



11th Circuit *Historical News*

Charles A. Pannell, Jr.: a profile

By Marti A. Minor

On Dec. 1, 2019, Judge Charles A. Pannell, Jr. marked his 20th year on the District Court for the Northern District of Georgia. Before joining the federal bench, Pannell served more than 20 years as a superior court judge in Georgia's Conasauga Judicial Circuit, which includes Whitfield and Murray counties. These four decades of public service have included thousands of written opinions, countless hours in open court, instructions to legions of jurors, and, most importantly, decisions, decisions, decisions. The hallmark of any respected jurist is, after all, well-reasoned decision-making. For 40 years, Judge Pannell has fulfilled his responsibility to make judicial decisions in a deliberate, straightforward manner, and without undue delay.

"The court is a dispute resolution mechanism," the judge frequently reminds his law clerks. "It's not my role to tell the parties and their lawyers how to argue and try their cases; I am here to address the issues they present and move matters along to a disposition." In doing so, Judge Pannell is guided by the advice of his father, Judge



For more than 40 years, Judge Charles A. Pannell, Jr. has followed a judicial philosophy of common sense and fairness.

Charles A. Pannell, Sr., of the Georgia Court of Appeals, who told his son that being a judge is really quite easy: "You just follow the law." Of course, he undoubtedly knew "the law" is often murky at best. But over the last 40 years, his son has taken this brilliantly simple instruction from his father and combined it with his own common sense and keen instinct for fairness to become a well-known and highly respected trial judge in the state of Georgia.

Pannell was born in Georgia, grew up on a farm in Georgia, attended public schools in Georgia and graduated from the University of Georgia — undergraduate and law school. His ancestors fought in the Revolutionary War. Members of one branch of the family were prominent at the Battle of Kings Mountain. His wife, Kate Williams Pannell, is a member of old Georgia families as well. One of her ancestors who fought in the Revolutionary War is buried on the Kettle Creek battlefield in Wilkes County, Georgia.

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About the author: Marti A. Minor has served as Judge Charles A. Pannell, Jr.'s career law clerk for 15 years. She earned a J.D. from the University of Georgia School of Law in 1995. Before joining the Pannell chambers, she worked in the staff attorney's office for the district court. Minor says: "Judge Pannell treats his staff like family. It has been my good fortune to work for him all these years. I was honored to be asked to write this profile in recognition of his decades of public service."

About the photographs: All photos were provided by the Pannell family.

MEET THE TRUSTEES

Celia J. Collins

The Society's mission includes a focus not just on the Eleventh Circuit Court of Appeals but also on all of the federal courts in Alabama, Georgia and Florida. Please tell us a little about your background, with a special focus on your connection to the federal courts in those states.

I practice labor and employment law with Johnstone Adams in Mobile, Alabama, and currently spend most of my court time in the beautiful new courthouse of the Southern District of Alabama.

I actually began my federal court experience before the Eleventh Circuit existed. In 1979, while in law school, I spent my second summer clerking for the U.S. Attorney's Office in the Middle



Celia J. Collins

District of Alabama, during which most of my time was spent assisting the attorneys with researching and writing Fifth Circuit appellate briefs. Their offices were then located in the old Middle District courthouse in Montgomery. The office had one of the first electronic research platforms, JURIS, which preceded the ready availability of Westlaw and Lexis and, as I recall, focused on federal law. The case that stands out in my mind from those days was the appeal by a convicted bank robber who performed his heist of the drive-through of a local bank while riding his bicycle.

I began practicing with Johnstone Adams in Mobile in 1980 after

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Editor's note

This is the first installment of our series "Meet the trustees." It is our pleasure to introduce to you our newest Alabama trustees, Celia J. Collins and William G. "Will" Parker, Jr.

William G. 'Will' Parker, Jr.

The Society's mission includes a focus not just on the Eleventh Circuit Court of Appeals but also on all of the federal courts in Alabama, Georgia and Florida. Please tell us a little about your background, with a special focus on your connection to the federal courts in those states.

I serve as chief deputy general counsel to Alabama Gov. Kay Ivey. But before this current role, I had two jobs that brought me into close contact with the Eleventh Circuit and all three federal district courts in Alabama.

First was a one-year clerkship following law school with now Chief Judge Ed Carnes. This was a formative experience for me due to Judge Carnes' love for the law and his constant pursuit of excellence. I will always remember sitting next to him at his



William G. 'Will' Parker, Jr.

computer when it came time to put the finishing touches on a published opinion. Watching him search for the right metaphor, the right turn of phrase — the right word, even — was a thrilling experience. And it impressed upon me just how important it is to pay attention to each detail that will affect the reader's perception. Of course, I will also remember the disappointment that he felt — and that he conveyed to his law clerks! — when one of his fellow judges reviewed a draft opinion and caught a typo or an erroneous citation. That was a decidedly less-than-thrilling experience, but it had the same effect on me as a young lawyer.

My other main federal-court

See Parker, page 4

graduating from Vanderbilt Law School. Because of my interest in civil rights, labor and employment law, upon entering my practice with Johnstone Adams I was assigned to work on numerous federal court matters.

My first experience as lead counsel in any trial was early in my career, defending a nonjury Title VII case before Judge Brevard Hand under the careful watch of a senior partner. My first federal court jury trial was serving as second chair with a senior partner in an antitrust case tried before Judge Virgil Pittman. I think we obtained one of the few antitrust defense verdicts in the state of Alabama. Both judges were extremely kind and very patient to a young lawyer.

A few years later, I was appointed to serve as a bar examiner for the Alabama State Bar on Federal Procedure, which required me to carefully study all of the federal rules in order to craft a fair bar exam question. Because of

that expertise, I became involved in many of the federal cases in my firm, including civil RICO and diversity cases as well as continuing with labor, employment and civil rights defense.

In the second decade of my practice, the world of labor and employment law expanded with the enactment of the Americans with Disabilities Act, the Family and Medical Leave Act and the amendments to Title VII allowing jury trials and punitive damages. From that point to present, my practice has been primarily in labor and employment cases in federal court. I have tried cases in all of the “old” as well as the “new” courthouses in the Northern District of Alabama, Middle District of Alabama and the Southern District of Alabama.

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SHARE YOUR NEWS!

Submit items for publication in the 11th Circuit Historical News to Wanda Lamar, executive director of the Society. (email: wanda_lamar@ca11.uscourts.gov). Historical articles on the federal courts and judges within the Eleventh Circuit will be considered, as well as investitures, courthouse dedications, portrait presentations, memorial ceremonies and oral history programs.

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This publication often covers “milestone” events — the investiture of a new judge, the dedication of a new courthouse, and so on. But there is also value in preserving the social history of our circuit, that is, the day-to-day business of our courts. Do you have any memorable stories from your own background, or perhaps that of a colleague or two, that highlight what life is like as a federal practitioner in our circuit?

My most memorable Eleventh Circuit courthouse experience occurred in what was then the brand-new courthouse in the Middle District of Alabama when I was trying a plaintiff’s jury case with my friend and former Historical Society Trustee Dawn Hare, before an elderly visiting judge from another circuit. Dawn and I had split the closing argument, with me handling the rebuttal. Halfway through my argument, the courthouse fire alarm went off. There were collective gasps in the courtroom, and everyone, including judge, jury and counsel, just looked at each other in a “what are we supposed to do?” manner. After a short time, the judge declared, “I think we need to evacuate.” As it turned out, it was a false alarm caused by dust stirred up by some remaining construction work in the courthouse. We returned to the courtroom, and the judge very kindly allowed me “all the time” I needed to finish my closing argument.

Very briefly, what do you see as the value of the Society and its mission? Why is it important for lawyers

throughout our circuit to support the Society and its work?

I became familiar with the Eleventh Circuit Historical Society through my partner, Ben H. Harris, Jr., who was a trustee for many years and eventually served as president of the organization. As a member of the Society, I have always enjoyed reading the newsletter, including articles and stories about our outstanding judges and courthouse buildings around the circuit. For a number of years, I have had the privilege of attending the Eleventh Circuit Judicial Conference, which has provided me the opportunity to attend the Society’s meetings and get to know other trustees and Society members and judges from around the circuit. While our circuit is young, we have our share of beautiful courthouses, both old and new, and certainly iconic judges. The website description of the Eleventh Circuit Historical Society refers to the creation of the Society just two years after the circuit was established, as allowing “the writing of history as current history not as research history.” As a practitioner whose legal career has literally grown up along with the Eleventh Circuit and lived its entire history, I fully appreciate the value of preserving the memories of our outstanding judiciary and the histories of our courthouses. Membership in the Society allows us to share our common bonds and interests and maintain the collegiality and professionalism for which our circuit is known.



connection is the almost 10 years I spent litigating as an assistant attorney general for the state of Alabama. I worked with a small group of lawyers in the Constitutional Defense Division, and our job was primarily to defend civil lawsuits challenging state statutes. Often, these were politically controversial statutes — think abortion laws, campaign-finance laws, school-choice laws, and so on. This practice frequently took me to all three federal district courts in Alabama and produced plenty of trips to the Eleventh Circuit as well.

Both of these experiences, the clerkship and the litigation practice, taught me that the federal courts in our circuit are far more than buildings or geographic boundaries. They are made up of people — judges and attorneys and litigants — striving to make good for their communities the notion that we are a nation of laws, not of men.

This publication often covers “milestone” events — the investiture of a new judge, the dedication of a new courthouse, and so on. But there is also value in preserving the social history of our circuit, that is, the day-to-day business of our courts. Do you have any memorable stories from your own background, or perhaps that of a colleague or two, that highlight what life is like as a federal practitioner in our circuit?

One story of this sort that comes to mind captures the jitters that many lawyers may feel for a first court appearance. With less than two hours to go before my first oral argument in the Eleventh Circuit, I locked my keys in my car, along with my briefcase and all of my argument notes.

The argument was set for the federal courthouse in Montgomery, where I live and where, just months beforehand, I had been a regular employee while I clerked

for Judge Carnes. So on one hand, I showed up to the courthouse that day with a bit more swagger than I was entitled to exhibit as a first-year lawyer: This felt like my home turf. I knew my way around it; I knew where to go; and I knew how things really worked.

At the same time, I had an oversized perception of how momentous this occasion was. During my clerkship, I had watched all manner of lawyers, from superstar Supreme Court short-listers (one had quoted, verbatim, from memory, an opinion of a visiting district court judge sitting by appointment) to complete frauds (I saw one lawyer called out, in person, for deliberately misquoting a deposition transcript). In my mind at least, this one argument would shape my reputation for the entirety of my career. So I knew, or thought I knew, how important it would for me to nail it.

The upshot of all this was that I pulled into the same curbside parking spot I had often used as a law clerk, with my mind on soaring argument rhetoric, not mundane logistics. I sat in my car for 10 minutes or so performing a run-through of my main argument points. But when I got out and tried to retrieve my briefcase, I realized that I had already locked my car door, with my keys, my notes, and everything else I needed locked securely inside.

Fortunately, my case was third on the argument docket. So I called a locksmith and paced by my car until he arrived, practicing my argument but also learning a valuable lesson of humility and vowing never again to forget the small stuff.

Very briefly, what do you see as the value of the

Society and its mission? Why is it important for lawyers throughout our circuit to support the Society and its work?

I am still quite new as a trustee for the Society. So my sense about this comes mainly from Reggie Hamner, a longtime executive director of the Alabama State Bar, who preceded me as trustee and who recommended that I take his place on the board. In addition to his service with the Alabama State Bar, Reggie spent years overseeing the construction of the new federal courthouse in Montgomery. The eagle overlooking the central plaza is named Reggie in his honor.

I met Reggie when I was clerking for Judge Carnes and instantly learned of his love for courthouse history. He would regale my fellow law clerks and me with stories of judges and attorneys. He also took time to show us some of the hidden nooks and crannies of the courthouse (for example, the small chambers Frank Johnson used after his appointment to the court of appeals).

If a major function of the law is to promote social cohesion, then Reggie intuitively understood that a major function of courthouse history is to promote cohesion among those who administer the law.

That, to me, is one of the most important reasons to support the Society and its work. By collecting, preserving and sharing stories, we foster a sense of community among those on either side of the bench and among those on either side of the "v." in the case name. More of that, not less, can only be a good thing for our bar, for the court system and for society at large.



The Eleventh Circuit Historical Society
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Annual Membership

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*KEYSTONE FIRMS: Please name five (5) members of your firm to be Society members.

(1) _____
 (2) _____
 (3) _____
 (4) _____
 (5) _____

Andrew L. Brasher invested as U.S. district judge

By L. Michael Higgins, Jr.

“He’s just flat-out devoted to doing the right thing. That’s kind of hard to teach.” Former United States senator and Alabama attorney general Luther Strange’s evaluation of District Judge Andrew L. Brasher set the tone for a memorable investiture in the Ceremonial Courtroom of the Frank M. Johnson, Jr. U.S. Courthouse in Montgomery, Alabama.

On Aug. 9, 2019, the United States Court for the Middle District of Alabama convened for the formal investiture of Judge Brasher. The ceremony began with greetings from presiding Chief District Judge Emily C. Marks. Noting Judge Brasher’s youth and the youthful achievements of Alexander the Great, Augustus Caesar, Mary Shelley and Mozart, Judge Marks queried, “So my question for you, Judge Brasher, is what took you so long to get here?”

The bench and jury box were graced with Chief Judge Ed Carnes, Judge Bill Pryor, Judge Kevin Newsom and Judge Joel Dubina of the Eleventh Circuit Court of Appeals, as well as numerous district, magistrate, bankruptcy and Alabama state court judges and justices. Also present were members of Judge Brasher’s family, as well as friends, members of the bar and court family spilling over into his adjacent courtroom via closed circuit televising of the proceedings.

The Rev. Brian Gay delivered the invocation. Judge Brasher’s sons, Hank and Drew, led those in attendance in reciting the Pledge of Allegiance. Judge Brasher’s Samford University classmate Allison Reid Lumbatis performed a beautiful arrangement of the national anthem and a medley of patriotic music.

Steve Marshall, with whom Judge Brasher has served as solicitor general for the state of Alabama, observed that “today is a good day for the court. You are going to inherit a remarkable jurist.” Marshall spoke of Judge Brasher’s high academic achievement at Samford University and



District Judge Andrew L. Brasher takes the oath of office, accompanied by his wife, Julie, while their son Hank looks on.

Harvard Law School and his early career at Bradley Arant Boult Cummings as harbingers of his ability to do great things, including taking “pennies on the dollar to work for the state’s law firm” beginning with then-Attorney General Luther Strange. Marshall recounted Judge Brasher’s skill as a litigator, writer, advocate, adviser, public servant and friend.

Sen. Strange next addressed the court, graciously acknowledging members of Judge Brasher’s family and their role in supporting him in his public service.

Sen. Strange spoke of Judge Brasher’s temperament, sense of humor, common sense, enduring work ethic and organization as hallmarks of his service. Sen. Strange explained that Judge Brasher not only mentored those who interned with them but also personally mentored Strange to prepare him for oral argument before the United States Supreme Court. Strange concluded his remarks stating that he “couldn’t be prouder to know that Andrew will be carrying on the tradition of the great judges in this district and across this country.”

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Judge Brasher’s sons, Drew and Hank, lead the Pledge of Allegiance at the formal investiture of Judge Brasher.

About the author: L. Michael Higgins, Jr. is the career law clerk for Judge Andrew L. Brasher. He is an Alabama native and a graduate of the University of Mobile, Princeton Theological Seminary and the Cumberland School of Law.

About the photographs: All photos are courtesy of the U.S. District Court for the Middle District of Alabama.

Brasher, continued

Elbert Lin was next to address the court. Lin and Judge Brasher were co-clerks for Judge Bill Pryor and later served as solicitors general for West Virginia and Alabama, respectively. Lin injected tasteful but genuine levity into the proceedings, with a few tales of their experiences clerking for Judge Pryor, before addressing the gravity of the occasion. "Judgment isn't something that can be taught," Lin observed. "It's sometimes a function of experience, but not always. Andrew's judgment has been excellent as long as I've known him, and it will be a great gift to the citizens and legal community of the Middle District of Alabama."

Before administering the oath of office to Judge Brasher, Judge Pryor spoke of Judge Brasher as a patriot, a devoted public servant and the first of his former law clerks to be confirmed to the federal bench. "It is important for every judge to make that promise in the presence of his community in the courthouse where he will serve them. A federal judge remains accountable to the American people for that promise." Judge Pryor then administered the oath of office to Judge Brasher. The robing was by Judge Brasher's wife, Julia, and their sons, Hank and Drew.

Judge Brasher then addressed the court and recalled that his first experience in a federal courthouse had been in that very courtroom, while he was a Harvard law student working as a summer associate at Bradley Arant, to watch an Eleventh Circuit oral argument. Judge Brasher expressed his gratitude to those who had assisted and supported him throughout the nomination and confirmation process, noting that "the only explanation for how I got here is it took extreme, extreme mentoring by people like Judge Pryor, Kevin Newsom, by John Neiman, by Luther Strange, by Steve Marshall, by partners at Bradley who are back there, associates and friends at Bradley, and a lot of other people to make me into the kind of person that could legitimately get a qualified rating from the ABA." He further recognized the importance of his family, particularly his wife, Julia, who "is the woman who is described in Proverbs 31." Judge Brasher further thanked President Donald J. Trump for nominating him, along with Sen. Richard Shelby and his team who assisted during the confirmation process.

Reflecting on his perception of the nature of law, Judge Brasher said that he had come to appreciate that "the human things about the law are not bugs. They are features. The law is a human invention. The court is a very human institution. And really, we need to approach this effort sort of like Winston Churchill described democracy: We need to recognize that our courts may be the worst way to establish justice except for all of the others." Judge Brasher concluded his remarks by committing himself "to approach this job with humility and with as much patience as I can muster, and with an appreciation for the human factors that I believe to be part and parcel of the justice system."



Judge Brasher with his honored guests, from left, Steve Marshall, Elbert Lin, Luther Strange and Brian Gay.



Alabama Attorney General Steve Marshall observed that "today is a good day for the court. You are going to inherit a remarkable jurist."



From left, Chief Judge Emily C. Marks, Judge Bill Pryor, Judge Brasher and Clerk of Court Debbie Hackett.



Former U.S. Sen. Luther Strange stated that he "couldn't be prouder to know that Andrew will be carrying on the tradition of the great judges in this district and across this country."



Elbert Lin, who clerked for Judge Bill Pryor along with Judge Brasher, said Judge Brasher's judgment "will be a great gift to the citizens and legal community of the Middle District of Alabama."

Investiture of Judge Roy K. Altman

By Benjamin J. Widlanski and Jonathan E. Kobrinski

On Oct. 18, 2019, on the 13th floor of the Wilkie D. Ferguson Federal Courthouse in Miami, Florida, hundreds of lawyers, judges, friends, family and members of the general public gathered to watch as Judge Roy K. Altman was formally invested as the 68th member of the United States District Court for the Southern District of Florida. Along with Judges Rodolfo Ruiz and Rodney Smith, Judge Altman, who has officially been a member of the judiciary since April 2019 and sits in the Fort Lauderdale Federal Courthouse in Broward County, brings the number of active judges in the district to 16, with two vacancies still pending.

Presiding over the investiture, Chief Judge of the Southern District K. Michael Moore invited Judge Altman's wife, Rachel Silverstein, and their 2-year-old son, Gideon, to lead the overflow crowd in the Pledge of Allegiance. With hundreds of voices repeating the time-honored pledge, this was one of the only moments when Gideon was, in fact, inaudible. The mayor of the city of Miami, Francis Suarez, then gave a moving invocation, calling on Judge Altman to heed the powerful words of Deuteronomy: "Justice, justice shall you pursue, that you may live."

After recognizing the numerous luminaries who gathered to celebrate Judge Altman, Chief Judge Moore invited Deputy Associate Counsel to the President of the United States Bethany Pickett to read the Presidential Commission. Counsel Pickett happily confirmed to all in attendance that, unlike William Marbury, whose undelivered commission was the subject of *Marbury v. Madison*, Judge Altman's commission was, in fact, both



Eleventh Circuit Court of Appeals Judge Stanley Marcus reads the oath to Judge Roy K. Altman, who is accompanied by his wife, Rachel Silverstein.

signed and delivered back in April.

Once his commission was read, Judge Altman took his oath of office, administered by Eleventh Circuit Court of Appeals Judge Stanley Marcus. Judge Marcus, presaging the speech he would give shortly, was full of humor and good cheer as he swore in his former law clerk. After the oath, Judge Altman received his robe at the hands of his parents, Oscar and Sara Altman, and his wife and son; once properly attired, Judge Altman took his seat next to his fellow district judges.

With that, the speakers transitioned from the formal to the personal. First up was Peter Prieto, who practiced with Judge Altman at Podhurst Orseck, Judge Altman's former firm. Prieto began by noting that Judge Altman has more best friends than anyone in the world, and any one of those best friends could give an amazing and poignant speech. Prieto gave a brief history of Judge Altman's professional career. He was a star athlete at Columbia University, playing both football and baseball, before moving to Yale Law School and excelling there, joining the *Law Review* as an editor. Afterward, as noted earlier, Judge Altman clerked on the Eleventh Circuit for Judge Marcus, before joining the United States Attorney's Office for the Southern District of Florida and trying dozens of criminal cases to verdict, gaining regard and plaudits for his successful prosecutions of sex traffickers, violent criminals and others.

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About the authors

Benjamin J. Widlanski was Judge Roy K. Altman's roommate during their undergraduate studies at Columbia University. Following that, Widlanski attended Columbia Law School, after which he worked for a large New York firm before joining the United States Army. After his military career, he was an assistant United States attorney in the Southern District of Florida. He is now a partner at the litigation boutique firm Kozyak, Tropin & Throckmorton in Coral Gables, Florida.

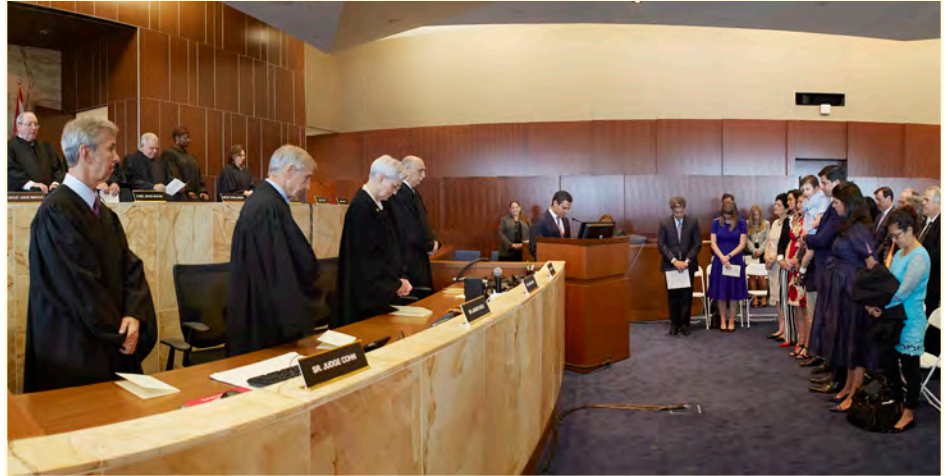
Jonathan E. Kobrinski was Judge Altman's classmate at Yale Law School. Kobrinski previously served in the United States Army as a judge advocate and is currently a supervisory attorney in the Miami United States Attorney's Office.

About the photographs

All photos are courtesy of Daniel Portnoy Photography.

After his time at the U.S. Attorney's Office, where he was ultimately promoted to a management position in the Special Prosecutions unit, Judge Altman joined Peter Prieto's firm, one of the premier litigation boutiques in the nation. Prieto recounted the congratulations he received for the hire from one of Judge Altman's now-colleagues, Judge Cecilia Altonaga, who noted: "I had never seen a lawyer conduct an effective hour-long closing argument without a single note in front of him."

Prieto also commented on many of Judge Altman's qualities and characteristics: his intellectual curiosity, tireless work ethic and phenomenal litigation experience. He homed in on one of Judge Altman's qualities, though, that stands apart from the rest: his sense of fairness and desire to do the right thing. It is that drive, Prieto noted, that compelled Judge Altman to leave a lucrative private practice and return to where he



Francis Suarez, mayor of the city of Miami, offers a brief invocation.

occupied Europe) speaks a multitude of languages. In a preview of Judge Altman's own speech, Judge Marcus told the assembly that "Roy Altman had almost no chance of existing, let alone showing up here."

Judge Marcus took up many of Peter Prieto's themes in his speech, remarking upon Judge Altman's superlative career at the U.S. Attorney's Office and Podhurst Orseck, his famed litigation skills and his sense of justice and drive to serve the public good. Perhaps most powerfully, Judge Marcus remarked upon the "Only in America" nature of Judge Altman's success: "If Roy's family had remained in Eastern Europe, or in Venezuela, for that matter, it is utterly unlikely that the brilliance and talent that the good Lord gave him would ever have seen the light of day. But this incredible country of ours is unique in its ability to release the talent of its citizens, and we keep getting better and better at it. Roy surely is an example."

After lightening the mood with a few additional stories and jokes, Judge Marcus closed by thanking the president, Florida's senators and the United States Senate for



Judge Altman enjoys the proceedings, flanked by his wife, Rachel Silverstein, his father, Oscar Altman, and his son, Gideon.

belongs – public service.

With his thanks to Chief Judge Moore, Prieto relinquished the lectern and microphone to Judge Marcus, who again took center stage. Exhibiting his famous sense of humor and riveting story-telling abilities, Judge Marcus livened up the room as he discussed Judge Altman's life history. Judge Marcus first likened Judge Altman to a polyglot parakeet, noting that Judge Altman (an immigrant from Venezuela whose Jewish ancestors fled Nazi-



Judge Stanley Marcus, for whom Judge Altman clerked, was full of good cheer and imparted that humor to all in attendance.

choosing and confirming Judge Altman, and concluding by saying: "I'm confident, Roy, this is work you were born to do."

With that, the spotlight turned, ultimately, to Judge Altman himself. Speaking without notes, as is his practice, Judge Altman gave a powerful address that brought the room to a standing ovation on multiple occasions. He began with a self-deprecating nod to his relative youth, admitting that many of the practitioners in the district have never met him and maybe do not expect such a young-looking judge. He then thanked many individuals who assisted him during the process, beginning with the president, the Florida senators, his then-counsel, Don McGhan – who was present – and continuing through the many individuals who vetted and supported his nomination. Judge Altman thanked his clerks and court employees, his prior colleagues and his



Peter Prieto, one of Judge Altman's former law partners and a current Historical Society trustee, gives a stirring address.



Judges Beth Bloom and Marcia Cooke welcome Judge Altman to the bench.

confirming that "there has been no greater example in our community." After thanking his most influential professional mentor, Judge Altman concluded by thanking his most important personal influence, his steadfast and brilliant wife. With a final thank you to everyone he could not thank due to time constraints, Judge Altman yielded the floor to tremendous applause. Chief Judge Moore concluded the ceremony, and all in attendance retired to a reception to enjoy the collegiality and camaraderie that define the United States District Court for the Southern District of Florida.

speakers. He then moved to thanking his family, telling a deeply moving family history that had the audience riveted. Continuing on Judge Marcus' "Only in America" theme, Judge Altman gave detail to the story of his family's flight from persecution in Europe and, ultimately, his family's move to the United States. With tears in their eyes, the attendees applauded Judge Altman's mother and father for bringing their family to Miami and following their immigrant dream. As Judge Altman succinctly stated:

"Whenever in my life I've thought that things were too hard for me, I've thought of my great-grandparents, starving in the Siberian wilderness. Whenever I've thought that I wanted to quit ... I've thought of my grandparents forging new lives for themselves after the war. Whenever I've thought I didn't want to work late or get up early, I've thought of my parents, who left their friends and their families and their livelihoods behind them in Venezuela to come to America, a place where they knew no one and where they had very little, but where they had an abiding sense that if they treated people with respect and worked hard, they and their children could do anything."

Judge Altman then thanked his mentor, Judge Marcus, for his guidance and teaching and lifelong service to the country,



Judge Altman spoke from the heart as he thanked his friends, family, colleagues and mentors.

Rodolfo A. Ruiz II takes oath as U.S. District Court judge

By Fabiana Cohen, Benjamin Tyler and Michelle Hogan

“Only in America could the son of Cuban refugees ascend to become a federal judge. And to the extent I possess any of the values that make a good judge — integrity, humility, compassion and courage — it is because my parents, and my grandparents — who I know are watching over me today — taught me these values and what it means to be a good spouse, father and person.” Those were the words of Judge Rodolfo A. “Rudy” Ruiz II as he described a family journey that began in Cuba and culminated on Aug. 15, 2019, in Miami at his formal investiture as a judge of the United States District Court for the Southern District of Florida.

From the outset, it was abundantly clear that this would be a memorable event. The crowd of attendees — which included nearly all district, magistrate and bankruptcy judges from the Southern District of Florida; Judge Adalberto Jordan and Judge Robin Rosenbaum from the Eleventh Circuit Court of Appeals; Justices Robert Luck and Barbara Lagoa from the Florida Supreme Court; and a legion of trial and appellate state court judges; lawyers; family; and friends — was far too large to be accommodated in the ceremonial courtroom. Two overflow rooms were opened to house the excited family and friends who came to share the moment with Judge Ruiz.

The ceremony began with the Pledge of Allegiance led by Judge Ruiz’s children, Victoria Ruiz and Rodolfo III, followed by the invocation by Father Manny Alvarez, pastor of the Church of the Little Flower. This was



Judge Rodolfo “Rudy” Ruiz, accompanied by his wife, Jenny, is sworn in by his mentor, Judge Federico Moreno, for whom Judge Ruiz clerked in 2005-2006.

succeeded by perhaps one of the most memorable moments in the proceeding — the administration of the oath by United States District Court Judge Federico A. Moreno, an infallible mentor to Judge Ruiz for whom Judge Ruiz clerked in 2005. The unique and sentimental experience of a United States District Court judge swearing in his former clerk as a colleague quickly gave way to laughter, when Judge Moreno could not find a copy of the oath of office. Chief Judge K. Michael Moore comically asked Judge Moreno if he could recite it from memory, to which Judge Moreno answered, “You want me to wing it?” “Wouldn’t be the first time,” Chief Judge Moore responded, as the crowd erupted in laughter. Judge Moreno impressively recited a close approximation of the oath, which was followed by Judge Ruiz’s enrobing.

Justice Luck, Judge Ruiz’s longtime friend, then spoke about his former colleague: “Judge Ruiz is a great judge because, through his example, humanity and character, he makes everyone around him better. Better judges, better people, better spouses and parents. I am better because of Judge Ruiz.” Justice Luck went on to share stories that he collected from other friends, colleagues and family members, each highlighting a different aspect of Judge Ruiz.

Justice Luck recounted that he had heard from newly appointed County Judge Natalie Moore that she had once

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About the authors

Fabiana Cohen, Benjamin Tyler and Michelle Hogan are serving as law clerks for Judge Rodolfo A. Ruiz II during his first year on the U.S. District Court for the Southern District of Florida.

About the photographs

All photos are courtesy of Daniel Portnoy Photography.

called Judge Ruiz for assistance with a complicated legal issue. Although together they came to an answer over the phone, both were dissatisfied with the conclusion. That night, around midnight, as Judge Moore continued to research the issue, she received an unsolicited, yet detailed email from Judge Ruiz that included a number of citations and in-depth analysis of the issue. It was a kind and selfless gesture, but not one surprising to those of us who know Judge Ruiz. In a similar vein, Justice Luck acknowledged that he had also been a recipient of Judge Ruiz's kindness early on in his judicial career, noting that he "never forgot and will never forget (Judge Ruiz's) kindness and genuine desire to reach out to a colleague he saw having a tough day and helped make it better."

Beyond these examples, Justice Luck also recounted the ways in which Judge Ruiz had served the South Florida legal community at large: Judge Ruiz taught judges and lawyers throughout the state about writing, professionalism, ethics, sentencing, attorney's fees and jury selection, served as judicial liaison for Dade Legal Aid, chaired the Florida Civil Procedure Rules Committee and was a member of both the Florida Jury Instructions Committee and the State Fairness and Diversity Committee. He did all of this while trying 300 cases to verdict or judgment, writing hundreds of orders and whittling down his case load to one of the lowest in both the criminal and civil divisions. In addition, Justice Luck noted that Judge Ruiz had routinely been affirmed by the Third District Court of Appeal.

Still, Justice Luck went on to state that Judge Ruiz's greatest contributions were as a great friend and a great person. Judge Nushin Sayfie, Judge Ruiz's former state court colleague, was quoted as saying that "Judge Ruiz (is) universally loved by all," and another former colleague, Judge Miguel de la O, noted that Judge Ruiz "is a wonderful human being. No one dislikes him. Literally no one. I've never, ever heard of any lawyer or judge say even a tepid comment about Rudy. All comments are glowing. Let's face it, it's sickening." Justice Luck remarked that, in the few months Judge Ruiz had been on the federal bench, he had already made an imprint on those around him. Indeed, after one of his recent trials, a juror wrote that "Judge Ruiz was so wonderfully personable" that he counted it a privilege to serve as a juror in Judge Ruiz's courtroom.

Justice Luck then noted that perhaps the best example Judge Ruiz set for his friends and loved ones was how he acted as a spouse and parent. He described Judge Ruiz's relationship with his wife, Jennifer Ruiz, as a true partnership in which they raise their beautiful children together, champion each other's legal careers and support each other in their accomplishments and



Judge Ruiz with his wife, Jenny, and their children, Victoria and Rodolfo

tough times. He also commented that Judge Ruiz was a profoundly involved father who never missed an important moment with his children. His daughter, Victoria, was quoted as saying: "My dad is always ready for adventure and plans ahead. He is brave, courageous and strong. He is a great dad, and I love him for that. He helps me with my homework and math."

In concluding his remarks, Justice Luck acknowledged Judge Ruiz's place in the district's tradition of taking "the best and brightest from the state court bench." In so doing, Justice Luck closed with the following: "We miss you every day, but we take comfort in knowing that you will enrich the lives of your colleagues on this court as you have enriched our lives."

Following Justice Luck was Judge Moreno. Judge Moreno unquestionably holds a special place in Judge Ruiz's life. Judge Ruiz clerked for Judge Moreno upon graduating from Georgetown Law, becoming a part of Judge Moreno's close-knit clerkship family. Judge Moreno, beaming with pride and admiration, began his speech discussing Judge Ruiz's application to be a county court judge in Miami Beach "at the ripe old age of ... 32." Although some members of the Judicial Nominating Commission had justified reservations about

a 32-year-old becoming a county court judge, Judge Moreno noted that Judge Ruiz easily persuaded them to give him the opportunity. In 2012, Judge Ruiz was officially appointed to the county court bench by then-Gov. Rick Scott. And after two years of serving on the county court bench, Judge Ruiz was elevated to the Circuit Court for the Eleventh Judicial Circuit of Florida where he served for five years. According to Judge Moreno, it was during this time that Judge Ruiz's exemplary work-product and dedication converted any remaining skeptics. Judge Ruiz quickly came to be considered one of the best judges in South Florida.

On a more personal note, Judge Moreno remarked that Judge Ruiz's "vocation" began with his parents. Judge Ruiz's father came from Cuba as a young boy through "Operation Peter Pan," a program created by the Catholic Church to bring unaccompanied children in Cuba to the United States and spare them from communism. Similarly, Judge Ruiz's mother also came from Cuba as a young child through the Freedom Flights. She lived in Brooklyn and became a public-school teacher and, according to Judge Ruiz's children, one of the world's greatest grandmothers.

Judge Moreno attributed Judge Ruiz's success and his character to his parents — "it is from them that I learned to give back ... to do good." Judge Moreno recounted that on Mother's Day weekend Judge Ruiz traveled from Justice Lagoa's investiture to Syracuse University to attend the graduation of his longtime mentee, who counted Judge Ruiz as family after having grown up in the foster system. Judge Moreno also mentioned that Judge Ruiz regularly volunteered to handle other judges' calendars when they had a conflict, without expecting anything in return.

Acknowledging the incredible feat of being confirmed by the United States Senate with 90 votes in this political climate, Judge Moreno believes the senators voted for Judge Ruiz because they acknowledged his potential and excellent record. In closing, Judge Moreno stated that the district is "blessed to have Judge Ruiz be part of our bench" and that he is "immensely proud of now calling (Judge Ruiz my) colleague."

Of course, Judge Ruiz also addressed the attendees. Judge Ruiz began his speech by expressing gratitude to Judge Moreno for going through the judicial selection process with him for the third time. He then stated that, in preparation for his investiture, he remembered all the people who "invested" in him along the way — the people who made contributions to his life and judicial career, as there would be no "investiture" without



Judge Ruiz surrounded by his former Florida state court colleagues, who presented him with a special gavel as an investiture gift.

"investment." In recognizing his many "investors," Judge Ruiz acknowledged President Donald J. Trump, stating that he was "forever grateful for the president's trust and confidence in (my) abilities" and was "honored to be the hundredth judge (confirmed) under the current administration."

Judge Ruiz next credited President Trump's former counsel Donald McGahn and former associate counsel Robert Luther for their role in his nomination. Importantly, Judge Ruiz commented on remarks made by Luther regarding judicial selection in President Trump's administration. According to Luther, a litigant can expect the following characteristics from a judge appointed by President Trump: (1) an outstanding reputation in his or her community; (2) a judge who is familiar with our founding documents, who is an originalist and a textualist, and who, like our Founders, harbors a healthy skepticism of government; and (3) a judge who, in his or her personal or professional life, has stood for principles and paid the price. Judge Ruiz gave appreciation to Luther and McGahn for believing he "fit this mold" and thanked them for giving him the opportunity to serve on the federal bench.

In continuing to acknowledge his "investors," Judge Ruiz recognized the "incredible team at the Office of Legal Policy with the Department of Justice," and specifically Beth Williams, Michael Fragoso and Andrew Bernie, who guided Judge Ruiz through the confirmation process. Judge Ruiz also thanked United States Sens. Mitch McConnell, Chuck Grassley, Lindsey Graham, Marco Rubio

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and Rick Scott and their respective teams for their support and leadership. He particularly thanked Sen. Scott, who set in motion the chain of events that brought Judge Ruiz to the federal bench by appointing Judge Ruiz to the state court bench twice previously. Judge Ruiz recognized Jesse Panuccio, former general counsel to then-Gov. Scott, who played an integral role in Judge Ruiz's state court appointments. Judge Ruiz further noted Panuccio's rise to acting assistant attorney general in the Department of Justice and thanked him for his friendship, guidance and support throughout the nomination process.

Next, Judge Ruiz turned to Justice Luck, with whom he served as a circuit court judge in Florida's Eleventh Judicial Circuit. Judge Ruiz thanked Justice Luck for being a "dedicated friend and colleague" and underscored that the two share a similar passion for the law. "We supported one another throughout our respective judicial journeys, and I am blessed to have always had you in my corner," said Judge Ruiz. Judge Ruiz went on to thank the Judicial Nominating Commission convened by Sens. Rubio and Scott and chaired by former Lt. Gov. Carlos Lopez-Cantera and Conference Chair Manny Kadre.

Finally, Judge Ruiz turned to his most important "investors," his family. He spoke about the heightened importance of the day for his parents, Rodolfo and Carmen, who sought refuge from a communist dictatorship by coming to the United States:

"They witnessed firsthand the suppression of civil liberties and the absence of freedom of speech and the press. Today, they got to watch their only son take an oath to support and defend the Constitution of the United States. Only in America could the son of Cuban refugees ascend to become a federal judge. And to the extent I possess any of the values that make a good judge — integrity, humility, compassion and courage — it is because my parents, and my grandparents — who I know are watching over me today — taught me these values and what it means to be a good spouse, father, and person."

Judge Ruiz expressed similar feelings in speaking about his wife, Jenny. "Despite being bestowed with the title of

Judge or Your Honor, said titles cannot compare with the pride and joy of being referred to as Jenny's husband," said Judge Ruiz. He recounted all the roles that Jenny plays including spouse, mother, lawyer, partner, campaign manager and, most recently, Girl Scout troop leader. He referred to Jenny as a "force of nature" and his "angel investor," who was the first to believe that judicial service was his calling in life. Judge Ruiz also expressed immense pride in his children, stating, "Coming home to your smiling faces, inquiring minds and infectious laughs allows me to recharge each and every day."

Judge Ruiz next thanked the greatest "investor" in his career, Judge Moreno. Judge Ruiz revealed the reason why he chose to hold his investiture on Aug. 15: It was the same day Judge Moreno was invested 29 years earlier. He emphasized that, with Judge Moreno, the term "clerk family" means exactly that — an extended family of clerks who look out for one another. Judge Ruiz then pulled out a stack of original notes that he had maintained since his clerkship, which instructed clerks how to successfully navigate a clerkship in Judge Moreno's chambers. "Tell whoever calls to put it in writing," read one of the notes. "The Order speaks for itself," said another. Of course, not all the notes dealt with the intricacies of legal analysis; "Café con leche, no sugar, three Splendas," read Judge Moreno's coffee order. "I don't think he uses the Splenda anymore," joked Judge Ruiz. Then, Judge Ruiz expressed his gratitude for Judge Moreno's mentorship, example and legacy, stating that "the most rewarding part" of his investiture was "the ability to further (Judge Moreno's) legacy in the Southern District of Florida."

Judge Ruiz ended by thanking all those in attendance, including his current and former staff, for helping him on his journey to the federal bench. He also thanked his former colleagues in Florida's Eleventh Judicial Circuit and the Miami-Dade County Attorney's Office. "In the end, I promise you all that I will do everything in my power to be a faithful servant to the Constitution and the laws of this great nation," he concluded.

In sum, Judge Ruiz's investiture was a memorable event and a true reflection of who Judge Ruiz is and how beloved he is by his community.



Looking back

Judge Frank Johnson and school desegregation in Montgomery County, Alabama

By David A. Bagwell

Judge Frank Johnson issued a really major school desegregation opinion in 1974 at the end of my clerkship year, just four days before I left. It went to the U.S. Supreme Court, which denied certiorari, but in a way that Bob Woodward in his 1979 book on the Supreme Court, "The Brethren," found significant.

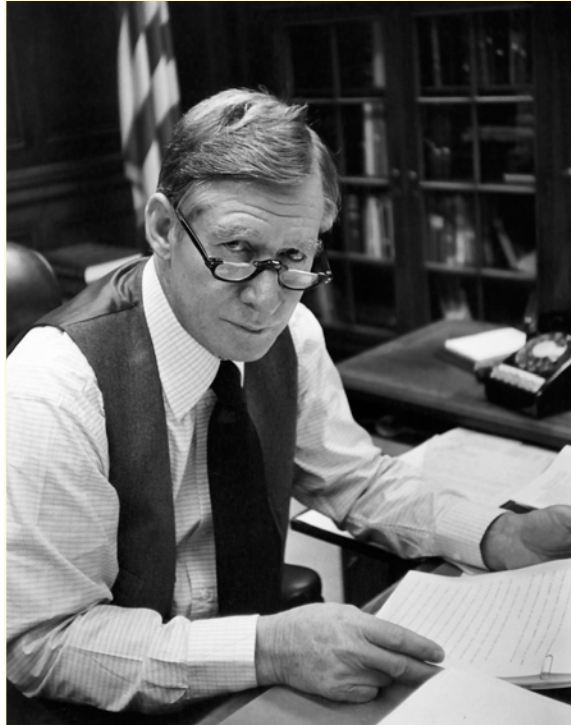
The case history goes to an interesting question: Just how pushy was Judge Johnson in the desegregation of the Montgomery County School system? Was he too pushy? Not enough? Opinions differed in the 1960s and '70s and likely still do.

Here is the background to the case and what happened in the case my year, in 1974.

1954-1964. I was educated in the public schools of Montgomery County. I graduated from Sidney Lanier High School in 1964, 10 years after the Supreme Court's *Brown* decision, *Brown v. Board of Educ.*, 347 U.S. 483 (1954), and nine years after its "all deliberate speed" opinion the next year, *Brown v. Board of Educ.*, 349 U.S. 294 (1955). In those 10 years, as far as I know and as far as I can figure out, the school board — upon which the duty to desegregate rested — did zero desegregation in the Montgomery public schools, except to make some plans about how to do it. I went through my entire school life in all-white public schools, graduating 10 years after *Brown*. That seems amazing to me now.

Nobody sued the school board for a decade after *Brown*. That seems amazing, too.

You cannot blame the judge if nobody sued. He had "no roving commission," as they say, to look up things to fix and to fix them.



Judge Frank Johnson worked long hours preparing his 1974 ruling in *Carr v. Montgomery County Bd. Of Educ.*
(Photo provided by David A. Bagwell)

Anyhow, plenty of other stuff was going on. In early 1963, a suit was filed to desegregate the schools of Macon County, *Lee v. Macon County*, 221 F. Supp. 297 (M.D. Ala. 1963), in due course before a three-judge court (consisting of Richard Rives, Frank Johnson and Harlan Grooms); and on three separate occasions that year, the court had to "enjoin state officials from various forms of interference with the schools in Macon County," *Lee v. Macon County*, 267 F. Supp. 458, 460 (M.D. Ala. 1967).

1964-1968. Almost exactly when I graduated from Lanier, on May 11, 1964, the Carr family, represented by Tuskegee lawyer Fred Gray, filed a school desegregation case about Montgomery County, which was assigned to Judge Johnson. (Unlike the Macon County case, this one did not seek an injunction against a state statute, so it was not a proper three-

judge court case.) One week later, the judge designated the United States of America as *amicus curiae*. Two-and-a-half months after filing, the judge issued a preliminary injunction ordering that, for that fall of 1964, the first, 10th, 11th and 12th grades must be desegregated. *Carr v. Montgomery County Board of Educ.*, 232 F. Supp. 705, 709 (M.D. Ala. 1964).

In March of 1966, in an unreported and unappealed opinion, the judge ordered complete desegregation of each grade, that there be no waiting period for school athletics for the new students, and that teachers be assigned so that no school should have faculty and staff of

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About the author: David A. Bagwell practiced in Mobile and later Fairhope, Alabama, and from 1979-1985 was a full-time U.S. magistrate for the Southern District of Alabama.

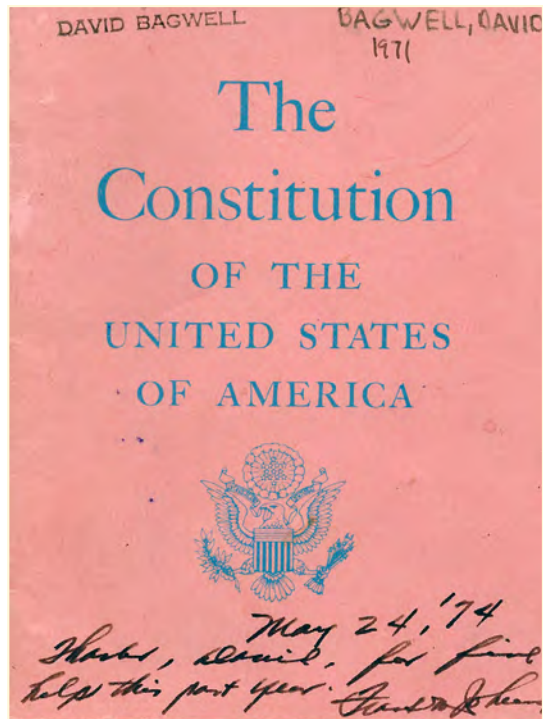
one race. *Carr v. Montgomery County Board of Educ.*, 289 F. Supp. 647, 649. (M.D. Ala. 1968).

In 1968, four years after the case was filed, and the year I graduated from college (and the year Martin Luther King, Jr. and Robert Kennedy were assassinated and the Democratic Convention went crazy), Judge Johnson ordered “more specific requirements governing minimum amounts of progress in the future in the several areas.” *Id.* at 652. Because the school board had done little or nothing to desegregate, he ordered precise faculty racial ratios in all schools (one of every six teachers must be of a race different from the majority race of the school). He eliminated overlapping bus routes based on race. And what really set him off about the actions of the school board was what it had done: The board had built three new schools — Jefferson Davis High, and Peter Crump and Southlawn Elementary — in places that the judge found had been intended to minimize integration. In the case of Jeff Davis, he placed extensive burdens on the board to publicize the availability of the school to all. *Carr v. Montgomery County Board of Educ.*, 289 F. Supp. 647 (M.D. Ala. 1968).

On appeal that summer, just before I went off to Army boot camp, the old Fifth Circuit (Walter Gewin, Homer Thornberry and J. Robert Elliott, a district judge, JJ), with great praise for both the district judge and the school board, affirmed except for the required faculty ratios, holding that instead of a requirement of one-in-six to be a different race, the trial court order should be modified “to mean substantially or approximately five to one.” *Id.* at 8. Judge Thornberry concurred except for the modification of the ratios. On appeal to the Supreme Court, Justice Hugo Black for a unanimous court — and with great praise for both the district judge and the school board — reversed the court of appeals and reinstated Judge Johnson’s order and the ratios. *United States v. Montgomery County Board of Education*, 395 U.S. 225 (1969).

1968-74. Between 1968 and 1974, cases in both the Supreme Court and the Court of Appeals were requiring much more in the way of desegregation, including what George Wallace and others on the right repeatedly called “busin’ to achieve racial balance,” in their call for “neighborhood schools.” Probably the high-water mark for equitable remedies in school desegregation cases was the Supreme Court’s 1971 opinion in *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971), a unanimous opinion stressing the requirement to desegregate fully and now, and the vast equitable powers of federal courts, including the power to assign students and faculty, and to use busing to remedy past failings.

1974. By the time I became a clerk for Judge Johnson (June 18, 1973), in the *Carr* case, Fred Gray and



Judge Frank Johnson signed author David Bagwell’s Constitution two days after the judge’s desegregation decision in 1974.

Solomon Seay represented the class, former Johnson law clerk Howard Mandell had intervened for Penelope Ann Jenkins and others, the Justice Department was still involved and the board was still represented by Vaughan Hill Robison and Joe Phelps of the Robison, Belser, Brewer and Phelps firm, the longtime lawyers for the board.

That year, there were voluminous statistical filings by all parties and several days of hearings and arguments. Afterward, the judge waded into the issues. We law clerks had much less to do with this effort than was customary with the judge. He arrived at work even earlier than usual and stayed later; he stayed in his office with the door closed and worked on the statistics.

One day, the judge came into my office in his shirtsleeves — he had not been in court or in a meeting as far as I knew — with a scrap of paper with the following citation written by hand: “*Ellis v. Board of Education*, 423 F.2d 203 (5th Cir. 1970).” He seemed very happy. I don’t recall whether the handwriting was his or not. He said “this is going to be the basis of my opinion. Look it up and Shepardize it and let me know what you find,” or words to that effect. I was mystified at first; what was this case? Who had told him about it? Where was he when he got

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this cite? Did some other judge tell him about the *Ellis* case? Somebody else? Did he meet with all the lawyers, somewhere else, and I did not know about it? Surely, he would not have met ex parte with less than all the lawyers, in this case of all cases? Here, 45 years later, I still don't know the answers to those questions.

He left me, and he went back to work.

I looked it up. It was a case involving Orange County, Florida, containing several cities, including what they several times called "Orlando" in those pre-Walt Disney days, and Winter Park, Winter Garden, Apopka and rural areas. The court was Judges Griffin Bell, Robert Ainsworth and John Godbold. Judge Bell wrote the opinion for a unanimous court and started off saying that "(t)he issue presented in this case is whether the Orange County, Florida public school system is now unitary." *Id.* at 204. The word "unitary" in those days in school desegregation cases was a term of art, based on *Green v. County School Bd.*, 391 U.S. 430 (1968), and other cases, requiring desegregation based on six factors: student bodies, faculty, staff, transportation, extracurricular activities and facilities. The panel held that the system was unitary except for one factor: a neighborhood school system.

Respecting the neighborhood school system, the panel wrote that:

a true neighborhood school system, assigning students to the school nearest the student's home up to the capacity of the given school, will result in the desegregation of eight of the remaining eleven all-Negro student body schools in the Orange County system, leaving three elementary schools.

Id. at 207. The court said that (1) the neighborhood school system had to take account of the capacity of the schools, and (2) the system must be applied without exceptions based on, for example, traffic patterns. The panel remanded the case for further work and evaluation, as a unitary system.

I Shepardized the case. In the four years since 1970, there had been a number of Fifth Circuit and Supreme Court school desegregation cases with strict requirements, including *Swann* and several in the Fifth Circuit. Several cases specifically did not buy the "neighborhood school" idea and seemed to hem *Ellis* in.

I gave my research to the judge, explained what I am sure he must already have known, that it was going to be hard to get a neighborhood school plan affirmed. I figured it would be reversed. He took it from there; he would be doing all the drafting, and he was working hard on it. In no



Judge Frank Johnson found that Jefferson Davis High School was one of three schools in Montgomery that the school board build in places that had been intended to minimize integration. In the case of Jeff Davis, he placed extensive burdens on the board to publicize the availability of the school. (Photo from Montgomery Public Schools)

other case my year did he take such a serious role in the drafting.

Naturally, I didn't ask him "why do you want to allow neighborhood elementary schools?" I didn't think it was appropriate for a young law clerk to ask that of Judge Frank Johnson. But I knew and could see what a burden this case was for him, weighing heavily on him. I guessed that his concern was that if he ordered too much, too fast, especially in elementary school, it would trigger serious white flight to private schools, leaving a mostly black system.

But he gave me one more assignment. He knew he had to run a major risk of reversal by going with a neighborhood school plan. He wanted me to draft a final part of the opinion, covering all of his history of desegregating everything in Alabama over the almost 20 years of his judgeship, citing all those cases. He said, "I want them to know who they are dealing with!" Those were his exact words; I remember them 45 years later.

He took my draft of that and ran with it, making a few changes of course. Here is how it starts out:

This Court feels an obligation to point out that its allowance of a neighborhood elementary school system does not constitute an abandonment by this Court of the goal of securing to all citizens their rights guaranteed by the Fourteenth Amendment. This Court has always strived to guarantee to all citizens, both black and white, their right to equal protection of the laws. This court has never balked at the enforcement of constitutional rights in racial discrimination cases. In the last nineteen years, this Court has sat in cases in which the constitutional rights of black citizens had been denied in that blacks were discriminated against when the sought to ...

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And then the opinion cited cases in some 16 areas in which the judge had integrated the heck out of stuff. It should suffice to “let them know who they are dealing with.”

The main part of the draft opinion also covered scads of racial data about the schools. He made a strong argument that equity is flexible and variable and that, in this system, a series of neighborhood elementary schools was appropriate, in accordance with *Ellis*, and correct.

He issued the opinion on May 22, 1974, *Carr v. Montgomery County Bd. of Educ.*, 377 F. Supp. 1123 (M.D. Ala. 1974), four days before I left to go into private practice in Mobile.

The case was appealed. The panel included Judges Walter Gewin, Irving Goldberg and David Dyer. Remember that, in 1968, when Judge Gewin was on the panel that tinkered with Frank Johnson’s lower court opinion in the same case, they had been reversed unanimously by the Supreme Court. They did not tinker with Johnson’s opinion this time. Gewin and Dyer voted to affirm on the basis of Judge Johnson’s order. *Carr v. Montgomery County Bd. of Educ.*, 511 F.2d 1374 (5th Cir. 1975). Judge Goldberg wrote that “respectfully, but without equivocation, I dissent.” He wrote a long opinion taking issue with most of what Judge Johnson had done, pulling the punch only by noting:

I am confident that our respected, scholarly, and courageous trial judge did not hesitate to apply the law correctly as he saw it to the facts before him in Montgomery. I firmly believe, however, that that view of the law is erroneous and in conflict with previous decisions of this Court and the Supreme Court of the United States.

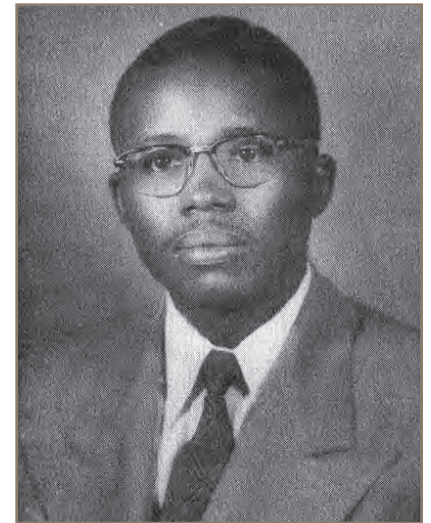
Id. at 1387. Judge Goldberg said he would reverse the parts about elementary and junior high schools and remand for further proceedings, and would reverse the award of costs against plaintiffs and plaintiff intervenors. Id. at 1388.

A request was made to reconsider the ruling en banc, which was denied by a vote of 11-4, with Judges Irving Goldberg, John Brown, John Minor Wisdom and Homer Thornberry dissenting from the failure to go en banc, for the reasons given in Judge Goldberg’s dissent from the panel opinion.

Plaintiffs petitioned for the writ of certiorari, which was denied on Nov. 17, 1975. *Carr v. Montgomery County Bd. of Educ.*, 423 U.S. 986 (1975). As they always say, “Of course we never know what happens in a Supreme Court conference dealing with and denying a petition for the writ of certiorari, unless some justice writes an opinion on the denial.”

Except that this time we do know what happened. Bob Woodward in his 1979 book on the Supreme Court, “The Brethren,” got people to talk on background about what happened. Woodward says that what happened was that the court was roughly evenly divided on the extent to which and the means by which desegregation was required (like “busin’ to achieve racial balance”).

The liberals did not want to grant certiorari because they were afraid that, considering Judge Johnson’s stature and



Tuskegee lawyer Fred Gray filed the Montgomery County school desegregation case in 1964 on behalf of the Carr family. (Encyclopedia of Alabama)

his opinion, the result would be a victory for neighborhood schools and limited relief; and the conservatives did not want to grant certiorari because they were afraid that the liberal view would prevail, as it had in *Swann* four years before. So, nobody could get the votes for certiorari to be granted.

I have no reason to doubt what Woodward says.

So, the Supreme Court was about evenly split on whether Judge Johnson didn’t go far enough to desegregate the Montgomery Schools. The



Joseph Phelps represented the Montgomery school board in the desegregation case. He later served as a judge for 18 years and was instrumental in reforming Alabama’s justice system. In 1990, the Alabama State Bar recognized him with its Judicial Award of Merit. (Courtesy Alabama State Bar)

old Fifth Circuit was split on that, too, apparently, 11-4. I’ll let you decide. I would never criticize Frank Johnson on anything he did or did not do in a Montgomery County school desegregation case, even if it was 45 years ago and he is dead.

Robert S. Vance Luncheon: Honoring Judge Vance's legacy

Editor's note: *The Atlanta Chapter of the Federal Bar Association first presented the Robert S. Vance Forum on the Bill of Rights in 1990 in honor of Eleventh Circuit Court of Appeals Judge Robert S. Vance, a lifelong champion of civil rights. The following remarks were presented at the 2019 forum on Sept. 18.*

My name is Phil Holladay, and I had the honor and privilege of clerking for Judge Robert Smith Vance from August 1984 through July 1985.

Looking around the room, I see several judges and others here who knew Judge Vance and some who knew him quite well. For those of you not lucky enough to have known him, I would describe him as a man who, at times, truly seemed a larger-than-life figure. That was my first impression during my clerkship interview with him in the spring of 1983, and it remains my lasting memory of him today.

Judge Vance was a big presence physically – he was well over 6 feet tall with an outsized gregarious and exuberant personality that oozed confidence. He had a big, booming voice that got and commanded your attention whenever he spoke and a loud infectious laugh that echoed through his chambers constantly during the day.

Judge Vance was smart. He graduated from college at age 19 and law school at age 21. He was funny, charismatic, compassionate, opinionated, courageous and never afraid to speak his mind or take an unpopular stand, something he did often both as a lawyer and as a judge. And, he was a great storyteller. Those were among the characteristics that made him a great advocate and trial lawyer long before he was appointed to the Eleventh Circuit Court of Appeals.

The thing I think that stood out most to me, though, as someone just starting my professional career, was how much Judge Vance loved life, and his insistence on living it on his terms. He loved to travel, to read, and enjoyed good food and cooking shows. One of his favorite television cooking shows was hosted by Justin Wilson, a



Judge Robert S. Vance summed up his judicial philosophy: Get the law right; express it clearly; apply it consistently, even when it conflicts with your personal opinion and beliefs; and do justice. (Photo courtesy of the Eleventh Circuit Court of Appeals)

Cajun-inspired chef and humorist whose trademark catchphrase was “I gar-on-tee it,” which Wilson delivered with an unforgettable Louisiana twang. Judge Vance often repeated that catchphrase and enjoyed delivering it in his own memorable Cajun-like accent. Judge Vance also loved training show dogs and dog shows, the University of Alabama and Alabama football. Best of all, he simply loved having a good time with whoever he was with and no matter what he was doing, which made our clerkship year a remarkable experience for me and my co-clerks, Joyce Tichy and Marilyn Drees.

During the year I spent getting to know and working with Judge Vance, it seemed to me that the three things that were most important in his life were his family, his intense interest in politics and serving as a judge on this court.

Judge Vance loved talking about his wife, Helen, and their two sons, young Bob and Charles. At that time, both boys were still in school and just starting to make decisions about their career paths. Judge Vance would literally beam with pride when talking about his sons’ accomplishments and aspirations. Young Bob elected to follow in his father’s footsteps and chose a legal career, while Charles decided to pursue a career in medicine. I know Judge Vance would have been so proud to watch their respective careers blossom and flourish and am sure he would especially have loved seeing young Bob become a respected and esteemed circuit court trial judge in Birmingham. I also know he would have been equally proud of Bob’s wife Joyce’s legal career, especially her service as the U.S. attorney for the Northern District of Alabama. I am certain he also would have enjoyed and not been at all shy in offering his views and colorful commentary on her part-time work today as a cable TV legal commentator.

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But there was never any doubt that Helen was glue that held the Vance family together. She was as quiet, reserved and soft-spoken as Judge Vance was outgoing, gregarious and exuberant. When she spoke, though, everyone – and especially Judge Vance – listened. Their devoted partnership was special and one that allowed each to thrive in their own and very different ways.

Politics was a prominent part of – and at times a driving force in – Judge Vance’s life before he became a judge. He was president of the student body at the University of Alabama at a time when that office was almost as revered in the state as the governor’s office. And holding that office most assuredly identified one as a future force to be reckoned in Alabama. That certainly proved true for Judge Vance.

He was later chairman of the Alabama Democratic Party for more than a decade and was responsible for integrating the state party. As chairman, he led the first racially mixed Alabama delegation to the 1968 Democratic Convention in Chicago. He also constantly clashed with George Wallace and kept Wallace and the party’s states-rights wing from ever gaining control of the Alabama Democratic Party – a remarkable feat given the times and Wallace’s then-unmatched political power and popularity in the state. It was during this period that he also led the effort to abolish the “gentleman’s agreement” in Birmingham and Jefferson County. Under that “agreement,” Birmingham lawyers worked together to make sure that black jurors on the venire panels never actually made it onto a jury. Bob Vance helped change that.

I once asked Judge Vance what he missed most after becoming a judge. He did not hesitate: “politics and trying cases.” He missed the human interaction, stress, adrenaline rush, competition and drama involved in both.

It seems especially fitting that I started today at the fall meeting of the Carter Center’s Board of Councilors, since President Carter was responsible for Judge Vance’s judicial appointment. Judge Vance loved serving on this court. He thought it was an honor and privilege that came with great responsibilities and demanded one’s personal and professional best every day. He often said that serving on the U.S. Court of Appeals was the greatest job any lawyer could have – he thought it was better than serving on the U.S. Supreme Court, since that court hears and decides so few cases.

Judge Vance’s judicial philosophy was straightforward, and he outlined it for me with remarkable clarity and brevity in my clerkship interview: (1) Get the law right; (2) express it clearly; (3) apply it consistently, even when it conflicts with your personal opinion and beliefs; and

(4) do justice. He then added a caveat with his trademark wry smile: Always apply heightened scrutiny to the government’s position and don’t hesitate to call them out and kick them where it counts when deserved. OK, he was a little more graphic and descriptive than that. I always suspected his battles with the General Services Administration over the remodeling of this courthouse, and the construction of Birmingham courthouse that now bears his name, may have been in part responsible for that caveat.

After his assassination, a group of former clerks pored through all 406 of the opinions authored by Judge Vance and analyzed them in an effort to try to objectively capture his judicial philosophy. It was a remarkable undertaking. Because I can’t improve on that work, I am going to read the portion of the article that I think best captures Bob Vance, the jurist:

There is a strong strain through Judge Vance’s case law of ensuring equal access for all persons to the rights of citizenship, the protection of the law and the mechanisms of government. Thus, in procedural questions of standing, his opinions read the law’s requirements in ways that protect the access of citizens to the courts; in questions of civil rights, constitutional law, and cases dealing with the relationship of individuals to the powers of government, his opinions read the facts with a strong dose of realism and interpreted them in ways to protect and further the rights of individuals; where citizens were involved in a dispute with the machinery of government, he was insistent that that machinery work for its intended beneficiaries rather than for the convenience of its functionaries; in criminal cases he was unwilling to allow clever lawyerly arguments to supplant the facts about whether a criminal suspect received a genuinely fair trial, a stance that would sometimes hurt but could also help a defendant.

The cases show that he approached judging with a strong sense of integrity. He was an intermediate level judge with powers to determine the law limited by the Congress and the Supreme Court, and where the Supreme Court had interpreted the law, even in a way he considered incorrect, he would enforce that interpretation with all the vigor his office demanded. He despised the death penalty as barbarous, for example, and would himself have voted to abolish it, but so long as the Supreme Court permitted it, he would enforce it where the facts demanded it, if and only if he were convinced that the defendant had received a fair trial. And where district courts attempted to argue their way around what he saw as settled precedent, he could be most vigorous in correcting that tendency.¹

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I would be remiss and not do justice to the man if I closed without talking about what a great mentor, teacher and friend Judge Vance was, and how much fun it was to clerk for him. While there was never a doubt who was in charge, Judge Vance gave his clerks great independence and autonomy. He loved, welcomed and encouraged vigorous and wide-ranging debate and argument when there was disagreement about an issue or outcome, and did not mind being challenged or argued with as long as the end result was getting the law right and doing justice. Joyce, Marilyn and I were always surprised to hear when we talked to the other clerks on the court just how differently Judge Vance ran his chambers as compared to other judges.

Judge Vance treated his law clerks and his loyal assistants, Mary Nell Terry and Shariann Fisher, like family. We went on lunch road trips together and always went to dinner together at least once during every out-of-town sitting. He made clear we were a team and that we were to treat each other with dignity and respect, which is exactly what he did.

My youngest brother, who held at least a half-dozen legal jobs before making the transition from lawyer to

schoolteacher, loves to tease me about my advancing age and has more than once referred to me as a dinosaur of sorts, since I have only had two jobs since graduating from law school – my clerkship with Judge Vance and my 34 years at King & Spalding. Even though I am getting older, there are lots of things in life and the law that I still have not figured out, but there are two things of which I am certain: (1) Clerking for Judge Vance is the best possible first legal job I could have had; and (2) much of my success in my second job, at King & Spalding and in my trial practice, is the direct result of what I learned from Judge Vance about the law, the impact it has on people's lives, and the responsibilities lawyers have to their clients, their communities, the profession and society as a whole.

Robert S. Vance's life was one very well-lived, albeit one tragically cut far too short by a senseless act of violence. I really appreciate the opportunity to talk to you today and to share some of my thoughts and memories of Judge Vance's remarkable life, career and legacy.

1. Footprints of a Just Man: The Case Law of Judge Robert S. Vance, 42 Alabama Law Review 987, 991-92 (1991).



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This newsletter produced courtesy of The Florida Bar

The Hon. Raymond B. Ray retires

By Mindy Y. Kubs

After serving nearly 27 years as a bankruptcy judge for the United States Bankruptcy Court for the Southern District of Florida, Judge Raymond B. Ray retired on Sept. 30, 2019. Judge Ray's contributions to the bankruptcy community as a whole, and to the careers of numerous lawyers like myself, are many. As a practicing attorney, he worked in a methodical and effective manner, without a lot of fanfare, and his demeanor in the courtroom was the same.

Judge Ray ran his courtroom in a steady and dignified manner, and he resolved the matters before him expeditiously and consistent with the law. His presence on the bench will be missed.

Judge Ray grew up in St. Petersburg, Florida. After high school, he put himself through the University of South Florida in Tampa by working a full-time job on the night shift of the St. Petersburg Times. When Judge Ray was not working or studying, he was active in the Naval Reserve and the Reserve Officer Candidate program. Upon graduating in 1965 with a degree in business management, Judge Ray was commissioned an ensign in the U.S. Navy, and he served multiple tours in the Vietnam War, both at sea and inland. It was after his release from active duty, in December of 1968, that Judge Ray attended the law school at the University of Florida.

Following graduation from law school in 1971, Judge Ray was hired as an assistant U.S. attorney for the Southern District of Florida in Miami. In 1973, he moved to Fort Lauderdale and entered private practice, first



Shortly before his retirement, Judge Raymond B. Ray's former law clerks joined him for lunch, at which time he reflected on what had been accomplished in his courtroom. From left, Mindy Kubs, Nathalie Cadet-James, Tarek Kiem, Isaac Marchushamer, Patrick Dorsey, Ashley Dillman-Bruce and Adam Gilbert (current law clerk at the time).

with the law firm of Ferrero, Middlebrooks and Houston, and eventually commanding a successful solo practice until his appointment to the bench on Nov. 9, 1993. Since that time, Judge Ray has presided over 107,567 bankruptcy cases, and an additional 6,676 adversary proceedings.

Judge Ray had a number of memorable cases, two of which were the related Chapter 11 cases of Thomas A. Warmus and his company, American Way Service Corp. Prior to his bankruptcy, Warmus had a personal net

worth of approximately \$50 million. One year after the cases were filed, Judge Ray approved the appointment of liquidating trustees to administer the estates, and the trustees worked together to pursue the recovery of fraudulent transfers from Warmus, his family members and other related entities. For much of the time, Warmus actively defended himself without counsel. As his law clerk at the time, I can attest that Warmus could be a challenging and frustrating litigant, but Judge Ray was the epitome of patience. Judge Ray fairly considered Warmus' pro se pleadings, and he ensured that Warmus felt sufficiently heard in the courtroom. Warmus was eventually found guilty of hiding more than \$2 million from the court and his creditors and was sentenced to 97 months in prison for bankruptcy fraud.

One of Judge Ray's most high-profile cases relates to the \$1.2 billion Ponzi scheme perpetrated by former

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About the author

Mindy Y. Kubs is an attorney at Kozyak Tropin Throckmorton LLC in Miami, Florida. She was the law clerk to the Hon. Raymond B. Ray from the fall of 1995 until the fall of 2000.

South Florida lawyer Scott Rothstein and his law firm, Rothstein Rosenfeldt Adler, P.A. (“RRA”). Rothstein’s fraud involved the sale of interests in nonexistent litigation settlements, with new investor money being used to pay earlier investors and fund Rothstein’s extravagant lifestyle. In 2009, three disgruntled Rothstein investors claiming to have lost more than \$850,000 placed RRA into an involuntary Chapter 11 bankruptcy proceeding.

Administration of the bankruptcy estate was complicated by the U.S Attorney’s Office criminal prosecution of Rothstein and others involved in the fraud, and its efforts to administer assets that would otherwise be made available to RRA’s creditors. Ultimately, the trustee prevailed in his efforts to marshal RRA’s assets for creditors, and Judge Ray approved a liquidating plan that, unlike many Ponzi scheme cases, could result in a full recovery for defrauded investors.

The majority of Judge Ray’s cases, as with all bankruptcy judges, were not as complex or well-known as those noted above. But, to Judge Ray they were equally important. Shortly before his retirement, Judge Ray’s former law clerks joined him for lunch, at which time he

reflected on what was accomplished in his courtroom. Countless jobs and homes were saved and, yes, fraudsters were held accountable for their misdeeds. I had the pleasure of clerking for Judge Ray for approximately five years, beginning in 1995, and, having spoken with some of Judge Ray’s other clerks, I know we all agree that Judge Ray’s primary focus was always on obtaining a fair result. He could see through the “excess” to get to the heart of the matter, and he kept his eye on the big picture. He was a teacher and mentor to all of us, and our lives and careers are all better for having had the opportunity to work as closely with him as we did.

Always humble, Judge Ray did not want a big party to celebrate his retirement. So, instead, the Bankruptcy Bar Association for the Southern District of Florida hosted an intimate reception at the Fort Lauderdale Antique Car Museum. Judge Ray was joined by his family, Bankruptcy Court Chief Judge Laurel M. Isicoff, Judge A. Jay Cristol, Judge Ray’s current and former staff and law clerks, trustees and members of the local bankruptcy bar to celebrate a great career of public service. We wish him all the best on his well-earned retirement.



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2019 High School Essay Contest

To celebrate civics education and foster a deeper understanding of the role of the courts in our government, the lawyers and judges of the United States District Court for the Middle District of Florida, with help from the Jacksonville Chapter of the Federal Bar Association, hosted the 2019 High School Essay Contest, this year focusing on the separation of powers and checks and balances.

Students in grades 10 through 12 in all counties in the Jacksonville Division were eligible to submit an essay no longer than 1,000 words based on this prompt:



The Founding Fathers created a “divided government” by separating important powers among each of the three branches – executive, legislative, and judicial. To prevent any one branch from becoming too powerful, the Framers established a system of checks and balances. Some argue, however, the concepts of separation of powers and checks and balances undermine the government’s ability to swiftly and decisively respond to problems facing the nation.

Identify a historical or current event that exemplifies the concepts of separation of powers and checks and balances. Drawing on primary sources, evaluate the strengths and weaknesses of a “divided government.”

The 2019 High School Essay Contest was a great success, with 112 students from 22 schools and homeschooled in 5 counties submitted essays. Thirty-three lawyers and seven federal judges selected the winners. Westside High School in Jacksonville submitted the most entries.

The essays were judged using four criteria: (1) understanding of legal principles; (2) identification of a historical or current event that exemplifies the concepts of separation of powers and checks and balances; (3) clarity and effectiveness in analyzing the strengths and weaknesses of a “divided government”; and (4) grammar, spelling and composition.



Awaiting the ceremony are contest winners (from left) Ella George of The Episcopal School of Jacksonville, Marissa Ann Cochran Norton of Paxon School for Advanced Studies, Inéz Anais Nieves Suárez of Fleming Island High School, and Mark Mori of The Episcopal School of Jacksonville.

Staff Attorney Kirsten Clement, former Judicial Law Clerk Mary Margaret Giannini and Outreach Coordinator Suzanne Judas spearheaded the 2019 High School Essay Contest. Clement observed, “As lawyers, we have an obligation to teach young people about civic awareness. I’m honored to be involved in a program that encourages high school students to reflect upon the foundation of our democracy in a way they may not otherwise have done.”

Mark Mori of The Episcopal School of Jacksonville received First Place, and with it, \$2,000 and an opportunity to shadow a federal judge for a day. Mark pointed to executive, legislative and judicial actions during the Great Depression as historic examples. He began his essay:

When faced with near total societal collapse, any republic, (Athenian), Roman, or 1st French, can and did become revolutionary, radically altering their political system to a point of no return so as to solve whatever crisis face(d) the nation. Often times, power becomes consolidated in a single individual empowering them to solve the crisis. In the short term, this can work. Both Napoleon and Caesar brought temporary stability; they prevented total societal collapse. However, these strongmen enabled a different type of collapse; their governments collapsed into tyranny. Their formerly republican systems appointed them dictators or crowned them and their sons emperors. During the Great Depression, if not for the (United States’) unique systems of checks and balances, it could easily have seen the same fate.

Inéz Anais Nieves Suárez of Fleming Island High School received Second Place, and with it \$1,000. Marissa Ann

Editor’s note: The Eleventh Circuit Historical Society specially thanks U.S. Magistrate Judge Patricia D. Barksdale for giving us the opportunity to report on the Middle District of Florida’s continuing efforts to conduct community outreach. All photos courtesy of the U.S. District Court for the Middle District of Florida.

Cochran Norton of Paxon School for Advanced Studies and Ella George of The Episcopal School of Jacksonville tied for Third Place, and each received \$500. For their examples, Inéz pointed to the Defense of Marriage Act, Marissa pointed to *United States v. Alvarez* (involving a false claim of receipt of the Congressional Medal of Honor), and Ella pointed to actions surrounding the proposed border wall.

Along with the awards, Mark, Inéz, Marissa and Ella's teachers each received a \$500 classroom grant. Emily Farmer, who teaches Mark and Ella, was delighted. She explained the prompt "fit in perfectly with my curriculum and gave the students an opportunity to further reflect on the importance of checks and balances in both a historical and modern context."

Taking the opportunity to tout civics education, Farmer added, "I often tell my students that government class is the most relevant class they will take, because its impact on their lives extends way beyond high school. We must continue to create opportunities, like the essay contest, that allow students to take what they're learning and make real-world applications. Our democracy depends on an educated and informed citizenry."

The students with the top 10 essays, their families, their teachers and their principals were honored at an awards ceremony on Nov. 20, 2019, in the Ceremonial Courtroom of the Bryan Simpson United States Courthouse in Jacksonville, complete with summaries of essays, praise for the teachers, certificates for the students, and cupcakes and lemonade for all. The audience included judges, lawyers, teachers, school administrators and courthouse personnel.

The students with the top three essays were also recognized before their families, lawyers, and judges of the Jacksonville Chapter of the Federal Bar Association at the association's annual "Spirit of Giving" luncheon on Dec. 12, 2019, at the River Club in downtown Jacksonville.

Inspired by the essay contest in the Ninth Circuit, the Middle District of Florida began the contest in 2018 and hopes to expand the contest to other divisions of the Middle District of Florida.

The 2019 High School Essay Contest is just one of many ways the Jacksonville Division, the Jacksonville Chapter of the Federal Bar Association and other organizations have joined to reach out to the community and address the need for an informed citizenry. Other events include a naturalization ceremony held during halftime at the



From left, District Judges Timothy Corrigan, Marcia Morales Howard and Brian Davis preside over the awards ceremony.

NFL football game between the Jacksonville Jaguars and the Indianapolis Colts (Dec. 29, 2019); a naturalization ceremony at Wolfson High School (Feb. 5, 2020); a mock-trial competition at the federal courthouse (Feb. 21, 2020); a naturalization ceremony at the state courthouse (Feb. 25, 2020); the hosting of a traveling exhibit from the American Bar Association's Standing Committee on the Library of Congress titled "100 Years After the 19th Amendment: Their Legacy, Our Future" at the state courthouse (March 23 to March 27, 2020) and the main public library (March 28 to April 3, 2020), and historic re-enactments of the trial of Susan B. Anthony at the state courthouse (March 26, 2020).

At the heart of many of the activities is United States District Judge Marcia Morales Howard. She explains, "Understanding the role of the courts and our system of government is critical to maintaining the trust and confidence of the public. Programs like the High School Essay Contest and Open Doors to Federal Courts allow the court to engage young people directly in dialogue about what courts really do and the important role courts play in our American government." She highlights an added benefit: "They also allow the court to expose young people to a different side of the justice system than their life circumstances may have presented to them and perhaps encourage them to aspire to play some role in the workings of the justice system or the third branch."

Funding for the 2019 High School Essay Contest came from the lawyers and judges of the United States District Court for the Middle District of Florida through the Court's Bench Bar Fund.

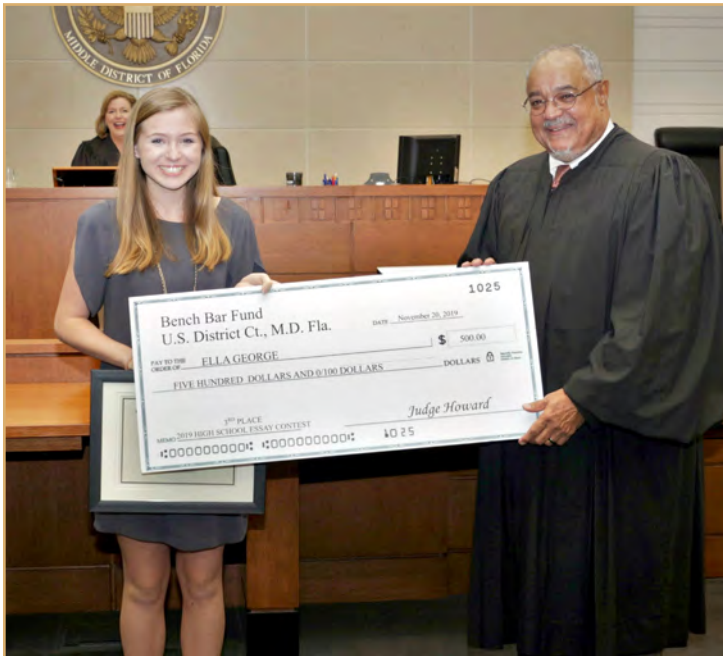
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Helen Peacock, president of the Jacksonville Chapter of the Federal Bar Association, welcomes students, teachers and other guests to the ceremony.



From left, State Circuit Judge Mike Sharrit, U.S. Magistrate Judges Patricia Barksdale and Joel Toomey, and Senior District Judge Harvey Schlesinger joined the guests in congratulating the students and teachers.



Third-place winner Ella George, a senior at The Episcopal School of Jacksonville, happily accepts a \$500 check from District Judge Brian Davis.

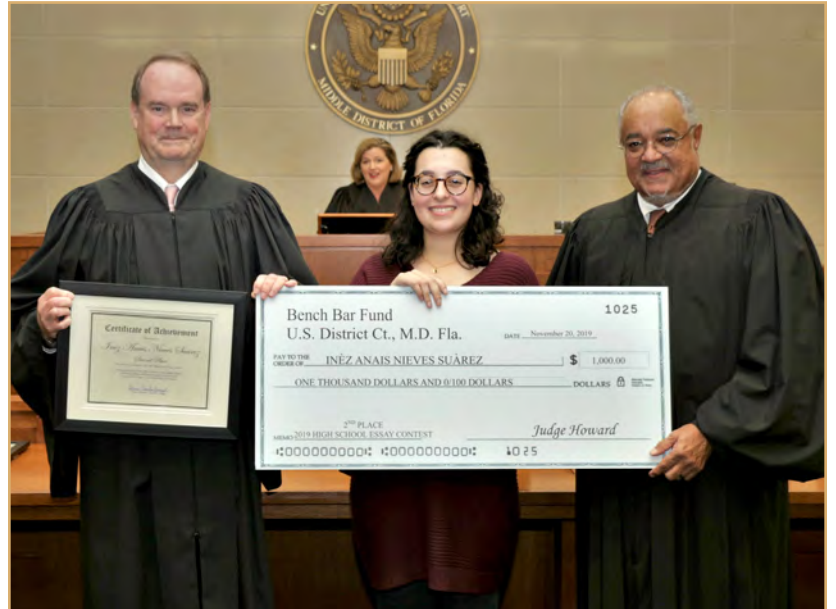


Outreach Coordinator and retired Holland & Knight partner Suzanne Judas touts several civics outreach initiatives.





Staff attorney Kirsten Clement announces each of the winners.



Second-place winner Inéz Anais Nieves Suárez, a senior at Fleming Island High School, poses with District Judges Timothy Corrigan and Brian Davis.



Third-place winner Marissa Ann Cochran Norton, a junior at Paxon School for Advanced Studies, accepts a certificate from District Judge Timothy Corrigan and a \$500 check from District Judge Brian Davis.



First-place winner Mark Mori, a senior at The Episcopal School of Jacksonville, and Emily Farmer, his proud AP United States Government and Politics teacher, pose with District Judges Timothy Corrigan and Brian Davis.



Serving those who served: An interview with Norman E. Zoller

By Christopher Pitts

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Every year, the Military Legal Assistance Program (MLAP) Committee recognizes an attorney for his or her efforts in providing legal services to deserving active duty service members and veterans. The award is named in honor of Andrew Marshall and U.S. Circuit Judge Elbert Parr Tuttle. Marshall, an Army corporal, was killed in action in Iraq in 2008. Tuttle, an Atlanta attorney who served in the Army during the First and Second World Wars and retired as a brigadier general, founded the firm Sutherland, Tuttle & Brennan (today Sutherland Asbill & Brennan), and served as a federal appellate judge for 43 years. Tuttle was remembered, among other reasons, for providing pro bono representation to a young marine, John Johnson, which led to the historic holding of *Johnson v. Zerbst* that counsel must be provided in federal criminal trials for all defendants who cannot afford to hire their own attorneys.

This year, the MLAP Committee was proud to recognize Norman Eugene Zoller. A native of Cincinnati, Ohio, Zoller served almost seven years in the Army on active duty as a field artillery officer. His service included two tours of duty in Vietnam, first with the Army Special Forces in 1964–65 and again in 1968–69 with the 82nd Airborne division as a response to the Tet Offensive.

Zoller earned his law degree from Northern Kentucky University's Chase College of Law. As a lawyer, Zoller managed the Hamilton County, Ohio, courts for a decade before accepting a position in the then-newly formed U.S. Court of Appeals for the Eleventh Circuit from 1981 to 1983 and began service immediately thereafter as circuit executive of the Eleventh Circuit until he retired in 2008.

During his career, Zoller also served as a judge advocate general officer in the National Guard and Army Reserves



Editor's note

In recognition of his extensive career in public service, we decided to ask 2019 Marshall-Tuttle Award honoree Norman E. Zoller not only about his background but also about his perspectives on the need for military-focused legal services. Author Christopher Pitts, at left, is director of the Military Legal Assistance Program of the State Bar of Georgia. Contact him at christopher@gabar.org.



Norman E. Zoller, right, is presented with the Marshall-Tuttle Award by, from left, Jay Elmore, Military Legal Assistance Program chair and the Eleventh Circuit Historical Society treasurer, and Ken Hodges, president of the State Bar of Georgia.

(Photo by Sarah I. Coole)

for 15 years. He retired in 1993 as a lieutenant colonel after 22 total years of military service.

In 2009, Zoller became the coordinating attorney of the Military Legal Assistance Program. In that position, he recruited and maintained a cadre of more than 700 volunteer attorneys who agreed to represent in-need service members and veterans on a pro bono or reduced fee basis. From 2009 to 2018, he was responsible for placing more than 2,200 eligible service members or veterans with volunteer attorneys.

Additionally, Zoller publicized and wrote articles about MLAP; helped conduct continuing legal education programs on pertinent legal issues for lawyers seeking initial or renewed VA accreditation; hosted a 15-state educational symposium in Atlanta concerning veterans' legal assistance issues; and led two State Bar-sponsored CLE programs to Belgium and France, one in 2014 that commemorated the 70th anniversary of the D-Day landings at Normandy and the other, in 2017, that

commemorated the 100th anniversary of America's entry into World War I.

Zoller also frequently spoke in support of the establishment of veterans' treatment courts across Georgia, was active in producing material to be used by judges who deal with military-specific issues, and helped in the formation and perpetuation of veterans' legal clinics at VA hospitals and at three law schools in Georgia.

In recognition of his extensive career in public service, we decided to ask Zoller not only about his background but also about his perspectives on the need for military-focused legal services.

What were some of your motivations for accepting the position as the first coordinating attorney of the Military Legal Assistance Program?

I had previously worked on several administrative matters with the late Jeff Bramlett during my tenure at the Eleventh Circuit Court of Appeals. Shortly after he completed his term as president of the State Bar, I learned about the recently approved MLAP program. I had just completed my responsibilities with the Eleventh Circuit, and helping to implement this program seemed like a logical next step in my career, as I had also retired from military service that included 15 years as an Army lawyer.

I subsequently met with Buck Ruffin, who at the time was chair of the MLAP Committee (and who later became State Bar president), the late Cliff Brashier, then-State Bar executive director, and Mike Monahan, director of the Pro Bono Resource Center for Georgia Legal Services Program. Individually, all were very accomplished and respected, and it seemed like, and proved to be, a good team to join. I later learned that the idea and concept for such a program originated between Jeff and his law partner and Navy veteran, Jay Elmore, who had been on a Defense Department liaison mission in 2007 to the Middle East.

From your time as coordinating attorney of MLAP, what were some of the main legal issues you saw facing service members, and how did these issues affect their ability to serve?

With respect to specific legal issues, the demand for assistance in family law matters has represented about half the total requests. And half the family law matters pertained to divorce. It is a sad but true reality that military service and multiple deployments abroad are difficult on families, on spouses and, especially, on children. There have also been many cases pertaining to landlord-tenant, consumer law, employment law and VA benefit matters.

Why do you believe service members or veterans often find themselves with legal problems that they cannot afford to resolve?

Military service members do not earn a great deal of money, and budgetary demands on normal family life are as significant for them as they are for the rest of us. Thus, when an unexpected legal problem arises, family budgets may be stretched beyond individual capacities. Although many categories of cases can be fairly easily resolved and do not consume extensive lawyer time, some are more time-consuming, especially when court appearances are necessary. Based on a lawyer's availability, however, he may be able to take a case on a purely pro bono or on a reduced fee basis. And so a program like MLAP is valuable because lawyers are recruited to volunteer and provide their time to help this especially worthy category of client, namely service members and veterans.

You have been involved in helping educate lawyers, judges and the public about legal issues facing service members and veterans. Why is this type of education and advocacy important?

With the elimination of the draft in 1973, first-hand knowledge of the military experience and the issues soldiers and sailors face has diminished. Now we have an all-volunteer force in which close to 1.4 million people serve in the armed forces; that's about 0.4 percent of the American population. So, not many people appreciate or understand the military generally and the problems military personnel may face. MLAP strives to increase the legal community's knowledge of ways individual lawyers can assist service members and veterans. For example, each year MLAP lawyers conduct a CLE program for Georgia lawyers who want to assist veterans obtain the VA benefits they may be entitled to. This CLE program satisfies the VA requirement for accreditation. Comparable instruction has also been given by MLAP lawyers to Georgia judges as part of their periodic training programs.

You have coordinated continuing legal education trips to Belgium and France to commemorate significant events in past military conflicts. What are some of the advantages in lawyers' visiting these locations while fulfilling their CLE obligations?

It can be a powerful personal experience to visit military battlefields and cemeteries. While we in America have memorial sites for important Revolutionary War and Civil War battle sites, our nation was blessed in not having battles of the First and the Second World Wars fought on our shores. However, there is value in paying tribute to those Americans who fought and sacrificed abroad on our behalf. And so MLAP members and their guests have made such personal journeys. In addition, CLE opportunities were also provided during those trips,

continued, next page

especially relating to elements of international practice and mediation/arbitration, which may prove useful even for attorneys whose practices and clientele are principally based in the United States.

You also coordinated a national educational symposium on state-level military legal assistance programs back in 2015. What have been some benefits or fruits of that effort to host such a symposium?

The national symposium held in Georgia in 2015 was useful in that it provided the opportunity for attendees to learn from one another about programs being offered in other states. Representatives from some states already had operational programs in varying degrees. Others who came to the symposium wanted to learn what types of assistance might be possible in order for them to offer and how programs offered elsewhere might be tailored to their needs and resources. So information was broadly shared. One significant aspect of this symposium was that Georgia attorney Linda Klein, who was about to become president of the American Bar Association, shared part of her forthcoming plans that encouraged development of programs to assist veterans and their families. The program she initiated is ongoing and expanding, because the need remains significant.

Many attorneys find it difficult to balance the demands of their clients and their personal lives. What are some easy ways in which attorneys can volunteer time to help service members and veterans?

Attorneys are always going to be pressed to balance their time: Time is our most important stock in trade. In Georgia, lawyers are asked to provide 50 hours of pro bono legal support annually, but it is not mandated, as in

some states. In Georgia, it is aspirational. One easy way to do this is to contact legal assistance coordinators at existing programs which already are doing this work: at VA facilities in Augusta, Decatur, Carrollton, Columbus, Fort McPherson and Rome (principal contact is Cary King, 404-920-4490); at Georgia law schools: Emory University (404-727-1044), the University of Georgia (Alex Scherr, 706-542-6510); Georgia State University (Patricia Shewmaker, 770-939-1939); and MLAP Director Christopher Pitts (404-527-8765).

What question did I not ask that you believe ought to be asked? Alternatively, what is something lawyers should know about the experience of service members or veterans that they may not understand?

Most people don't realize just how large Georgia's population of service members and veterans is: More than 100,000 active duty, reservists and National Guard members and about 690,000 veterans live here. That means roughly one person out of every 10 of Georgia's population of 9 million is either in the military now or used to be. With Georgia's 10 military installations, the many ongoing deployments of the service members who live here and an aging population of veterans, the need for legal help for this special category of our citizens is not going away. I hope that our Georgia lawyers will continue to find ways to allocate a portion of their work year, every year, to assist with this need. While the need is great, so is the satisfaction. As with other circumstances, when lawyers do something to help others, it pays back many times over. In a biblical reference, we learn that when you save the life of one person, it is as though you have saved the life of the entire world.



Visit the 11th Circuit Historical Society Website to view all issues of the Society's newsletter:
<https://sites.google.com/site/circuit11history>

10 years of Miami Law Review's Eleventh Circuit Issue

By Melanie Kalmanson

Each year, the *University of Miami Law Review* dedicates a portion of its annual publication to discuss issues related to the U.S. Circuit Court of Appeals for the Eleventh Circuit. With the publication of the 2019 Eleventh Circuit Issue, the *University of Miami Law Review* published the 12th edition of the Eleventh Circuit Issue.

The Eleventh Circuit Historical Society looks forward to reviewing the Eleventh Circuit Issue in its newsletter each year. Ahead of doing so, this article reviews 10 previous Eleventh Circuit Issues (Volumes 62-71).¹

The *University of Miami Law Review* published the first Eleventh Circuit Issue in July 2008 (Volume 62). After the foreword by the Honorable Stanley Marcus, the issue included a speech by the Honorable J.L. Edmondson — *Dedication of the New Flag for the U.S. Court of Appeals for the Eleventh Circuit*. Judge Edmondson gave that speech in Atlanta, Georgia, on Oct. 25, 2004.² In the speech, Judge Edmondson explained the meaning behind the red stripe in the flag of the U.S. Circuit Court of Appeals for the Eleventh Circuit: “to honor the past [and] inspire the future” with the hope that people who see the flag will “remember that hardships can be overcome and that the best days of this court and of this our beloved country are always ahead of us.”³ This edition also included several articles discussing immigration-related issues, a few articles on criminal issues and a student note discussing an issue related to the Fair Labor Standards Act.

The 2009 issue (Volume 63) featured articles discussing the effects of the financial crisis of 2007-2008. The Eleventh Circuit Issue of Volume 64 (2010) included four articles and six student notes — all discussing various “important and contemporary issues” the court had addressed that year.⁴ At that time, the court had also just welcomed the Honorable Beverly Martin.⁵ In the foreword, the late Honorable James C. Hill reported that the court “continue[d] to be one of the busiest circuits in the country,” handling “over 7,000 cases for the third straight year” in 2009.⁶ Noting the practical importance of the court’s work, Judge Hill wrote that each case the court

reviews “represents a human drama of great import to sincere litigants.”⁷

Another full issue, the Eleventh Circuit Issue of Volume 65 (2011) included four articles and six student notes. One article by three practitioners discussed the “federal flavor” of lawsuits in which the plaintiff seeks relief under Florida’s Deceptive and Unfair Trade Practices Act (FDUTPA).⁸

The Honorable Paul C. Huck wrote the foreword for the 2012 Issue (Volume 66).⁹ Judge Huck noted that the court’s caseload had declined in 2010 but was again on the rise.¹⁰ During 2011, the court docketed “a total of 6,455 new appeals.”¹¹ Shouldering a large caseload, the court had operated with “only 10 active circuit judges,” although 12 are authorized by Congress.¹² The court’s “decision that garnered the most public attention” that year was *Florida ex rel. Attorney General v. U.S. Department of Health and Human Services*,¹³ in which the court issued a 207-page opinion addressing “the constitutionality of Congress’s 2010 healthcare reform legislation.”¹⁴ Judge Huck, in 2019, administered the oath to his daughter-in-law, Barbara Lagoa, as she was sworn in as a justice on the Supreme Court of Florida.¹⁵ Lagoa now serves as a judge on the U.S. Court of Appeals for the Eleventh Circuit.

The Honorable Adalberto Jordan, a graduate of the University of Miami School of Law, wrote the foreword for the 2013 issue (Volume 67).¹⁶ Introducing Professor Tamara Rice Lave’s essay on “stand your ground” (SYG) laws,¹⁷ which is part of that edition, Judge Jordan noted Florida’s importance in national issues, writing: “Florida . . . is often ground zero for issues that are the subject of national debate.”¹⁸ The publication of Professor Lave’s essay came right as the shooting of Trayvon Martin brought SYG laws to the forefront of debate.¹⁹

Indeed, the 2014 issue (Volume 68), which was published a year after a Florida jury acquitted George Zimmerman for the shooting of Trayvon Martin, focused on SYG laws.²⁰ The articles in the 2014 issue shed “new light not only on the law, but also on the politics surrounding the law, as well as the law’s social meaning and impact.”²¹

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About the author

Melanie Kalmanson graduated magna cum laude from the Florida State University College of Law in 2016. After law school, she served as a staff attorney to Supreme Court of Florida Justice Barbara J. Pariente until Justice Pariente’s retirement in January 2019. In January 2019, Kalmanson joined the Appellate Practice Group at Akerman LLP in Tallahassee. She is a new member of the Eleventh Circuit Historical Society.

The Eleventh Circuit Issue of Volume 69 (2015) featured three articles and two student notes addressing various topics. The Honorable Ursula Ungaro wrote the foreword, which reported that “2014 was a pivotal year” for the court.²² With the addition of three female judges, that year “ushered in a new era of diversity on the court.”²³

Volume 70, Issue 4, was published in the summer of 2016 — a few months after the U.S. Supreme Court decided *Hurst v. Florida*.²⁴ In *Hurst v. Florida*, the U.S. Supreme Court held that Florida’s capital sentencing scheme violated the Sixth Amendment to the U.S. Constitution.²⁵ When the 2016 issue was published, the Supreme Court of Florida’s decision on remand from the U.S. Supreme Court was still pending.

Although the Supreme Court of Florida has mandatory jurisdiction over Florida death penalty appeals, *Hurst v. Florida* also affected the Eleventh Circuit, which often reviews capital defendants’ federal habeas claims. In fact, in 2019, the court squarely addressed the retroactivity of *Hurst* in federal habeas proceedings in its decision in *Knight v. Florida Department of Corrections*.²⁶ Thus, the 2016 Eleventh Circuit Issue included an article by Professors Chance Meyer and Craig Trocino contemplating the future of Florida’s death penalty in light of *Hurst v. Florida*.²⁷ Specifically, their article discussed the potential Eighth Amendment ramifications of the Supreme Court’s decision in *Hurst v. Florida* and argued that, on remand, the Supreme Court of Florida should repair its Eighth Amendment jurisprudence to avoid a future constitutional catastrophe.²⁸

Finally, the 2017 issue (Volume 71) featured four articles. First, Professor Michael Sevel’s article argued that the U.S. Supreme Court may no longer be the leader it once was in admiralty law.²⁹ Second, Professor D. Wendy Greene’s article reviewed the Eleventh Circuit’s decision in *EEOC v. Catastrophe Management Solutions*³⁰ regarding workplace discrimination against black women for natural hairstyles.³¹ Third, an article by practitioner Lindsey Lazopoulos Friedman explored the difficult balance between sufficient punishment for “those who sexually abuse and murder children” and those defendants’ constitutional rights.³² Finally, a co-written article reviewed the Supreme Court of Florida’s jurisprudence on the economic loss rule.³³

1 My article in the summer 2019 newsletter reviewed Volume 72. Volume 73 will be reviewed in a future article. Past Eleventh Circuit issues, as well as the current Eleventh Circuit Issue, can be found at: <https://repository.law.miami.edu/umlr/>.

2 J.L. Edmondson, *Dedication of the New Flag for the U.S. Court of Appeals for the Eleventh Circuit (Speech Delivered on October 25, 2004)*, 62 U. Miami L. Rev. 973 (2008).

3 *Id.* at 978.

4 James C. Hill, *Foreword*, 64 U. Miami L. Rev. 1201, 1202 (2010).

5 *Id.*

6 *Id.* at 1201. The U.S. Supreme Court accepted 21 of those 7,000 cases for review. *Id.* at 1203.

7 *Id.*

8 D. Matthew Allen, David L. Luck & Leah A. Sevi, *The Federal Character of Florida’s Deceptive and Unfair Trade Practices Act*, 65 U. Miami L. Rev. 1083, 1084 (2014).

9 Paul C. Huck, *Foreword*, 66 U. Miami L. Rev. 899 (2012).

10 *Id.* at 900.

11 *Id.*

12 *Id.*

13 648 F.3d 1235 (11th Cir. 2011).

14 Huck, *supra* note 9, at 900-01. In 2012, the U.S. Supreme Court reviewed the Court’s decision, affirming in part and reversing in part. See generally Nat’l Fed’n of Independent Bus. v. Sebelius, 567 U.S. 519 (2012).

15 See D. Bailey Howard, Governor DeSantis Makes His First Appointment to the Florida Supreme Court: Justice Barbara Lagoa, Fla. Sup. Ct. Historical Soc’y, <https://www.flcourthistory.org/JusticeLagoa>.

16 Adalberto Jordan, *Foreword*, 67 U. Miami L. Rev. 763, 764 (2013).

17 See generally Tamara Rice Lave, *Shoot to Kill: A Critical Look at Stand Your Ground Laws*, 67 U. Miami L. Rev. 827 (2013).

18 Jordan, *supra* note 15, at 764.

19 *Id.*

20 See Donna Coker, “Stand Your Ground” in Context: Race, Gender, and Politics, 68 U. Miami L. Rev. 943, 944 (2014).

21 *Id.*

22 Ursula Ungaro, *Foreword: The Evolution of the Eleventh Circuit Court of Appeals: A New Era of Diversity on the Bench*, 69 U. Miami L. Rev. 929 (2015).

23 *Id.*

24 136 S. Ct. 616 (2016); see Darrin P. Gayles, *Foreword*, 70 U. Miami L. Rev. 1063, 1067 (2016).

25 See generally *Hurst*, 136 S. Ct. 616.

26 936 F.3d 1322 (11th Cir. 2019).

27 See generally Craig Trocino & Chance Meyer, *Hurst v. Florida’s Ha’p’orth of Tar: The Need to Revisit Caldwell, Clemons, and Proffitt*, 70 U. Miami L. Rev. 1118 (2016).

28 See generally *id.*

29 See generally Michael Sevel, *Lost at Sea: The Continuing Decline of the Supreme Court in Admiralty*, 71 U. Miami L. Rev. 938 (2017).

30 *EEOC v. Catastrophe Mgmt. Sols.*, 852 F.3d 1018 (11th Cir. 2016).

31 See generally D. Wendy Greene, *Splitting Hairs: The Eleventh Circuit’s Take on Workplace Bans Against Black Women’s Natural Hair in EEOC v. Catastrophe Management Solutions*, 71 U. Miami L. Rev. 987 (2017).

32 See generally Lindsey Lazopoulos Friedman, *Striking a Balance Between the Paramount Importance of the Safety of Children and Constitutionally-Imposed Limited on State Power*, 71 U. Miami L. Rev. 1037 (2017).

33 See generally Steve Siegfried, et al., *The Economic Loss Rule: Is a Building a “Product?”—Another View*, 71 U. Miami L. Rev. 1065 (2017).

Going to law school was just a default choice, according to Pannell. At the time he completed his undergraduate degree at the University of Georgia in 1967, his father was serving on the Georgia Court of Appeals. "I worshipped my father, and I wanted to please him. I felt faint at the sight of blood, so I couldn't go to medical school. Instead, I followed in his footsteps and went to law school." It was during law school at the University of Georgia that Pannell got his start as a jurist: he served on the Student Judiciary in the inaugural years of that body and on the ROTC Honor Court.

Upon graduation from law school, Pannell began active duty in the U.S. Army, serving in the Military Police Corps. As part of the Army's reduction in force near the end of 1970, 2nd Lt. Pannell transferred to the Army Reserves, where he continued to serve for 28 years before he retired as a colonel in the Judge Advocate General's Corps. Meanwhile, upon his release from active duty, Pannell sought his first job as a lawyer. He found it in January 1971 at the U.S. Attorney's Office for the Northern District of Georgia, then located in the Tuttle Building on Forsyth Street in Atlanta — a scant few blocks from where Judge Pannell's chambers are located today.

Judge Pannell remembers the work he did as an assistant U.S. attorney as the most exciting of his career. "Maybe it's because it was my first job as a lawyer. I still remember my first jury trial. It was a two-week RICO trial about an organized crime gambling ring out of Miami. I was assigned one full day of witnesses to question. Of course, they were all FBI agents providing routine testimony for the case. It would have been hard to mess up. But being given that opportunity really meant a lot to me," he says.

Nearly two years later, the Dalton, Georgia, law firm of Pittman and Kinney came calling, offering Pannell a position as an associate. Raised on his family's farm in Murray County, Georgia, he saw this offer as his chance to go home. He and his wife, Kate, moved to North Georgia and eventually took up residence on that same farm, where they still live today.

Pannell became a partner in the firm but was soon



Judge Charles A. Pannell, Jr. was sworn in as a superior court judge on Sept. 27, 1979. Pictured are Judge Charles A. Pannell, Sr., Kate Pannell with Ruthie, Gov. George D. Busbee, Judge Pannell with Chad, and Ruth Ann Pannell.

pulled into local politics when he was encouraged to run for district attorney. In 1976, he was elected as the district attorney for the Conasauga Judicial Circuit. "When I walked into the office, there wasn't even a filing cabinet; they had disappeared. Some of the case files were just mounded up in a pile on the floor. On the first day, I had to send my secretary out to the store to buy legal pads and paper," Pannell recalls.

District Attorney Pannell worked long hours to get the caseload under control and the office organized and functioning. His wife, Kate, remembers, "When he was the

DA, investigators frequently asked Charlie to come to the scene of serious crimes that happened in Murray or Whitfield counties to give advice. So, it was not unusual for him to be called out in the middle of the night and then to go from there right to the office." At the time, their two children were toddlers. Kate says their father always kept the violent and often gruesome details of the cases he prosecuted out of their home. "He has a way of telling a story that makes people laugh. He used that talent to share his work with our children without dwelling on the uglier side of what those cases were about."



Boy Scout Troop Chairman Pannell with his son, Chad, at Philmont Scout Ranch, New Mexico, in 1991.

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After distinguishing himself as a dedicated public servant in the role of district attorney, Pannell was appointed to the Conasauga Judicial Circuit's Superior Court by Gov. George D. Busbee in 1979. He was only 33 — the youngest superior court judge in Georgia at that time.

Governor Busbee got the right man for the job, says Dalton attorney Stephen A. Williams. "Charlie immediately had a good feel for the bench. He had a sensible way of proceeding that lawyers and their clients appreciated." Williams served as assistant district attorney under Pannell for two years and then practiced before him as the DA himself and later in private practice. "Lawyers here still talk about him and wish he would come back," Williams said.

Early in his tenure on the superior court, Judge Pannell voluntarily accepted a case from outside of his circuit that brought television cameras into a Whitfield County Superior Court courtroom for the first time. In 1983, he presided over the retrial of suspected serial killer James Samuel Walraven, dubbed the "Bathtub Strangler" by the Atlanta press. Walraven had been accused of strangling a property manager at a DeKalb County apartment complex and leaving her body in a bathtub, and he was suspected of disposing of two other victims the same way — in a bathtub. The first conviction and sentence from the DeKalb Superior Court were overturned by the



Judge Pannell was sworn in as a United States district judge on Dec. 1, 1999. Pictured are Judge Pannell, Ruthie Pannell (Crider), Kate Pannell and Chad Pannell.

Georgia Supreme Court. When called upon to take the case because publicity made retrial in DeKalb County untenable, Judge Pannell agreed. To accommodate the Atlanta media, he hammered out a 35-point plan that ultimately allowed the trial to be recorded by television cameras, and portions were regularly aired during Atlanta's local news reports.

By the time Judge Pannell left superior court for the federal bench in 1999, he had presided over or been lead counsel in more than 800 jury trials. But even with the heavy demands of his job, the judge found time to

serve as the Ninth District STAR Student chairman for more than

20 years. He was also a Boy Scout troop chairman and later became the district chairman for Murray and Whitfield counties. In May 1999, after 10 years of service and having organized and traveled with five crews to three different High Adventure Bases, Pannell was presented with the Boy Scouts of America Silver Beaver Award.

That same spring, Sen. Max Cleland submitted Judge Pannell's name for nomination to the district court, and President Bill Clinton nominated him on July 14, 1999. Having been on the short list for prior Clinton appointments to the district court, Judge Pannell recalls, "I was more than happy to get the job." He arrived at the United States Courthouse in Atlanta looking forward to starting work in this new arena. He found an environment much more formal than what he was used to on the

superior court. "The courthouses in Dalton and Chatsworth were kind of social hubs for the community," his wife Kate says. "Charlie knew all the lawyers and often knew the parties in the cases he heard in superior court. But on the district court in Atlanta, the cases were more removed and less personal."

Despite the higher level of formality that inevitably comes with being a federal judge in a large city, Judge Pannell has maintained a relaxed atmosphere in his chambers and



The 1983 "Bathtub Strangler" trial was televised by Atlanta media.

his courtroom reminiscent of the courthouses of North Georgia. He works in his shirtsleeves with his office door open. When staff members approach his doorway, the judge always motions them in and asks, "What's on your mind?" In his courtroom, the judge welcomes lawyers to make their presentations sitting, standing or wherever they are most comfortable. His focus is not on the pageantry of the court but on getting to a resolution of the dispute that brought the parties to his courtroom.

In addition to the more ceremonial environment of federal court, Judge Pannell found his new caseload filled with legal issues novel to him. Through a random reassignment process, newly appointed district judges are given an instant civil caseload with widely varying causes of action. "I had patent cases, antitrust cases and bankruptcy appeals, even one case in admiralty that eventually went to the Supreme Court. These were issues I had no experience with," Judge Pannell recalls. Despite the unfamiliar subject matter of many of his assigned cases, the judge moved through the pending matters with his usual business-like judicial philosophy. He addressed the issues presented in motion practice with straightforward written opinions leaving out unnecessary pomp and circumstance in favor of concise resolution of the matters raised by the parties. His written orders avoid "cute" comments and hard-to-understand language. He strives to produce orders that an average citizen can read and understand without looking up words in the dictionary. Judge Pannell does not believe parties should be ridiculed or have their cases made light of, but simply handled professionally. "Sometimes this is difficult, particularly with some lawyers," observes the judge.

In the early years on the district court, Judge Pannell completed numerous jury trials — many of which were multi-week proceedings. "Everyone knows that old joke comparing going to trial with going to Heaven: They all want to go, but not today," the judge says. "But it's my belief that if you set a firm date for trial, the lawyers have to get serious about preparing the case; once that happens, the end is in sight. We all just have to saddle up and get it done."

It was this "get it done" attitude that allowed Judge Pannell to efficiently dispose of the larger matters on his criminal docket; once he arrived in federal court, he was assigned a number of cases containing indictments against multiple defendants. One large case involving drugs, murder and members of the MS-13 gang had 45 defendants and was related to another case with 19 defendants. The judge simply broke the defendants into groups and set them for trial. Eventually, all 64 defendants were tried, pleaded guilty or had their cases dismissed by the government.



Judge Pannell with longtime staff members Regena Martin and Marti Minor in 2014.

In managing the heavy work load, Judge Pannell found an advantage in the level of staffing on the federal bench compared with superior court. In the state court, he shared one law clerk with two other judges. Once he became a United States district judge, he was able to employ at least two full-time law clerks of his own. Since 1999, 23 lawyers have served as Pannell clerks. Two of them have gone on to become jurists themselves. Both credit Judge Pannell for the guidance he afforded at the early stages of their careers. James Crowell IV, a Pannell clerk in 2000 and 2001, was recently confirmed as a superior court judge for the District of Columbia. In his opening statement before the United States Senate, Judge Crowell recognized Judge Pannell as the person who taught him the meaning of judicial temperament, what he described as a combination of patience and unbiased open-mindedness. Charles J. Bethel of the Georgia Supreme Court clerked for Judge Pannell from 2001 to 2003. Justice Bethel points to his two years working in the Pannell chambers as the firm foundation of his legal career. Here is how he describes his former boss and mentor: "Judge Pannell is my first point of reference for what a trial judge ought to be. He is committed to the law and its faithful application and administration. He works to make sure lawyers are successful in representing their clients in his court. He never loses sight of the people involved in the process. And he declines to take himself more seriously than his work."

High profile cases come with the territory for any jurist, and Judge Pannell has presided over his share. In 2005, he accepted the guilty plea of Centennial Olympic Park bomber Eric Rudolph. Rudolph also pleaded guilty to

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bombing a Sandy Springs, Georgia, abortion clinic and an Atlanta gay-and-lesbian nightclub. On the morning of the plea hearing, every phone line in chambers was ringing with members of the press clamoring for a quote and local citizens who just wanted to give the judge their two-cents worth. In the courtroom, the high security presence and full gallery made for close quarters and created an electric atmosphere. But as soon as Judge Pannell took the bench and called the case with his usual no-nonsense demeanor, the proceeding moved forward just like any customary business before the court.

In 2011, Judge Pannell was named as one of *Georgia Trend Magazine's* 100 Most Influential Georgians in recognition of his role in another highly publicized case — one in which the state of Georgia entered into a historic settlement with the United States Department of Justice to direct millions of dollars to improve the state's mental health system. Initially, Judge Pannell withheld his approval of the settlement. He did so to allow mental health advocates who had objected to portions of the plan to offer their unique perspective as to what should be included in the final resolution. After the settlement was reached and efforts to improve the system were underway, one of those advocates, Cynthia Wainscott, former presidential appointee to the National Council on Disability, stopped by the Pannell chambers. She told the judge she wanted to thank him for allowing advocates who are involved day-to-day with mental health care in Georgia to have a role in the final settlement between the two governments. The judge's response: "No, Ms. Wainscott, thank you. Your input in the process made the plight of those living in the system real to both the court and the lawyers negotiating the settlement. Sometimes the real people who are affected by lawsuits get lost in the legal process. You kept that from happening here."

On Jan. 31, 2013, Judge Pannell assumed senior status with the district court, which opened his seat for a new appointment and allowed him to reduce his caseload. At that time, however, the Northern District of Georgia already had two long-term vacancies because Georgia's senators would not support the nominees offered by President Barack Obama. This meant that any reduction in caseload would simply shift Pannell's work to his already overloaded colleagues. With no end in sight to the impasse between the senators and the Obama administration, Judge Pannell was unwilling to place this burden on a short-handed court, so he continued with a full active case load of both civil and criminal matters for almost two years into his senior status. "We treasure our senior judges. They do the court a great service, especially when active judgeships are sitting empty," commented then-Chief Judge Julie E. Carnes, who is now a judge on the Eleventh Circuit Court of Appeals.

Pannell announces for District Attorney

Charles A. Pannell, Jr. announces that he will qualify as a candidate for the position of District Attorney of the Conasauga Judicial Circuit composed of Murray and Whitfield Counties. He is a partner in the law firm of Pittman, Kinney, Kemp, Pickell and Averett in Dalton.

Mr. Pannell is the son of Judge & Mrs. Charles Pannell. Judge Pannell, who practiced law for many years in Murray and Whitfield Counties, is now a Presiding Judge on the Georgia Court of Appeals.

Mr. Pannell is a native of Murray County and was reared at Eton. He attended public schools in Murray and Whitfield Counties. He received his A.B. and Juris Doctor degrees at the University of Georgia. After law school he served as a lieutenant in the United States Army Military Police Corps, and is now a Captain in the U.S. Army Reserve, Judge Advocate General's Corps.

In 1971 and 1972, Mr. Pannell was an Assistant United States Attorney with the Department of Justice in the Northern District of Georgia. During that time, he prosecuted criminal cases with special assignments to the Organized Crime Strike Force.

Mr. Pannell is a member of the Kiwanis Club of Dalton, the Elks Club, a member of the board of directors of the Looper Speech and Hearing Clinic and the Red Cross, and the Gridiron Society at the University of Georgia. He has

been active in the Georgia Conservancy as was a participant in the 1974 Leadersh Georgia Program sponsored by the Georgia Chamber of Commerce. Presently, he is the 9 District Chairman of the Star Stude Program.

Mr. Pannell and his wife, Kate, a former teacher at Fort Hill School, are presently residing at Eton with their son.



THE CHATSWORTH TIMES, Chatsworth, Georgia, April 8, 1976

The decision in 1976 to run for district attorney set Pannell on the course for a career in public service.

After three appointments were made to the district court in November 2014, Judge Pannell finally felt comfortable reaping the benefits of senior status: He stopped taking criminal case assignments altogether and began to reduce the number of civil cases he accepted. But even today, he maintains a hefty civil case load; he disposes of more than 300 cases per year, which is more than 75 percent of a typical active judge's load for the Northern District of Georgia in 2019.

In reflecting on how the district court has changed since his appointment in 1999, Judge Pannell usually points to technology. In 2005, the Northern District of Georgia transitioned to electronic case filing. "I was a skeptic. For a long time, I required the clerk to maintain all my cases as paper files. I was worried that, somehow, the digital versions might just disappear," the judge recalls.

A longtime chambers staff member, Regena Martin, chuckles when she remembers hauling the carts of paper files to and from the clerk's office. "He was one of the last to make the switch to all electronic files," says Martin, "But working in the Pannell chambers was always a positive

experience. So, a little extra effort to make sure the judge was comfortable with our case management didn't bother me."

As bosses go, Judge Pannell has a good reputation. Martin, who retired from the district court in 2014, told the applicants for her post, "You will love working for him." Nearly all of his cadre of law clerks return to chambers every December for a holiday luncheon. Steve Wagner, Judge Pannell's first law clerk in federal court and a regular at the annual luncheon, points to Judge Pannell's simple advice to just follow the law. "That guidance informed my work not only as a law clerk but through my years as a practicing attorney as well," says Wagner, now an attorney with the Equal Employment Opportunity Commission. And in addition to numerous law students who have voluntarily interned for Judge Pannell over the years, Allen Wallace, a former law clerk who retired after working for the Honorable Robert Vining for 32 years, has spent the last nine years volunteering in the Pannell chambers two days per week.

When asked about his plans for full retirement, Judge Pannell refuses to set a definitive timeline. "I used to say I would retire by 70, but that day got here a little quicker than I expected," the judge says. "I have a good balance right now. I'm needed down at the courthouse to try cases, conduct hearings and read briefs pretty regularly. But when Kate and I want to take a trip or we are called on to stay with grandbabies, I can do that."

Judge and Kate's children, those toddlers treated to stories from Pannell's stint as the district attorney, are now grown-up professionals with children of their own. Charles A. Pannell III (Chad) is a patent litigator with Kilpatrick Townsend in Atlanta. He and his wife, Valerie, have three children: Charles A. Pannell IV (14); Jackson L. Pannell (11); and Charlotte F. Pannell (8). Ruth Ann Pannell Crider (Ruthie) is an emergency room physician with East Georgia Regional Medical Center in Statesboro, Georgia. She and her husband, Bill, have two boys: William A. Crider IV (11) and Bozeman A. Crider (9).



No fish tales here! Judge Pannell caught this Big One in Alaska in 2017.

This account is a mere summary of more than 40 years of public service given by Judge Pannell. There are countless stories that could have been included. But those are best told by the judge himself. As his wife observed, he does have a way with telling a story. A former law clerk recently described the judge's stories like this: "just enough humor to keep them light, just enough intrigue to hold your attention and just enough facts to make them believable!" Anyone

who has been fortunate enough to hear a Judge Pannell story would agree that the best part about listening is soaking up the real enjoyment he gets from the telling. Often when his law clerks go to him for guidance on a



Judge and Kate Pannell with their grandchildren in Glacier National Park in 2017.

thorny legal question or to ask him to make that inevitable judgment call in a case, he responds with a story from way back when. But at the conclusion of the story, Judge Pannell always fulfills his duty as a judge: He considers the question presented and makes a decision.

