

Florida Supreme Court Historical Society

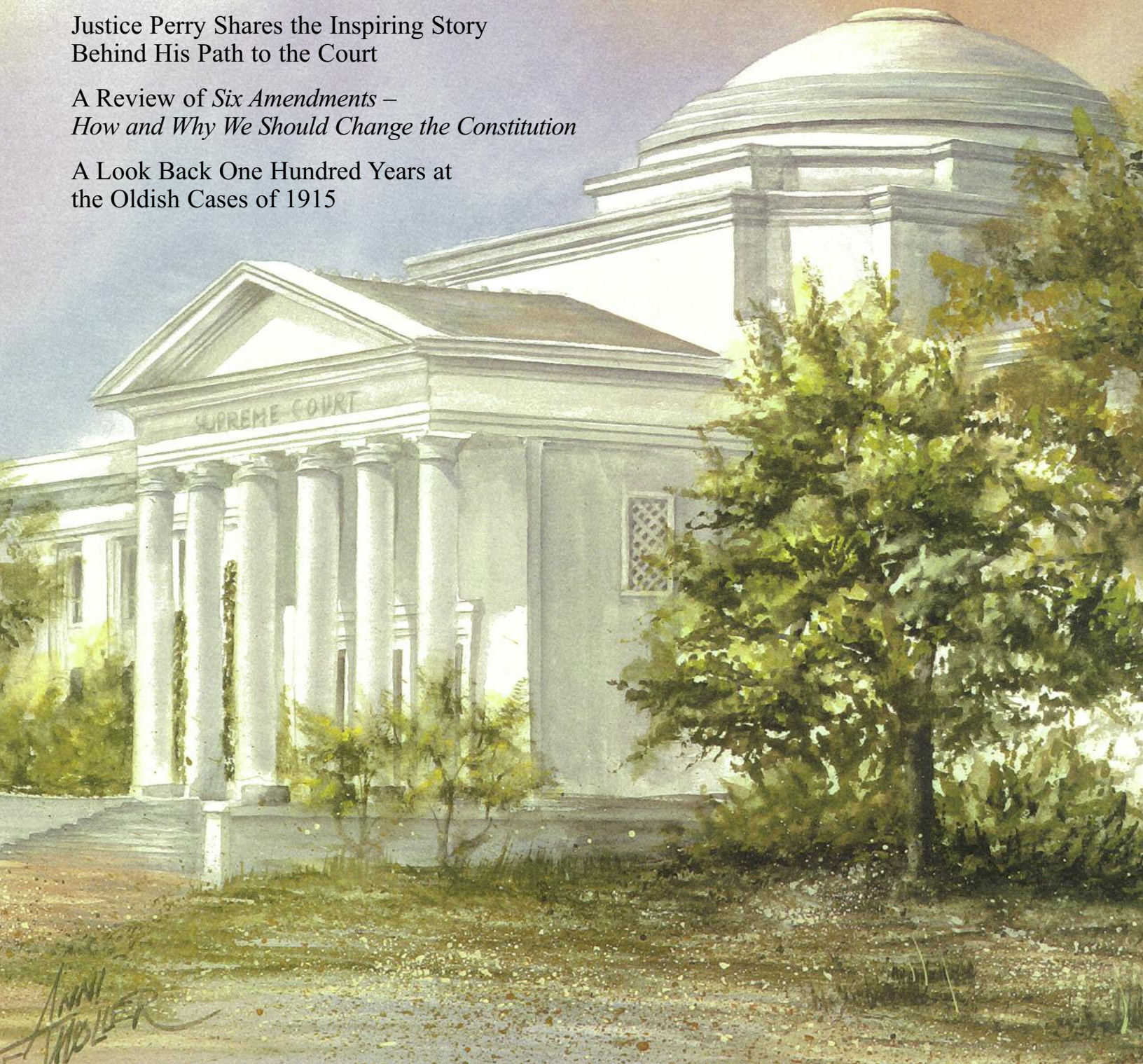
SPRING/SUMMER 2015

Justice Canady Considers Three Civil War
Era Separation of Powers Cases – *TIIF v. Bailey*

Justice Perry Shares the Inspiring Story
Behind His Path to the Court

A Review of *Six Amendments* –
How and Why We Should Change the Constitution

A Look Back One Hundred Years at
the Oldish Cases of 1915



FROM THE EDITORS



We hope you enjoy this fourth annual addition of the Society's magazine, which includes three separate pieces from sitting Justices – the Under the Dome column authored by Chief Justice Labarga on the history of IOLTA, an inspiring autobiographical article from Justice Perry, and an examination by Justice Canady of three interrelated Confederate-era Florida Supreme Court opinions; Bruce Rogow's review of *Six Amendments* by former Justice John Paul Stevens; a book excerpt from Neil Skene on the efforts to move Article V reform through the 1971 Florida Legislature; and a consideration of century old Florida Supreme Court opinions by Joseph H. Lang, Jr.

Stanley M. Rosenblatt

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Florida Supreme Court Historical Society

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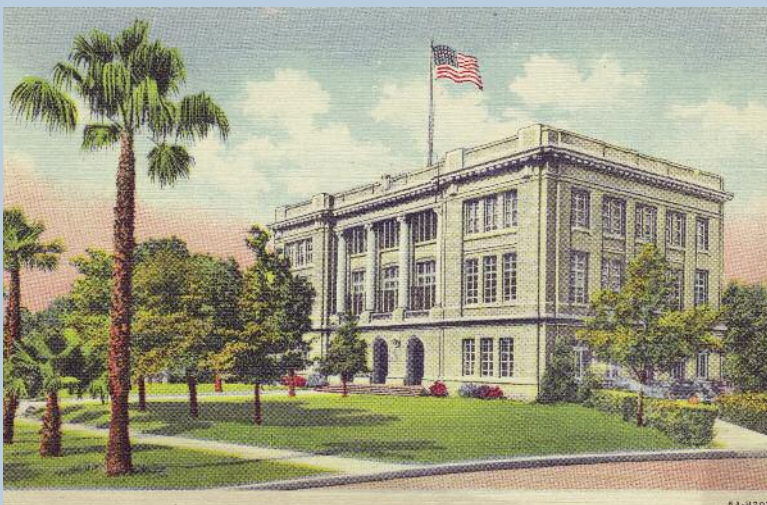
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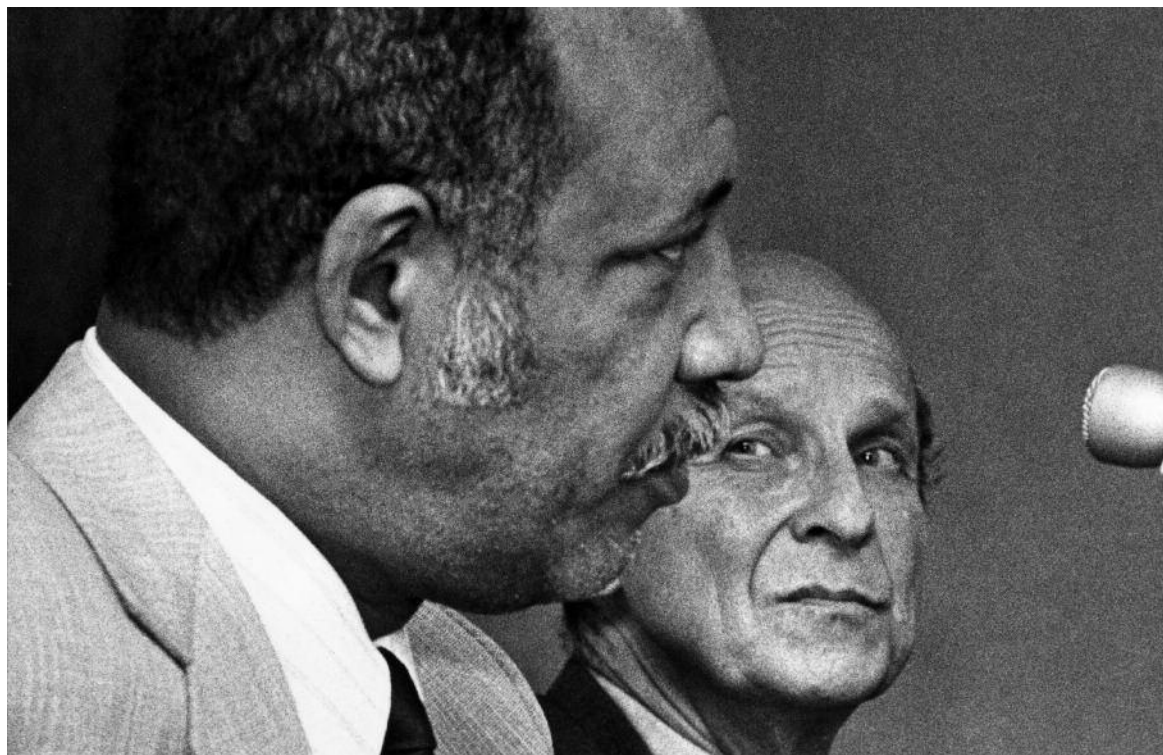
The Florida Supreme Court Historical Society works to save and maintain for future generations the records of the people and events that have shaped the evolution of Florida's court system from the early 1800s, through the 20th Century, and beyond. The Society is committed to making sure people understand the importance of a strong, independent judiciary in our governmental balance of power. The Society's two-fold mission is to (1) educate the public about the critically important work of the courts in protecting personal rights and freedoms, as well as in resolving the myriad of disputes that arise within the state, and (2) preserve the rich history of Florida's judicial system.

This publication has been sponsored by the members of the Florida Supreme Court Historical Society.

Florida Supreme Court Historical Society
PO Box 11344, Tallahassee Florida, FL 32302



Postcard rendering of the Florida Supreme Court



Florida Supreme Justices Leander Shaw Jr. and Raymond Ehrlich campaigning against a merit retention challenge in 1984.

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Florida Supreme Court Historical Society

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FROM THE PRESIDENT

Dear Members and Friends of the Florida Supreme Court Historical Society,

I know you will enjoy reading the Society's fourth annual Magazine. Many thanks to Dan Hoffman, Susan and Stanley Rosenblatt, and Jonathan Claussen for their heroic efforts in putting together another outstanding issue. And, many thanks to all of our authors for their very interesting articles.

The Society has moved forward to further its mission this year. The Society commissioned portraits of five justices; four are of sitting justices and one of a retired justice. All of the portraits are now complete and their public debut will be during the Society's Annual Dinner on Thursday, January 29, 2015 at the University Center Club in Tallahassee. The official installation ceremony of the portraits is being planned for the Spring, when the current justice's portraits will be placed on public display in the lawyers' lounge of the Florida Supreme Court building. When a justice retires from the bench, the portrait is then moved into the courtroom to join the portraits of the other former justices.



On June 30, 2014, Justice Jorge Labarga was sworn in as Florida's 56th Chief Justice and Florida's first Cuban-American to hold the post, succeeding Chief Justice Ricky Polston. This year, we revived the tradition of the Society's involvement in the Passing of the Gavel of the Chief Justice, a custom started in 1996 when then incoming Chief Justice Gerald Kogan, for the first time, opened the installation ceremony as a public event.

To honor the original historic event, the then president of the Society, Robert M. Ervin, whose passing this year we mourn, commissioned a special ceremonial gavel. The gavel has been passed from one Chief Justice to the next at each installation ceremony since then. At Chief Justice Jorge Labarga's installation, the Society sponsored the post-ceremony reception featuring coffee and desserts honoring his Cuban-American heritage.

The Society's mission also includes informing the public about the court and this year we are involved in two exciting educational projects. Earlier this year, the Society sponsored the graphic redesign and updating of the "Evolution of Justice" historical panels for public use on the Court's website. Visit it at www.flcourthistory.org to view the updated historical panels and take advantage of our many new resources profiling court history.

Under the leadership of Kelly O'Keefe, First Vice President, the Society is reinstituting the docent program at the Court. The docent program recruits and trains volunteers to provide guided tours of the Supreme Court building. This opportunity to share the Court's rich history with visitors and students is a key feature in communicating our message to the public. The Society is extremely grateful for the help of Irene Kogan, the original creator and champion of this program over 30 years ago. Irene continues to assist the Society and has been an invaluable resource as the Society breathes new life into this important program.

Planning is well underway for the Society's Annual Dinner, which will feature the presentation of the Society's Lifetime Achievement Award to Sandy D'Alemberte, along with our keynote speaker, Gilbert King, the best-selling author of *"Devil in the Grove: Thurgood Marshall, the Groveland Boys, and the Dawn of a New America."* Once again, the talented Hank Coxe, former Society President, will be the Master of Ceremonies. Mark your calendar now and plan to join your friends and colleagues for this wonderful event. Registration is now open on our web site.

Last year was a significant transition year for the Society, in which we updated our financial protocols and invigorated our membership rolls. Although thanks must be extended to all of our Trustees, there are two individuals in particular who deserve special recognition for their leadership and hard work in that transition.

Miles A. McGrane III, as the then president of the Society, provided his experience and wise management style, as the organization evolved to the next level. Ruth McDonald, who has provided decades of service to the Society from its very beginning through the last few years as the dedicated Treasurer, labored to ensure that every dollar of the Society's hard-earned funds were well spent on its mission.

Ruth has chosen to step back from her active role as of July of 2014. With her years of service and endless dedication to the Florida Supreme Court Historical Society, the Board of Trustees honored Ruth with an Honorary Life Membership; the recognition of this honor was etched into a crystal vase and presented to her by Kelly O'Keefe at a special lunch in her honor at the Governor's Club in Tallahassee.

We look forward to a successful year for the Society in 2015!

A handwritten signature in dark ink, reading "Sylvia Walbolt". The signature is fluid and cursive, with a large, stylized "S" at the beginning.

Sylvia Walbolt
President

CONTRIBUTORS



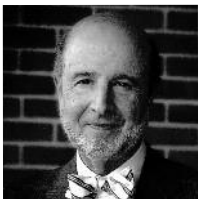
Justice Charles T. Canady served three terms in the Florida House of Representatives (Nov. 84 - Nov. 90), and from January 1993 to January 2001, he served four terms in the United States House of Representatives where he was a member of the House Judiciary Committee. Upon leaving Congress, Justice Canady became General Counsel to Governor Jeb Bush. He was appointed by Governor Bush to the Second District Court of Appeal for a term beginning November 20, 2002. Justice Canady was appointed to the Florida Supreme Court by Governor Charlie Crist and took office on September 8, 2008. He served as Chief Justice from July 2010 through June 2012.



Joseph H. Lang, Jr. is a shareholder in the Appellate Practice Group of Carlton Fields, P.A. He is Board Certified by The Florida Bar in Appellate Practice. He served as a law clerk to Justice Overton from 1995 to 1997.



Justice James E. C. Perry was appointed to the Florida Supreme Court by Governor Charlie Crist and took office there on March 11, 2009. Before his appointment, he served as a circuit judge of Florida's Eighteenth Judicial Circuit upon his appointment by Governor Jeb Bush in March 2000. Justice Perry was the first African-American appointed to the Eighteenth Judicial Circuit, where he later served as Chief Judge of the Circuit for a two-year term beginning July 2003. Following his graduation from Saint Augustine's University in 1966, Justice Perry served in the U.S. Army as a first lieutenant; He went on to Columbia Law School where he earned his Juris Doctorate degree in 1972.



Bruce Rogow is a Professor of Law at Nova Southeastern University Law Center. He has argued hundreds of cases in state and federal courts including numerous cases in the Supreme Court of the United States. He began his legal career in 1964-1966 with the Lawyers Constitutional Defense Committee representing civil rights workers in Mississippi, Alabama and Louisiana. He has been named in Best Lawyers in America for 27 years, this year in 6 separate categories.

UPDATE ON THE FSCHS MERIT SELECTION AND RETENTION PROJECT

BY SUSAN AND STANLEY ROSENBLATT

We are pleased to report that The Florida Supreme Court Historical Society Merit Selection and Retention Project is essentially complete. There have been eleven interviews since 2012 that will educate the public about Florida's judicial merit selection and retention system and hopefully assist in taking politics out of this judicial process. The interviews will also memorialize the events that transpired during recent merit retention elections in Florida.

We have had the pleasure of working with Sylvia Walbolt, Ed Guedes, Chris Searcy, Martin Dyckman and Mary Adkins. The interviews have been of current and former Florida Supreme Court Justices, the late Governor Askew and other individuals listed below, all of whom have had first-hand experience with Florida's merit selection and retention process.

1. Late Former Governor Reubin O'Donovan Askew: *August, 2012*
2. Martin Dyckman (Investigative journalist/author): *August, 2012*
3. Former Justice Rosemary Barkett: *September, 2012*
4. Late Former Justice Ben Overton: *October, 2012*
5. Justice Barbara J. Pariente: *October, 2013*
6. Justice Peggy A. Quince: *October, 2013*
7. Justice Fred Lewis: *October, 2013*
8. Gwynne Young (Former President of The Florida Bar): *June, 2014*
9. Justice James E. C. Perry: *September, 2014*
10. Chief Justice Jorge Labarga: *November, 2014*
11. Sandy D'Alemberte: *November, 2014*

The complete interviews will be archived with the FSCHS and we hope will be available on the Society's webpage. Additionally, we are currently working with Chris Searcy and his staff to edit and combine the raw footage into a consolidated film which we hope to share with The Florida Bar, law students, colleges and the voting public. We look forward to sharing these compelling interviews with you.

UNDER THE DOME

BY CHIEF JUSTICE JORGE LABARGA



When I became Chief Justice this summer, I took the opportunity presented by the “Passing of the Gavel” ceremony to publicly express my gratitude to Florida Bar President Greg Coleman for spearheading a discussion about access to the courts for those who cannot afford it.

I am excited that he asked me to chair a commission that will include business leaders from around Florida who will, I hope, help find solutions to this societal

problem. Finding broad-based strategies that enable more people to afford court access will be difficult. But it is the challenge that faces us all here and now.

However, in this column, for this publication, it’s more appropriate for me to reflect on a historical subject.

And the historical topic I have chosen happens to be the same subject: expanding access to the courts for those who cannot afford it. I want to focus on the history of this topic because I firmly believe that we can be—and should be—inspired by the wisdom and the work of those we follow.

In 1981, the Florida Supreme Court approved a program that has built a truly astounding record of success. I’m sure many of my readers know that I am referring to the Interest on Trust Accounts program, commonly known as IOTA (or IOLTA for Interest on Lawyers Trust Accounts outside of Florida). For those readers who may not have a legal background, let me briefly explain the nuts and bolts of IOTA: Lawyers routinely hold money for clients or others on a short-term basis. Those funds are pooled into an interest-bearing account and the interest earned on the pooled funds is then distributed to programs for those among us who need help to access the courts and to improve the administration of justice.

Florida’s IOTA program was the first in our country. Other states followed Florida’s lead and the program now has long been a staple in every state.

We can go no further on this subject without paying tribute to Arthur England. Florida was the leader of IOTA in our country and Arthur England was the leader of IOTA in Florida. He was a Supreme Court justice in 1976 when he proposed establishing an IOTA program. Five years later, his proposal became a reality in our state.

In June 2013, just a few weeks before his death, the Florida Bar Foundation awarded Chief Justice England the IOTA Founder’s Award. My colleagues on the Court and the many friends and admirers of Chief Justice England reflected on his legacy last December during a service in the Courtroom.

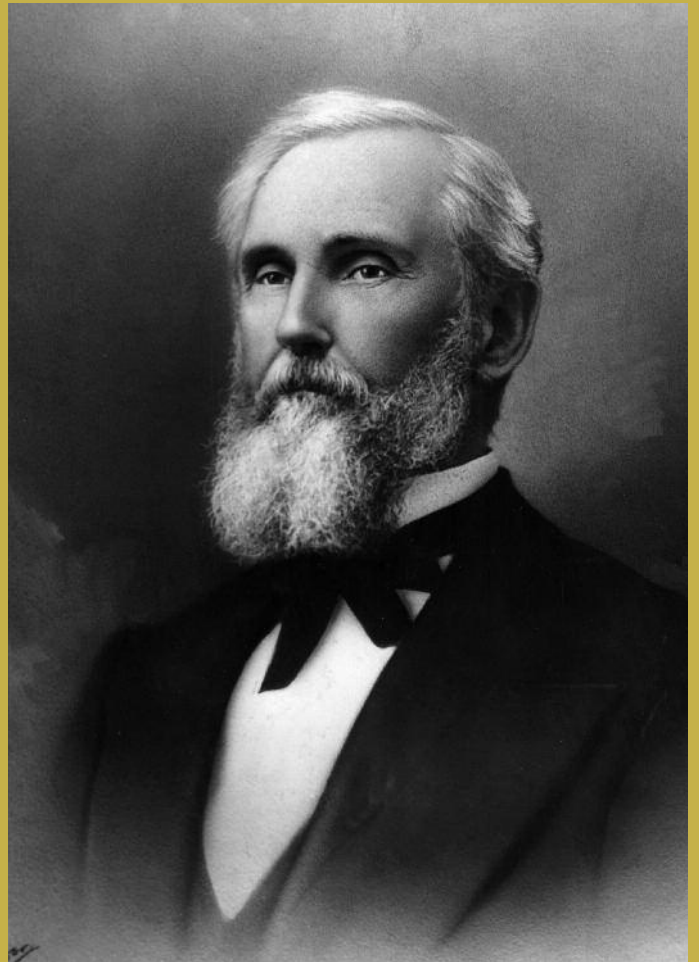
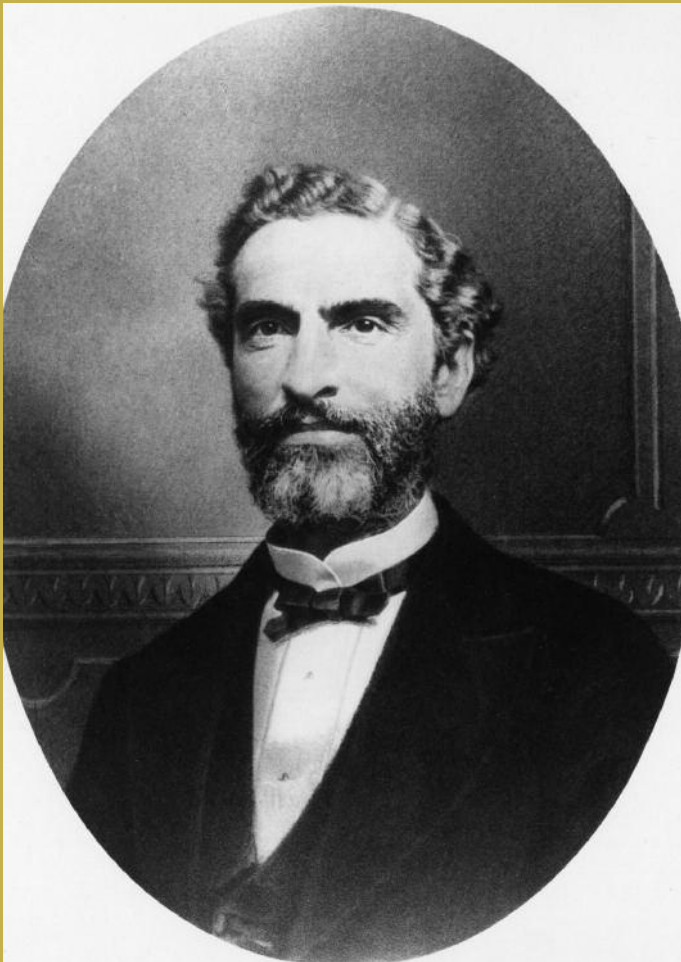
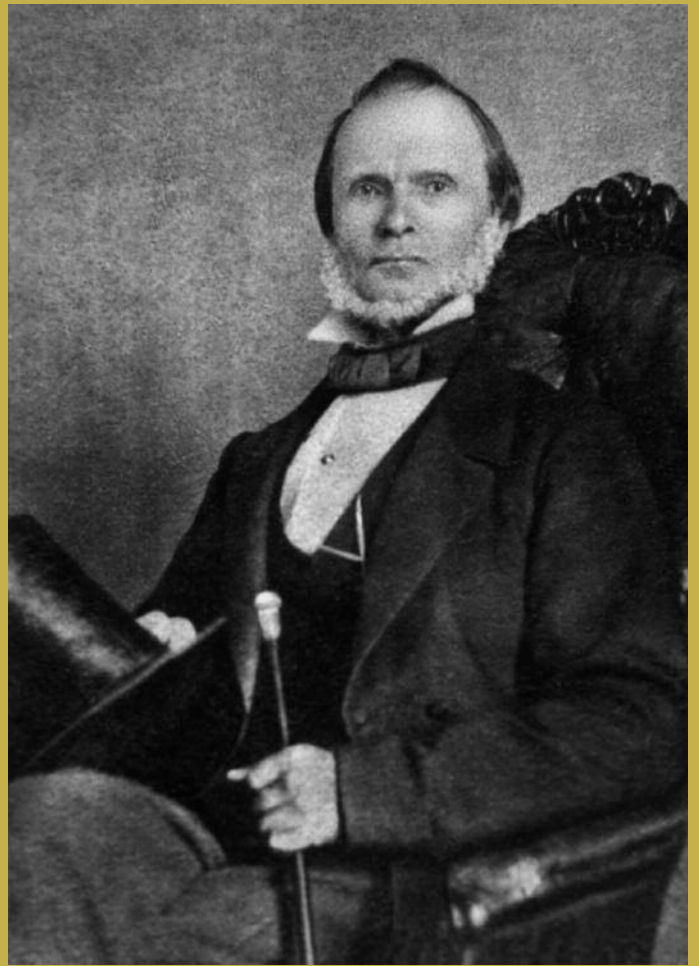
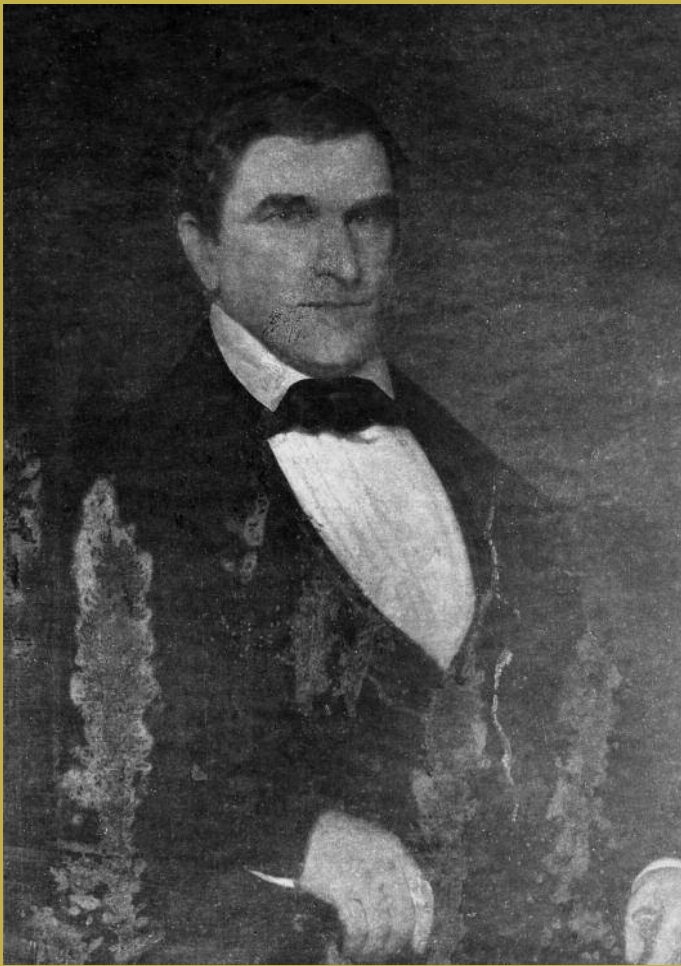
The debt of gratitude we all owe Arthur England continues to grow each year—even in recent years when the income generated by IOTA has plummeted as a result of low interest rates. In 2007-08, before the recession, IOTA income was \$44 million. Over the next two years, it dropped almost 90 percent. It has yet to recover.

But even as we are concerned, alarmed, and disturbed by the size and complexity of the challenge we face, I at least am also heartened and encouraged to know that in the past 33 years Florida’s IOTA program has generated some \$450 million, primarily to help people who need civil legal assistance but can’t afford it.

What does this mean on Florida streets, in Florida homes, businesses and courtrooms? It means hundreds of thousands of people have been helped with family matters, housing disputes, immigration, disability rights, employment law, and access to public benefits.

What an incalculably valuable achievement! Access to the courts for each of us can be so very important on an individual basis, of course. But access to the courts for all of us, regardless of income and regardless of need, is also immensely important in a much larger sense because courts are essential to the good health of our democracy, our economy, and our civil society. Even if we personally never need a judge or a jury of our peers, we benefit when our neighbors, our relatives, and our fellow citizens have a place to go to resolve differences and seek justice.

It is my hope that, with creativity and commitment, we will find new paths and programs addressing court access that will create as rich a legacy as the one created by Chief Justice England. The story of his vision and his perseverance reminds me of one of the reasons it’s so important for us to study history: To be inspired to aim for great things, regardless of the hurdles in our path. ■



RAILROADS, RECUSALS, REHEARINGS, AND SOME LESSONS IN THE SEPARATION OF POWERS

TRUSTEES OF THE INTERNAL IMPROVEMENT FUND V. BAILEY (1862-63)

BY JUSTICE CHARLES T. CANADY

As the Civil War was raging, the Florida Supreme Court considered a constitutional controversy over the impact on railroad bondholders of legislation to improve the navigation of the Apalachicola River. At the heart of this controversy was the question of whether funds from the Internal Improvement Fund could only be used for certain interest payments on railroad bonds previously issued under the provisions of the legislation creating the Internal Improvement Fund. Once that question was settled in favor of the railroad bondholders and adversely to the position of the Legislature, the controversy took on a new dimension. The Legislature passed a law challenging the integrity of the Court and seeking to bring about a reconsideration of the constitutional issue. This legislative intervention in the adjudication of the case was not successful.

The story, which presents a window into the workings of Florida's Confederate era government, unfolds in a series of three opinions: *Trustees of the Internal Improvement Fund v. Bailey*, 10 Fla. 112 (1862) (*Bailey I*); *Trustees of the Internal Improvement Fund v. Bailey*, 10 Fla. 213 (1863) (*Bailey II*); and *Trustees of the Internal Improvement Fund v. Bailey*, 10 Fla. 238 (1863) (*Bailey III*). Before examining what the Court had to say in these opinions, we look briefly at the justices who participated in deciding the *Bailey* case and at the other major players in the controversy.

The Members of the *Bailey* Court

At the time of the *Bailey* case, the Court was composed of three justices who were elected by the people of Florida. The Chief Justice, Charles H. DuPont—a wealthy planter long active in radical Democratic (that is, secessionist) politics—had been elected as a justice of the Court in 1853 in Florida's first popular election of justices. In 1859, he was popularly elected Chief Justice, ousting incumbent Chief Justice Thomas W. Baltzell, who had become mired in public disputes with the other members of the Court. The *Bailey* Court was filled out by two justices—David S. Walker and William Augustus Forward—who had come on the Court after being elected in 1859. Justice Walker's background was as a moderate Whig politician. Before joining the Court, he served in the Legislature and in the elected position of Registrar of Public Lands. Walker would go on to be elected Governor of Florida in the immediate aftermath of the Civil War and to serve in that position until Florida was readmitted to the Union. Justice Forward had, before his election to the Supreme Court, served both as a Democrat member of the Legislature and as a circuit judge.

The Parties and Counsel

William Bailey, the plaintiff in the lawsuit that brought the controversy to the Florida Judiciary, was reported to be the wealthiest man in Florida, a man who at one time owned more slaves than any other Floridian. Based on his service in the Second Seminole War, he was known as General Bailey. Among his other interests, Bailey was heavily involved in the railroad business. That involvement included service on the board of directors of the railroad company that issued the bonds at the center of the controversy in the *Bailey* case. Bailey was represented by M.D. Papy, who had served as Florida's Attorney General from 1852 through 1860, and in that capacity had been a member of the Trustees of the Internal Improvement Fund from the Fund's inception.

On the other side of the case were the Trustees of the Internal Improvement Fund—at least nominally. As the story unfolds, it



Former Justice Thomas Baltzell (1846-50 & 1854-60) served as counsel to THIF and the Legislature.

becomes apparent the real party in interest adverse to Bailey, one of the most prominent citizens of Florida, was in fact the Florida Legislature. In all the *Bailey* cases, the position adverse to Bailey was represented by Thomas Baltzell, who had not long before been ousted from the position of Chief Justice.

Bailey I

Legislation Declared Unconstitutional

General Bailey, who was a director of the Pensacola & Georgia Rail Road Company, was the holder of bonds issued by the railroad, bearing interest payable semiannually. Attached to Bailey's bonds was an endorsement made by the Trustees of the Internal Improvement Fund—including Registrar of Public Lands David S. Walker and Attorney General M.D. Papy—providing that the bonds were issued in accordance with legislation, the Internal Improvement Act, adopted in 1855 to create the Internal Improvement Fund. The endorsement specifically stated that the Internal Improvement Fund “is specially pledged for the payment of interest on these bonds.”

Then, in 1861 the Legislature adopted a law providing for the Trustees of the Internal Improvement Fund to contract for clearing out and improving the Apalachicola River and for reclaiming its swamp and overflowed lands. For that purpose, the legislation directed that the Trustees “raise whatever funds are necessary from the Internal Improvement Fund and from the lands thereof.” On the ground that the use of funds from the Internal Improvement Fund as directed by the 1861 legislation would impair his security as a bondholder, Bailey—solely in his capacity as an individual bondholder—successfully sought an injunction in circuit court to prevent the Trustees from

expending funds on the Apalachicola River project. The Trustees appealed to the Supreme Court.

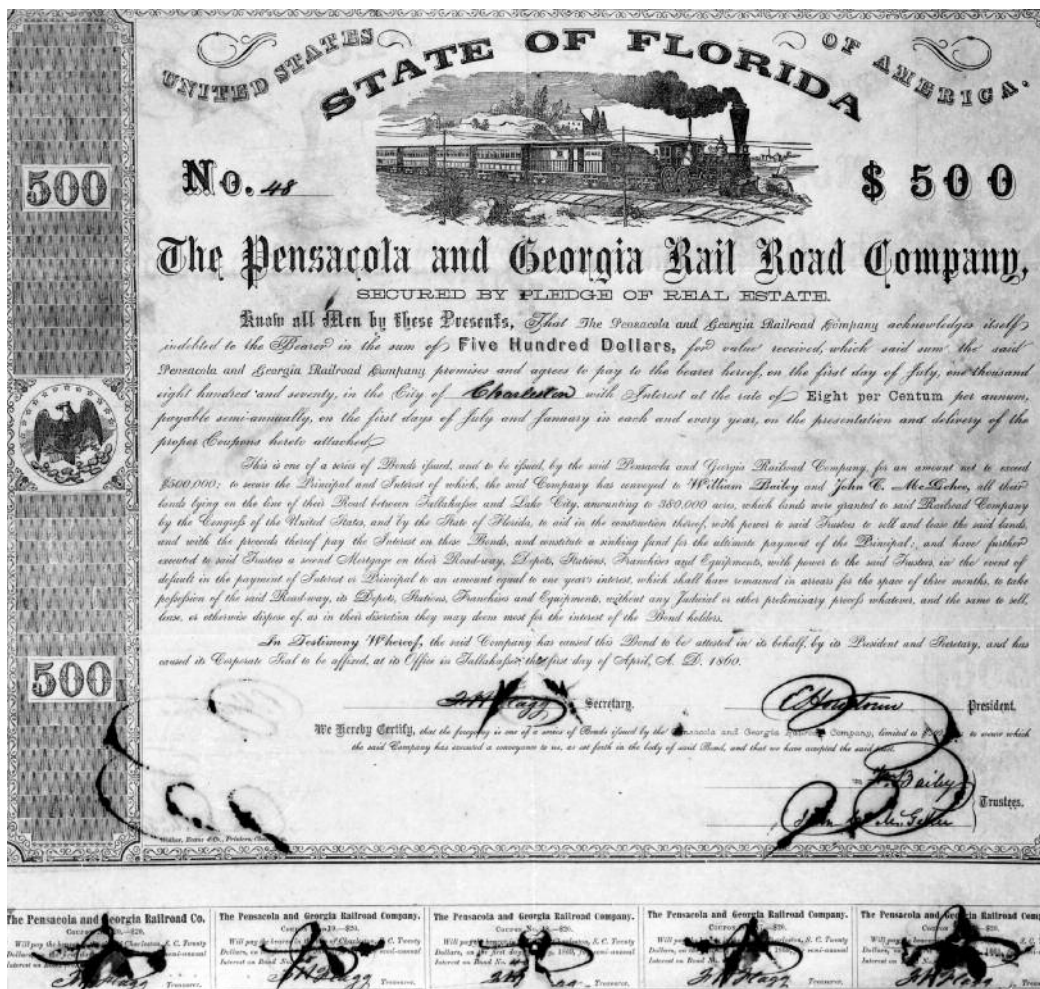
In a unanimous opinion delivered by Justice Walker, the Court affirmed the decision of the circuit court in favor of Bailey. As a threshold matter, the Court concluded that the Legislature had the constitutional power to adopt the 1855 Internal Improvement Act and to provide that the lands and money composing the internal improvement fund “be held in pledge, mortgage, or trust, for the payment of the interest of the bonds authorized by said Act.” The Court rejected the Trustees’ argument that the 1855 legislation violated a provision of the Constitution prohibiting the Legislature from pledging the faith and credit of the State to raise funds in aid of any corporation. The Court reasoned that this constitutional provision did not apply to a pledge of “a fund already raised by a gift of the United States to the State of Florida”—such as the Internal Improvement Fund, which held title to lands granted to Florida by federal legislation. In rebuffing an argument by the Trustees that the 1855 legislation constituted an unlawful delegation of legislative power, the Court observed that the Trustees “cannot be heard to impeach the very act which gives them existence” and that the unlawful delegation argument would have as much force against the 1861 legislation—under which the Trustees sought to act—as against the 1855 legislation.

The Court then turned to the question of whether the 1861 legislation unconstitutionally interfered with Bailey’s rights as a holder of bonds issued in accordance with the 1855 legislation. In discussing the provisions of the 1855 legislation, the Court pointed out the Legislature had provided that funds could be directed to projects other than the projects designated in that legislation only when certain financial objectives had been met by the designated projects. The legislative design was not “to absorb the whole fund in aiding the designated improvements to the exclusion of all others, but only to postpone all others till those first designated should have been put into successful operation”—a condition that apparently had not been realized.

The Court stated the rule it was required to apply:

The Legislative Department can constitutionally pass no law impairing the obligation of [the State’s] contracts, and when it attempts to do so, it is the solemn duty of the Judicial Department, co-equal and co-ordinate with the Legislative, each being supreme in its own sphere in the constitutional system, to declare such law null and void.

Citing the decision of the United States Supreme Court in *Fletcher v. Peck*, the Court reasoned that the Legislature, in adopting the 1855 legislation, “made a law in the nature of a contract” and that rights vested under the 1855 legislation could not be divested by subsequent legislation. Accordingly, the Court concluded that the 1861 legislation unconstitutionally impaired the rights of bondholders:



Pensacola and Georgia Railroad Company bond Issued April 1, 1860 in the amount of \$500 and secured by a conveyance of land to William Bailey, as co-Trustee.

All the fund having been appropriated, for the present, to the purposes mentioned in the [1855] act, it follows of course, that the rights of those who have purchased bonds on the faith of that appropriation would be violated if any portion of the fund should be applied to any other purpose so as to endanger their security.

It is noteworthy that the Supreme Court of Confederate Florida expressly relied on the jurisprudence of the United States Supreme Court. The disunion of the Civil War no more precipitated a complete breach in the legal culture than had the independence of the states that followed the American Revolution.

Bailey II

The Court Rejects the Legislature's Challenge to Its Competence

Evidently, the Legislature was highly displeased with the Court's decision in *Bailey I*. The Legislature soon adopted a law challenging the Court's decision. The provision was adopted as part of an act to repeal legislation adopted in 1857 to facilitate the construction of the St. John's and Indian River canal. The pertinent provision provided:

... That the Attorney General shall file an application before the Supreme Court for rehearing in the case of the Trustees of the Internal Improvement Fund vs. William Bailey, before a *competent tribunal*, or by bill or otherwise, to be filed by him, shall come before a *competent tribunal* to have the questions in the above case settled, and the questions arising out of this Act in regard to the Indian River Canal.

By this law the Legislature directly called into question the competence of the Court to decide the *Bailey* case. Just a few days before passing this legislation, the Legislature had passed other legislation regarding the disqualification of judicial officers, providing that no judge "shall sit or preside in any cause to which he is a party, or in which he is interested, or in which he would be excluded from being a juror by reason of interest, consanguinity, or affinity to either of the parties." The disqualification legislation also provided that the judicial acts of a judge "so incompetent, shall be of no force or validity, and are hereby declared to be null and void."

The challenge to the Court's competence was based on the contention that two justices—DuPont and Walker—were

disqualified from considering the *Bailey* case due to the ownership of stock in the Pensacola & Georgia Rail Road Company. In the case of Justice Walker, the stock was owned directly. And in the case of Chief Justice DuPont, the stock had been given by him to his six children, four of whom were still minors. The same issue had been raised by the Trustees in a timely motion for rehearing of *Bailey I* and had been rejected by the Court without comment.

The Court's unanimous opinion in *Bailey II* was delivered by Justice Forward—the one member of the Court whose competence had not been called into question. The Court noted at the outset that the recently passed disqualification legislation had not changed the standard for disqualification. The Court also explained that since no statutory provision established the “mode of determining” the issue of disqualification, the Court held “that the safest and legal way of determining the same is by decision of the Court, in cases where there is any question of doubt as to the disqualification of the Judge.”

Evaluating the merits of the disqualification issue, the Court acknowledged that any interest, “[n]o matter how slight,” of the judge in the case requires recusal. But the Court went on to stress that in order to be disqualified, the judge “must be *immediately* interested in the very issue in question.” And “[a] mere *speculative possibility* of such an interest” is not sufficient to require recusal of a judge. Instead, “[t]he interest which disqualifies is a legal interest, certain and dependent on the results of the case.” Applying this rule, the Court concluded that the interest of the Pensacola & Georgia Rail Road Company in the *Bailey* case “is speculative and uncertain.” The Court reasoned that the company had no legal right to enforce any payment of funds by the Trustees to bondholders, that the company was required to reimburse the Trustees through stock for interest payments made by the Trustees, and that the impact of the outcome of the *Bailey* suit on the finances of the company was purely speculative.

In *Bailey II* the Court therefore rejected the Legislature's attempt to impugn its integrity and determined that *Bailey I* had been decided by a competent tribunal.

Bailey III

The Sanctity of Final Judgments Upheld

The Attorney General's request for a rehearing of *Bailey I* remained for disposition. That rehearing—which was brought by Thomas Baltzell—was filed only after the Trustees had formally adopted a resolution reciting that the Trustees did “not consider[] themselves the parties immediately interested” in the case, “but merely nominal parties thereto,” and that the consent of the Trustees to the petition for rehearing “was intended as an act of courtesy to the General Assembly.”

In considering the pending application for rehearing, the Court observed that the Legislature in the 1861 legislation had neither “granted the rehearing, [n]or directed the Court to grant it.” The Court further observed that if the Legislature had “directed a

rehearing, the hearing of the case would necessarily carry with it the right to set aside the judgment of the Court, and there would be unquestionably an exercise of judicial power” and, therefore, a violation by the Legislature of the constitutional separation of powers. But the Court rejected Bailey's argument that the legislation impermissibly directed the Attorney General to take action. In connection with this issue, the Court focused on the Legislature's legitimate interest in a case where the activities of a public entity created by the Legislature were at issue.

Nevertheless, the Legislature's effort to obtain a reexamination of the decision in *Bailey I* was unavailing. The judgment in *Bailey I* had been “enrolled,” the Court observed, and the cause was no longer pending in the Court. The Court explained that the effort to obtain further rehearing was simply too late:

The term of Court in which said judgment was entered has long since passed, and the question arises, can this Court recall or vacate said judgment? If this can be done now, it can be done twenty years from this time, and there is no telling when litigation would cease. The exercise of such a power, if it existed at all, would be the most uprooting and dangerous act ever exercised by any Court. No such power, however, exists. The judgment of this Court during the term in which [it] is pronounced, like any other order, may be vacated, corrected and changed. But after it is enrolled and the term passed at which it was pronounced, the power of the Court over the record ceases and the judgment possesses a solemnity and sanctity which holds it sacred, and cannot be even appealed from, much less recalled.[]

With this ringing affirmation of the importance of the finality of judgments, the controversy over General Bailey's bonds was brought to an end.

A Postscript

In 1866, a proposal was made to the Trustees that the project to improve the Apalachicola River be resurrected, but the lessons of the *Bailey* case had not been lost on the Trustees. The minutes of the Trustees recording their rejection of the proposal contains the following entry: “The Board expressed the opinion that they did not have the legal right to appropriate the funds for the purpose mentioned, but consented to recommend the subject to the Legislature.” The entry was made by David Walker—who earlier had signed the Trustees' endorsement on Bailey's bonds and participated as a Justice in deciding the *Bailey* case—as President of the Trustees, a position he held by virtue of his tenure as Governor. ■

The author expresses his gratitude to Daniel R. Hoffman for his valuable research and editorial assistance. Daniel is an attorney with the Law Office of Stanley M. Rosenblatt, P.A., in Miami.

For the footnotes to this article, please refer to the Society website: <http://flcourthistory.org/Historical-Review>

Photographs provided by the State Library and Archives of Florida.

SYLVIA WALBOLT
PRESENTING MILES MCGRANE
WITH HIS PRESIDENT GIFT



2014 HONORARY LIFE MEMBER AWARD
PRESENTED TO
RUTH McDONALD

ALSO PICTURED ARE FORMER JUSTICE PARKER LEE McDONALD AND SOCIETY FIRST VICE PRESIDENT KELLY O'KEEFE



3 UNLIKELY ALLIES MOVED REFORM OF COURTS THROUGH '71 LEGISLATURE

BY NEIL SKEENE

Besides Governor Reubin Askew's "nominating commissions" created to screen applicants for judicial vacancies, the most important part of judicial reform in the 1970s was the passage of a major revision of Article V, the judicial section of the Florida Constitution. The effort spanned nearly five years. A watered-down reform foundered at the polls in 1970 before voters gave it final approval in March 1972.

Three prominent people who went on to greater fame in public service pushed that constitutional amendment through the Legislature in 1971. This is the story of the collaboration of these three unlikely allies – the liberal Miami advocate Talbot D. "Sandy" D'Alemberte, future U.S. Attorney General Janet Reno, and conservative Panhandle senator Dempsey J. Barron.

The situation they faced in the Florida courts was unsustainable. Over the decades, a motley collection of local courts had developed in Florida as a way around a constitutional formula that limited the number of circuit judges to one for every 50,000 people. There were separate traffic courts, municipal courts, justice of the peace courts, and civil courts of record as well as the county and circuit courts. Many judges, including some county judges, did not even have legal training. The courts had overlapping jurisdiction, so parties often could choose the court more likely to rule in their favor. Each court had its own marshals and clerks, so they were sources of patronage. And in the 1960s and 1970s, the courts were facing a "law explosion," as Ben Overton later described it in his address to the Legislature as chief justice in 1977.

Askew had led the reform effort in the 1967 Constitution Revision Commission, but the Legislature, already burdened by another round of court-ordered reapportionment, caved in to objections from the local judges, clerks and bailiffs whose fiefdoms would be abolished. So judicial reform had not been part of Florida's new constitution passed by voters in 1968. In 1970, the judicial reformers managed to win near-unanimity for



Sandy D'Alemberte as a Florida State Representative in 1970.

amending Article V but only with a lot of compromise. Legislators "left to the discretion of future legislatures an unnecessarily large number of actions considered mandatory to a complete new system of courts," as Chief Justice B.K. Roberts' Judicial Council put it in its 1971 report. Neither the Florida Bar nor the Judicial Council endorsed it. Despite support of newspaper editorials, the Article V proposal of 1970 failed -- 503,992 for, 526,328 against.

One discouraged reformer was D'Alemberte. After four years in the House, he was being lured back to full-time law practice by a dramatic increase in salaries at big law firms like Steel Hector. Even before what he called the "pabulum" reform failed, D'Alemberte told his friend and fellow legislator, Richard Pettigrew, that he was not going to run again in 1970. Pettigrew, who had been designated the next Speaker of the House, told D'Alemberte he could have any committee he wanted if he'd stay one more term. D'Alemberte wanted to chair Judiciary, and he wanted to name his own committee staff. Pettigrew agreed.

Their circle of friends in south Miami included John Edward Smith, a tax lawyer at Steel Hector in Miami, and Janet Reno, who had been a debate champion and valedictorian at Coral Gables High School, went off to college at Cornell, then graduated from Harvard Law School in 1963, a year behind Bob Graham. She returned to Miami, interviewed with the Scott McCarthy law firm, a forerunner of Steel Hector, and was told there was no chance the firm would hire a woman. She ended up practicing law with Gerald Lewis, a 1960 Harvard Law grad who was running for the State Senate in 1970.

One night soon after the November election, when D'Alemberte was at the Smiths' home, Sarah Smith told D'Alemberte he should think about Reno for the Judiciary Committee staff. "The next day," D'Alemberte says, "I was driving down Dixie Highway in my Mustang convertible with the top down, and heard the horn from the car next to me. I looked to my right, and



Janet Reno in 1978 upon becoming Florida's first woman State Attorney.

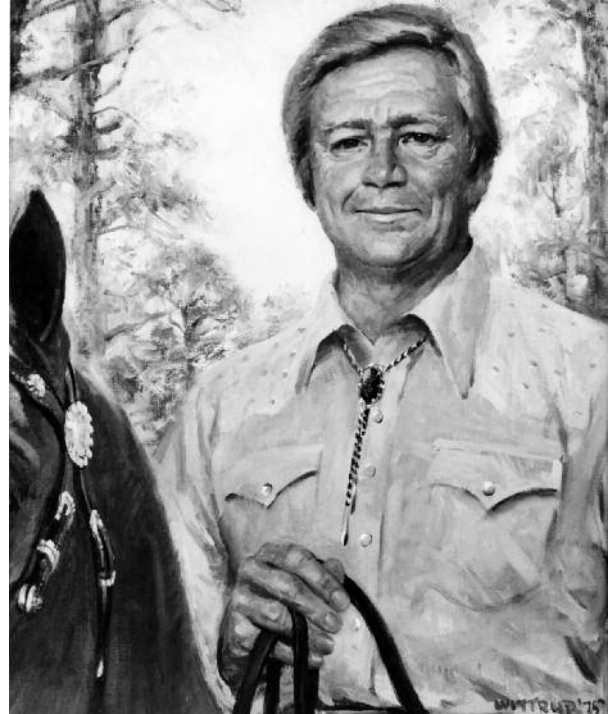
it was Janet. I motioned to her to follow me home. Before we finished our second drink, she agreed to be my staff director.” Reno soon won the regard of Sen. Dempsey J. Barron, D’Alemberte’s counterpart in the Senate as chairman of the Judiciary-Civil Committee, Barron had proven many times that he could kill almost any legislation he wanted to kill. A lawyer in Panama City with an insurance-defense practice, Barron also owned a ranch near Bonifay, up near the Alabama line, and a 3,000-acre ranch in Wyoming, which he once called “a leftover dream from cowboy movies when I was a little boy.” He often sported western-style attire. His portrait as Senate president (1975-76) shows him not in a traditional pose but in an open-necked western-style shirt atop his palomino horse.

Barron and Reno both loved low-brow western mysteries; they would swap books and tell stories amid talk about judicial reform. Barron insisted on preserving local elected judges, but moved the other new Article V changes through the Senate as D’Alemberte and Pettigrew were moving them through the House.

It took all of 1971 to get the Article V changes ready for a legislative vote. Askew called a special session of the Legislature starting November 29, 1971, to focus on implementation of a corporate income tax, which the voters had just approved in a special election, and the revisions to Article V.

The House-Senate conference committee that worked out the final provisions included not only D’Alemberte and Barron but Reno’s former law partner, Sen. Gerald Lewis, and future Supreme Court justice Sen. Fred Karl. The result, Senate Joint Resolution 52-D, was approved on December 11, 1971, by the three-fifths vote of both houses needed to go on the ballot.

A separate vote produced the three-fourths vote to put the amendment before the voters during the presidential primary on March 14, 1972. Unless the changes were approved before the



Portrait of Sen. Dempsey J. Barron with his palomino horse.

fall elections, many local judges would be re-elected, and consolidation of the courts would effectively be delayed for four years. (Legislators created 26 new circuit judgeships and 135 county judgeships, many of which went to judges of the abolished local courts.)

Voters gave the more far-reaching new Article V overwhelming approval – 969,741 for, 401,861 against.

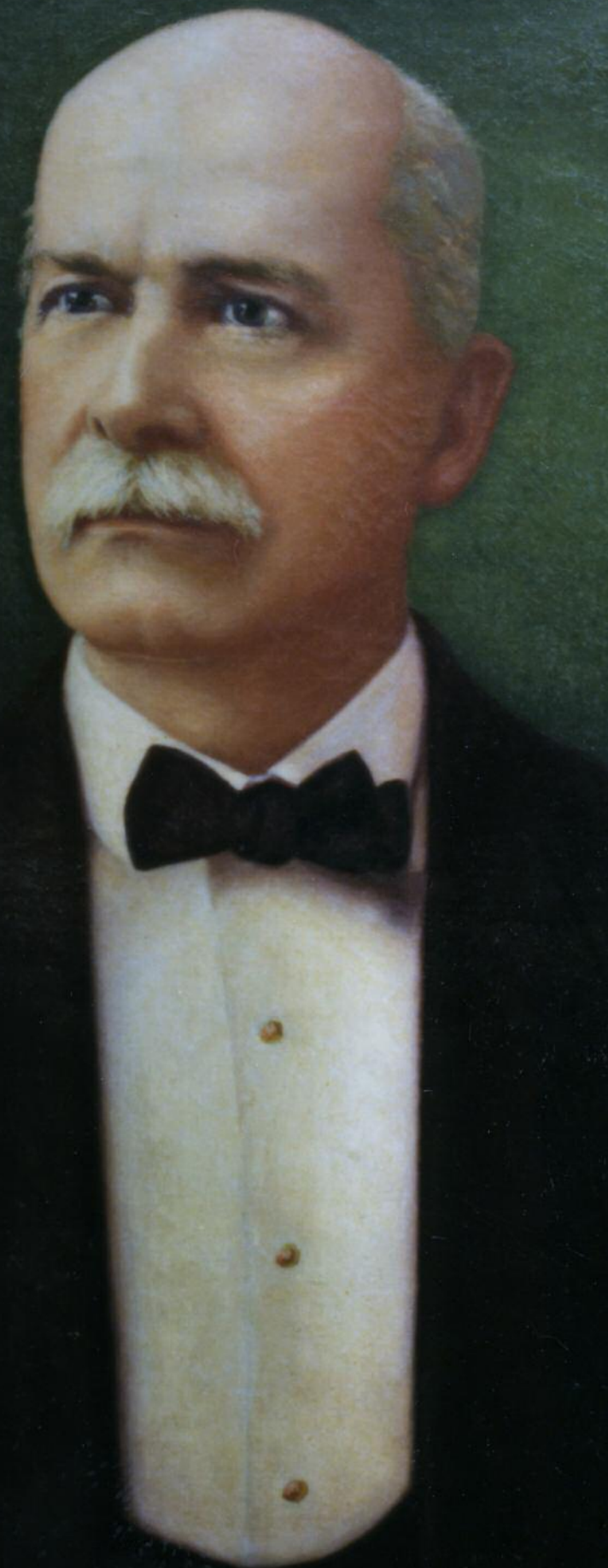
Reno went to work for Pettigrew when he became a senator, became a partner with D’Alemberte at Steel Hector, was then appointed State Attorney in Miami-Dade. D’Alemberte, as president of the American Bar Association in 1992-93, played a key role in Reno’s nomination by President Bill Clinton to be Attorney General. Barron remained first among equals in the Senate. Though a supporter of civil liberties, he was often at odds with Askew and liberals on other populist issues like financial disclosure for public officials. But it was a time when adversaries on some issues could be allies or dealmakers on others, and the odd couple of Reno and Barron joined with D’Alemberte to make judicial reform happen. ■

Neil Skene is author of the forthcoming third volume of the History of the Florida Supreme Court. This excerpt from the book was edited for the FSCHS newsletter.

OLDISH CASES OF 1915:

A REVIEW OF CENTURY-OLD
FLORIDA SUPREME COURT
CASES AND A DISCUSSION OF
THEIR CONTINUED RELEVANCE
BY JOSEPH H. LANG, JR.

On a recent weekend, I read some oldish 1915 opinions from the Supreme Court of Florida. I say “oldish” because the cases are one hundred years old, before nearly all of us alive today were born. Yet, against the backdrop of the common law as a whole and in the light of the types of disputes covered, the opinions do not really seem old. To be sure, the issues in 1915 read much more contemporary than antediluvian. In fact, once the creaky demurrers, assignments of errors, and the like are worked through, it is apparent that these issues themselves could, and often do, arise in similar forms today. Below, I will look briefly at a handful of these century-old cases and then examine whether such cases carry any continuing relevance today. These six cases are presented in three sections: (I) a companion pair of separation of powers cases, (II) disputes between local governments, and (III) a couple of personal injury actions.



The Florida Supreme Court in 1915

Five Justices sat on the Court in 1915, one of whom joined the Court in January of that year, and each of whom served for many years. Chief Justice R. Fenwick Taylor (34 years on the court), Justice Thomas M. Shackleford (15 years), Justice Robert S. Cockrell (15 years), and Justice James B. Whitfield (39 years on the Court) were the sitting justices. Justice William H. Ellis was elected in 1914, took his seat on the Court at the beginning of the new year, and would serve for 23 years.

I. Challenging the Legislature's Right to Create a Judicial Positions

In one pair of cases that year, the Court was called on to examine the constitutional delineation of powers among the branches of government. The Florida Legislature passed a bill in May 1915 that created an additional judicial circuit and provided for two additional circuit judges for the new circuit. The new circuit encompassed Duval and Nassau counties.

Immediately upon its passage, Governor Park Trammell wrote to the justices of the Court and requested the Court's opinion as to "whether the Constitution limits the Governor in this instance to the appointment of one such judge only." *In re Opinion of the Justices*, 69 Fla. 632, 633, 68 So. 851, 851 (1915). On May 21, 1915, the Court declined to provide an answer: "The justices of this court have invariably, since the adoption of the Constitution in 1885, expressed the opinion that ... the Constitution does not authorize the justices of the Supreme Court to give to the Governor at his request an opinion upon statutory enactments affecting his executive powers and duties." The Court further explained that "[a]n advisory opinion of the justices, while not binding upon the court, and open to reconsideration and revision, yet, if it questioned the validity of a statute, would create a doubt as to the effect of such statute which the justices of this court should not upon an *ex parte* consideration of the subject bring about."

Chief Justice Taylor, Justice Whitfield, and Justice Ellis signed that reasoning. Justices Shackleford and Cockrell agreed with that resolution, but not the reasoning: "In our judgment, the question as propounded does not ask an interpretation of any portion of the state Constitution; it is too general in its scope, and therefore not proper to be answered. We do not concur in the reasoning of the majority of the justices leading them to this same conclusion."

That non-answer, of course, led to another case. In due course, Attorney General Thomas F. West challenged, in a *quo warranto* proceeding, the lawfulness of the Honorable J. Turner Butler's appointment as a circuit judge in Duval County earlier in the year. *See State ex rel. West v. Butler*, 70 Fla. 102, 69 So. 771 (1915). The Court framed the main issue as follows: "The primary question presented is whether, under the Constitution, the Legislature has the power to provide for more than one circuit judge to be appointed for one judicial circuit of the state."

The Court concluded that the Constitution allowed only one circuit judge in each circuit; the Legislature could create more circuits, but it could not increase the number of judges in any circuit. It explained: "However desirable it may be to provide for more than one circuit judge in a judicial circuit of the state in which multiplied and rapidly increasing litigation keeps pace with vastly increased population, property, values, business, and commerce, the inconvenience necessarily result from a lack of adequate judicial tribunals cannot lawfully be overcome by ignoring the express provisions and limitations of organic law." Thus, "the appointment of the respondent as circuit judge for a circuit in which there is already one circuit judge is without authority of law under the Constitution of this state." "Let a judgment of ouster be entered." Justices Cockrell and Ellis dissented.

In resolving this jostling among the three branches of government, the Court's opinion provides a bounty of interpretive canons that still hold currency today. The following are just some examples of many such canons found in the comprehensive opinion:

- Questions of power, not of policy, are to be considered, and any doubts as to its validity should be resolved in favor of a statute alleged to be unconstitutional.
- While the lawmaking power of the Legislature is limited only by the express and clearly implied provisions of the federal and state Constitutions, and while all fair intendments should be indulged in favor of the constitutionality of a duly enacted statute, yet the provisions expressed and implied of the Constitution must prevail where a statute conflicts therewith; and where the terms of a statute plainly conflict with an applicable provision of the Constitution, it is the duty of the court in proceedings where the matter is appropriately presented to "support, protect and defend the Constitution" by giving effect to its provisions, even if in doing so the statute is held to be inoperative.
- Express or implied provisions of the Constitution cannot be altered, contracted or enlarged by legislative enactments.
- In determining the meaning of the words of the Constitution, they should not be taken separately, but in conjunction with other words, and considered in the light of the purpose of the lawmakers as shown by the provisions as an entirety.
- Where numerals are used to indicate a definite number in express provisions, as one judge, or three justices, or five county commissioners, or a tax of one mill, the number expressed should be regarded as a limitation excluding other and different numbers, unless the entire context clearly shows a different intent.
- A construction of the Constitution which renders superfluous or meaningless or inoperative any of its provisions should not be adopted by the courts.

II. Financial Disputes Between Local Governments

The Court was called on in 1915 to settle disputes between local governments, as well. This being the dawn of the age of mass produced automobiles, it is fitting that both disputes involved in large part the allocation of costs for road improvements. In one instance, the City of Gainesville brought a lawsuit against Alachua County for street improvements on county property located within the City of Gainesville (the property on which the county courthouse is located). Gainesville wished to assess Alachua County for the cost of those street improvements.

The Court posed the question like this: “Can the Legislature give to a city authority to make a special assessment for street improvements against property belonging to the county, located within the city, and used for governmental purposes?” *City of Gainesville v. Alachua County*, 69 Fla. 581, 583, 68 So. 759, 760 (1915). The Court answered this question in the affirmative. The Court also answered a secondary question, whether the Legislature may authorize such special assessments by a single municipality by special act, in the affirmative. Justice Cockrell dissented.

Likewise, the 1915 Court was faced with a dispute between Hillsborough County and Pinellas County. Prior to 1912, Pinellas County was a part of Hillsborough County. By chapter 6247, Laws of Florida, Acts of 1911, Pinellas County was created out of territory that formerly belonged to Hillsborough County. In turn, Hillsborough County sued to ascertain the amount of Pinellas County’s indebtedness and to compel Pinellas County to levy taxes sufficient to pay off its pro rata share of the indebtedness of Hillsborough County. *See Pinellas County v. Hillsborough County*, 70 Fla. 504, 70 So. 558, 558 (1915). Specifically, Hillsborough County alleged “[t]hat the board of county commissioners of Pinellas county had declined and refused to enter upon a plan or plans for the assumption by that county of its part of such indebtedness.” In the end, the Court unanimously affirmed a decree “that the county of Pinellas should levy annually a tax sufficient to pay off its pro rata share of the indebtedness of Hillsborough County.”

III. The Danger of Streetcars and Electric Machines

Beyond these disputes among branches of government and between local governments, the 1915 docket also presented the Court with interesting issues in some personal injury cases. Two interesting cases, both arising in Jacksonville, reveal a Court focused on various pleading doctrines. In the first case, the Court favors flexibility in pleading at the outset of a case, finding that the trial court abused its discretion in dismissing an attempt to amend a claim. In the second case, the Court reverses a jury verdict because the testimony at trial varied from the theory of the case pleaded by the plaintiff.

In *Bedell v. Jacksonville Traction Co.*, 69 Fla. 217, 67 So. 859 (1915), the Court resolved a pleading dispute involving one Chester Bedell, a minor. The plaintiff (through next friend George C. Bedell) sued Jacksonville Traction Company in

relation to an incident that occurred on a street railway in Jacksonville. The defendant moved for a compulsory amendment to the declaration, seeking a more definite statement of the incident. The trial court granted that motion. The plaintiff filed a statement including the date of the incident, the location where the plaintiff boarded the streetcar, the location to which he was heading, and the general location of the incident. The defendant moved to strike this filing as not being a proper amendment. The trial court granted that motion and eventually entered an order dismissing the case.

On appeal, the Court determined that the trial court in Jacksonville was within its discretion to require an amendment in the first instance, but the Court reversed the order dismissing the action for failure to properly amend. The Court explained that “[i]t appears from the transcript, and the plaintiff by counsel asserts, that the paper filed pursuant to the order for compulsory amendment was intended as an amendment to the declaration under the order made, and the amendment is apparently a substantial compliance with the order.” It concluded that, “[a]s the paper intended to be an amendment of the declaration . . . was improperly stricken, the judgment dismissing the action, because the plaintiff ‘failed to amend his declaration as required,’ was erroneous, and is hereby reversed, and the cause remanded for appropriate proceedings.”

In *Coons v. Pritchard*, 69 Fla. 362, 68 So. 225 (1915), the appeal was from a jury verdict and judgment for the plaintiff. There, a 15-year-old minor, Robert B. Pritchard, was injured in a shop in Jacksonville while operating an electric machine. It was alleged (through next friend John T. Pritchard) that the minor was, “by reason of his youth and inexperience too young to fully understand and appreciate the hazard and danger of the employment in which he was engaged.” After a jury verdict for plaintiff was returned, the Court rejected most of the issues raised by the defendants on appeal. It did find merit in three issues raised, however, and reversed the judgment. The Court ruled that the plaintiff’s testimony at trial as to how the accident happened was at variance with how the case was pleaded: “It is settled law in this state that there can be no recovery upon a cause of action, even though it be a tort, however meritorious it may be, or how satisfactorily proved, that is in substance variant from that which is pleaded by the plaintiff.”

The Court also ruled that the trial court erred in disallowing a question to the plaintiff on cross-examination about a conversation he had on the way to the hospital after the accident. Finally, the Court ruled that it was error to exclude a doctor’s testimony “as to the possibility of a third operation benefitting the plaintiff’s arm.” The case was remanded for a new trial.

IV. The Modern Relevance of Century-Old Cases

The foregoing cases address themes and issues that seem quite familiar in 2015. But do they carry any relevance in the law today? Do they simply represent interesting moments in time or



Justice James B. Whitfield served on the Court for 39 years (1904-1943). Justice Whitfield's grandnephew is the Society's own Sandy D'Alemberte.

do they stand the test of time? In fact, a look at the Court's recent opinions reveals that some 1915 cases have been relied upon by the Court in the past few years, including a 2014 opinion which contained language from *Butler* (as earlier quoted in *Sparkman v. State*, 58 So.2d 431, 432 (Fla.1952)). See *Garcia v. Andonie*, 101 So. 3d 339, 346 (Fla. 2012). Additionally, in *Caduceus Properties, LLC v. Graney, P.E.*, 137 So. 3d 987, 993 (Fla. 2014), the Court cited another 1915 case, *Gibbs v. McCoy*, 70 Fla. 245, 70 So. 86, 86 (1915)).

Expanding the scope a bit, the Court regularly cites cases from the early 20th century. E.g., *Peterson v. State*, 2014 WL 2882801 (Fla. June 26, 2014) (quoting *Gracy v. Atl. Coast Line R.R. Co.*, 53 Fla. 350, 42 So. 903, 906 (1907)); *Wilcox v. State*, 143 So. 3d 359, 378-79 (Fla. 2014) (quoting *Volusia Cnty Bank v. Bigelow*, 45 Fla. 638, 33 So. 704, 706 (1903)); *State v. Chubbuck*, 141 So. 3d 1163, 1170 (Fla. 2014) (quoting *Curry v. Lehman*, 55 Fla. 847, 47 So. 18, 20 (1908)).

Of course, when the Court cites one of these cases, it often does so for foundational or bedrock principles of law. In doing so, the Court sometimes describes such cases in terms that ascribe authoritative status. See, e.g., *Delmonico v. Traynor*, 116 So. 3d 1205, 1212 (Fla. 2013) (quoting the "bellwether case" of *Myers v. Hodges*, 53 Fla. 197, 44 So. 357, 361 (1907)); *Palm Beach Savings & Loan Assoc. F.S.A. v. Fishbein*, 619 So. 2d 267, 269 (Fla. 1993) (citing the "seminal case" of *Jones v. Carpenter*, 90 Fla. 407, 106 So. 127, 130 (1925)). These cases seldom provide the linchpin of the opinions in which they are cited today. Instead, they contribute the basic principles upon which the Court's current analysis builds. Notwithstanding, the Court's

citation of these cases in today's opinions lends deep-rooted support to the Court's reasoning and provides an important continuity in the Court's work across generations.

Although the Court regularly cites cases from this earlier period, it must also be acknowledged that most cases from 1915 and that era are never cited anymore. Changes in constitutional provisions, statutory law, and court procedures naturally have overtaken many of those cases. And sometimes principles in those earlier cases are carried forward in newer cases as the years pass, making it unwieldy to cite every previous case that stands for a well-established proposition. In that circumstance, reference to older cases occasionally gives way to the citation of more recent cases that say the same thing.

It is notable that cases from this era do not often serve as a basis for seeking supreme court review grounded in an alleged express and direct conflict. It is unlikely that such an express and direct conflict on the same question of law would arise between only a new decision and a case from one hundred years ago. There are some exceptions to this general observation. E.g. *Eversley v. State*, 748 So. 2d 963, 964 (Fla. 1999) (granting review based upon conflict with *Bradley v. State*, 79 Fla. 651, 84 So. 677 (1920)); *Grossman Holdings Ltd. v. Hourihan*, 414 So. 2d 1037, 1038 (Fla. 1982) (granting review based upon conflict with *Bayshore Development Corp. v. Bonfoey*, 75 Fla. 455, 78 So. 507 (1918)); *Nowlin v. State*, 346 So. 2d 1020, 1022 (Fla. 1977) (granting certiorari based upon conflict with *Crawford v. State*, 70 Fla. 323, 70 So. 374 (1915)). But, as a rule, it is the rare occurrence where the Court grants review based only on an express and direct conflict with century-old cases.

The unlikelihood that a modern case expressly and directly conflicts with such century-old cases probably explains why it is also uncommon to see the Court actually overrule or recede from those much-earlier cases. Whereas the Court does recede from its more recent precedent on occasion, it does not usually take that step when these oldish cases create tension with a current decision. Rather, when it is necessary to reconcile a current decision with a much-older precedent, the Court tends to distinguish, not recede from, the case from a much-earlier era. See, e.g., *Pino v. Bank of New York*, 121 So. 3d 23, 40 (Fla. 2013) (distinguishing "several older equity cases ... [from] the first half of the twentieth century" as predating the contemporary rules of civil procedure).

In sum, these oldish cases are not really so old as to be forgotten. They continue to have their place in the fabric of Florida law and they occasionally live on in modern opinions to this day. So, the dust that may have settled upon many Southern Reporter volumes does not mean that their contents have been relegated altogether to the dustbins of history. And in all events, reading these 1915 opinions provides a fascinating insight into a sliver of Florida Supreme Court, and indeed Florida, history. ■

SIX AMENDMENTS

HOW AND WHY WE SHOULD CHANGE THE CONSTITUTION

JUSTICE OF THE SUPREME COURT OF THE UNITED STATES (RET.)
JOHN PAUL STEVENS
AUTHOR OF *FIVE CHIEFS*

A REVIEW BY BRUCE ROGOW

In this slim book (133 pages excluding the photos, the Index, the Constitution and the Acknowledgements), Justice Stevens makes the case for curing six ills caused by his former (living and deceased) colleagues. The six problems which Justice Stevens aims to remedy by proposed Amendments to the Constitution are Political Gerrymandering, Campaign Finance, Sovereign Immunity, the Death Penalty, Gun Control, and the “Anti-Commandeering Rule.” If you do not know the meaning, application, and consequences of the anti-commandeering rule, *SIX AMENDMENTS – HOW AND WHY WE SHOULD CHANGE THE CONSTITUTION*, is a must read. And even if you do know the rule, Justice Stevens’ thoughtful and easy to read analysis of the rule and why it is antithetical to the health and welfare of a “more perfect union” is provocative. More on that later.

This book is not a cakewalk for those not familiar with legal jargon, legal history and constitutional law, although Justice Stevens tries to keep it simple. So while not a thriller, the book is an invitation to change six important areas of law – an invitation that stems from his dissatisfaction with the Supreme Court’s jurisprudence in the six areas he targets for constitutional change. Let me take you through his concerns and remedies one by one.

Campaign Finance

Justice Stevens proposes this Constitutional Amendment:

Neither the First Amendment nor any other provision of this Constitution shall be construed to prohibit the Congress or any state from imposing reasonable limits on the amount of money that candidates for public office, or their supporters, may spend in election campaigns.

Justice Stevens, who concurred in part and dissented in part in the *Citizens United* case (joined by Justices Ginsburg, Breyer and Sotomayor), is especially frustrated by the Court's treatment of campaign financing, calling *Citizens United* "a giant step in the wrong direction." Among the wrong first steps was the 1976 decision in *Buckley v. Valeo*, which Justice Stevens writes promoted the "central error" of "reject[ing] the fear of corruption or the interest in equalizing the candidates' opportunity to persuade, as permissible justifications for limiting campaign expenditures."

The "reasonableness" rule espoused by Justice Stevens (who recognizes the potential for disputes about what constitutes "reasonable") is not a sure way around the complicated and convoluted approaches of the Court's campaign financing jurisprudence. *Buckley* consumed 294 pages with different opinions by five justices seeking an answer. Certainly, an across the board levelling of campaign expenditures for candidates competing for the same office is appealing and simpler. The notion that political pandering must be extensively repeated hundreds of times in ubiquitous television ads and by other propagandistic methods, turns political campaigns into mere marketing campaigns, not serious and earnest discourse on important issues. "Reasonable" limitations might raise the levels of political discussions, but Justice Stevens' hopes for such a constitutional amendment are not realistic. Jill LePore, recently wrote in the *New Yorker*, that an electoral integrity amendment that grants "states the power to regulate and set reasonable limits on the raising and spending of money by candidates and others to influence elections" would never get out of the Congress. "It can't possibly pass; a constitutional amendment requires a two thirds majority in both houses."

Justice Stevens' hope for an egalitarian election process in which the same spending limits would apply to all candidates competing for the same office is an admirable aspiration. But only a national disgust with the notion that "money talks" can bring about the change he proposes. Perhaps a few more election cycles like the most recent one may put some wind at the back of his proposed amendment.

Sovereign Immunity

I loved his proposal to upend the Eleventh Amendment immunity of states and state officers and undo, *inter alia*, *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), because I lost the case 5-4 in the Supreme Court. Justice Stevens called the majority decision in *Seminole Tribe* "unquestionably

the most important opinion that Bill Rehnquist wrote during his tenure as Chief Justice" because "in one fell swoop" the decision severely limited Congressional power to impose liability on states for violations of federal commands. In *Seminole Tribe*, Congress had expressly authorized suit against the states for failure to comply with certain provisions of the Indian Gaming Regulatory Act, but the Court held the Indian Commerce Clause did not provide Congress with the power to abrogate Eleventh Amendment immunity.

In his book, Justice Stevens (who joined Justice Souter's *Seminole Tribe* dissent and its wonderful historic analysis of the Eleventh Amendment), traced sovereign immunity from "the king can do no wrong" to *Chisholm v. Georgia*, 2 U.S. (2 Dall.) 419 (1793), allowing a South Carolinian to sue Georgia for supplies sold during the Revolution, leading to the Eleventh Amendment, enacted in response to *Chisholm*. He takes the reader up to date, through *Seminole Tribe* and beyond, and comes to the conclusion that "[i]t is simply unfair to permit state owned institutions to assert defenses to federal claims that are unavailable to their private counterparts."

So he proposes:

Neither the Tenth Amendment, the Eleventh Amendment, nor any provision of this Constitution shall be construed to provide any state, state agency or state officer with an immunity from liability for violating any act of Congress, or any provision of this Constitution.

Justice Stevens is no state's rights kind of fellow. His proposal would subvert present state expectations, and I am afraid those forces will foreclose this amendment's chances of success.

Death Penalty

Justice Stevens offers two Florida cases, *Florida v. Nixon*, 543 U.S. 175 (2004), and *Ford v. Wainwright*, 553 U.S. 35 (2008), as examples of wasted resources in the quest for death sentences – sentences that he correctly observes do not deter murder. Nixon went to trial only because the prosecutor rejected his guilty plea and acceptance of life imprisonment, and so for 30 years his death penalty case went up and down state and federal courts. Based on *Ford's* preclusion of executing the insane, delusional Gary Alvord had been on death row in Florida since 1974, until his death of natural causes in 2013. In addition to wasted resources, and the lack of evidence that putting people to death serves anything other than retribution, Justice Stevens also reminds us of the potential for executing the innocent. A reminder confirmed by the numerous exonerations over the past two decades.

His answer for the death penalty is to add only a few words to the Eighth Amendment:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments such as the death penalty inflicted.

Practically, such an Amendment to the Constitution will never occur, but there has been a *de facto* and a *de jure* rejection of the death penalty over the past twenty years. Eighteen states have abolished the penalty. The number of death sentences have declined nationally over the 5 years as juries have become sensitive to its shortcomings. In 1990 there were 251 death sentences nationally, compared to 80 such sentences in 2013. Executions dropped from 98 in 1999 to 39 in 2013. Texas is still the most murderous and the least restrained, executing 576 people from 1976 through October 29, 2014, when Texas executed Scott Panetti who was sentenced to death in 1992 for killing his wife's parents. It could be a long time before the death penalty comes to a halt, but maybe the message from Justice Stevens will move states other than Texas to a more peaceful punishment scheme.

Gun Control

Justice Stevens proposes saving the Supreme Court from its 5-4 decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. Chicago*, 561 U.S. 742 (2010). They respectively held that the Second Amendment protects a citizen's right to keep a handgun and the Due Process Clause limits the power to outlaw possession of handguns. Justice Stevens saw "an intriguing similarity between the Court's sovereign immunity jurisprudence, which began with a misinterpretation of the Eleventh Amendment, and its more recent misinterpretation of the Second Amendment. He is right on both fronts. The Eleventh Amendment has been expanded beyond its plain language, and the Second amendment has been similarly enlarged.

Justice Stevens proposes adding just five words to the Second Amendment: "A well-regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear arms *when serving in the Militia* shall not be infringed." One would think those added words were, given the plain language and punctuation, redundant, but given *Heller's* interpretation, Justice Stevens' addition would cure the *Heller* take on the Second Amendment. Doing so may curb the campaign that led to the reinterpretation of the Second Amendment; an effort that retired Chief Justice Burger said was "one of the greatest pieces of fraud, I repeat the word 'fraud,' on the American public by special interest groups that I have ever seen in my entire lifetime." But it worked. *Heller* remade the Amendment's meaning.

In this lifetime the Second Amendment will not be redone to reject *Heller*. But at some point gun violence and the dangers of unregulated weaponry may restrain the license to shoot perpetuated by *Heller* and *McDonald*. Public antipathy, not a constitutional amendment, is the more likely cure.

Political Gerrymandering and Anti-Commandeering

Why do I join these two? Because my space is limited. Political gerrymandering is antithetical to good government. Justice Stevens would have the courts follow the lead of *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), which held that changing

Tuskegee, Alabama's boundaries "from a square to an uncouth twenty-eight sided figure" deprived African Americans of the right to vote in city elections. Political gerrymandering's perniciousness is different, but as he assesses cases dealing with contorted maps that cancel or minimize the voting strength of political elements of the population, he concludes that outlawing political gerrymandering will avoid overpopulation of legislatures by the party seeking to preserve its power, make elections more competitive and "promote political compromise."

The proposed remedy is a constitutional amendment requiring Congressional and state legislative districts to be compact and contiguous, with the burden on the state to justify departures from that standard. The recent litigation in Florida declaring invalid the 5th and 10th Congressional Districts proves that Justice Stevens' concerns are timely, but judicial remedies do exist. A constitutional amendment would be a boon to good governance, but will not happen. The temptation of politicians to tinker for political advantage is too great.

Finally, Justice Stevens' suggestion to cure the anti-commandeering rule is to add four words to Article VI of the Supremacy Clause:

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all Treaties made or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges *and other public officials* in every State shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding.

Adding those words would eliminate any question about the ability of the federal government to "command" state officials to enforce federal laws. Justice Stevens gives various examples of the deficiency, including the inability to make state officials comply with federal gun purchase laws. The 5-4 decision in *Printz v. United States*, 521 U.S. 898 (1997), which birthed what is called the anti-commandeering rule, prohibited Congress from requiring state officials to perform federal duties. His history of the cases leading up to, and following *Printz*, ends with his call to "maximize the federal government's ability to respond effectively" to national needs by requiring state officials to assist in implementing Congressional mandates. One need look no further than the contretemps about state participation in the Affordable Care Act to realize that commandeering state officials is not easy, and rife with political tension. This proposed amendment, like the other five, is not a realistic possibility.

Justice Stevens is a wonderful wishful thinker. His book describes and advocates opportunities for change that dream of a more perfect union. Dreams are what inspire the future. Thank you Justice Stevens for the inspiration. ■

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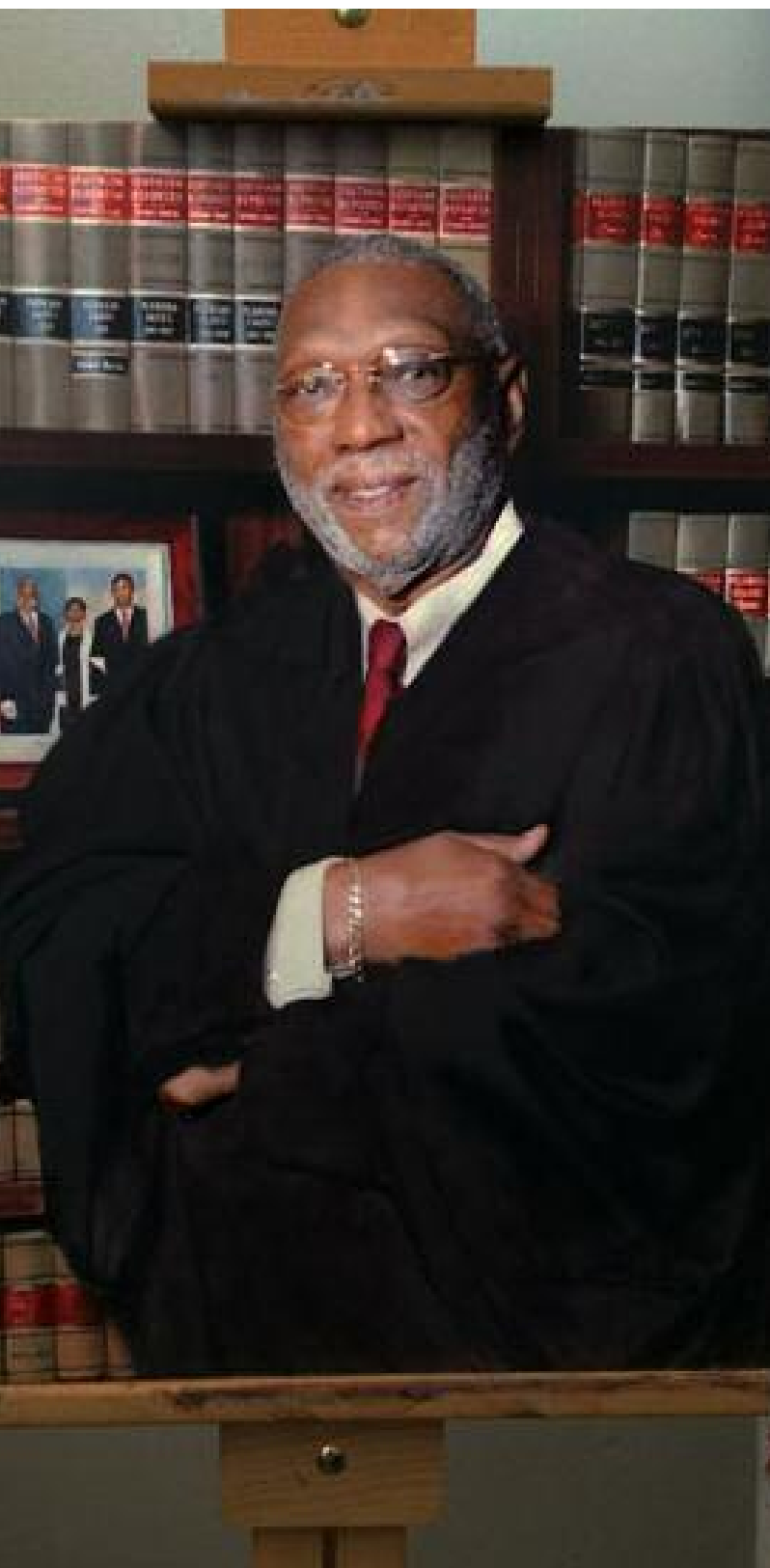
MY PATH TO THE COURT:

JUSTICE PERRY SHARES HIS
INSPIRING LIFE STORY

BY JUSTICE JAMES E. C. PERRY

I grew up in the segregated projects of New Bern, North Carolina, during the dark and ugly years of Jim Crow. In those days, I did not have a strategic or master plan for my life. How could I? When you are not allowed a seat at the local lunch counter, it's hard to imagine a seat on the Florida Supreme Court. But what I did have was a thirst for knowledge and a passion for pursuing the American promise of "justice for all." I knew that I wanted to do something positive with my life, but I didn't know what nor how.

Facing page: Portrait of Justice James E. C. Perry



Still, I worked hard. In high school, I was an above average student, captain of the football and basketball teams, member of the chorus, vice president of student government, and was even voted the “Best All-Around” student by my classmates. Despite my achievements however, I never thought that it was possible for me to attend college. None of my teachers or guidance counselors even encouraged me to pursue a college education. Further, neither of my parents, who both left school after the 3rd grade, had the capacity, perspective, or know how to encourage me to become a college educated man. To them, and most of my peers, college was a luxury for those with money.

But then something remarkable happened. Just one month before graduation, I was offered an opportunity to play college football at St. Augustine’s University in Raleigh, North Carolina. Needless to say this struck me as the chance of a lifetime, so I jumped at the opportunity! I majored in Business Administration, and played football and basketball for about a year or so. Subsequently, I became heavily involved as a leader in student government.

At that time, circa 1962, blacks were systematically denied all access to public and private establishments throughout the South. During my junior high, high school and college years, I participated in many civil rights demonstrations, which had proven extremely effective in peacefully resisting segregation in other Southern cities. My efforts in the early days of the civil rights movement were both exhilarating and humbling. In one instance, I, along with three fellow college students – dressed in our Sunday best - attended Sunday morning worship services at the First Baptist Church of Raleigh, an all-white congregation. We hoped that the church would show compassion and, in the true spirit of the Christian faith, support our cause for equality and welcome us to worship. Sadly, the pastor, right from the pulpit, ordered us to be escorted out of the sanctuary.

Undaunted, I and my fellow students, also participated in sit-in demonstrations at lunch counters, bus and train stations, as well as at the governor’s and mayor’s respective mansions. I also had the privilege of marching with Dr. Martin Luther King, Jr. through Downtown Raleigh, in spite of the fact that we knew we were under the watchful eyes of the local Ku Klux Klan. They were hooded, in full regalia, and some were dressed like storm troopers ready for battle. That experience and others would shape my life and rejuvenate my sense of purpose to be a difference maker. If the KKK intended to intimidate and discourage my commitment that day, they failed miserably.

After graduating from college with a degree in Business Administration, I briefly worked for IBM as a junior

accountant. In November of 1966, I was drafted into the United States Army and served during the Vietnam Conflict. As a college graduate, I was fortunate to qualify for Officer Candidate School (OCS). While stationed at Ft. Dix, New Jersey, I went to OCS at Ft. Eustis, Virginia, and received a commission. I was reassigned to Ft. Dix and eventually promoted to first lieutenant, and remained in active duty for the Army for nearly three years.

While I was still in the Army, Dr. Martin Luther King, Jr. was assassinated. I will never forget that day. It was April 4, 1968. I was driving to my off-post apartment when the regularly scheduled radio programming was interrupted with the news of his assassination. His death set off in my mind the litany of senseless murders and attempted assassinations of our black leaders. That was the seminal moment that I decided to attend law school. In the Army, I had been certified to be an officer, gentleman and leader. I also realized that most legislators and executives who wielded power and influence in the justice system were lawyers, and I knew that's what I had to be. By attending law school, I would gain a better understanding of the system and have the credibility and access needed to contribute to the struggle for equality and justice for all.

Once again, however, I found myself lacking in role models and mentors for my prospective legal career. In fact, I didn't know a single lawyer or the first thing about law school. However, a college classmate of mine, whose academic record was far less impressive than my own, had successfully matriculated through Case Western Reserve Law School. So I decided to apply there and was accepted. But luckily, prior to enrolling in Case Western, I used a military connection to reach out to a fraternity brother who was a second year law student at Columbia Law School in New York. I just wanted to know more about the rigor and routine of law school, and I told him about my plans to attend Case Western. But when he saw my LSAT score, he said, "Man, you can attend any law school of your choice. Have you applied to Columbia?" He then handed me an application from his drawer and encouraged me to apply.

I never dreamt I could attend an Ivy League school - arguably one of the best law schools in the country. But I applied, and in one of those life changing twists of fate, I was accepted. From the projects of New Bern where all roads seemed to lead to nowhere, to a prestigious law school in New York - my path in life may have changed, but my purpose remained the same.

Nearing graduation, most of my classmates were encouraged and attempting to land lucrative jobs on Wall Street. The dean of Columbia Law School called me into his office to inquire as to why I hadn't interviewed with any of the major firms that were recruiting. I told him that I did not go to law school to work on Wall Street. My plan was, and would always be, to return to the South and fight for justice and equality.

While on spring break during my third year of law school, armed with a Reginald Heber Smith Fellowship stipend, I traveled to Charlotte, North Carolina looking for a job placement. To my surprise and chagrin, I discovered that in order to practice as a lawyer in North Carolina, students had to apply for admission to the bar during their first year of law school or had to wait 27 months to take the bar exam. I was not going to wait.

So, I drove farther south down to Greenville, South Carolina where I learned that there were very few black lawyers, and no black person had passed the bar exam in more than seven years. Although there was no waiting requirement, South Carolina had a requirement that, if an applicant failed the bar examination three times, they had to obtain a masters of law degree in order to retake the exam to practice law. Accordingly, most blacks had taken the bar exam twice and were afraid to take it the third time.

So, I drove down to Atlanta, Georgia and met Maynard Jackson who, at the time, was the Vice Mayor and owner of a small seven-person law firm. He assured me that Georgia did not have any of the bar impediments that I'd experienced in the Carolinas. However, he said that Georgia normally passed only three blacks a year: a graduate from Emory, a graduate from the University of Georgia, and one other graduate. I said "great" I will be the "other one!" At the time, Georgia had only 38 black attorneys practicing in the entire state, 32 of whom were in Atlanta.

In June of 1972, the first year of the multi-state exam, I, along with 49 other black applicants, sat for the Georgia bar exam. At the time, I was living in Augusta working for Georgia Indigent Legal Services and I felt well prepared. So, I was shocked when I received my exam results and learned that, not only had I not passed the Georgia Bar, but that *all* the black applicants had failed the bar as well.

I could not sit idly by and allow the State of Georgia to bar me from my chosen profession and the life of public service I had planned. This was the very system of institutional racism that I had vowed to fight. I initiated a meeting with the other black applicants in Atlanta to discuss taking legal action against the Georgia Board of Bar Examiners. Of the 49 other applicants, however, only 16 agreed to participate due to fear of repercussions. So, 16 of us filed a class action lawsuit in which I was the named plaintiff. *Perry v. Sell* was filed in the United States District Court for the Northern District of Georgia, Atlanta Division, in November of 1972.

Our case received widespread publicity, however, while the case was still in litigation, we sat for the February 1973 Georgia Bar exam. Miraculously, 11 of the 16 plaintiffs, including me, plus 13 others blacks, passed the bar exam at that sitting. Similarly, 24 more blacks passed the very next bar exam in June of 1973. Although our law suit had not reached

its conclusion, I cannot help believing that the stand we took against injustice and inequality was the catalyst for the more than doubling and increase of 48 black attorneys in the State of Georgia in just one year.

In November 1973, I was in Washington, D.C. interviewing for a legal position with the Civil Rights Division of the Justice Department and the FCC. While having dinner with a friend and one of his friends from Florida, his friend offered me a job in Sanford, Florida. At the time, I had no interest in moving to Florida because I was not particularly interested in taking another bar exam. But then, it started to snow. Snowstorms have been known to inspire many epiphanies. And, I had one! I was determined to become a Florida Lawyer where there was no snow.

Since there was no reciprocity in Florida, I inquired of my future employer about the prospect of passing the Florida Bar exam. He said, "You must know someone in order to pass and I don't know anyone." Despite the slim odds, I took and passed the Florida Bar Exam on my initial attempt in 1975. I have been in Florida ever since.

For twenty-five years I had practiced various aspects of law, including civil, criminal, personal injury, domestic, probate, real estate, bankruptcy, public finance and corporate law. I was committed to public service and served as my church trustee, a mentor to many children, and was an active member in the United Way, NAACP, Voters' League, Jackie Robinson Athletic Association, AAU basketball league, YMCA, and many other nonprofit boards. I was an enigma to many because they could not understand why I would devote hours upon hours to these community projects when there could be time better spent billing clients. But if they knew how much joy I received from my community involvement, they wouldn't have had to ask.

I was asked by friends and supporters to apply for a judicial appointment in the Eighteenth Judicial Circuit for the first time in 1990, and then again in 1993. I never really thought that I would make it through the Judicial Nominating Committee (JNC) process because of the inherent obstacles that black attorneys still faced in the South. I was so doubtful that, in 2000, when I was asked to apply for a third time, I was reluctant to do so. It truly seemed to be an exercise in futility. However, I knew that if I did not submit my application I could not be considered for the appointment. So, on the last half of the very last day of the application deadline, I submitted my application. This time, I made it through the JNC and was pleasantly surprised to be appointed by Governor Jeb Bush to the Circuit Court for the Eighteenth Judicial Circuit.

Just three years after my appointment to the circuit bench, I was asked by my fellow judges to stand for election as chief judge of the Circuit. Though relatively new, I was told that I could be trusted to leave politics and personalities out of the

decision making process. Chief Judge elections can create conflicts within a judicial body, so I was relieved and gratified when, in 2003, I was elected chief judge with the unanimous support of all 42 of my fellow judges. Although I never aspired to this position, it is a source of great pride to have been, not only the first black circuit judge in the Eighteenth Circuit, but also the first black chief judge as well.

Since my passion has always been children, especially at risk youth, I assigned myself to drug court. Presiding over drug court was one of the most rewarding experiences that I have had. Most of the people participating in the program were young parents, so it was wonderful to see the positive effect Drug Court had on their lives. As judges, we are taught to be impartial and detached. But drug court is the rare exception where you can root for the defendant and rejoice in their victory. Sobriety also allows parents to provide a safe and stable home for their children and that is a cause worth celebrating. There was nothing better than hearing, "Thank you. You saved my life!" after a successful participant finished the 18 month therapeutic drug program. They would never realize the transformative impact that they had on my life.

My tenure in the 18th Judicial Circuit was quite rewarding. But, when friends and supporters approached me about applying for the Florida Supreme Court vacancy created by Justice Charles T. Wells' imminent retirement, I was again reluctant. I was content with my career accomplishments and I was nearing retirement age. However, I was reminded that it wasn't about me or my career goals, but that a seat on the Florida Supreme Court was about answering the call of duty, and being of greater service to the people of Florida. The mission of my life and career was about pursuing equality and justice for all – the reason I went to law school in the first place. And so I applied for the seat on the Florida Supreme Court. Understandably, I was proud and ready to serve when I was appointed to the Court by Governor Charlie Crist in 2009.

Being a Justice is much less solitary than being a trial judge. The Florida Supreme Court is a collegial body, and making very important decisions with six other people, all with brilliant minds, can be very intense. However, throughout my varied career, I have learned flexibility, open-mindedness, and the ability to respect different views and perspectives, which is paramount and invaluable in working within a diverse group of people. Good people do not always agree, but can disagree without being disagreeable. It has been an honor to serve with my colleagues and to serve the people of the state of Florida as a Justice of the Supreme Court. It is certainly fitting that my title of "Justice" is also the ideal to which I have dedicated my life's work. Life certainly has a way of coming full circle. ■

A CONVERSATION WITH TALBOT “SANDY” D’ ALEMBERTE

CONDUCTED BY SOCIETY PRESIDENT
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What honor do you cherish the most?

ANS: Probably the ABA Medal, which is usually given once a year. I believe this was awarded for the work done by the volunteer pro bono lawyers through the Central European and Eurasian Law Institute, a program I worked on with Homer Moyer and Mark Ellis.

Who were your mentors?

ANS: It's a long list. As a trial lawyer: Bill Killian, Bill Steel and Bill Frates. In bar work: Chesterfield Smith.

Who is your idol/hero in the practice of law?

ANS: Again, it's a long list, but Bill Frates and Chesterfield were great influences on me.

Are you ever going to retire?

ANS: I hope not.

What books would you suggest someone read before starting law school?

ANS: Great question. Fiction: *To Kill a Mockingbird*. Non-fiction: Gilbert King, *Devil in the Grove*; Holmes, *The Common Law*; Jerome Frank, *Courts on Trial*; Louis Nizer, *My Life in Court* and any of the Clarence Darrow biographies.

What is the funniest thing that ever happened during one of your appellate oral arguments?

ANS: Arguing against Richard McFarlain in a JQC case, I submitted that my client was charged with speaking out for law reform, something that members of the Court had done when they advocated for amendments to Article V relating to the Court's jurisdiction. When Richard stood up, Chief Justice Sundberg asked him to first address my point.

Richard responded as only Richard could: "Mr. Chief Justice, I am here representing the JQC in this particular case involving a circuit judge and I am not authorized to comment on the unethical conduct of members of this Court."

What would you want your epitaph to say?

ANS: Maybe "Common Lawyer," but I need another 20 years to consider that.

Did you ever consider becoming a judge?

ANS: Not seriously. I recall that Judge Arnold, when asked why he had resigned from the federal circuit, said something to the effect that he would rather stand and address a bunch of old fogeys than sit and listen to one.

What books are on your night table?

ANS: I am now plowing through Doris Kerns Goodwin, *The Bully Pulpit*.

How many chicken dinners would you guess you have eaten during the course of your career?

ANS: Served: an infinite number. Eaten: not so many.

Do you have any hindsight regrets about the right to abortion controversy while you were president of the ABA?

ANS: No. The principle of a woman's right to choose is important.

If you were dean of a law school today, are there changes you would make in its curriculum?

ANS: Assuming that the faculty agreed, I would try to substitute an extensive skills program for the third year of law school and push to have this substitute for the bar exam.

What is the single biggest change in the practice of law in your years at the Bar?

ANS: Expansion of the profession, greatly enriching the law and my life. Minorities: Joe Hatchett, Jesse McCrary, Frank Scruggs. Women: Janet Reno, Pat Seitz, Sandra Day O'Connor, Rosemary Barkett, Martha Barnett, Sylvia Walbolt, Barbara Pariente and Peggy Quince. Most important: Patsy Palmer.

Did your legal training help you as the president of a major university?

ANS: Definitely. Although I had great lawyers serve as General Counsel (Alan Sundberg and Richard McFarlain), legal training helped me analyze the difficult problems that students and faculty face every day.

What is the best job you ever had?

ANS: Probably being a trial and appellate lawyer with Steel, Hector & Davis although my naval service provided travel, adventure and the chance to play with some large toys.

What would your wife say is your worst habit?

ANS: My guess is that she would say my failure to listen but I ask her to edit whatever I write and she may have something else to report when she edits this. (She did not.)

Do you leave your work at the office when you go home?

ANS: No.

What suggestions do you have for improving our state's merit retention system?

ANS: Return it to the original Askew model and perhaps, allow judges to serve on the JNC panels.

What do you consider to be the most important case you ever handled?

ANS: Other than capital post-conviction cases, it is between two: 1) The 1975 impeachment proceedings that led to the modern court, now one of competence and integrity: 2) The petition for mandatory reporting of pro bono activity that increased lawyers' service to the underserved.

When you were growing up, the Florida Supreme Court was almost a family business. Did you feel pressured to go into the law?

ANS: No, but once I decided I did not want to be an Episcopal minister, law was my goal.

When you were handling judicial impeachments in the 1970s, was there a tipping point in the process?

ANS: After it was apparent that the House was going to impeach Justice McCain, there was a newspaper article that reviewed the process and Chief Justice Adkins was interviewed about his role as presiding officer at the upcoming Senate trial.

I was Chief Counsel for the House Committee and I went to Justice Adkins, whom I liked very much and told him that he could not preside at the Senate impeachment trial because he, like most others on the Court, was on the questioned opinions with McCain. The defense would undoubtedly argue that the results reached were logical, not produced by corruption. So, the most senior justice not involved with McCain's cases, Ben Overton, would have to preside.

Right after this, McCain resigned and thereafter the "four horsemen of court reform" - Overton, England, Hatchett and Sundberg changed the culture of the Court.

Why aren't writs-- beyond habeas-- more widely used in Florida?

ANS: Most lawyers do not know the power of extraordinary writs. You may be the biggest individual user of the petition process to alter rules of court and rules relating to the profession.

What are some of the things you've accomplished through petition?

ANS: Cameras in the courtroom (Florida was the first state to adopt an open access rule); mandatory reporting of Pro Bono (the Florida model has been used by other states); Innocence Commission (Court dismissed the petition and the Chief Justice promulgated an administrative order). I also attempted to get a rule change to allow admission of immigrants who have complied with all the rules of bar admission, but the Court has not accepted this.

You'll be 81 in June. Do you still have an active practice of law?

ANS: Yes. In the last two years, I have argued five cases in the Florida Supreme Court and have handled a number of other matters.

Who were some of the ablest opponents you faced in the courtroom?

ANS: I have already mentioned Bill Frates, who, with his trial partner, Pete Fay, were the greatest trial team I have ever known. Walter Beckham and Aaron Podhurst were very, very good. Murray Sams was excellent. In appellate practice, Raoul Cantero and Mel Nimmer.

Tell us about the classes and the students you're teaching.

ANS: Three classes this semester: State Constitutional Law, with a great group of students. International Human Rights Law, a course I team teach with Mark Ellis, the Executive Director of the International Bar Association. This course has FSU students and IBA students from around the world (Poland, Lebanon, Nigeria, Australia, UK, among other countries). The third course is a one month U.S./Russia comparative law course built around two Russian Law students who are visiting in order to learn more about U.S. law.

If you were just starting out as a law student or a young lawyer, what areas of law would interest you now?

ANS: The areas where I have practiced with perhaps more emphasis on international human rights. ■

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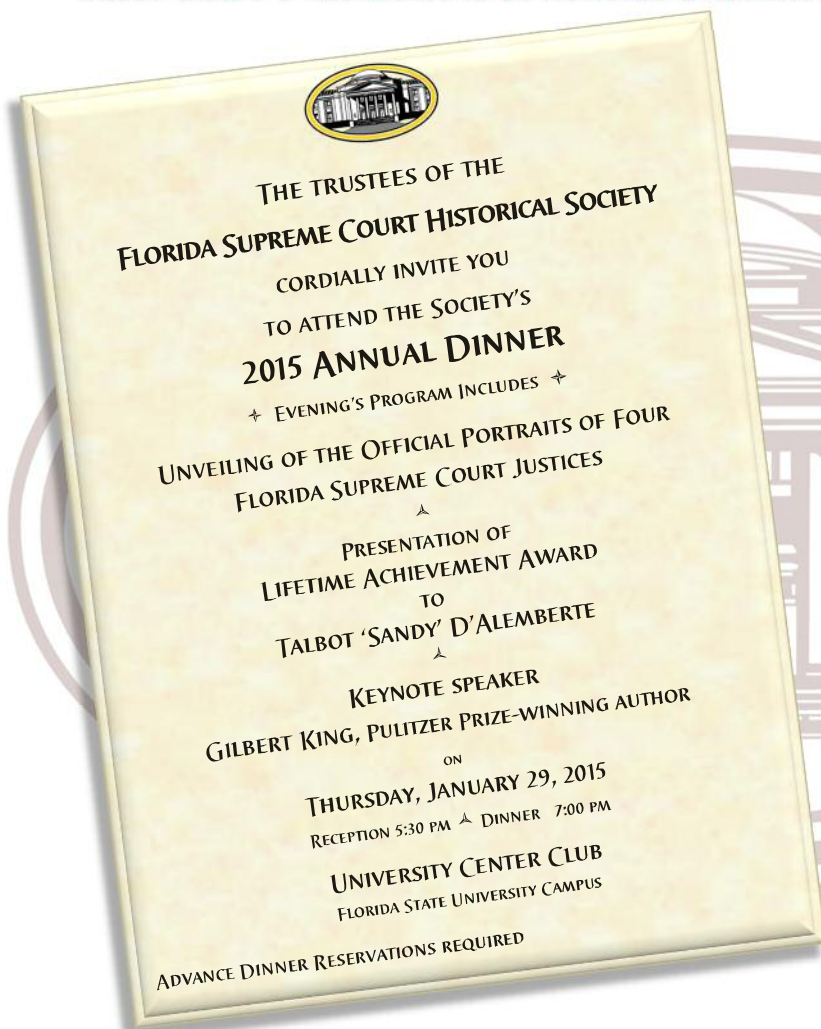
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2015 ANNUAL DINNER OF THE HISTORICAL SOCIETY

TALBOT 'SANDY' D'ALEMBERTE TO BE HONORED & AUTHOR GILBERT KING TO PRESENT KEYNOTE



Please join us for the **2015 Annual Dinner** as we honor **Talbot 'Sandy' D'Alemberte** with the Society's Lifetime Achievement Award, hear from a Pulitzer Prize winning author and more.

Sandy D'Alemberte led the American Bar Association as president from 1991 to 1992 and served as dean of the Florida State University College of Law from 1984 to 1989. He was president of FSU from 1993 to 2003.

As a member of the Florida House of Representatives from 1966-72, he chaired the House Judiciary Committee, where he was an advocate judicial for reform and to helped craft the merit retention constitutional amendment Florida voters passed in 1976. He was also founding chairman of Florida's Innocence Project, which works to free those wrongly convicted and served as president of the **Florida Supreme Court Historical Society** in 1990-91.

The evening's Keynote Speaker is **Gilbert King**, whose *"Devil in the Grove"* tells the story of U.S. Supreme Court **Justice Thurgood Marshall's** defense when he was an attorney of four black men in Lake County falsely accused of raping a white woman. The book won the 2013 Pulitzer Prize for General Nonfiction, and a Film by Lionsgate based on it is in pre-production. King has written about the Supreme Court and the death penalty for the New York Times and the Washington Post and is a featured contributor for Smithsonian Magazine.

Also on tap for the evening are the unveiling of portraits of **Chief Justice Labarga** as well as **Justices Charles T. Canady, Ricky Polston and James E.C. Perry**. **Chief Justice Labarga** will provide a brief update to the guests on the State of Florida Supreme Court as well.

Henry 'Hank' Coxe, III, will be the master of ceremonies for evening, and will assure we are adjourned by 9:00 PM.

RESERVATION REQUESTS FOR FSCHS 2015 ANNUAL DINNER

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Please print or type your guest's names below that will be seated at your table. (10 people max per table)

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Reserve _____ seats for the Annual Dinner at \$95 per person on or before January 21, 2015

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I'm not able to attend the Annual Dinner, here is my tax-deductible gift to the Historical Society of \$ _____

Gift contributions of \$100 or more include a one year individual membership in the Historical Society.

Total \$ _____ Credit Card Payment: ☐ MasterCard ☐ Visa ☐ AMEX ☐ Discover

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Plenty of convenient ways to make your Reservations for the 2015 Annual Dinner

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FSCHS Annual Dinner

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A MOMENT IN TIME



40 years ago this year: Florida's first black Supreme Court Justice Joseph W. Hatchett taking the oath of office. On the bench (L-R): Justice Boyd and Justice England. Holding the Bible is Clerk of the Court Sid J. White. Administering the oath (but not pictured) is Chief Justice James C. Adkins.