

Florida Supreme Court Historical Society

SPRING/SUMMER 2017

Reflecting on Justice Pariente's Career in the Law

Considering Florida's Colonial Past as Part of Its Legal History

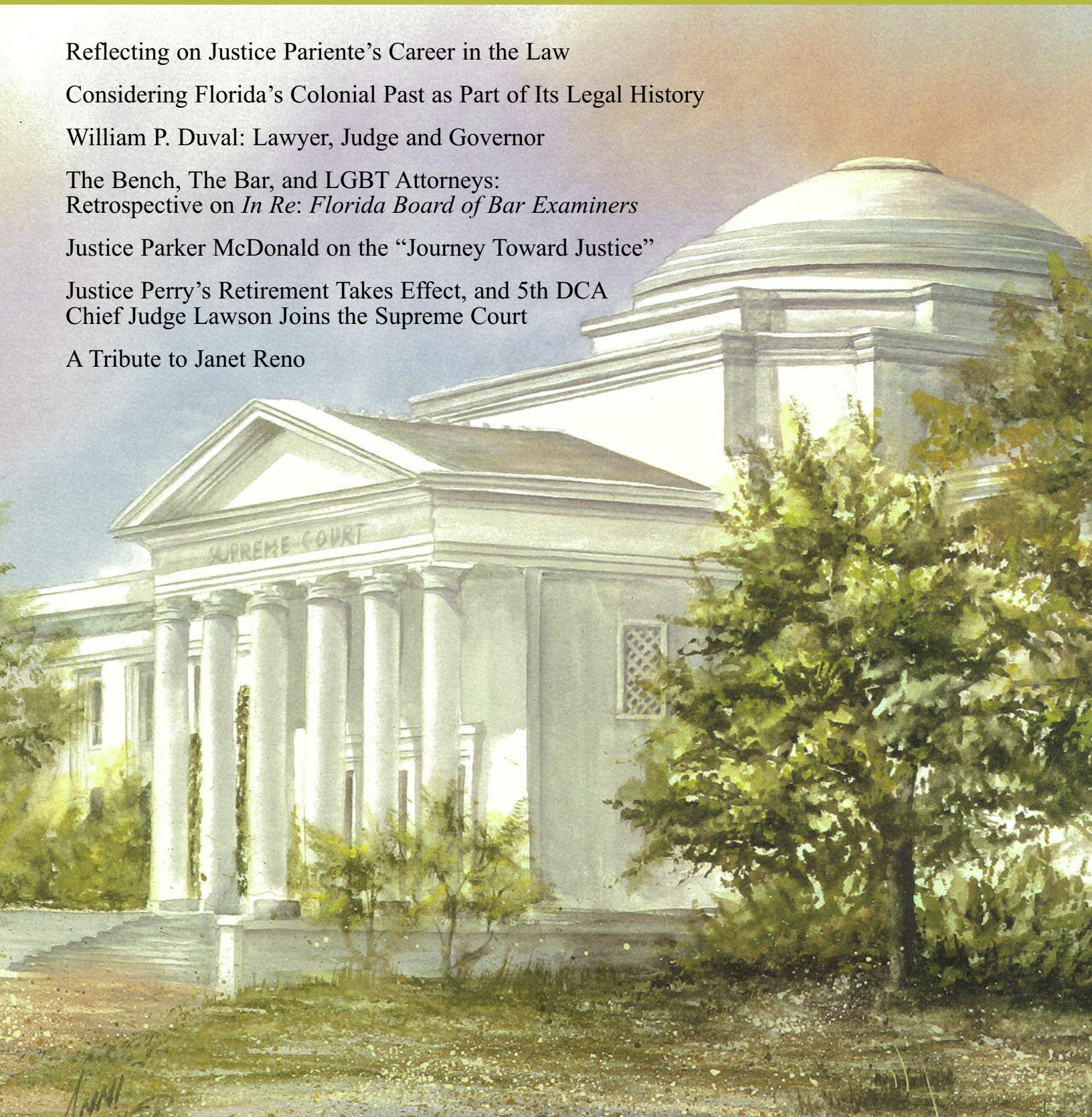
William P. Duval: Lawyer, Judge and Governor

The Bench, The Bar, and LGBT Attorneys:
Retrospective on *In Re: Florida Board of Bar Examiners*

Justice Parker McDonald on the "Journey Toward Justice"

Justice Perry's Retirement Takes Effect, and 5th DCA
Chief Judge Lawson Joins the Supreme Court

A Tribute to Janet Reno



FROM THE EDITORS



We hope you enjoy this sixth annual addition of the Society's magazine, which includes tributes to Justice Pariente, the newly retired Justice Perry, and the late Janet Reno. We are proud to offer feature articles on Florida's colonial legal history by Prof. M.C. Mirow, Gov. Duval's career as a lawyer and a judge by Prof. James Denham, and a retrospective on the rights of LGBT lawyers in Florida by Judge Robert W. Lee. We are also fortunate to have insights from his time on the Court from former Justice McDonald, offered in support of Volume III of the Society's *History of the Florida Supreme Court* (authored by Neil Skene).

Stanley M. Rosenblatt

Daniel R. Hoffman

TABLE OF CONTENTS

5	From the President <i>By Kelly O'Keefe</i>
7	Under the Dome <i>By Chief Justice Jorge Labarga</i>
8	Justice Barbara P. Pariente: A Woman of Valor
12	The <i>History of the Florida Supreme Court, Volume 0</i> <i>by Professor M.C. Mirow</i>
16	William P. Duval: Lawyer, Judge and Governor <i>by Professor James M. Denham</i>
20	The Bench, The Bar, and LGBT Attorneys: Retrospective on <i>In Re Florida Board of Bar Examiners</i> <i>By Judge Robert W. Lee</i>
24	A Tribute in Honor of Justice James E.C. Perry
26	The Florida Supreme Court Welcomes Justice C. Alan Lawson
27	The Florida Supreme Court Historical Society's Archiving Project <i>By Erik Robinson, Kristen Diot and Melanie Kalmanson</i>
28	A Tribute to Janet Reno <i>By Sandy D'Alemberte</i>
30	Justice Parker McDonald on the "Journey Toward Justice"

Florida Supreme Court Historical Society

Spring/Summer 2017

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Published annually by the Florida
Supreme Court Historical Society

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.

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Judge Robert W. Lee of the Broward County Court, has authored more than a dozen articles in legal publications. He has had more than 500 of his legal decisions published and has presided over more than 345 jury trials. He is currently sitting as an Acting Circuit Judge and Chair of the Civil Division of the Broward County Court.



Justice Parker Lee McDonald was born in Sebring on May 23, 1924. He served in the U.S. Army in Germany during World War II. Justice McDonald served 14 years, 7 months as a Florida Supreme Court Justice. (October 1979 to May 31, 1994; Chief Justice from 1986-1988). He lives in Tallahassee with Ruth, his wife of 68 years.



M.C. Mirow is Professor of Law at F.I.U. College of Law, Miami. He holds research doctorates in legal history from Cambridge and Leiden Universities and is a member of the Florida bar. He is the author, most recently, of *Latin American Constitutions: The Constitution of Cádiz and its Legacy in Spanish America* (Cambridge University Press, 2015).

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FROM THE PRESIDENT

Dear Members and Friends of the Society,

Welcome to the latest edition of the Society's Magazine. I'm honored to be back leading the Society for a second year, at a time when our mission is more important than ever. Our mission is twofold. First, the Society preserves the Florida Supreme Court's history through oral histories, collections of historical papers and artifacts, the Justices' portraits and its various publications. Why does the Society preserve these historical treasures? So that they can use them to educate the public about our courts' mission to protect personal rights and freedoms, uphold and interpret the law and resolve disputes that arise between citizens of the state.

An educated public, the second facet of the Society's mission, is the best tool for increasing understanding and confidence in our courts. If the public lacks confidence in the courts, the courts cannot fulfill their responsibilities which are essential to our democracy. Recognizing this, both the Society and the Florida Supreme Court have made improving the public's understanding of our courts a priority in their respective long range strategic plans, and the Society is working closely with the Florida Supreme Court and Chief Justice Labarga to achieve our mutual goals.

Of course, the Society cannot make education a priority without two critical resources – historical content and committed members. As a result, we have made cultivating historical collections and content and developing resources and members our two remaining key priorities. These priorities will guide the Society as we map out plans to achieve the specific goals we have identified.

The Society's Committees, composed of our talented and dedicated Trustees, are currently immersed in identifying the formative steps we must take to achieve those goals and implement the Society's strategic plan. The work of the Committees will ultimately be the force that drives the Society's continued success for years to come.

Simultaneously with this intensive planning process, the Society is already engaged in many programs and projects that reflect our priorities.

Priority I: Cultivating Historical Collections and Content

At the core of the Society's mission is preserving the stories that are the history of the Florida Supreme Court. In 2016, our Oral History Committee, led by Mary Adkins, worked diligently to preserve the stories of Justice James E.C. Perry, who retired effective December 30, 2016. To obtain a better understanding of the contributions Justice Perry made to the courts, the legal profession and our community as a whole, we encourage you to view Justice Perry's Oral History on our website: flcourthistory.org/Oral-History-Project.

Oral History interviews are also being coordinated for Justice Barbara Pariente, Justice Fred Lewis and Justice Peggy Quince, all of whom must retire effective January 8, 2019. Through these Oral Histories the Society will capture for future generations the stories that each Justice has to share. The Society, in collaboration with local bar associations throughout Florida, is also leading the charge to celebrate the contributions of the retiring Justices. Justice Perry's retirement dinner is set in April 2017, and promises to be an event that will be just as inspiring as he is.

Another important window to the past, *The Supreme Court History Volume III: Journey Toward Justice*, will also be available in the upcoming year. The book covers the tumultuous years 1972 to 1987 – a time of significant political and social change. The book tells the stories of the jurists and lawyers, including some of our own Trustees, who made significant contributions to Florida law. Publishing the book is not the end of the story though. The Society will be promoting the book with an educational series for local bar associations, community associations and in classrooms. Watch for Continuing Legal Education opportunities associated with the book as well.



Continued on page 6

Our annual Magazine also provides many historical pieces and perspectives. We hope you find this year's articles insightful and intriguing. Do not miss Justice Parker Lee McDonald's glimpse into his fourteen-plus years on the Court. Justice McDonald, in his unassuming and good-natured way, describes his colleagues, the mutual respect between the Court and the Legislature, and his and his colleagues' desire to maintain a court in which the public had confidence. Throughout the years, Justice McDonald and his wife Ruth have tirelessly given of their time to maintain that public confidence, and have made sure that goal remains a priority for the Society.

Priority II: Improving Understanding Through Education

This year's Annual Dinner keynote speaker is dedicated to educating the public about the Constitution. He is the President and CEO of the National Constitution Center which educates millions, young and old, about the United States Constitution on a non-partisan basis. You can find out more about the Center at: <http://constitutioncenter.org/>

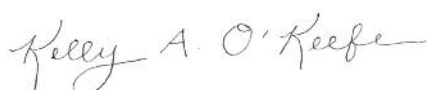
In his newest book, *Louis Brandeis: American Prophet*, Mr. Rosen describes Justice Brandeis' unifying vision of liberty and democracy. Brandeis concluded that both oligarchic businesses that were too big to fail and overregulation by the government were primary factors that prevented the common person from achieving his or her full potential. He looked for balance in these arenas which seemed as unattainable then as it does today.

Recognizing the opportunity Mr. Rosen's visit presented, the Society arranged for him to speak to the first-year law students at the Florida State College of Law and to a local community organization. In addition to increasing educational opportunities using our existing programs, such as the Annual Dinner, we are partnering with the Florida Supreme Court to expand the channels through which we increase awareness and understanding of the courts. The Society recognizes the need to look at other ways to circulate the content we cultivate. By collaborating with the Florida Supreme Court as they develop policies, procedures and content for their podcasts and social media sites, such as Facebook and YouTube, we will reach not only more, but more diverse audiences.

Priority III: Developing Resources and Members

Reaching larger and more diverse audiences is also important to developing a larger more diverse membership. The good news is our membership is increasing at about 10 percent annually. Our efforts to recruit young lawyers, past and present Florida Supreme Court law clerks and Appellate Section members have been successful and will continue. We will also continue our grant programs, like the "Archive Project" featured in this year's Magazine. Through this project, in which law students are archiving the Justices' papers, we are instilling in a new generation of lawyers an appreciation of the Court's history, preserving the Court's history for future generations and developing potential future Trustees and Members.

I could not end on a brighter note than the success of a program which reflects all of the Society's key priorities. Let me close by saying thank you to all of you who support the Society and its mission. I invite all our readers to join me, Justice McDonald, Ruth McDonald, our Justices, Trustees and Members, in building strong and continuing confidence in our courts around the state and beyond.



Kelly O'Keefe
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UNDER THE DOME

BY CHIEF JUSTICE JORGE LABARGA



Eighty years ago, state and federal courts across the country kicked cameras out of their courtrooms — cameras, radios and any other technology that did not exist when the Bill of Rights took effect in 1791. Here in Florida, we wholeheartedly agreed with the thinking that cameras were simply incompatible with fair judicial proceedings.

Forty years later, the Florida Supreme Court took a brave step. It authorized an experiment with cameras in the courtroom, allowing them in cases where all the parties consented to their presence. But the experiment was a dud: There was not a single case where all the parties would agree to a camera. No attorney was willing to take the risk.

Undeterred, the Florida Supreme Court took another brave step, expanding the experiment to every court in the state and eliminating the requirement that all parties had to consent. And so, despite the warnings and alarms of critics who were very comfortable with the conventional wisdom that cameras would interfere with the delivery of justice, the broadcast of Florida trials and appeals began. When the year-long experiment was over, the Court gathered data and questionnaires and carefully and thoughtfully analyzed the results. The Court concluded cameras did little harm and, what's more, did a great good: They helped make the judicial process more transparent to the public.

In a milestone opinion issued on April 12, 1979, Florida adopted the nation's broadest rule allowing cameras into courts. The late Justice Alan Sundberg wrote the opinion, which included this wonderful and very wise observation: "A democratic system of government is not the safest form of government, it is just the best man has devised to date, and it works best when its citizens are informed about its workings."

I would argue it is constructive to remember this proud moment in the Court's long history of openness as we move ahead in a century during which the norms of communication have rapidly changed and likely will continue to do so. This is not a time to hesitate or retreat. Rather, it is a time to advance and make progress, using new

technologies to improve our communication with the public we serve so as to better serve them and keep the foundation of public confidence on which we rest strong.

The branch-wide communications plan approved by the Court in late 2015—"Delivering Our Message/Court Communication Plan for the Judicial Branch of Florida"—will be our guide.

I am convinced that this extremely thorough and comprehensive plan will prove to be a historic milestone itself and an important guide for decades to come. If you have not had a chance to read it, let me assure you that it achieves a wonderful balance between the past, the present and the future. It calls on our state's courts to identify the appropriate and effective use of social media, but also emphasizes the importance of time-proven communications strategies, such as developing relationships of trust with your audiences.

Consider this quote from the plan: "In the always-connected information age of the 21st century, managing court communications requires extensive knowledge and practical understanding of a wide variety of media, communications principles, judicial canons and emerging technologies."

Surely, the 2016 campaign season—which marked a turning point in the use of direct communication between candidates of all levels and their supporters, as well as the appalling prevalence of "fake news"—illustrated the extent to which the new tools of communication have become commonplace and have, at least to a degree, supplanted the "traditional news media."

This is true not just for the political branches of government, but for the judiciary too. Again, from the plan: "Twitter, Facebook, YouTube and others are tools courts can use to disseminate important information and enhance the public's understanding of the courts. Seizing on the opportunity to meet the needs of the public and promote transparency, the institutional use of social media by courts is gaining acceptance."

Here at the Florida Supreme Court, we are indeed "seizing the opportunity." For instance, the Supreme Court joined Twitter in 2009. Last fall we launched our Facebook page. And we're getting ready to begin a podcasting program.

I am excited by the potential of these new communications tools. As a former trial judge, I know firsthand that courts do good. Yes, courts so often are faced with extremely difficult situations that require heartbreaking decisions. But courts also can—and DO—make positive changes in people's lives. I know it. I've seen it. I'm convinced in my heart I've done it.

Courts exist for one reason and one reason only: to administer justice so that we can live in a civil and peaceful manner, in free and orderly communities, in a democracy. That will never change, with or without cameras, with or without social media.

But courts could not exist, could not function, if they did not have a foundation of public trust. Improving public understanding of courts enhances public trust of courts. And the new communications tools—social media—will help us do just that. It really is that simple. ■

JUSTICE BARBARA P. PARIENTE: A WOMAN OF VALOR

Sometimes the essence of a person can be captured by her office décor; for instance, what a Florida Supreme Court Justice chooses to surround herself with each day.



Former Justice Sandra Day O'Connor, flanked by Justice Peggy A. Quince and Justice Pariente

Justice Pariente's office is filled with intimate photographs of family, friends and colleagues, past and present. Many depict her loving family, consisting of her husband, former Fourth District Court of Appeal Judge Fred A. Hazouri, her children, and her grandchildren. Justice Pariente's additional 'family' are those with whom she works, as evidenced by the many photographs and photo albums of Pariente with past and current colleagues on the Florida Supreme Court and the Fourth District Court of Appeal. Pariente has photos with her fellow clerks from her time as a law clerk in the chambers of United States District Court Judge Norman Roettger, Jr. (1973-75). And in Judge Roettger's tradition, Justice Pariente also keeps photos of her own law clerks that have clerked for her at the Fourth District and during almost two decades at the Supreme Court. Significant by their absence are any photos hinting of politics.

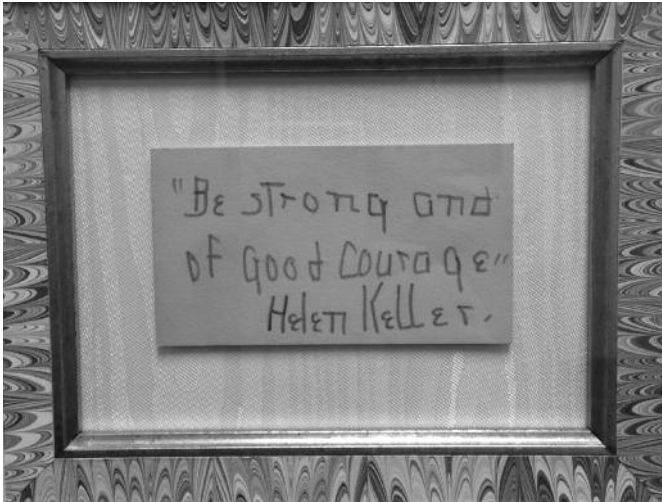
A large portrait of Helen Keller hangs on the office wall and provides a window into Justice Pariente's strength and character, and a dramatic episode in her life. In the portrait photograph, Helen Keller is a young, beautiful woman inhaling the fragrance of a single white rose. Beneath the portrait is a framed original note in Helen Keller's own handwriting: "' Be Strong and of Good Courage.' – Helen Keller." This phrase has a biblical source – when Moses (per instructions from God), tells Joshua to "Be Strong and of Good Courage" when entering the Promised Land.¹

Justice Pariente decided on the Helen Keller original piece from a South Florida art gallery, rather than jewelry or artwork, when her husband asked to buy her something very special following her 2003 breast cancer diagnosis and treatment. Pariente explains that Helen Keller's bravery and courage had always been a source of inspiration to her, particularly during those difficult times when Pariente was challenged to her core.

When Justice Pariente retires in 2019, she will leave a legacy on the Court that goes far beyond the many historic opinions she has authored, those she has helped shape as part of the majority, or the significant concurring and dissenting opinions she authored that have also impacted Florida's jurisprudence.

Still, not knowing whether an issue relating to one of these decisions could be presented to the Court during the balance of her term, Justice Pariente remains more comfortable discussing the issues important to her, rather than specific judicial cases.

Justice Pariente's extensive resume on the Supreme Court website highlights those varied interests important to ensuring equal justice for all, as well as issues such as promoting drug courts as an alternative to incarceration, increasing pro bono participation, and the necessity of a fair and impartial judiciary. For the past twenty years she has worked continuously on issues involving children and families, stressing that those cases should be a priority in trial courts and for advocates in order for the State's most vulnerable children to



Handwritten Note from Helen Keller: "Be Strong and of Good Courage" – Helen Keller

have a voice. For instance, she has advocated for making cases involving children and families less adversarial, emphasizing, where possible, alternative dispute resolution, and giving courts the tools to be able to ensure children and families are linked to critical community services. She has also advocated, and the Supreme Court has adopted, rules to help ensure that all cases involving the same family or child are assigned to one judge. More and more, Justice Pariente says, there is a recognition that underlying many of these cases are complex family problems ranging from mental health and addiction to abuse and neglect, and that if the judiciary does not recognize these underlying causes, including adverse childhood experiences, subsequent generations of the family are adversely affected. She is heartened that judges, court personnel, and lawyers alike have grown to conform their practices to these realities—all with the view of improving outcomes for families and our most vulnerable children.

Barbara Pariente was born on Christmas Eve in New York City and moved with her family to New Jersey when she was nine years old. She attended public schools, was a Girl Scout Brownie and, for a time, a Girl Scout. She was a big fan of Ricky Nelson, but disliked Elvis. Her mom, Mildred, had worked booking movies for theaters and was a stay-at-home mom for her older daughter Barbara, and her younger daughter Susanne. Today, Mildred lives near Pariente in South Florida. Pariente's father, Charles, was a WWII veteran and worked for a chocolate company.²

Pariente was the first in her family to attend college. She majored in communications at Boston University, and studied journalism, advertising, public relations and public broadcasting, as well as photography, political science and French literature. While she believed the educational function of public broadcasting was very important, she perceived it as far too male-dominated in the late 1960's to attract her as a practical career choice.



Portrait Photograph of Helen Keller, seated with hand on braille book as she smells a rose in a vase. c.1904 (Library of Congress)

A Boston University college project paved an unexpected path to law school. Assigned to produce a film project on any subject, Pariente focused on Harvard's program that provided legal services to the poor and produced a documentary on the new program's efforts to provide legal representation to those unable to afford a lawyer. The project opened her eyes to using the law as a tool to educate and assist the poor in asserting their legal rights. Social issues had been important to Pariente in college; when she was tested in high school for a career fit, social work was suggested.³ It was unsurprising then, that her film project documenting issues of providing legal services for the poor, not only inspired her, but led her to apply to law school.

Pariente preferred to attend law school in Washington D.C., the nation's capital, rather than remain in Boston. She enjoyed her time in Washington where whites were in the minority and there appeared to be a semblance of racial equality. There were very few women in her class at George Washington University Law School. There were no lawyers in the family, except for a great-uncle on her mother's side, S. Chesterfield Oppenheim, an anti-trust attorney who also taught law at both the University of Michigan and George Washington University. In fact, John Paul Stevens, a future United States Supreme Court justice, was part of the presidential commission on anti-trust law, which her great uncle chaired during the Eisenhower administration.

Once in law school, Pariente worked for legal services, providing the same type of legal representation to the underprivileged as the Harvard Law School program she chronicled as an undergraduate communications major at Boston University. She also interned at the Public Defender's office, and while there, successfully argued against the unequal enforcement of laws against prostitution. The experience lead her to co-author a law review article published in the *American Criminal Law Review*, "The Prostitution of the Criminal Law."⁴ Pariente graduated magna cum laude from college and was fifth in her graduating law class at George Washington University.



Mildred Pariente is holding the Bible while her daughter Barbara J. Pariente is taking the oath of the Florida Supreme Court from then U.S. 11th Circuit court judge Rosemary Barkett. February 20, 1998.

Then a harsh reality set in. The major law firms in the Northeast did not offer Pariente a position as an associate in their trial divisions, positions historically reserved for men. But she decided that Florida would be a better place to begin her career so she applied for a clerkship with recently-appointed United District Court Judge Norman Roettger, Jr., in Fort Lauderdale. Pariente was hired for the two-year clerkship, and worked for Judge Roettger from 1973 to 1975.

During her clerkship, Pariente witnessed firsthand skilled lawyering in Judge Roettger's courtroom. During her second year, she started interviewing for a position as a trial lawyer in the top trial firms in Palm Beach County at a time when there were few women lawyers and even fewer women trial lawyers. Fortunately, another female trial attorney, Rosemary Barkett (later a Florida Supreme Court Justice and Judge of the Eleventh Circuit Court of Appeals), had already made a name for herself as an excellent trial lawyer with the Farish law firm – helping to pave the way for Justice Pariente. The two became close friends and remain so today.

Today, Pariente jokingly explains that she was very naive when interviewing for a trial lawyer position with various Palm Beach County trial firms. The law firms were not impressed with her federal clerkship or law school honors. The firms explained that they avoided litigating in federal court, preferring state forums. Nor was her law review article challenging state prostitution statutes on constitutional grounds a selling point in many Palm Beach County firms. But the Cone Wagner and Nugent law firm offered her a trial attorney position, and she accepted. She worked mostly with the firm's founding partner, legal legend Al Cone, on products liability cases in state court. Her future husband, Fred Hazouri, was also a partner at the firm. Pariente worked at Cone Wagner for eight years. The Cone Wagner firm stressed professionalism and cooperation, and both remain very important to Pariente today.

While in practice, Pariente preferred working on products liability cases because the misconduct or negligence of the

defendant could often be identified in their own documents.⁵ Meritorious products liability cases also helped ensure the safety of products for the public, an added societal benefit. In contrast, in medical malpractice cases, the defendant's negligence was often more difficult to pin down; the defense would defend with a new, rare virus or other causes of injury. She still derives satisfaction from the structured settlements she arranged for clients when interest rates were high and annuities were locked



Judge Barkett administers the oath again as Justice Pariente was sworn in as chief justice on July 2, 2004. Pariente is joined this time by her husband, former Fourth District Judge Fred A. Hazouri.

in for the life of the injured plaintiffs, many of whom are still supported by the annuity to this day. In 1983, Pariente left Cone Wagner with another partner, Louis Silber, and together formed a successful trial partnership, Pariente and Silber. They did trial work in Palm Beach County and throughout the state and continued to work on cases with her old law firm following their amicable parting from the firm.

Interestingly, although appointed to serve on the Fourth District Court of Appeal and later, to the Florida Supreme Court, Pariente never did appellate work during her legal career. Florida's litigators will surely agree that her background as an accomplished trial attorney is equally important as a Justice. Her legacy of landmark judicial opinions also speaks to Pariente's ability to quickly adjust and excel as both an appellate Judge and Supreme Court Justice.

During her years of practice, Pariente had occasion to be both adverse and aligned with her friend Rosemary Barkett. She litigated against Barkett in a matrimonial case, where Barkett represented Governor Claude Kirk and Pariente represented his estranged spouse, Erika Mattfeld Kirk. During the trial, the parties reconciled and their lawyers felt very satisfied about that development. Pariente later represented Barkett in a dispute with her law firm about the distribution of assets and fees after she left the firm. Barkett urged Pariente to repeatedly object at trial, but that was not Pariente's style, as she did not want to antagonize the trial judge. Barkett (and her lawyer Pariente) prevailed.

Though Pariente had a successful trial practice, she wanted to give back by serving in the judiciary. Governor Lawton Chiles appointed Pariente to the Fourth District Court of Appeal in September, 1993 and later appointed her to the Florida Supreme Court on December 10, 1997. Life was good both personally and professionally. That changed in April 2003, when Pariente was diagnosed with breast cancer. But the Justice did not let breast cancer define her. She served as her own advocate and researcher, as she had been trained to do as a trial lawyer handling complex litigation; she analyzed her options and determined her best course of action--a double mastectomy, breast reconstruction, and a full course of chemotherapy.

Incredibly, during these very challenging times, Justice Pariente never missed an oral argument and she participated in all Court conferences. Normally a very private person, she decided to share her breast cancer struggle and treatment with the Palm Beach Post to educate and strengthen other women facing the same problem. While undergoing chemotherapy, Justice Pariente regularly appeared in the Courtroom during oral arguments without her wig. Her strength and leadership during this challenging time surely epitomizes Helen Keller's dictum, "Be Strong and of Good Courage."

Justice Pariente is also committed to protecting the independent judiciary from politics. Florida's appellate district court judges and Justices of the Florida Supreme Court are appointed by the Governor under a merit selection process. In the first election following appointment and every 6 years thereafter, the appointed Justices are on the ballot for merit retention, until the mandatory retirement age of 70.

She witnessed the increasing use of merit retention elections to advance what she perceived as political agendas, threatening a fair and impartial judiciary in the process. She witnessed successful efforts in Iowa in 2010, where three Iowa Supreme Court justices were unseated due to then unpopular decision on marriage equality that the Court had made. The Iowa upheaval was a wake-up call for Justice Pariente as well as Justices Quince and Lewis who were also on the ballot for retention in November, 2012. All three justices were targeted by various groups who accused them of "judicial activism." Because the justices perceived that such attacks were politically motivated and a threat to the merit retention system and a fair and impartial



Justice Pariente with Former US Supreme Court Justice O'Connor.

judiciary, they fought back with a campaign to educate voters on the reasons for the merit selection and retention system. The Florida Bar, which could not advocate for their retention, also ran a separate educational campaign called "The Vote's in Your Court." Fortunately, the three justices were retained with a substantial percentage of the vote despite the efforts to unseat them.

Justice Pariente has dedicated considerable time and effort to educate the public about the judicial branch of government and why good judges must base their decisions on the rule of law, not on what the majority deems popular at the time. She has been active in a program titled the "Informed Voters Project" spearheaded by the National Association of Women Judges. She is passionate about these issues because of her belief that the independence of the judiciary is at stake. Pariente shares much of her thoughts on the topic in a forthcoming article in the *Florida Law Review*, titled, "A New Era for Judicial Retention Elections: The Rise of And Defense Against Unfair Political Attacks", co-authored with F. James Robinson, Jr. of Kansas. The Florida Supreme Court Historical Society also has an educational series of interviews on merit selection and retention, including an interview with Justice Pariente, available at the Society's website: <http://www.flcourthistory.org/> ■

The Historical Society thanks Matthew Christ for his editorial assistance. Christ is a staff attorney to Justice Pariente.

¹ Deuteronomy 31:6

² Several childhood facts are taken from the excellent profile of Justice Pariente by Jan Pudlow, TFB Journal, Oct. 2004, Vol SXXVII, No. 9 (2004).

³ Her sister is a social worker – so it must run in the family.

⁴ *The Prostitution of the Criminal Law*, The American Criminal Law Review, Vol. 11:373 (1973) The article is a resource for attorneys seeking to challenge prostitution statutes on constitutional grounds with its much cited comprehensive analysis of all state prostitution laws.

⁵ The Justice stressed the importance of document discovery in *How to get the Corporate Defendant to Cooperate with Discovery*, Women Trial Lawyers: How They Succeed in Practice and in the Courtroom, pp. 151-65 (1987): "[T]he first step in forcing a corporate defendant to comply with discovery is to believe that the corporate defendant holds the key to your case in its own corporate archives."

THE HISTORY OF THE FLORIDA SUPREME COURT, VOLUME 0

BY PROFESSOR M.C. MIROW

The Florida Supreme Court Historical Society's multi-volume *History of the Florida Supreme Court* is a wonderful addition to the literature of our state's legal history and a much-needed professional study of its premier judicial institution. The series aptly begins in *Volume 1* with Florida as a territory of the United States and the territorial courts that existed from 1821 until statehood in 1845. Similarly, another path-breaking work of Florida's judicial history, Kermit Hall and Eric Rise's *From Local Courts to National Tribunals*, begins with the territorial courts of this period.

Nonetheless, Florida has a much longer legal history than the starting points of these works might lead us to believe. Indeed, when considering Florida's participation in European law and legal systems, the approximately 200 year span from 1821 to the present date has to be read against the more than 300 years of Florida under either Spain or Britain from 1513 to 1821. In theory, for us to understand the continuities and changes that occurred in Florida's judiciary throughout its history, the *History of the Florida Supreme Court* should be supplemented with an additional volume, *Volume 0*, on colonial courts. Here I consider some of the obstacles to this work and imagine what such a volume about Florida's colonial courts might look like.

As a legal historian, I think *Volume 0* would be an invaluable contribution to the field of Florida's colonial legal history. The academic contribution would be immense. Such work would also have practical import. Glenn Boggs' studies of land grants in Florida have demonstrated that Florida's colonial legal history is not exclusively of academic interest.

Before exploring Florida's high courts in the Spanish and British periods, it is worth thinking about some of the reasons why a *Volume 0* has not already been written, as well as about what contributions have already been made in its direction. Several years ago, Robert M. Jarvis, professor of law at Nova Southeastern University, approached me about contributing to a volume of essays on various Florida courts that lie outside the purview of ordinary common-law justice. Having written an important study of the Florida courts and judiciary in the British period (1763-1783), he asked me to write about Spanish courts for the book, and I gladly accepted. Other chapters in this forthcoming work edited by Professor Jarvis will look at territorial courts, Confederate courts, military courts, religious courts, Miami's "Black Court," and the courts of indigenous communities. For general readers, historians, and lawyers, this book, and especially its first two chapters, will fill some of the void we currently have in our knowledge of Florida's colonial legal history. It will be an important contribution to our understanding of courts and justice in Florida. Nonetheless, the chapters on colonial courts are



The promulgation of the Constitution of 1812, oil painting by Salvador Viniegra (Museo de las Cortes de Cádiz).

written as initial studies that highlight the limited nature of available sources and secondary scholarly studies in the field. They are first attempts to unearth the basic contours of these important, established, and relatively unknown precursors of the Florida Supreme Court.

So, as lawyers and judges in Florida, we should be somewhat surprised that so little has been done, that the law reviews of our state have not explored Florida's courts and colonial law, and that professional historians of Florida have not sought to examine these institutions and guiding norms of family, commerce, and society. Why have so few scholars explored Florida's colonial courts and its colonial legal history?

Let me offer a few thoughts on this dearth of interest, research, and scholarship. The reasons can be grouped around three general categories. First, there is a general lack of appreciation for Florida's colonial history. Second, the development of law and legal institutions has not been an emphasis of today's historians, who are more interested in economic and social history. Third, locating, reading, and interpreting legal records erect additional hurdles to preparing an in-depth study of Florida's colonial courts. I'll take these one at a time.

The first hurdle has to do with the nature of the material artifacts of Florida's colonial history. Florida natives and transplants alike know that if you leave a sheet of paper on the ground in Florida for a day or two, the sun, rain, humidity, and insects quickly make it disappear. Most of Florida's colonial settlements and structures have gone the way of a sheet of paper exposed to the elements. There are few landmark structures standing to testify to Florida's complex and international colonial past. Their wooden construction has long succumbed to the violent and unrelenting forces of nature in Florida. The rarity of more lasting building materials meant that many cut blocks and bricks were put to other uses after storms or fires. Apart from a few extant spectacular sites, Florida's material colonial history is left to the imagination. We are not blessed with the buildings similar to those of colonial Massachusetts or colonial Williamsburg to pique the popular interests of Floridians. Without popular engagement in

our state's history, professional and scholarly activities are too often viewed as being less relevant and less worthy of public support.

Furthermore, Florida, now the nation's third most populous state, has only recently arrived on the national stage as a massive and important player. Because Florida is a state of national and international transplants, there has been little opportunity to develop the deep, local appreciation for the past that exists in so many other parts of the United States. And, as a historian and legal historian, I think it is fair to say that until quite recently, there has been a scholarly bias against southern history and southern legal history. An additional problem is that the unique array of international connections and colonial links of our region means that Florida history actually challenges the simplistic, middle-school story of the United States unfolding from a popular British democratic revolt against royal absolutism based on the rights of an "Englishman." How many of us know or remember that when St. Augustine was transferred from Spain to the United States in 1821, the city was under a constitutional monarchy limited by a written constitution? This was far too late to fit into a story focused on 1776 and far too "constitutional" for a story of free men casting off the yoke of an absolutist king. Thus, Florida's history has always been too different, too international, too temporally out of step, and perhaps even too diverse for it to fit comfortably with the general notions many of us were taught about the colonial period of U.S. history.

Please don't think I am saying that no one is writing about Florida history, or even Florida's legal history. There are and have been excellent historians of Florida, and there is a growing pool of people interested in and writing about the history of law in Florida. I do think that we are underappreciated on the national scene and that the importance of Florida in the United States has been neglected by scholars. While I will have to explore this topic another day, I can give one example. The Index of *The Cambridge History of Law in America, Volume I, Early America (1580-1815)*, a standard reference work for U.S. legal historians, contains no entry for the terms "East Florida," "West Florida," or "Florida." This same work, however, has entries for Delaware, Georgia, Louisiana, Maryland, Massachusetts, Middle colonies, New England colonies, New France, New Hampshire, New Haven colony, New Holland, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia.

There is also the hurdle of finding scholars to do this work. Modern historians tend to be more interested in economic and social history than in *legal* history. Different areas, approaches, and predilections move in and out of fashion as historians train the next generation of scholars to carry on their craft. Despite the importance of law in changes in society, politics, and economics over time, few historians dedicate themselves exclusively to legal history. Individuals with legal training in the United States almost always opt for the professional and

intellectual rewards of legal practice, rather than using their law degrees as the basis for further study of the history of our profession. This is not new. In 1888, perhaps the greatest of English legal historians, Frederic William Maitland, lamented exactly this problem in his famous inaugural lecture as Downing Professor of the Law of England at Cambridge University. The title of his talk was *Why the History of English Law is not Written*. Nearly one hundred thirty years later, the same hurdles exist. Plus ça change.

Assuming there are people with the proper historical and legal training ready to jump fully into the task, the records themselves are a third hurdle to writing a history of Florida's colonial courts. The records of Florida's colonial courts present additional challenges for the legal historian. These obstacles are related to locating the records and to interpreting their language and hand. Let's begin with locating records. Here, there is some good news. For what is called Florida's second Spanish period (1783-1821), records for East Florida with its capital at St. Augustine are available, complete, reasonably well-organized, and relatively legible. I have done some preliminary studies of these documents summarized in an article *Law in East Florida 1783-1821* found in the Further Reading section below. Documents for the entirety of the first Spanish period (1513-1763) and for West Florida in the second Spanish period (1784-1821) have either been lost or are scattered amongst various archives in the Americas and Spain, and they are in various conditions and states of legibility. Just finding all these legal documents for Florida represents a Herculean task.

Colonial Florida has not attracted the attention of historians of Spanish colonial law, and so these historians are apt not to focus on legal papers found in Spanish-language archives. Historians of North American law have not focused on the available legal records for Spanish Florida probably because they are in Spanish, and many U.S. colonial historians are not trained in Spanish or Spanish paleography to decipher properly these rich materials.

Similarly, until recently, it had been assumed that the legal records from Florida's British courts from 1763 to 1783 were entirely lost or destroyed. Nonetheless, I am pleased to report that in the summer of 2015, I found documents from Florida's British courts in the National Archives (Kew) in England. They are not well-organized and many have been rendered illegible from water damage, mold, and insects. I am currently trying to make sense of these documents, and I believe that they are a great, unknown treasure of Florida's legal past.

Locating the records aside, a student of Florida's colonial courts must be trained in both Spanish and English and in the paleography of the period. The documents from the British courts contain pages in Spanish, and the documents from the second Spanish period contain some documents in English. Scholars need both languages to study the activities of these



Constitution Monument in La Plaza de la Constitucion, St. Augustine. Erected 1813; photographed in 1937 by Frances Benjamin Johnston. (Library of Congress)

courts. They also need to become acquainted with the handwriting of the periods.

Finally, these documents will say little to someone who does not have a good understanding of the underlying law in its colonial context. Spanish colonial law, commonly called *derecho indiano*, is necessary to make sense of the Spanish records, and a good understanding of eighteenth-century English common law is necessary to make sense of the British records.

Despite these obstacles, some studies indicate what lies beneath the surface of these records and reveal what they say about Florida's early judiciary. I have worked mostly on the papers from the second Spanish period from 1783 to 1821. These documents reveal a sophisticated legal world in St. Augustine and East Florida. It seems that unlike elsewhere in the Spanish empire, St. Augustine's city council did not have individuals who served as local judges. The governor of the province served as the judge, but this does not mean that the cases he heard were few or small. There are records of significant civil cases dealing with, of course, debt collection and contract enforcement. There are cases dealing with testaments, and many criminal cases. Enslaved human beings appear in the records of cases as plaintiffs, defendants, and as objects and assets in dispute. Litigants relied on Spanish colonial law and supporting documents. Legal advice was scarce and sought only in the bigger, more important cases. Some parties even sought legal advice from lawyers in Havana

when no one legally trained could be found in St. Augustine. The governor, however, often had access to a local, trained, legal adviser, an asesor, who would provide him substantial guidance. We know much less about what happened during the first Spanish period, but for the time being, we can imagine that Spanish justice was administered similarly during the first 250 years. I should mention that nothing in my research so far indicates that the Spanish system of justice was awash in corruption, partiality, avarice, and slapdash procedures. Spaniards were ferocious record-keepers and, if nothing else, compulsive proceduralists.

Thanks to two important books published in the 1940s about British East Florida and British West Florida and the forthcoming work of Professor Jarvis, we have a good general knowledge of the British judiciary and the names of the courts in which they served. It may be surprising to Florida's present bench and bar that during the British period from 1763 to 1783, Florida had a Court of Common Pleas; a Court of General Sessions of the Peace, Oyer et Terminer, Assize and General Gaol Delivery; a Court of Chancery; a Court of the Vice-Admiralty, and a Court of the Ordinary. Grand juries were empaneled in criminal matters, and petit juries decided criminal and civil cases under judicial supervision. There was a small corps of trained lawyers representing clients in these courts. During the British years, Florida had some members of the judiciary who were relatively independent from the other branches of government and, as in the case of East Florida's Chief Justice, William Drayton, ran into great personal and constitutional difficulties because of their assertions of judicial independence. The governor of West Florida sparred with his Chief Justice, and both East and West Florida had Chief Justices who were suspended at one time or another.

These flitting descriptions of centuries of law, judges, and justice in Florida only reveal the great work ahead for historians of Florida's colonial judiciary and legal world. With all the hurdles mentioned, it is not surprising that, in truth, paraphrasing Maitland, the history of Florida's colonial courts is not written. Volume 0 of the *History of the Florida Supreme Court*, a meaningful and comprehensive history of the courts of Florida during the first 300 years, is a distant dream for those of us working slowly on small pieces of Florida's colonial legal history. Nonetheless, sources exist, and they are available and legible. Considering the indisputable future growth of our state and its greater political, economic, and social power within the United States and world, it is likely that generations of legal historians to come will turn their attention to these important documents. Nonetheless, we may have to wait a long time before the *History of the Florida Supreme Court, Volume 0*, sees the light of day. ■

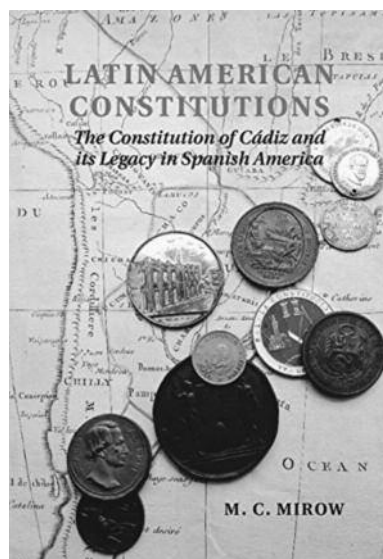
M.C. Mirow is Professor of Law at F.I.U. College of Law, Miami. He holds research doctorates in legal history from Cambridge and Leiden Universities and is a member of The Florida Bar.

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

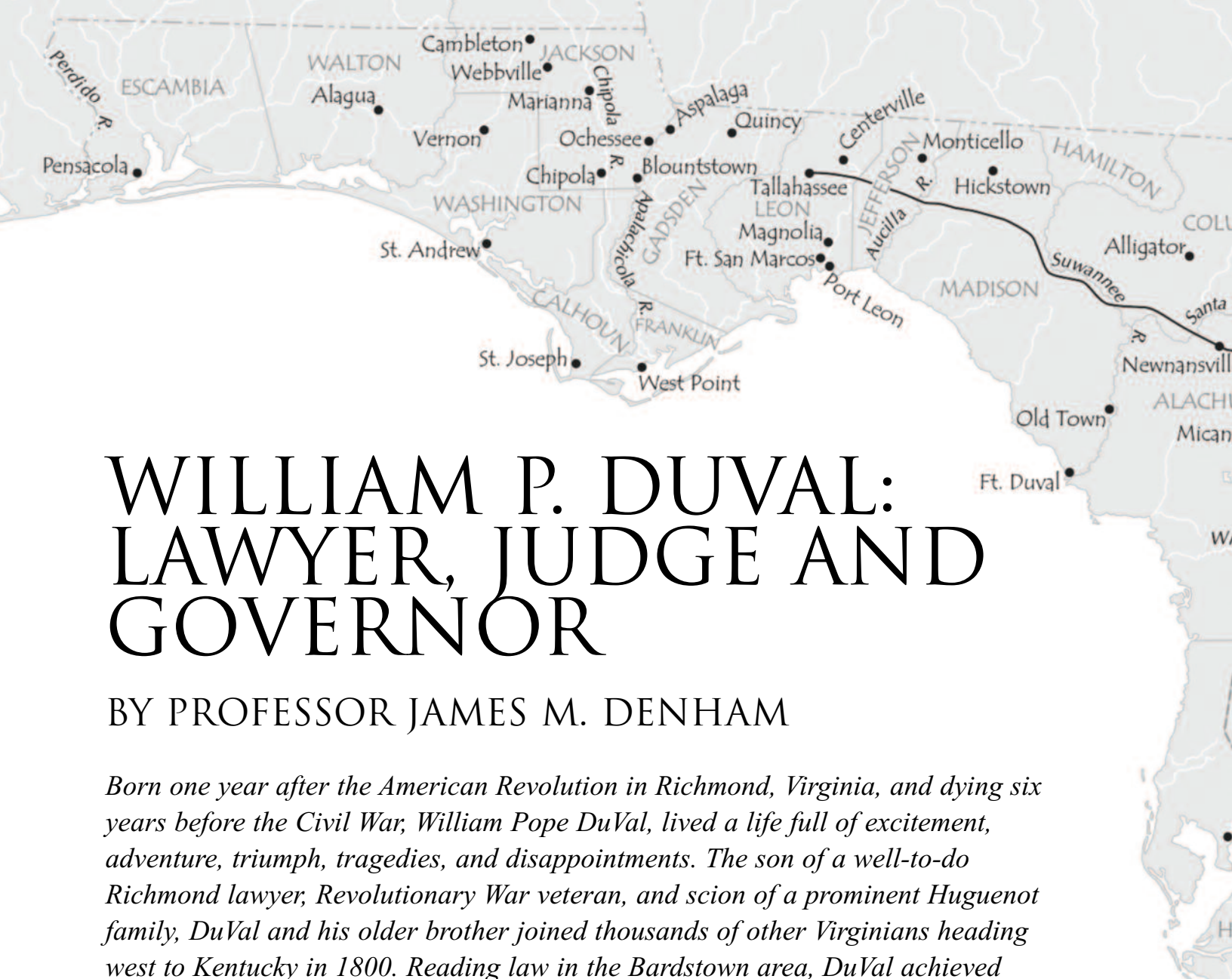
Photographs provided by the State Archives of Florida, Florida Memory.

Further Reading:

- Boggs, Glenn. "The Case of Florida's Missing Real Estate Records." *Florida Bar Journal* 77(9) (October 2003): 10-17.
- Boggs, Glenn. "Florida Land Titles and British, Not Just Spanish, Origins." *Florida Bar Journal* 88(3) (July-August 2007): 23-31.
- Gannon, Michael, ed. *The History of Florida*. Gainesville: University Press of Florida, 2013.
- Grossberg, Michael & Christopher Tomlins, eds. *The Cambridge History of Law in America, Volume I, Early America (1580-1815)*. Cambridge: Cambridge University Press, 2008.
- Hall, Kermit L. & Eric W. Rise. *From Local Courts to National Tribunals: The Federal District Courts of Florida, 1821-1990*. Brooklyn, New York: Carlson Publishing Co., 1991.
- Jarvis, Robert M., ed. *Florida's Other Courts: Unusual Justice in the Sunshine State*. Forthcoming, 2017.
- Johnson, Cecil. *British West Florida 1763-1783*. New Haven: Yale University Press, 1943.
- Maitland, F.W. *Why the History of English Law Is Not Written*. Cambridge: Cambridge University Press, 1888.
- Manley II, Walter W., E. Canter Brown, Jr. & Eric W. Rise. *The Supreme Court of Florida and its Predecessor Courts, 1821-1917*. Gainesville: University Press of Florida, 1997.
- Mirow, M.C. "The Constitution of Cádiz in Florida." *Florida Journal of International Law* 24(2) (2012): 271-329.
- Mirow, M.C. "Law in East Florida 1783-1821." *American Journal of Legal History* 55(1) (2015): 89-118.
- Mowat, Charles Loch. *East Florida as a British Province 1763-1784*. Berkeley: University of California Press, 1943.
- Vallandigham, Christopher A. "Tracking Down Legal Sources on Prestathood Florida," in Michael Chiorazzi & Marguerite Most, eds., *Prestathood Legal Materials: A Fifty-State Research Guide, Volume I, A-M*. 248-276. New York: Haworth Information Press, 2005.



Professor Mirow's most recent book is *Latin American Constitutions: The Constitution of Cádiz and its Legacy in Spanish America* (Cambridge University Press, 2015)



WILLIAM P. DUVAL: LAWYER, JUDGE AND GOVERNOR

BY PROFESSOR JAMES M. DENHAM

Born one year after the American Revolution in Richmond, Virginia, and dying six years before the Civil War, William Pope DuVal, lived a life full of excitement, adventure, triumph, tragedies, and disappointments. The son of a well-to-do Richmond lawyer, Revolutionary War veteran, and scion of a prominent Huguenot family, DuVal and his older brother joined thousands of other Virginians heading west to Kentucky in 1800. Reading law in the Bardstown area, DuVal achieved notoriety as a lawyer and politician. In 1812 he was elected to Congress but before going to Washington he volunteered for service in the War of 1812 and fought in the Illinois territory in the first few months of the war. Returning to Kentucky after one term in Congress, DuVal practiced law, but fell on hard times during the Panic of 1819. But relief came in 1821 when John C. Calhoun, James Monroe's Secretary of War, used his influence to have DuVal appointed judge in the newly created Florida territory. The next year, also through Calhoun's influence, Monroe appointed DuVal the territory's second governor, succeeding Andrew Jackson's brief three month tenure. DuVal served three consecutive terms as territorial governor until 1834. In those years he presided over the first civil government of Florida, and oversaw the founding of the territorial capital at Tallahassee. Throughout the remainder of his life DuVal practiced law in Florida, Kentucky, Texas, and finally, Washington D. C., DuVal, where he died in 1854.



William P. DuVal, courtesy of the Collection of the Museum of Florida.

The following is an excerpt from James M. Denham, Florida Founder William P. DuVal, Frontier Bon Vivant, (Columbia: University of South Carolina Press, 2015), 9-18, 43-46 focusing on William P. DuVal's legal training and his brief tenure as the first federal judge in Florida.

In 1800 Lexington and Bardstown were focal points of settlement for Kentucky. The Nelson County seat was also home to some of the best legal talent in the West, many of whom had done their legal training in Virginia. . . . Bardstown offered many opportunities for a young ambitious man like William P. DuVal. Here he could observe and assist master lawyers at work on complex cases. Also beginning their careers in the area were a number of young men who would go on to flourishing careers in the law and in politics, such as DuVal's relative John Pope, Charles A. Wickliffe, Ninian Edwards, Benjamin Hardin, Thomas Speed, George W. Bibb, and Felix Grundy. DuVal dedicated himself to intense study of the law under the tutelage master practitioner Henry Broadnax. DuVal served a kind of apprenticeship, working in the office, copying documents, and going to court under the supervision of the master. The study of law was a grueling ordeal. DuVal recounted his regimen in later years: "I read and read for sixteen hours of the twenty and four; but the more I read the more I became aware of my deficiencies. It seemed as if the wilderness of knowledge expanded and grew more perplexing as I advanced. Every height gained only revealed a wider region to be traversed, and nearly filled me with despair. I grew moody, silent, and unsocial, but studied on doggedly and incessantly." Despite his difficulties, DuVal was ready for his examination before a committee of the bar and judges, and he passed. On September 10, 1804 he presented his license to the Nelson County Court and was admitted to practice. DuVal's prospects were bright. A career in the law and politics beckoned. . . .

William Pope DuVal pursued the practice of law with vigor. Because of confused land titles Kentucky was a land of opportunity for lawyers. . . . Much of the land by the late 1790s had not yet been surveyed, entered, or patented. The field offered potential wealth for lawyers, especially those skilled at litigating land titles. According to Malcolm J. Rohrbough, "The lawyer was the first professional man on the frontier, and his work carried him to the heart of the frontier's interest in economic advantage. In the struggle for acquisition of property, amidst the fluid economic conditions and numerous opportunities for advancement of the western country, lawyers almost everywhere prospered." . . .

While he was an adequate practitioner of the law, DuVal's main talents in these early years and in his later life rested in his oratorical skills. By all accounts he was an orator of the first rank. But most of all he was a joker, singer, tall-tale-teller and possessed a winning personality. These were assets in great demand on the frontier in the law and politics. People were naturally drawn to him. . . . One man who saw DuVal frequently during those years recalled that, "I never knew a more charming conversationalist. It is impossible to exaggerate his powers in this respect. If he emerged from his lodgings the public seemed to have its eye upon him. The moment he



Wilderness Road to Kentucky Settlements, ca. 1800. Map by Peter Krafft.

paused, an admiring company would gather around. He did all the talking, and his hearers never wearied.” Another man noted that “DuVal’s charm was in graphic narrative and vivid description. I once made the journey of several hours in a stagecoach from Bardstown to Springfield. . . . DuVal was my companion, and so completely was I fascinated by his uninterrupted conversation that I was startled when the journey ended, so entirely had I been oblivious of time, distance and surroundings.”

DuVal’s winning ways and popularity paid dividends in the courtroom. He soon acquired clients. In the remaining years of the decade DuVal developed his law practice. But after a series of economic set-backs, relief came in the form of a federal appointment as the first judge in the Eastern Judicial District in the new territory of Florida.

William P. DuVal arrived in St. Augustine to assume his official duties as Judge in the last week of November, 1821. DuVal chose not to travel directly to the Ancient City by boat. Instead he (along with his 23 year-old brother in law Alfred Hynes) determined to explore the entire length of the St. Johns, before arriving in St. Augustine’s back door. Entering the mouth of the St. Johns, DuVal and Hynes paddled past Picolata, (the stopping off point for those heading to St. Augustine), Lake George, and continued all the way to Volusia. Returning to Picolata and then on horseback the twenty or so miles to St. Augustine, DuVal took a look around town and reported his observations to Secretary of State John Quincy Adams

A few days later DuVal noted to Adams that the fever in St. Augustine had “happily subsided” (even though the district attorney died less than two weeks later). DuVal found “considerable confusion . . . among the several officers of government as to their powers,” and added that “nothing less than the timely interposition of Congress can restore harmony and order in this place.” DuVal also asked permission to appropriate some part of the public buildings here for the court

and Clerk’s office,” and asked whether or not President Monroe had “fixed on the allowance intended for the U. S. judge of E. Florida.” Finally, DuVal closed his correspondence with the request that he be allowed to appoint fellow Kentuckian Greenbury A. Gaither “now residing in this place” a clerk of his court. Gaither, a “gentleman of excellent legal knowledge from Kentucky” spoke the “French language and reads the Spanish with fluency,” and would be competent to decide on the land titles of E. Florida. Without fully appreciating it, DuVal had hit upon the most vexing problem confronting American officials in the Florida Territory.

The terms of the Adams-Onís Treaty stipulated that the United States would recognize lands granted to subjects of the Spanish king before January 24, 1818. The task of any claimant was to prove that their grants were established before that date, and to do that archival records were indispensable. Boards of commissioners in St. Augustine and Pensacola were appointed and in operation by July 1822, but long before they began their deliberations, conflicts over control of records in Pensacola and St. Augustine were rampant. Some time before DuVal arrived, an official on the scene warned authorities in Washington that “abuses . . . are going on with regard to land titles. I am informed that the authorities here, having possession of those titles, are determined to ship them at all hazards, alleging as a reason that all the United States would find it in her interest to destroy them but if my information is correct, the reason is founded on their having mutilated them by ante-dating tearing out and inserting leaves, so as to make grants for much larger tracts of land than were originally given.” Controversy over the grants went on for decades and was further complicated by the fact that, despite Provisional Governor Jackson’s virulent protests, Spanish officials succeeded in carrying off many of the land records to Cuba.

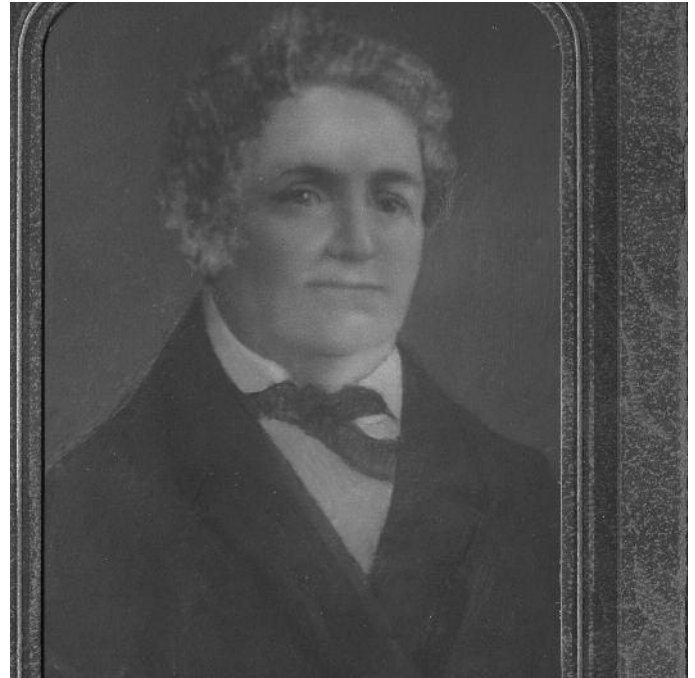
Even after he left the territory, Jackson continued to insist that Spanish officials had colluded with corrupt Americans to fraudulently alter records so that they might legitimize fraudulent claims to land. Even after he left the territory Jackson raged against situation. To Jackson the behavior of the Spaniards with regard to the archives suggested foul play at every turn. “The attempt to carry away a number of those documents from St. Augustine and Pensacola in a clandestine manner was considered, as a flagrant violation of the Treaty, and I began to entertain the opinion, that a systematic combination had been formed amongst the Officers of Spain to deprive the honest citizens of the country all the evidences of their right to property, secured to them by the provisions of the cession.”

When DuVal arrived in St. Augustine he moved quickly to hold the first session of court in the new territory. Addressing the grand jury on December 5, DuVal gloried in the opportunity to proclaim to his listeners that “the acquisition of the Floridas [was] a demonstration of the power of our great and growing empire.” The meeting of the court witnesses “on

this occasion, the interesting spectacle of its highest judicial tribunal ready for the distribution of justice, without regard to religious faith, rank, or nation. . . . Every good citizen of the United States looks with confidence and triumph to the Constitution and Laws of the Union for equal protection of his life, liberty, and property. The humblest individual in society claims and enjoys all rights and privileges in our Courts of Justice in our political institutions, in common with the wealthy and powerful. The despot governs by his will and the highest and the dearest rights of community sink before his interests and ambition. Our government is that of the laws; none are above their influence and power. To you, Gentlemen of the Grand Jury and to the citizens of our country, we look for their execution.”

The work of the court was minimal and DuVal left St. Augustine for Washington on December 23, leaving behind his brother-in-law Alfred Hynes who served as a clerk to Acting Governor Worthington. Before he departed however he had the opportunity to meet most of the town’s inhabitants. He no doubt made a favorable impression. A number of those in town solicited him to serve as an unofficial delegate for the territory in Congress. When he arrived in Washington on January 14 the 17th Congress was midway through its first session, and DuVal’s friend Philip Barbour was speaker. Congressmen and senators solicited Judge DuVal’s advice, and of course, the issue of who would replace commissioner-governor Andrew Jackson was paramount in the discussions. DuVal began lining up support for his own selection. Securing the entire Kentucky delegation for his appointment as governor, DuVal also drew support from both Illinois and Indiana’s senators, and ones from Virginia, Delaware, and Ohio. Congressmen from Pennsylvania, Massachusetts and Maryland added their support. One of DuVal’s supporters suggested that Andrew Jackson’s short tenure as commissioner-governor had caused a “sort of irritability in the Territory and a restive, suspicion & uneasy feeling within it.” Writing directly to President Monroe, the man suggested that DuVal’s easy temperament would harmonize discordant elements.” Simultaneously with his efforts in Congress, a petition arrived supporting DuVal’s cause from the inhabitants of East Florida that noted that no other “choice would be so gratifying or acceptable to the people of East Florida as Judge DuVal.” Monroe appointed DuVal on April 17, 1822.

William P. DuVal arrived in Pensacola on June 20, 1822 to assume his official duties as governor, where he presided over the first legislative council of the territory. The next year DuVal oversaw the founding of a new territorial capital between the two Spanish towns of Pensacola and St. Augustine. He presided over the first meeting of the legislative council meeting in Tallahassee in 1824. In the next twelve years DuVal served as territorial governor of Florida, enjoying appointments for Presidents James Monroe, John Quincy Adams, and Andrew Jackson. Until leaving office in 1834, DuVal oversaw Indian



William Pope DuVal, ca. 1830s. From the author’s collection.

Affairs, road building and other internal improvements. He was also one of Florida’s greatest promoters and played a large part in Congress’s decision to locate a township of land in favor of the Marquis de La Fayette within the current city limits of Tallahassee.

After his years as governor DuVal practiced law in Kentucky and relocated to Florida in 1836. He served in Florida’s state constitutional convention (1838-1839) and then as president of Florida’s territorial Senate (1841). That year President John Tyler appointed DuVal Law Agent, a federal position created by Congress in 1828 to represent the United States in court against claimants of lands granted by the Spanish government before January 24, 1818.

In 1848 DuVal ran for Florida’s lone seat in Congress, and not long after losing, joined his sons and daughters in Austin, Texas. In 1852 DuVal moved to Washington where he represented many clients who had business before Congress. On March 18, 1854 DuVal died after complications of a stroke at the age of seventy. ■

Please note that the footnotes have been removed from this excerpt and are available in the book.

THE BENCH, THE BAR, AND LGBT ATTORNEYS:

RETROSPECTIVE ON *IN RE FLORIDA BOARD OF BAR EXAMINERS*

BY JUDGE ROBERT W. LEE

In 1994, after considerable opposition from some members of The Florida Bar,¹ the Florida Supreme Court approved² Canon 3B(5) of the Florida Code of Judicial Conduct, for the first time specifically denoting as improper any judicial acts manifesting bias or prejudice based on sexual orientation:

A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct³ manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so. This section does not preclude the consideration of race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors when they are issues in the proceeding.

Florida High Court Upholds Right Of Homosexuals to Practice Law

By JON NORDHEIMER
Special to The New York Times

MIAMI, March 20—The Florida Supreme Court ruled today that a homosexual could not be denied admission to the state bar because of sexual preference.

In a 6-to-1 landmark ruling, the court declared that acknowledgment of a homosexual preference by an applicant was not in itself a failure to meet the "good moral character" standard for admission.

The decision was believed to be the first in the United States concerning a homosexual's right to practice law. The matter has not been the subject of controversy in legal circles since state bars apparently have not systematically excluded homosexuals.

Sources in the American Bar Association headquarters in Chicago said that applicants were not routinely questioned about sexual orientation by bar examiners in individual states. If the subject was raised under any pretext, they said, applicants have apparently been able to evade the issue and gain admission.

Background of Case

"The subject is rarely addressed during application procedures in most states," said an A.B.A. spokesman.

The Florida case arose in 1976, when Robert F. Eimers, then a resident of California, applied for admission to the Florida Bar. He had passed the Florida bar examination but was summoned to Florida for a special hearing before the State Board of Bar Examiners. In that interview, he was asked if he was a homosexual. Mr. Eimers's response was affirmative.

"The situation was not too unusual," said Terry De Meo, a lawyer for the American Civil Liberties Union, who is representing Mr. Eimers. "Apparently, someone in California wrote the Board of Examiners as a form of blackmail against Mr. Eimers."

The 12-member board deadlocked on

Liberties Union "The court decision in favor of Mr. Eimers means that a person's status cannot be considered sufficient reason to disqualify any person from government benefits, privilege, license or employment."

In 1976, an A.B.A. subcommittee asked bar associations across the country whether sexual orientation was weighed in applications for admission. No state bar acknowledged that such information was sought from an applicant. To a questionnaire sent to the state bar associations and those of the American territories, asking "Do you have a policy, formal or informal, relating to the admission of gays?" 45 state bar associations responded in the negative, while at least six, including Florida, made no response.

A spokesman for the New York Bar Association said that it had no official stand on the matter, and that its policymaking body, the House of Delegates, had not adopted any resolution on the admission of homosexuals.

Says Applicants Lied

"What happened in Florida in the past is that applicants simply lie about it if the question comes up because of blackmail or extortion," said Miss De Meo. "Too much was at stake, and they were not willing to risk careers to come out of the closet."

Today's ruling, she said, essentially stated that a homosexual should be considered in good moral standing unless it could be demonstrated otherwise. By that measure, heterosexuals would face the same test of character before bar examiners, she said.

However, the court specified that any disciplining of bar members because of personal moral standards should take place only when there was "a substantial connection" between private behavior and the ability to carry out professional responsibilities.

NY Times article from March 21, 1978.

Today, this Canon seems relatively unremarkable and noncontroversial.⁴ And yet, just twenty years before, Florida lawyers experienced considerable discord concerning whether LGBT⁵ persons should even be permitted to practice law in the State of Florida.

Until 1978, no person could be a member of The Florida Bar who was a known or “admitted” homosexual.⁶ Prior to this year, The Florida Bar on several occasions had not only denied admission to LGBT persons, but had also revoked the membership of persons who had committed homosexual acts.⁷ Against this backdrop, Robert F. Eimers sought admission to The Florida Bar in 1976.⁸ At the time of his application, he held a degree from an accredited law school, was already approved to become a member of the Pennsylvania Bar, and had successfully completed the Florida Bar exam.⁹ Indeed, after conducting an in-person interview,¹⁰ the Board of Bar Examiners “found him qualified for admission to The Florida Bar in all respects” but “with the possible exception that he may fail to meet the ‘good moral character’ standard for admission due to his homosexual preference.”¹¹ Concurrently, a strong wave of anti-LGBT activity was sweeping the State, which for the first time in Florida began to awaken the closeted LGBT minority.¹² In keeping with long-held practice, The Florida Bar could have simply denied the applicant’s admission. The Board of Bar Examiners, however, was unable to reach a decision on admission,¹³ with one commentator claiming they were “deadlocked” after “tortuous debate.”¹⁴ The Board therefore sought “guidance” from the Florida Supreme Court as to the disposition of the matter.¹⁵

As a result, the next year the Florida Supreme Court considered the admission of Robert Eimers in *In re Florida Board of Bar Examiners*, 358 So.2d 7 (Fla. 1978), in which he had acknowledged his sexual orientation in response to a question from the Board of Bar Examiners.¹⁶ As Eimers had waived the confidentiality of the Court’s decision,¹⁷ the mainly closeted¹⁸ LGBT attorneys and law students of Florida nervously awaited the Court’s decision.¹⁹ In a *per curiam* opinion which the *New York Times* referred to as the first U.S. decision “concerning a homosexual’s right to practice law,”²⁰ the Court however found no “rational connection between homosexual orientation and fitness to practice law.”²¹ The full rationale of the *per curiam* opinion was joined in by Justices James Adkins, Alan Sundberg, Joseph Hatchett and Frederick Karl. Chief Justice Ben Overton and Justice Arthur England concurred in the result only.²²

In reaching its decision, the Florida Supreme Court relied on language in a concurring opinion eight years prior of Chief Justice Richard Ervin that “[t]he present record contains no evidence scientific, medical, pathological or otherwise suggesting homosexual behavior among consenting adults is so indicative of character baseness as to warrant a

condemnation per se of a participant’s ability ever to live up to and perform other societal duties, including professional duties and responsibilities assigned to members of The Bar.” Indeed, one commentator has proffered that it was likely Justice Ervin’s concurrence that led the Board of Bar Examiners to begin to reconsider its previous steadfast position.²³

Nevertheless, the Court’s ruling was tightly framed²⁴ and left open the possibility that an application for admission could be denied if evidence demonstrated that the applicant had actually engaged in homosexual conduct.²⁵ Moreover, the decision was not unanimous. Justice Joseph Boyd sharply dissented, bluntly declaring that no one should be able to become a member of The Florida Bar “whose sexual life style contemplates routine violation of a criminal statute,”²⁶ alluding to the Florida statutes criminalizing homosexual conduct.²⁷

Robert Eimers believed the decision would soon be forgotten.²⁸ Soon, however, Eimers would again be before the Florida Supreme Court, this time in a case that would determine whether the Court would expand its holding from homosexual orientation to homosexual conduct. Notwithstanding the 1978 decision, The Florida Bar had continued questioning applicants about their private sexual conduct.²⁹ For instance, in a case in 1981, The Bar discovered that an applicant may have been removed from military service consideration because of his homosexuality.³⁰ The Board of Bar Examiners questioned the applicant, who acknowledged his “continuing sexual preference for men” but who refused to respond to inquiries dealing with specific sexual activity.³¹ The case came before the Florida Supreme Court, with the applicant being represented by Robert Eimers, now duly licensed to practice law in the State. In *Florida Board of Bar Examiners re: N.R.S.*, 403 So.2d 1315 (Fla. 1981), the Florida Supreme Court expanded on its 1978 ruling by holding that “[p]rivate noncommercial sex acts between consenting adults are not relevant to prove fitness to practice law,” with a caveat dealing with “non consensual sex or sex involving minors.”³²

Once again, Justice Boyd firmly dissented, this time joined by Justice James Alderman.³³ They argued that the Court should place no reins on the authority of the Board of Bar Examiners to question applicants about private sexual conduct, and further noted that the record in the underlying case demonstrated that the applicant might still be involved in homosexual conduct with “no intention of changing his ways.”³⁴ Their position as a dissent, however, suggested a widening yet gradual acceptance of LGBT persons in the legal profession in Florida.

Eimers was dismayed, however, because the *N.R.S.* decision was released as a “confidential” decision, not subject to



Supreme Court Justice Richard W. Ervin, served 1964-75.

publication because it involved an applicant to The Florida Bar. On the one hand, the applicant wanted his identity protected, tacitly acknowledging the risk of coming out as a gay attorney.³⁵ On the other hand, Eimers considered the potentially broader sway of the decision and sought to have the opinion released because of its likely nationwide significance. As a result, Eimers sought publication, but “with certain deletions” which would include omitting the name and initials of his client to protect his identity.³⁶ This request was, however, denied when the decision was issued in June 1981.³⁷ Eimers, however, continued to seek to lift the cloak of confidentiality, advising an attorney in California that “[w]hile the case is still confidential, we hope that the Court grants, in the near future, our motion to have it published.”³⁸

Shortly thereafter, the decision was leaked to a local newspaper in Miami, which published a related story and included the applicant’s identity. With the disclosure being made, Eimers convinced his client to consent to a release of the decision by the Supreme Court without redactions so that it could be published nationally.³⁹ Ultimately, the request was granted, and the decision was released a few months later for publication in the *Southern Reporter*.⁴⁰

These two decisions set the groundwork for *In re Petition of Kimball*, 425 So.2d 531 (Fla. 1982), in which the Florida Supreme Court authorized an attorney who had been disbarred for 25 years as the result of public, albeit consensual, homosexual activity to apply for readmission.⁴¹ Kimball had fought for years to regain his Bar license. Again, though, the Court’s decision was not a complete victory – the Court made his readmission conditional on retaking and passing the entire Bar examination because of the significant amount of time that had passed from when Kimball was last permitted to lawfully practice.⁴²

Now, more than three decades later, the few reported cases in the Florida legal community of disparagement based on sexual orientation suggest a maturation of society in general and a true sensitivity among legal practitioners and judges in particular that public expressions of bias are unacceptable.⁴³ The case of Robert Eimers has devolved from being one cited as legal authority in other reported cases and administrative decisions to one being merely cited as historical perspective in dozens of secondary resources. Although the possibility of termination from employment continues to be legally permissible for many LGBT persons working in the legal profession in Florida,⁴⁴ the LGBT community should take some comfort, however, that manifesting discrimination against someone based on that person’s sexual orientation is now definitively contrary to the “prevailing professional norms” in the Florida judicial system,⁴⁵ and that the appropriate disciplinary agencies stand by ready to seek enforcement of the anti-disparagement rule and canon when called upon to do so.⁴⁶ ■

• B.A., Jacksonville University; M.A., California State University, Dominguez Hills; J.D., University of Florida. The author especially thanks the Stonewall National Museum and Archives, located in Fort Lauderdale, for hard-to-locate and rare materials relating to the LGBT experience.

¹ For a detailed history of the development of this Canon in Florida, see Robert W. Lee, “Doomed Social Engineering?” *Ethics and Professionalism Related to Sexual Orientation: The Florida Experience*, 19 Barry Law Rev. 269, 276-91 (2014), portions of which have been presented in a modified format herein.

² *In re Code of Judicial Conduct*, 643 So.2d 1037, 1039-40 (Fla. 1994). The decision was issued on September 29, 1994 and took effect January 1, 1995. *Id.* at 1037, 1040. The first two sentences were modeled after the language proposed as part of the American Bar Association Model Code of Judicial Conduct. *Id.* at 1037-38. The final sentence, however, was added by the Florida Supreme Court upon suggestion. The opinion is silent as to the party offering the suggestion, whether it was The Florida Bar or one of the more than dozen persons who filed individual comments. *Id.* at 1037, 1039-40. See Terl, *An Essay on the History of Lesbian and Gay Rights in Florida*, 24 Nova L. Rev. 793, 831 (2000) (discussing the extension of the judicial canons in Florida to cover prejudice and bias based on sexual orientation).

³ In the commentary to Rule 3B(5), “conduct” is explained as including gestures, facial expression and body language. Fla. Code of Judicial Conduct Canon 3B(5) cmt. (1994). See 643 So.2d at 1048 (setting forth the commentary as adopted by the Florida Supreme Court).

⁴ See Lee, *supra* note 1, at 294 (subsequent to its adoption, the Canon has “not raised much dispute”).

⁵ In this article, the author, with apologies to any offended, will use the abbreviation “LGBT” to refer to lesbian, gay, bisexual and transgender persons, as well as any other person who may be questioning, intersexed, etc. The author believes the abbreviation LGBT has become sufficiently widely accepted and understood without need for further elaboration or unwieldy characterization.

⁶ In re Florida Board of Bar Examiners, 358 So.2d 7 (Fla. 1978). The routine exclusion of LGBT persons from professions in Florida was not, of course, limited to law. See Stacy Braukman, Communists and Perverts under the Palms: The Johns Committee in Florida 1956 – 1965, 4-5, 121 (2012) (discussing the effort to “remove homosexuals from state agencies, particularly schools); Arthur Guy Mathews, Is Homosexuality a Menace? 155, 164-65 (1957) (urging local, state and federal governments to remove “all of the homosexuals [. . .] from office,” even if they have the ability to do the job); Ken Worthy, The New Homosexual Revolution 7, 116 (1965) (expressing concern that homosexuals already “have taken over” some professions, and are taking the place of “normal” persons in college, “closing [. . .] more and more career-doors to the normal boy or girl”).

⁷ See, e.g., The Florida Bar v. Kay, 232 So.2d 378 (Fla. 1970) (attorney convicted of engaging in public homosexual activity); Kimball v. The Florida Bar, 465 F. Supp. 925 (S.D. Fla. 1979) (attorney who had been convicted of engaging in public homosexual activity in 1956 unsuccessfully sought federal court intervention to have Bar membership restored).

⁸ Christopher Cubbison, *Gay Attorney Can Practice*, MIAMI HERALD (Mar. 21, 1978), at 16C [hereinafter cited as Cubbison].

⁹ 358 So.2d at 8.

¹⁰ Danny Goodgame, *Lawyer is a Vet, Tennis Buff, Pianist . . . and Gay*, MIAMI HERALD (Apr. 2, 1978), at 24-A, c.1 [hereinafter cited as Goodgame I].

¹¹ *Id.*

¹² The case arose just as entertainer Anita Bryant led a successful referendum to repeal Dade County’s ordinance that protected lesbian and gay individuals from employment discrimination. See Anita Bryant, *The Anita Bryant Story* 125 (1977). The singer commented that the repeal effort “overwhelmingly” demonstrated the Florida voters’ “revulsion toward homosexuality becoming an acceptable, normal life-style.” *Id.* See also Brian McNaught, Editor’s Note, On Being Gay 4 (1988) (“[f]ollowing the Dade County vote, there was a spate of pro gay civil rights ordinances which were either overturned or rejected”). Efforts continued to bar LGBT persons from being licensed as teachers. Danny Goodgame, *A Matter of Sex*, ST. PETERSBURG INDEPENDENT (Apr. 5, 1978), at 9-A, c.1 [hereinafter cited as Goodgame II]. At the same time, the Florida Legislature enacted a law banning homosexuals from adopting.

¹³ 358 So.2d at 8.

¹⁴ Terl, *supra* note 2, at 806.

¹⁵ 358 So.2d at 8.

¹⁶ *Id.*

¹⁷ Eimers had engaged “civil rights attorneys” to handle his case. Cubbison, *supra* note 8, at 16C.

¹⁸ Russell Troutman, the president of The Florida Bar at the time, noted that he did not know of even one Florida attorney who was homosexual. Goodgame II, *supra* note 12, at 9-A, c.2.

¹⁹ Cubbison, *supra* note 8, at 16C.

²⁰ *Supreme Court Rules Bar Must Admit Gays*, MIAMI HERALD (Mar. 21, 1978), at 8C, col. 1 (reprinting *New York Times* article); Jon Nor Oheimer, *Florida High Court Upholds Right of Homosexuals to Practice Law*, N.Y. Times, Mar. 21, 1978, available at http://www.nytimes.com/1978/03/21/archives/florida-high-court-upholds-right-of-homosexuals-to-practice-law.html?_r=0 (last visited Sept. 30, 2016).

²¹ *Id.* at 9, quoting The Florida Bar v. Kay, 232 So.2d 378, 380 (Fla. 1970) (Ervin, C.J., concurring).

²² 358 So.2d at 10.

²³ Rivera, *Our Straight-Laced Judges: The Legal Position of Homosexual Persons in the United States*, 50 Hastings L.J. 1015, 1077 (1999).

²⁴ See *id.*

²⁵ 358 So.2d at 8.

²⁶ *Id.* at 10 (Boyd, J., dissenting). Justice Joseph Boyd was elected to the Florida Supreme Court in 1968 and began to sit in 1969. While on the Court, he was known for reading his Bible as the “first thing” he would do

each day “upon arrival at the court.” W. Manley & C. Brown, Jr., *The Supreme Court of Florida, 1917-1972*, 320-21 (2006). He believed that the Bible set forth the “basic norms for human conduct.” *Id.* at 321. Boyd viewed “liberals” as “his principal foe.” *Id.* at 324. He served on the court until 1987. *Id.* at 320, 325.

²⁷ Fla. Stat. §§ 796.07, 800.02 (1979).

²⁸ Goodgame I, *supra* note 10, at 24-A, c.4.

²⁹ See Florida Board of Bar Examiners re N.R.S., 403 So.2d 1315 (Fla. 1981).

³⁰ *Id.* at 1316.

³¹ *Id.*

³² *Id.* at 1317.

³³ *Id.* at 1317-19 (Boyd & Alderman, JJ., dissenting). Justice James Alderman was not yet sitting on the Florida Supreme Court when the previous decision was issued in 1978. See 358 So.2d at 10.

³⁴ 403 So.2d at 1319 (Boyd & Alderman, JJ., dissenting).

³⁵ *Ruling Banning Questions on Sex Released*, PALM BEACH POST (Oct. 2, 1981), at C-2 [hereinafter cited as *Ruling*].

³⁶ Florida Board of Bar Examiners: In re N.R.S., Case No. 59,238, Unpublished Order [denying Petitioner’s request that the opinion of the Court be published with certain deletions] (Fla. Jun. 18, 1981), available at <http://www.unmarriedamerica.org/Archives/added-9-13-10/1981-florida-bar-examiners-cant-question-gays.pdf> (last visited Oct. 2, 2016).

³⁷ *Id.*

³⁸ Letter from Robert F. Eimers to Jay M. Kohorn, Esq., Sep. 29, 1981, available at <http://www.unmarriedamerica.org/Archives/added-9-13-10/1981-florida-bar-examiners-cant-question-gays.pdf> (last visited Oct. 2, 2016).

³⁹ *Ruling*, *supra* note 35, at C-2.

⁴⁰ Although the N.R.S. court file does not appear in the online docket of the Florida Supreme Court, the case appearing in the Southern Reporter just after the N.R.S. case had rehearing denied on October 15, 1981, suggesting that the decision to release the veil of confidentiality had to have been made about the same time. See State v. Hall, 403 So.2d 1319, 1319 (Fla. 1981).

⁴¹ In re Petition of Kimball, 425 So.2d 531 (Fla. 1982). Kimball’s failure to initially seek further judicial review upon his disbarment was later noted as a reason to deny federal court review. See Kimball v. The Florida Bar, 632 F.2d 1283, 1285 (5th Cir. 1980).

⁴² 425 So.2d at 534.

⁴³ Telephone Interview with Alan A. Pascal, Bar Counsel, The Florida Bar (Sep. 20, 2013).

⁴⁴ See ERIC MARCUS, IS IT A CHOICE? 107 (1999). Although many counties and municipalities in Florida have ordinances prohibiting employment discrimination based on sexual orientation, the State of Florida still has no statewide law banning such discrimination. See Human Rights Campaign, *Statewide Employment Laws and Policies* (Jun. 19, 2013), available at http://www.hrc.org/files/assets/resources/employment_laws_062013.pdf (last visited Sept. 26, 2013); Movement Advancement Project, *Employment Non-Discrimination Laws* (Sept. 12, 2013), available at http://www.lgbtmap.org/equality-maps/employment_non_discrimination_laws (last visited Sept. 26, 2013); Nolo Law For All, *Sexual Orientation Discrimination: Your Rights*, available at <http://www.nolo.com/legal-encyclopedia/sexual-orientation-discrimination-rights-29541.html> (last visited Sept. 26, 2013). See also Nicole Lancia, *New Rule, New York: A Bifocal Approach to Discipline and Discrimination*, 22 Geo. J. Legal Ethics 949, 954-45 (2009) (referring to similar rules in Maryland, Virginia and the District of Columbia, and noting that because these jurisdictions do not have laws preventing LGBT discrimination in employment, the rule standing alone would not prevent law firms from having policies not to hire LGBT persons); Lonnie T. Brown, Jr., *Racial Discrimination in Jury Selection: Professional Misconduct, Not Legitimate Advocacy*, 22 Rev. Litigation 209, 304 n.362 (2003) (noting that “sexual orientation” as a category is “typically unprotected” in an employer’s “anti-discrimination policy statement”).

⁴⁵ See Winston v. Boatright, 649 F.3d 618, 631 (7th Cir. 2011).

⁴⁶ Telephone Interview with Alan A. Pascal, *supra* note 43.

A TRIBUTE IN HONOR & APPRECIATION OF JUSTICE JAMES E.C. PERRY WAS HELD AT THE COURT ON DECEMBER 7, 2016.

A native of New Bern, North Carolina, James E. C. Perry was appointed as the 85th Justice 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 later served as Chief Judge of the Circuit for a two-year term beginning July 2003.

He attended Saint Augustine's University, graduating in 1966 with a Bachelor of Arts in Business Administration and Accounting. After serving 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.

Justice Perry met his wife, Adrienne M. Perry, Ph.D., while at Columbia Law School. They have three children, two attorneys and a Human Resource Manager.

Justice Perry has been actively involved in many community activities. A dedicated father, Perry managed his son's AAU basketball team, the SanLando Greyhounds and played an active role in all their sports activities. Justice Perry's commitment to improving children's lives extends beyond his own family. As founder and president of the Jackie Robinson Sports Association, Perry built a baseball league serving 650 at-risk boys and girls – the largest in the nation.

However, the Association did more than coach baseball. Volunteers also served as mentors and provided free tutoring. In addition to his work with disadvantaged kids, Justice Perry served as captain of the Heart of Florida United Way Campaign, and his firm served as general counsel for the Florida Chapter Branches of the NAACP. He is a former member of the Board of Trustees at Saint Augustine's University. Justice Perry has been a member of the Carter CME Tabernacle Church of Orlando for more than 30 years and a former member of the Board of Trustees.

As an attorney, Justice Perry was widely recognized for his legal skills and abilities. Prior to his appointment to the trial bench, he was senior partner in the law firm of Perry & Hicks, P.A., where he specialized in civil and business law.

Justice Perry has received numerous honors and awards, including the 3rd Annual Puerto Rican Bar Association's Moot Court Competition Award in 2014, the 2014 Key to the City of Titusville Award for recognition of his dedication and extraordinary commitment to Justice, the Florida Memorial University's President's Award in 2014, the North Brevard County Branch NAACP's Award of Appreciation for outstanding and exemplary service to this nation in fall 2014, the Seminole County NAACP Humanitarian Award, the Orange County Chapter NAACP Paul C. Perkins Award, and the 2005 Martin Luther King Drum Major Award for Social Justice. In 2004, Justice Perry was honored by his hometown, New Bern, North Carolina, receiving the "Key to the City." In 2005, the United Negro College Fund selected Justice Perry as one of four individuals to be profiled during its national broadcast of An Evening of Stars: A Celebration of Educational Excellence. Justice Perry received the prestigious Williams-Johnson Outstanding Jurist of the Year Award for 2006 from the Brevard and Seminole County Bar Associations. The recipient of an honorary Doctor of Law degree from Stetson University College of Law, Justice Perry is frequently asked to speak at schools, churches, and civic groups. He has delivered the commencement address at several schools, including the University of Central Florida, Stetson University College of Law, Barry Law School, and his alma mater, Saint Augustine's University.

Justice Perry was the first African-American appointed to the Eighteenth Judicial Circuit. Governor Jeb Bush issued this statement when he appointed Justice Perry to the circuit bench in March of 2000. "James brings a high level of professionalism, knowledge, and skill to the bench. His community service and commitment to the Jackie Robinson Little League demonstrate his dedication to the community. I am confident that his expertise, strong commitment, and dedication will continue to be an asset to the 18th Judicial Circuit and the state." Following his appointment to the circuit court bench, Justice Perry ran unopposed to retain his seat.

A TRIBUTE IN HONOR & APPRECIATION OF JUSTICE JAMES E.C. PERRY

December 7, 2016 – 2 p.m.

Call to Order	The Honorable Jorge Labarga Chief Justice
Invocation	The Reverend Dr. Ronald Fox
Opening Remarks	The Honorable Jorge Labarga
Remarks	The Honorable Major B. Harding Former Justice of the Supreme Court of Florida Chief Justice 1998-2000 Dr. Randy Nelson Bethune-Cookman University Criminal Justice Administration Graduate Program Coordinator The Honorable Thomas G. Freeman Former Judge, Eighteenth Judicial Circuit Antonya K. Johnson President, Virgil Hawkins Florida Chapter National Bar Association Dr. Everett Ward President, Saint Augustine's University William J. Schifino, Jr. President, The Florida Bar Willis Perry, Jaimon Perry, and Kamilah Perry The Honorable Joseph W. Hatchett Former Justice of the Supreme Court of Florida
Response	The Honorable James E.C. Perry
Adjournment	The Honorable Jorge Labarga

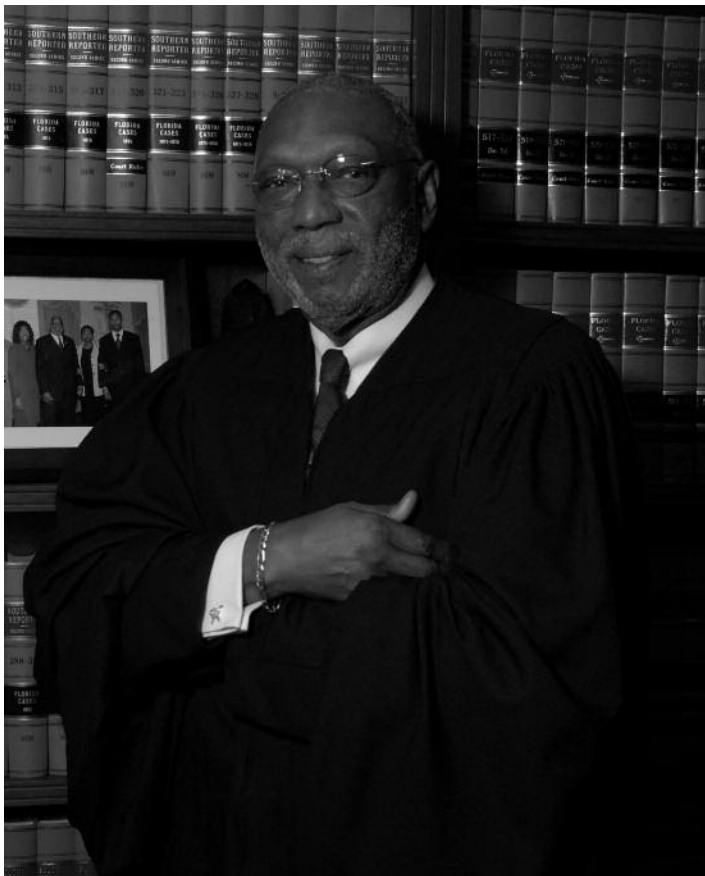
A reception will follow in the rotunda





JUSTICE PERRY'S RETIREMENT

Judicial communities around the state are joining together
to celebrate the career and accomplishments of
JUSTICE JAMES E. C. PERRY
at a retirement event in his honor on April 13th in Orlando.



The classic elegance of Church Street Station's Ballroom will be the perfect venue for Florida's legal community to celebrate and commemorate Justice Perry's distinguished legal and judicial career in the state of Florida. On **Thursday, April 13th** the doors open at 5:30 PM for hors d'oeuvres and cocktails, with dinner served at 7:00 PM, followed by brief lighthearted comments and keen observations of Justice Perry's career by some of his notable colleagues from over the years. Entertainment is also planned to keep the evening light.

The Florida Supreme Court Historical Society is hosting the retirement event for Justice Perry with Kamilah Perry as the event's chair. Additional co-hosting organizations include the Orange County Bar along with other local and statewide Bar groups.

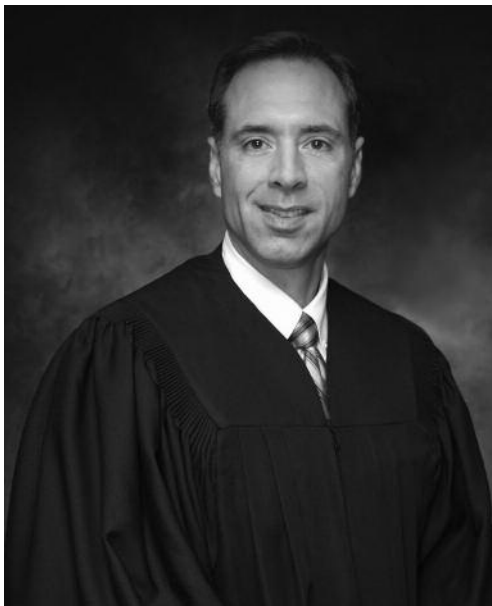
Dinner reservations and event sponsorship can be made starting **January 20, 2017** at FlCourtHistory.org

(Please contact the Historical Society for sponsorship opportunities).



THE FLORIDA SUPREME COURT HISTORICAL SOCIETY CONGRATULATES AND WELCOMES JUSTICE C. ALAN LAWSON.

On December 16, 2016, Gov. Rick Scott appointed ALAN LAWSON, Chief Judge of the Fifth District Court of Appeal, as the 86th justice of the Florida Supreme Court. He fills the vacancy created by the retirement of Justice James E.C. Perry.



Justice Lawson, 55, is originally from Tallahassee and received a bachelor of sciences from Clemson University in 1983 and a J.D. from Florida State University in 1987. Gov. Jeb Bush appointed Lawson as a Ninth Circuit judge in 2002 and to the Fifth DCA in 2006.

Lawson lives in Winter Park and has been married to his wife, Julie Carlton Lawson, since 1987. They have two grown children.

C. ALAN LAWSON
CHIEF JUDGE



DISTRICT COURT OF APPEAL
FIFTH DISTRICT
300 SOUTH BEACH STREET
DAYTONA BEACH, FLORIDA 32114
386.947.1500 COURT
386.255.8600 CLERK

December 20, 2016

The Honorable Rick Scott
Governor of Florida
The Capitol
400 S. Monroe Street
Tallahassee, FL 32399-0001

Dear Governor Scott:

I have had the honor and privilege of sitting as a judge on the Fifth District Court of Appeal for over eleven years and of serving as its chief judge since 2015. While I am grateful beyond words for the opportunity that you have afforded me with the recent appointment to the Florida Supreme Court, I now face the bittersweet duty of tendering my resignation as a judge of the Fifth District Court of Appeal, effective December 31, 2016, so that I can undertake my new responsibilities on that day.

Many years ago, I heard the words of author Herman Raucher: "[L]ife is made up of many comings and goings and for everything we take with us, we must leave something behind." I will be leaving behind a great institution that serves faithfully and diligently the people of the State of Florida by quietly administering justice effectively, efficiently and fairly. I will miss her legacy and traditions. But, most of all, I will miss her people and my frequent interaction with them – both her judges, my soon-to-be former colleagues, and the staff who work so hard to carry out her mission every day. I take great comfort in knowing the care and concern with which you, your General Counsel and his staff, and your Fifth DCA Judicial Nominating Commission will go about filling the vacancy now created by my resignation.

Sincerely,

C. Alan Lawson
Chief Judge

cc: William N. Spicola, General Counsel to the Governor
Fifth District Court of Appeal Judges and Staff

FAX NUMBER 386.947.3443
E-MAIL ADDRESS SDCA@FLCOURTS.ORG

THE FLORIDA SUPREME COURT HISTORICAL SOCIETY'S ARCHIVING PROJECT WITH THE FSU COLLEGE OF LAW'S WOMEN'S LAW SYMPOSIUM

BY ERIK ROBINSON, KRISTEN DIOT AND MELANIE KALMANSON

Ever since Florida Supreme Court Librarian Brian Polley first came up with the idea in 1982, the Florida Supreme Court Historical Society (FSCHS) has supported and added to the Florida Supreme Court's archival collection. Today, the collection includes papers of 26 former Justices and comprises over 700 boxes (more than 1,000 cubic feet) of records. Former Justice Overton's donation of 123 boxes is the largest in the archives, followed by the late Justice Shaw's donation of 104 boxes, and former Justice Kogan's donation of 43 boxes.

The Supreme Court of Florida Library acquires primary documents of the Court's history. With the help of the FSCHS, the Library has been able to preserve, catalog, and make these papers available for research and educational display to current Justices, the Court, scholars, and attorneys for the past thirty-two years.

The stated purpose of the Library's archives is as follows:

The Supreme Court of Florida Library's Archives exists to collect, preserve, research, exhibit, and publish materials of enduring use and value to the Justices of the Supreme Court, the judicial branch of state government, the state court system, and the people of Florida.

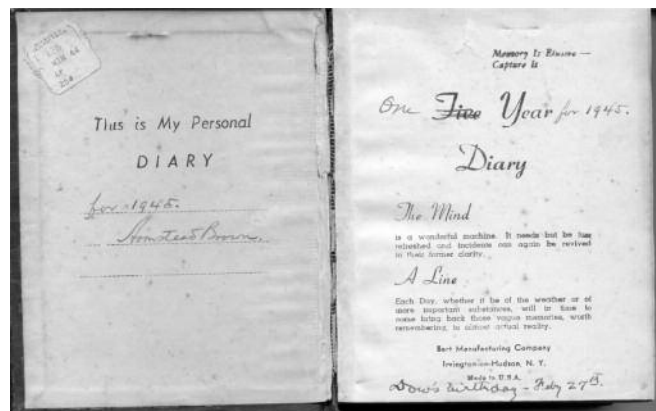
The archives's stated acquisitions policy provides, in part:

The Florida Supreme Court Library's Archives collects both documents and three-dimensional objects that demonstrate the legal, fiscal, evidential, and historic purposes of the Supreme Court of Florida, its Justices, and their relationship to the state court system and the people of Florida. Of primary interest to the Archives are original documents and objects not kept by the Florida State Archives or published in multiple printed copies or on the Internet.

Examples of such materials could be the personal and professional papers of persons who have served as Justices of the Florida Supreme Court; objects, books, and documents related to or associated with their careers, especially if such items relate to their professional and career concerns; and objects, books, and documents associated with the Supreme Court and its Justices that could be used in educational exhibits to show the importance, meaning, and history of the

Court and the Judicial Branch of Florida government. All acquisitions must relate to the Archives's stated purpose. All acquisitions shall possess potential for research and study and/or be useful for exhibition or educational purposes.

In the spring of 2016, the FSCHS set out to become more involved with the Florida State University College of Law and its students. In collaboration with students and administrators, the FSCHS Board collected applications from student organizations at the law school to participate in what would become the "Archive Project." Ultimately, the Women's Law Symposium (WLS) was chosen to receive a grant from FSCHS in return for providing volunteers who would be trained by the Court's Archivist, Erik Robinson, and would help preserve documents within the collection.



The diaries of former Justice Armstead Brown are part of the FSCHS collection and have been transcribed in full and are available online at: <http://www.floridasupremecourt.org/library/archives.shtml>

Since receiving the grant, WLS has provided over 23 volunteers, cumulatively donating 81.25 volunteer hours, who have helped the Supreme Court Archivist and library staff in continuing the huge task of cataloging and preserving the collection. Specifically, the volunteers move the documents from their original acidic folders and adhesive folder labels to acid-free folders, which they label with acid-free writings. The hard work and dedication of the volunteers has helped create an inventory that may be used by researchers, historians, and attorneys seeking information relating to the Florida Supreme Court's history that may sometimes only be found in these documents. Such projects are essential to ensuring that the history of the Florida Supreme Court is properly preserved and available to the public to enjoy for centuries to come. ■

Erik Robinson is the Archivist for the Supreme Court of Florida; Melanie Kalmanson is a Staff Attorney for the Supreme Court of Florida; and, Kristen Diot is a Staff Attorney for the Supreme Court of Florida.

A TRIBUTE TO JANET RENO

BY SANDY D'ALEMBERTE

Florida is known for great lawyers: Eight have been elected president of the American Bar Association, at least four elected president of the National Bar Association, and many lawyers and judges have national reputations. But no Florida lawyer has done more to advance justice in the United States than Janet Reno.

All Florida lawyers (indeed, all lawyers in the nation) know of Janet's history as the first woman to serve as United States Attorney General but few know of her rich contributions to law reform and reform movements that continue to be important.

Janet's service as legislative staff director of the House Judiciary Committee (1970-72) was important for her major role in the drafting and passage of Article V, a remarkable achievement in the face of massive opposition. Revision of the judicial article was defeated in the 1968 Legislature and by the electorate in 1970, but the 1972 Revision — consolidating the numerous trial courts, strengthening the Supreme Court administrative and rule-making authority, bringing merit selection into the Constitution — earned praise from national legal organizations as "Florida's great leap forward."



Janet Wood Reno (July 21, 1938 – November 7, 2016)

Janet's work gained her the respect of both legislative chambers. As a House staffer, she even received an unprecedented invitation from Senate leadership to be on the Senate floor to explain the proposed amendment when it was debated there.

During this period, Janet also was principle author of other significant reforms of Florida law: No Fault Divorce and the mental health reforms known as the Baker Act. She then worked with then Senator Dick Pettigrew to craft a major reform of Florida's criminal statutes, eliminating much archaic underbrush that had accumulated over the years.

After her service to the Legislature, Janet worked as an Assistant State Attorney and then returned to private practice, where she



Florida Gov. Reubin Askew announces the appointment of Janet Reno as the first female state attorney in Florida history. (Tampa Bay Times)

joined a firm that previously had declined to hire women but had recently hired a young lawyer named Patricia Seitz. Pat went onto become the first woman President of The Florida Bar and then a federal District Judge. Janet's work in private practice included litigation of the largest ad valorem tax assessment challenge in Florida, relating to the Flagler County property now known as Palm Coast.

In 1976, Janet was appointed State Attorney by Governor Reubin Askew, who knew her through her work on the revision of the judicial article.

Her tenure as State Attorney was remarkable because she succeeded in changing the culture of the office and the public perception of the office. Janet was not a stereotypical "lock them up for long prison terms" prosecutor. She saw her duty not as setting records for long prison terms, but as developing techniques for diversion, where possible. She instituted dispute resolution procedures to address complaints that should be resolved without prosecution. She innovated by establishing the drug court, a widely-imitated procedure that has kept many non-violent offenders from prison.

Janet used her authority to address conditions that breed crime: She brought cases against slum landlords and began to enforce child support judgments against delinquent fathers. Juvenile justice was a particular passion of hers, one that drove her in the Article V reform; as State Attorney, Janet paid close attention to the operation of that division and worked closely with reform-minded judges to improve juvenile facilities and programs.

Governor Askew had great respect for Janet and this led to her service on state commissions and her appointment as a special prosecutor on sensitive cases. In one of those cases, Janet determined that a man had been wrongfully convicted in part through use of unscientific expert testimony.

After years of service and reelection as State Attorney, she was appointed United States Attorney General by President Clinton in early 1993. In his second term, Janet was reappointed. Her service as the first female Attorney General and her long tenure were both historic.

As Attorney General, Janet continued to pursue reforms: Her undergraduate degree from Cornell was in chemistry and she hated junk science. Janet instituted a review of the FBI crime lab that led to the elimination of some unscientific procedures and tests and also developed protocols for evaluating evidence that have brought nationwide improvements.

Her work in assessing the integrity of convictions led directly to the creation of the Innocence Project movement, which was supported by her Department of Justice. Today, Innocence Projects exist in many states and the work of these commissions continues to be important—notably freeing innocent people from prison, but also for pushing prosecutors and judges to be more careful with eye witnesses, jailhouse informers, tracking dogs and even fingerprints and ballistics.

After graduating from Harvard Law School, Janet came back to Miami to find that major law firms did not hire women. Yet she went onto become a partner in one of those firms and much more—the first woman Florida legislative staff director, the first woman state attorney in Florida, the first woman Attorney General of the United States.

The important point is not what offices Janet Reno held or even that she demonstrated unshakable integrity in each, but what she accomplished to make our society more just. As lawyers go about their 4 day-to-day practice, they should realize that they are indebted to a remarkable woman.

Janet drafted the judicial article that shapes our court system ... reformed archaic criminal laws ... brought more civil and sensible practice to divorce and mental health litigation ... led in the elimination of junk science ... developed diversion from prosecution programs including the drug courts ... supported projects to exonerate the innocent ... and pioneered the use of the prosecutor's power to bring about improvements in housing, juvenile justice and the environment.

Janet Reno was the greatest advocate for justice reform in Florida's history. ■

JUSTICE PARKER LEE MCDONALD ON THE “JOURNEY TOWARD JUSTICE”

For several years Neil Skene has been working on a continuation of the history of the Florida Supreme Court. That effort, Volume 3, is scheduled to be published this coming April (2017). Mr. Skene, a former reporter for the St. Petersburg Times, is well versed to discuss the issues, personnel, and work of the Court. I invite you to read it. He has called his work “Journey Toward Justice.” In as much as I was a member of the Court during a portion of that journey, I am taking the liberty of relating some of my memories and impressions of that journey.

I had been a circuit judge in Orlando for eighteen years when Joe Hatchett gave up his seat on our Supreme Court so that he could accept an appointment to the Fifth Circuit Court of Appeals. I applied to fill the vacancy his action created. I was approved by the Supreme Court Judicial Nominating Commission and was appointed by Governor Bob Graham. This was in October 1979. I loved Orlando, its Bar, my home there and our many friends. Even so, I happily accepted the appointment. I traveled to Tallahassee and worked as a circuit judge on assignment to the Court for two weeks until my formal induction in late October. When I first arrived, I was whistling away under the dome when Tony Smilgin, the Marshal, came up and said “We don’t allow any whistling in the Supreme Court building.” I introduced myself and said, “I don’t care what you don’t allow, I’m going to whistle anyhow.” He probably knew who I was but we had a good-natured laugh. We became friends and stayed that way.

Awaiting my arrival on the Court were Chief Justice Arthur England, Justices Jimmy Adkins, Joe Boyd, Ben Overton, Alan Sundberg, and Jim Alderman. I knew them all through activities of The Florida Bar and circuit judge activities. Each individually and collectively gave me a warm welcome. We quickly became friends. We had all moved to Tallahassee which made it easy to see and be with each other, whether for social occasions or for business. We ate lunch together, usually in the Capitol cafeteria or sandwich shop on the 10th floor of the Capitol building. We socialized with each and our wives as though we had been acquainted for years.

Also greeting me were a large number of cases needing the vote of a seventh Justice. I was first presented with the pending petitions for review of some of the opinions of the district courts of appeal. The first issue would be whether or not the Court had jurisdiction under Article V of our constitution. If so, was it

mandatory or discretionary? If discretionary, should we take the case? Four favorable votes were required to accept the case. After I looked at them most were referred back to conference for further evaluation and discussion. This was also the procedure used for circulating opinions where a majority of four had not been reached.

Conferences were held at least once a week. Everyone was expected to be there in person. The only non-Justice attending was the clerk. The agenda and conduct of the conference were the duty of the Chief Justice. It was in the conference where we began to know each other well. I thought Alan Sundberg, in particular, had a sharp crackling mind with a keen sense of humor. Arthur England was similarly talented. He was somewhat egotistic but had earned the right to be. When the two had opposing conclusions on an issue, it was a treat to sit back and listen to them as they went into it. Jimmy Adkins and Jim Alderman had sound grasps of the law. Both were old Florida crackers and proud of it. Joe Boyd was a people person and sometimes related personal experiences to the subject of our view. He had reached the Court by election and sometimes referred to us who were appointed as “silk stocking Justices.” To prove his point, he would give us silk socks for Christmas. Ben Overton liked to mull a question over and over. He seldom voted quickly and was guided frequently by equitable considerations, similar to those employed in his circuit days. It turned out that he and I voted alike more often than not.

Arthur England was the Chief Justice when I arrived. For a long time, had been seeking to get the attention of the legislature for adequate funding of the judicial branch. For some reason (or not), it had been short for several years. The Supreme Court building was in desperate need of repairs. The roof was leaking, causing damage to the library and its valuable contents. Salaries for judges and staff were well below the national average. Arthur used the occasion of my joining the Court to invite the legislature to the Court for a reception to meet the new Justice. He arranged for this as the new legislature met for their new legislative organizing session. The real purpose was to establish a friendly relationship and let them see some of the needs first-hand. For the first and only time, wine was included in the refreshments. The attendance was good and all went well.

The following spring, our wives joined into the public relations game. Many of the legislature’s members had their wives in town. Led by my wife, Ruth, our wives decided to have a special educational reception in our building. With the help of Court personnel, a moot court demonstrating a current issue was presented. Rules, procedure and other aspects of the Court’s work were presented in a relaxed, informal way. Some of the needs of the Court were presented. Refreshments were served. Sorry, no wine. Even so, it was an afternoon of goodwill.

Over time we established a good working relationship with the legislature with mutual respect. It soon became apparent that Arthur was in a financial dilemma. His wife became the victim



Scene from the investiture of Parker Lee McDonald to Justice of the Florida Supreme Court

of a mental condition that required full-time hospitalization and treatment. He had four daughters to support. His salary was woefully inadequate to satisfy his needs. On the other hand, his expertise, acumen, scholarship and work ethic called for and demanded compensation greatly exceeding his judicial pay. So it was that upon the completion of his term as Chief Justice, he retired.

As much as I'd like to, one cannot discuss the work of the Supreme Court without its role in death cases. To me, they were an unwanted distraction from the other work of the Court. The required reading of the record was tedious, boring and time-consuming. When you didn't get that done you were afraid that you missed something vital. After finding the conviction free of reversible error we turned to the penalty phase. The application of death as a penalty was a work in progress. The Court stated that it was reserved for the worst of the worst, but it didn't always work out that way. As time went on, the record will reflect that fewer death sentences were affirmed, but there continued to be a large number. When the Governor signed a death warrant you could expect a crescendo of collateral filings. Because of the set execution dates sometimes we had to delay other Court work to accommodate those filings. I don't think, however, that this extra work affected the original decision. We did our work diligently, but I cannot say that I enjoyed it. In his book, Neil Skene has comprised a comprehensive review of the penalty development in Florida.

The Court had a good working relationship with The Florida Bar. We worked together on Rules, Standard Jury Instructions, pleading forms the public could use, sentencing guidelines, the Gender Bias Study, and many other problems brought to our attention. I belatedly thank them for it.

Being a Justice led to many collateral activities and duties; we were invited to a great number of social gatherings. We had the

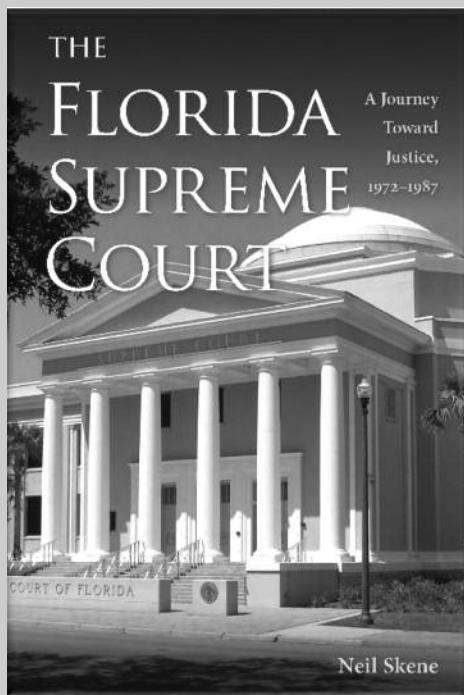
pleasure of sitting in the Presidents' boxes at the University of Florida and Florida State universities' football games. We sat on the platform at graduation ceremonies of these two schools. We were frequently asked to give graduation speeches at high schools. We joined in a teach-in program in schools all over the state to inform students of the court system. We judged moot court arguments at law schools. We regularly attended and participated in the annual meetings of The Florida Bar. We attended judicial schools, writing seminars and other educational endeavors to help us in our work.

I regularly attended the meetings of the Judicial Administration section of the American Bar Association. When I was Chief Justice, the ABA hosted the chief justices of countries from around the world, and I was invited to be a host at the convention held in San Francisco. We learned that many were striving for an independent judiciary similar to ours. We wine and dined them and escorted them to a couple of dances. My wife, Ruth, danced with several of them. When the Chief Justice of Nigeria wanted to "belly dance", she took him to another dance hall where the young lawyers were -Rocking and Rolling. He danced so hard that he lost his little hat.

Whether it was work or play, being a Justice was a privilege and an honor. I enjoyed all of my fourteen years and seven months as a member. My goal, and I can safely say that all of those with whom I served, was to establish and maintain a court in which the public had absolute confidence. Scholarship, integrity, diligence, and dedication all played a part. We tried to make wise decisions and conduct ourselves and the Court in a manner deserved by you. I hope that we did.

If you haven't already done so, check us out. There is a ton of information in Neil Skene's book. ■

UPCOMING PUBLICATIONS



THE SUPREME COURT OF FLORIDA

A Journey toward Justice 1972-1987

This is volume III in a historical series on the Florida Supreme Court, describes the court during its most tumultuous years, 1972-1987.

PART ONE: The Reformation

Part One focuses on court reform after a series of scandals, the rise of merit selection of justices, the streamlining and professionalization of the court system, efforts to broaden access to the courts by funding legal services for those who can't afford them, and Florida's leadership among states in introducing cameras to courtrooms.

PART TWO: The Life of the Law

Part Two chronicles the dramatic changes in almost every field of law as the court struggled with cultural traditions amid pressures for new rights for consumers, criminal defendants, women and minorities. Three chapters chronicle the fall and resurrection of the death penalty and the court's struggle with a fast-growing capital caseload. The book concludes with the story of Virgil Hawkins, who challenged segregated law schools and struggled to become a lawyer.

A Journey toward Justice 1972-1987 will be available to purchase on the Society's website FICourtHistory.org starting in June of 2017 and at the Florida Bar's Annual Convention in Boca Raton.



THE FLORIDA STATE CONSTITUTION

The Oxford Commentaries on the State Constitution of the United States

With an introduction that traces the long constitutional history of Florida, Talbot D'Alemberte provides a thorough understanding of Florida's state constitutional history. He includes an in-depth, article-by-article analysis of the entire constitution, detailing the many significant changes that have been made since its initial drafting. This treatment, along with a table of cases, index, and bibliography, provides an unsurpassed reference guide for students, scholars, and practitioners of Florida's constitution.

This second edition provides analysis of Florida's State Constitution with updated commentary focusing on the many court decisions rendered since the 1990s, summarizing the state's current jurisprudence and the increasing use of Florida's many methods of Constitution Amendment, including initiative, Legislative, Constitution Revision Commission and Tax and Budget Reform Commission adopted proposals. (From the Publisher, Oxford University Press).

MEMBERSHIP

YOUR INVITATION TO PRESERVE HISTORY

We are inviting you to help support vital programs that are preserving and honoring the long and proud history of the Supreme Court of Florida by joining as a proud member of the Florida Supreme Court Historical Society.

Your tax-deductible membership into the **Florida Supreme Court Historical Society** (FSCHS) will show your commitment to commemorating and preserving the milestones of Florida's judiciary. Please support the efforts of the Historical Society on this year's Florida Bar Fee Statement or complete the membership form below.

Your membership into the **Florida Supreme Court Historical Society** funds these projects and more...

- ◆ Funding of the Oral History Projects that records the rich history of the Court from retired Justices
- ◆ Commissioning of the official portraits of five of the Justices
- ◆ Funding the research and publishing of the *History of the Florida Supreme Court*, Vol. I, II & III
- ◆ Sponsoring the 'Passing of the Gavel Ceremony' for the incoming Chief Justices
- ◆ Assistance to the Court in finding unique ways to publicly commemorate historical milestones
- ◆ Lifetime Achievement Awards at the Annual Dinner
- ◆ Publishing of the *Historia Juris Newsletter* & *The Florida Supreme Court Historical Society Review*
- ◆ Ongoing efforts to acquire significant artifacts from the history of Florida's Court



The simple truth is, funding for these types of projects is drying up from traditional sources. That is why it is essential now, more than ever, for you and along with our Florida Bar colleagues to fill this important funding need. If not us, then who will?

Please join the Historical Society online at FICourtHistory.org or complete and return the form below. Either way your commitment at any level would be greatly valued.

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Dues and contributions to the FSCHS, Inc., are tax-deductible for charitable purposes to the extent allowed by law, and 100 percent of each dues contribution is received by this organization. The Society's IRS tax identification number, for your records, is 59-2287922. Florida non-profit registration number: SC-09634

THE FLORIDA SUPREME COURT HISTORICAL SOCIETY'S SUPREME EVENING 2017

JEFFREY ROSEN,
NATIONAL CONSTITUTION CENTER,
KEYNOTE PRESENTER

On January 19th, the eve of the nation's presidential inauguration, our acclaimed keynote presenter, **Jeffrey Rosen**, was in a unique position to provide a glimpse of the possible influence our president-elect will have on the U.S. Supreme Court and our nation. He also shared his keen insights into issues the Court is facing with the dynamics of technology, social media and realities of our modern digital world.



Jeffrey Rosen is president and CEO of the National Constitution Center, professor of law at the George Washington University Law School, and a contributing editor of the Atlantic. His latest book, *Louis D. Brandeis: American Prophet*, was published on June 1, 2016, the 100th anniversary of Brandeis's Supreme Court confirmation.

Lifetime Achievement Award Presentation

The Florida Supreme Court Historical Society posthumously honored **Janet Reno** with its Lifetime Achievement Award at the Annual Dinner.

Janet Reno was a warrior for justice and inspired innovator. She served as a role model and mentor to anyone with whom she dealt.



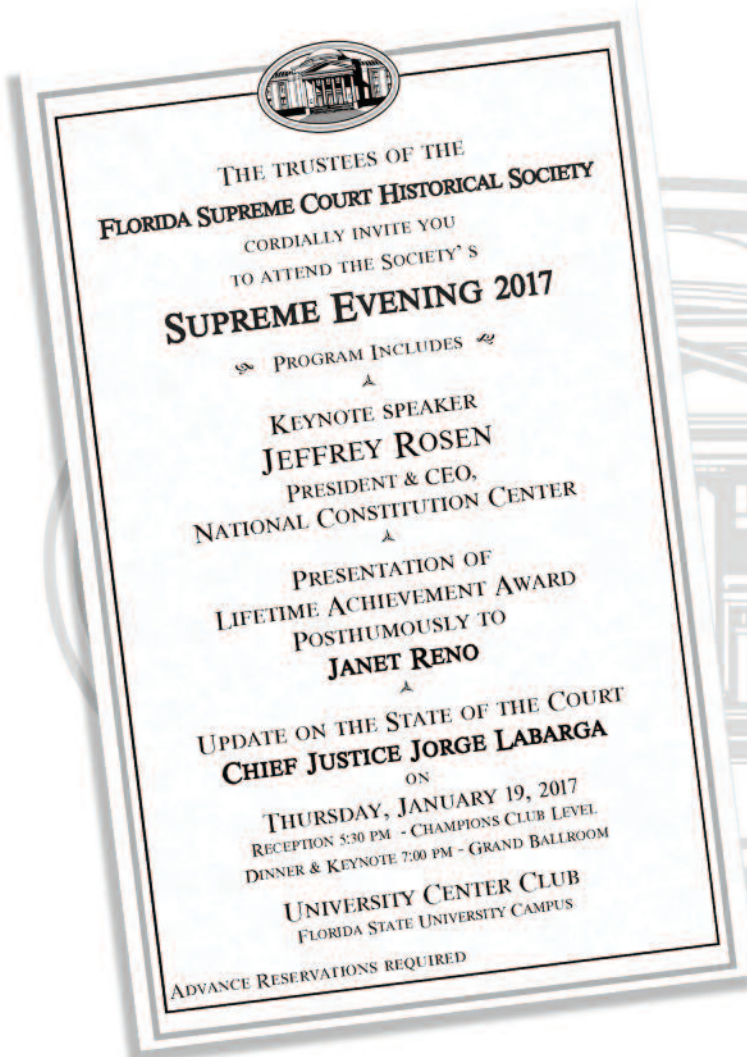
She was genuine, extraordinarily wise, and loved everyone -- above all, our children. Few have blessed this nation, and those in public service, with a greater legacy of commitment to integrity and appreciation for America's magnificent resources.

She was a valued member of the Historical Society for many years. Ms. Reno's Sister, Maggy Hurchalla, accepted the award at the dinner on her behalf.

Chief Justice Jorge Labarga also provided an update on his highly-praised initiative to improve access to civil justice for all of Florida's citizens, as well as his perspective on the state of the Florida judicial system.

Thank you to everyone that attended this year's Supreme Evening, Florida's premier judicial event, hosted by the Florida Supreme Court Historical Society.

The photo gallery of the evening will be posted after 1/24/17 at flcourthistory.org/2017SupremeEvening.



The Florida Supreme Court Historical Society is a non-profit organization committed to helping Floridians learn the importance of a strong, fair and impartial judiciary in our governmental balance of power. Our mission is to save and maintain 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 now in the 21st, for the benefit of future generations.

This annual dinner event is the main fundraiser for the Historical Society. The Society uses these funds to educate the public about the work of the courts in protecting personal rights and freedoms, and to preserve and honor the history of the Supreme Court of Florida. Please support our efforts by attending the annual dinner or joining FSCHS. Florida non-profit registration: SC-09634

To learn about the Historical Society visit: FLCourtHistory.org

THANK YOU

THANK YOU TO OUR SPONSORS OF THE SUPREME EVENING 2017

A special thank you to all of our Supreme Evening Sponsors for their generous contributions that make this event possible. It is their commitment to the Historical Society's mission that makes it possible for us to educate the public about the critically important work of the courts in protecting personal rights and freedoms, and to preserve the history of Florida's judicial system.

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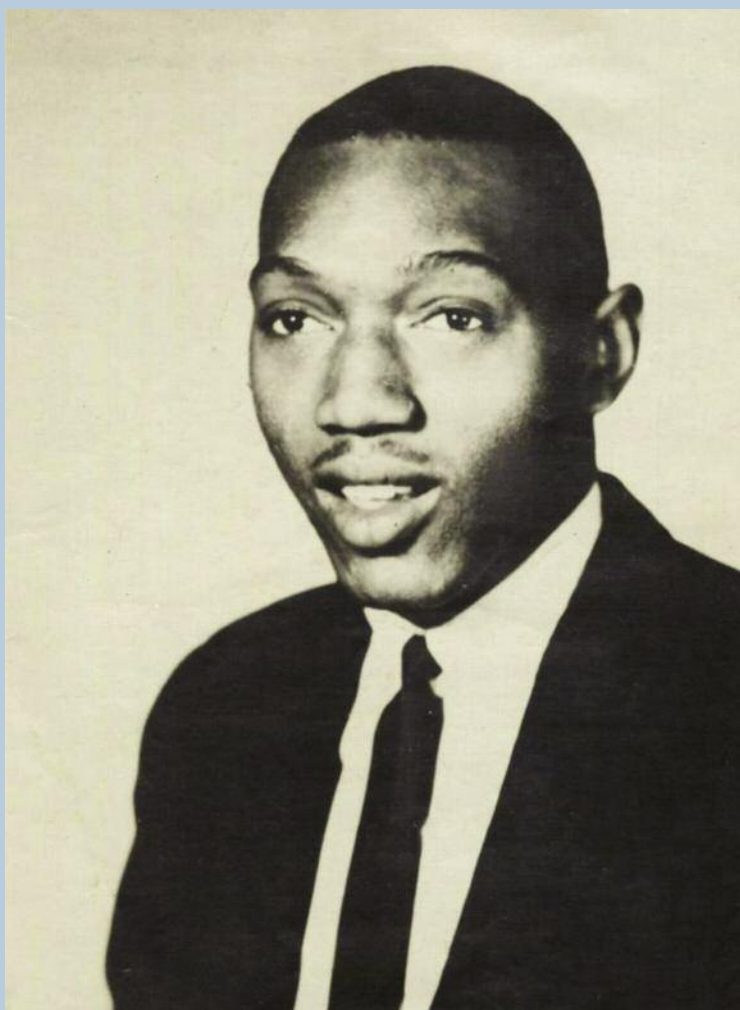
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A MOMENT IN TIME



Justice Perry at Saint Augustine University in Raleigh. B.A., 1966.