

# HISTORIA JURIS

Newsletter of the Florida Supreme Court Historical Society

[www.flcourthistory.org](http://www.flcourthistory.org)

June 2013

Tallahassee, Florida



## President's Perspective

by Hank Coxe

### *Striking a Delicate Balance*

The Supreme Court Historical Society's experience this past year served to highlight both the mission and purpose of the Society, balanced against what is not the purpose and mission of the Society. The merit retention elections of Justice Lewis, Justice Quince and Justice Pariente will become a chapter in the Court's history. The events will become a springboard for evaluations, critiques and recommendations that may well affect retention issues for many years to come.

The role of the Society is to chronicle the events, the Justices and the history of the Court. The Society is a nonprofit corporation and cannot compromise its mission or status by engaging in political efforts. It accordingly did not

become involved in the election issues, but it will now record for posterity in great detail precisely what occurred in the November 2012 election.

There will be, and perhaps should be, countless suggestions for

improvement, not to mention a deliberate analysis of whether the Canons of Judicial Conduct need to be reviewed to determine whether the rules governing a contested judicial election can be applied to a merit retention effort. Nevertheless those are issues which must be addressed by other than

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The Florida Supreme Court Historical Society



**Lifetime Achievement Award**  
*presented to*  
**Reubin O'Donovan Askew**

Florida's three branches of government were enormously enhanced over the decades of the leadership of Reubin O'Donovan Askew. From his election to the Florida House of Representatives in 1958, the Florida State Senate in 1962 and his two terms as Governor, ending in 1979, he transformed the legislative, executive and judicial branches of Florida government. But it is Governor Askew's commitment to civil rights that is perhaps his most lasting legacy. He named the first Black to the state Supreme Court, and appointed the first Black, who was also the first woman, to head a state agency. Racial justice and honesty in government were the hallmarks of his governorship. In recognition of his lifetime of public service, Governor Askew was named one of America's Top Ten Governor's of the 20th century.

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**Officers and Trustees of the  
Florida Supreme Court Historical Society  
January 31, 2013**

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the Society. The Society must remain a chronicler of the Supreme Court's history while not participating in creating that history.

\* \* \* \* \*

It is exciting to announce the selection of an Interim Administrator for the Society with the arrival of Ms. Kelly Layman, whose credentials are outstanding. Our Society enjoys a significant number of members, and we are financially solvent. It is this solvency which will now afford the Society the opportunity to provide additional services to the Court, consistent with the Society's mission.

The last few years have made the Historical Society's Annual Dinner an outstanding event looked forward to by the judiciary, legal community, and many others. The January 2013 dinner was the highlight of the Society's year with the recognition of former Governor Reubin Askew, the late Chief Justice Ben Overton and our beloved

statesman Reece Smith.

I thank everyone who assisted in preparing for and presenting the event.

On behalf of the entire Executive Committee of the Society, I personally want to thank Ruth McDonald, who for the past few months has been the foundation of support and assistance to the Society. I also appreciate the remarkable and continued efforts of Bruce Blackwell, Sylvia Walbolt, Kelly O'Keefe, Susan Rosenblatt and your incoming President, Miles McGrane.

I anticipate an outstanding year under Miles's leadership and know that we will continue reporting the marvelous history of our Supreme Court.



## ***Mark your calendars***

**Florida Supreme Court  
Historical Society**

**2014  
Annual Dinner**

**Thursday  
January 30, 2014**



*Window, etched with the seal of the Florida Supreme Court. Curved and beveled glass set in a window frame. Circa 1912.*

## **New Historical Display**

An historic curved glass window with the seal of the Supreme Court of Florida etched into it is now on long-term display in the Lawyers' Lounge in the Supreme Court Building. The window came out of the first Supreme Court Building, constructed in 1913. Now demolished, it stood on Monroe Street a block south of the old Capitol Building.

Thanks to a generous donation by the Supreme Court Historical Society, the window has been installed in a beautiful custom-built mahogany display case designed by Charity Myers of The Creative Pool exhibit design firm. Also on display in the Lawyers' Lounge are two cast iron staircase newel posts that were also part of Florida's first Supreme Court Building. Florida's Supreme Court Building is home to a number of historic treasures and cares for the Court's library and archive that date back to the 1820s.

Please stop by to have a look at this treasure of our court's long and fascinating history.





## *A Message From Chief Justice Ricky Polston*

In this column, I want to discuss the steps that the men and women in our branch of government are taking now to ensure that we meet current challenges and thereby pass on to future generations the legacies we ourselves inherited.

Yes, the history of democracy we share in this country is a gift that we must protect and nourish. For the judiciary, good stewardship is essential to keeping alive public trust and confidence in our courts.

First, I am pleased to share news about the re-creation of the Judicial Management Council, a development that was approved early this year by the Court, acting on the suggestion of the Judicial Branch Governance Study Group.

The first incarnation of this advisory body dates back to 1953, when it was established and named the Judicial Council of Florida. The role of the Council has been revised several times since then, in order to stay abreast of the changing governance and administrative needs of the judicial branch.

The reconstituted Judicial Management Council will focus on five areas of responsibility.

It will identify potential crisis situations and develop strategies for addressing them. It will also identify and evaluate information that will help improve the performance and effectiveness of the branch.

It will develop and monitor progress related to our efforts to make long-range plans. And it will also review the work of the various court and Bar commissions in order to recommend any consolidation, revision or coordination that may help.

Finally, it will address other issues that the Court brings to the Council.

I encourage you to stay follow the Council's important work as we move forward. I have recently appointed Council members and we anticipate a meeting in early 2013.

Another area of good stewardship is the effective use of technology to carry out our mission.

The use of automation and technology is making many government functions more accessible and more convenient for citizens to use. The courts will be no different.

When we talk about this development in the judicial branch, we mean not only electronic filing by litigants but courtrooms where judges can use electronic records when they are on the bench. This applies to both trial and appellate courts.

In addition to saving litigants time and money, having fully electronic court records will also significantly reduce the costs of paper and storage for the courts, especially for the clerks of court. But there has to be an investment first to realize this return on investment. The judicial branch is working hard to obtain these requisite resources.

So when you hear talk of “e-filing,” I urge you to remember that that is only part of the story. E-filing deals with how documents come through the front door; it does not mean that judges will automatically have access to electronic records. Our vision is more comprehensive: Ensuring that judges have electronic access to court records and can take actions electronically. For a judge, this means being able to maneuver through the electronic court files to readily locate information. And it means writing, approving, and distributing orders electronically from the bench.

This goal will need more work and resources. But the end result will justify the effort. Because through these developments, Florida will have a truly interactive and vibrant electronic system that produces efficiencies for the parties, the courts, and the clerks of court.



## **Old Notes and Clips are Reminders of the Court's Lighter Side**

*By Neil Skene*

An occasional frustration in writing a history that begins 40 years ago is that people don't always remember much about things that seem noteworthy from a historical perspective. “How could they have forgotten THAT?” I would think to myself.

But not long ago I ran across some notes from 1982, when I was the Tallahassee

bureau chief for the *St. Petersburg Times*. The notes were printouts from an old pre-Windows computer summarizing conversations with various justices serving at the time.

And I don't even remember the conversations, except maybe remembering being told something recorded with much more context in these notes.

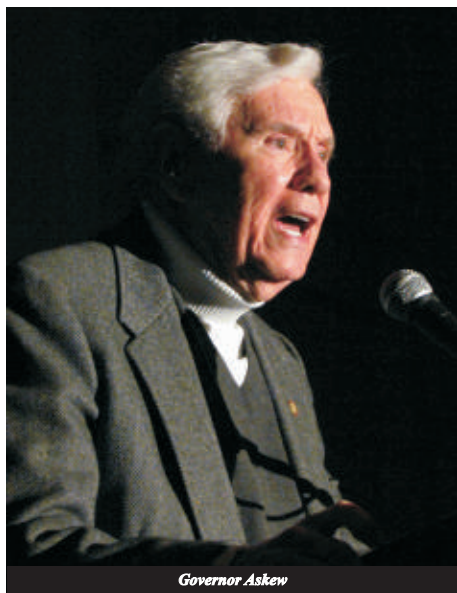
There were notes from lunch with Justice Jimmy Adkins, dated 2/26/82. I vaguely

remember riding with him to lunch, and I believe we went to a fish-and-beer place out on Apalachee Parkway (no longer there). He commented, according to my notes, “I like bars, even though I don't drink.” At one point he joked that he did not want a portrait at the court. “I want 'em to stuff me and stand me over in a corner,” he said.

He also described going into conference one day on a case about extending to

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# Florida Supreme Court Historical Society 2013 Annual Dinner



*Governor Askew*



*Ben Hill and Former Justice Stephen Grimes*



*Lansing Scriven, C. Sha'Ron James, Kelly O'Keefe, Scott Hawkins*



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*Former Senator Graham; Sandra and Charlie Gray*



*Sylvia Walbolt & Martha Barnett*



*Paul Jess (Fla Justice Association),  
Fred Dudley (Holland & Knight)*



*Lorna E. Brown-Burton and Juliet Roulhac*



*Three former Florida Bar Presidents:  
Steve Zack, Edith Osman and Burton Young*



*Ruth McDonald, Treasurer of the Society (and wife of Former  
Justice Parker Lee McDonald), & Gov. Reubin Askew*



## Highlights From the Dinner

**H**ank Coxe, President of the Florida Supreme Court Historical Society, opened its annual dinner on January 31, by telling those in attendance that in addition to honoring former Governor Askew for his success with improving the Florida judiciary, the Society would be honoring two legal giants who recently passed away.

Mr. Coxe asked Reece Smith's devoted friend and fellow former ABA President Martha Barnett accompanied by Sylvia Walbolt, another devoted friend, to accept the Lifetime Achievement award from the Florida Supreme Court Historical Society on Mr. Smith's behalf.

Martha Barnett said it was fitting that the last award Smith received was from the Society, "giving new meaning to the old cliché that maybe, just maybe, we saved the best for last." Barnett said it is an understatement to say Smith was an active member of the Bar, as he is the only American lawyer to have been president of a local bar, a state bar, the ABA, and the International Bar Association.

"He did not use the power that comes from those positions for personal ambitions, but rather to give meaning to the rule of law," said Barnett, noting that in 1981 Smith helped save the Legal Services Corporation from extinction, which defined his ABA presidency. "If not for Reece Smith, there may not be a federally funded program for legal service to the poor," she said.

Smith understood the promise of equal access to justice only has meaning if it is "equal justice for all, especially for those who could not afford to pay for it," Barnett said. For those in the audience whose legal careers were impacted by the good work of Smith, the award was particularly meaningful.

Hank Coxe then asked former Justice Steven Grimes to come speak on behalf of his colleague and good friend, Justice Overton. Grimes, who served with Overton on the high court for 12 years and was his neighbor in Tallahassee, said the most significant event in Overton's professional life was when Governor Askew appointed him to the Supreme Court in 1974, after it earlier had become involved in scandal. He was the first justice chosen through the merit selection process created by Askew that soon was added to the Florida Constitution. The

award to the late Justice Overton was followed by Governor Askew's powerful words about merit selection and retention.

From his appointment until his retirement in 1999, Overton authored more than 1400 decisions and was a central figure in a vast series of reforms that made his court one of the most respected and accessible in the nation – a record of pride for the Florida Supreme Court.

"Governor Askew told Ben, 'I want you to go up and clean up the Supreme Court,'" Grimes said. "And he did."

Prior to calling Senator and former Governor Bob Graham to introduce Governor Askew, FSCHS President Hank Coxe of Jacksonville said all three branches of government were enhanced during the decades Governor Askew was in power, including his push to modernize Florida's 1885 Constitution as a member of the Constitution Revision Commission in 1966.

"As governor, he implemented the corporate income tax, upon which he campaigned in 1970; reorganized the budgetary responsibility of the state under the Department of Administration; created meaningful and enforceable environmental controls; helped create limitations on campaign spending and effective financial disclosure for all public officials; created an ethics commission; and reformed the prison system," Coxe said.

Coxe said Askew also created the statewide juvenile system; supported school; appointed Joe Hatchett as the first black justice of the Supreme Court; appointed, a black woman, secretary of the Department of Community Affairs; and named, secretary of state, the first black man to hold a Florida Cabinet position since reconstruction.

"Racial justice and honesty in government were the hallmarks of his governorship," Coxe said. Those in the audience who practiced law during Askew's governorship experienced these positive changes.

In introducing Governor Askew to the hundreds of lawyers, judges and family members gathered for the FSCHS's annual dinner in Tallahassee on January 31, former Governor Bob Graham called Askew a model "of courage and high values" who came onto Florida's political

stage at "precisely the time he was needed most."

"He became the education governor. He became the environmental governor. He led in reform of our health institutions," said Graham, who followed Askew into the governor's mansion and also served in the U.S. Senate. "But the thing for which he will be best known will be his leadership for an independent judiciary."

Graham said Askew became governor in the early '70s in the shadow of the worst scandal in the history of the Florida Supreme Court, when corruption and cronyism charges ended up costing two justices their jobs.

While the scandal tarnished the court's reputation, Graham said Askew also saw it as an opportunity and in 1971 gave up the governor's unilateral power to fill mid-term judicial vacancies in favor of a judicial nominating commission process, which was eventually included in the Florida Constitution. Askew also championed the 1976 constitutional amendment that ended direct, contested elections for the appellate bench, instead substituting a merit selection and retention system.

In accepting the award, Askew, the state's former Governor who served from 1971 to 1979, said he spent more time on judicial reform than any other issue.

"Why? Because it was the most critical," Askew said.

Askew, who was elected to the Florida House in 1958 and the Florida Senate in 1962, said people who expect to be free expect something "that never was and never will be" without a strong independent judiciary. He referenced the presence at the dinner of author and journalist Martin Dyckman who uncovered the Court scandals in the 1970's for the St. Petersburg Times and later wrote about Governor Askew's critical part in getting the Florida Legislature to overhaul the judicial election process.

Askew, 84 and sharp as ever, said this past November's balloting, which saw three Supreme Court justices survive an organized effort to oust them and the defeat of a "terrible constitutional amendment" that would have required Senate confirmation of the governor's

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## Annual Dinner continued...

Supreme Court appointments, made it easier for the Legislature to revoke court procedural rules, and given the speaker of the House broader access to investigation files of the JQC was “one of the most important” elections of his lifetime.

“I was so happy, I don't know what to say,” said Askew, adding that he thinks the people of Florida perceived a threat and stood up to protect their rights.

“It was such a wonderful feeling.” Many in the audience shared the Governor's satisfaction in observing that – in the end – Florida's system withstood an aggressive challenge, and the judiciary retained its apolitical, independent character. Governor Askew sounded a time-honored warning:

“If you are looking to protect your rights, don't look to the executive; don't look to the legislative; look to the courts and the judiciary because they are the only ones who will stand up for absolute fairness.”

After becoming the first Florida governor to serve two consecutive, four-year terms, Gov. Askew, barred from seeking a third term, accepted an ambassador position in President Carter's cabinet as the United States Trade Representative. At the expiration of the President's term, ambassador Askew returned to Miami to practice law and later, after visiting all 50 states, would mount a campaign for President.

Gov. Askew has spent the past 23 years teaching graduate-level courses at Florida's universities. Askew said he explored teaching as a way to keep young people from becoming cynical about the government and the judicial system.

“I'll tell you what; we have students that are interested and all they are doing is looking for a little bit of encouragement,” Askew said. In his classes, Askew often discusses *Marbury v. Madison* “because it shows the human dynamic in reaching appellate decisions, but it also says clearly that

the supreme law of the land is – in practicality, as it should be – in the independence of the judiciary.”

Askew said the battle to maintain judicial independence is an ongoing struggle.

“The fight is not over,” Askew said. “And I've got just a little bit of fight left in me.” From what the audience observed, Governor Askew has a lot of fight left in him, and all for the good of Floridians and our judicial branch of government.

In addition to an exciting program, the guests enjoyed good food with their friends and colleagues.



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## Thank you!



## Skene continued...

women the same right men had to recover money damages for loss of consortium. The case, obviously *Gates v. Foley*<sup>1</sup> in 1971, did extend the benefits of loss of consortium to women. Although the term “consortium” formally refers to “the companionship of marriage,” all of us come on, admit it joked about it in law school as loss of having sex. Adkins said he walked in and said something like, “It seems to me the real issue is whether a woman enjoys sex as much as a man. I think it's going to take me about six weeks to research this.”

In a memoir at his retirement,<sup>2</sup> Adkins recalled asking a jury for damages for loss of consortium during a trial near the “horse country” of Ocala. “Consortium is a nebulous concept,” he says he told the jury, “but please keep in mind the stud fees that are paid to race horses.” The argument worked “too well,” he says, because the judge ordered a remittitur.

I ran into Justice Raymond Ehrlich in the rotunda one day July 17, 1982, my notes say, which would have been shortly after Alan Sundberg left the chief justiceship. Ehrlich, a great admirer of Sundberg, noted with his usual humor that despite Sundberg's reputation for articulate opinions loaded with Harvard words, he and Sundberg both use “muleskinner language” in conference that they would not use in mixed company. Ehrlich added that the English vocabulary “doesn't have just 1,000 words.”

The notes were among clips of some of my old articles about the court. There was this Times headline dated Jan. 15, 1983: “Vasectomy fails; doctor asked to pay for 'wrongful life.'” The doctor, from Miami, was appealing a \$325,000 verdict. Noting the argument that the doctor should support the child to age 18, Justice Joe Boyd asked at oral argument if the doctor “wouldn't be morally and reasonably entitled to social visitation.” Fortunately, Ehrlich jumped in with another question.

An article from May 4, 1984, was called “Dog Day at the Court” about two opinions regarding injuries caused by dogs. In one, a little boy had hitched a medium-sized dog to his little red wagon, then got hurt when his dog started chasing another dog. In the other, a man was walking through the gate of a marina where he kept his yacht when the watchdog, Duke, lunged and bit his testicles.



## The Florida Supreme Court Historical Society



### Lifetime Achievement Award presented to

**William Reece Smith, Jr.**

Officers and Trustees of the  
Florida Supreme Court Historical Society  
January 31, 2013

William Reece Smith, Jr. served the legal community at all levels, and was the only American lawyer to have been president of a local bar, a state bar, the American Bar Association, and the International Bar Association. He was an extraordinary trial lawyer, role model, and mentor to many. Throughout his distinguished career, he set the gold standard for professionalism and commitment to pro bono service. Serving as President, Trustee and Lifetime Member he advanced the Florida Supreme Court Historical Society's growth and mission with his quiet and unswerving leadership.

## Recognition of Supreme Court Justice Ben F. Overton

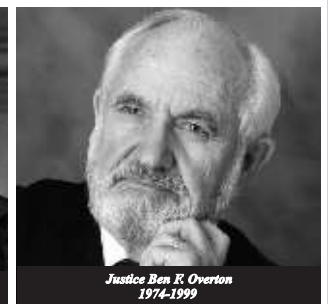
Born December 15, 1926, in Green Bay, Wisconsin. Died on December 29, 2012, in Gainesville, Florida. Former Justice Ben F. Overton was the first Florida Supreme Court Justice to be selected under the merit selection process (effective January 1, 1973). He was appointed by Governor Reubin Askew on March 27, 1974, and retired on January 4, 1999. He authored over 1,400 opinions and served as Chief Justice from 1976 to 1978.



Newly sworn-in Supreme Court Justice Ben Overton (left) gets congratulations from Governor Reubin Askew  
Tallahassee, Florida - March 27, 1974



Justice Ben F. Overton 1974



Justice Ben F. Overton  
1974-1999

Donnie got to keep his \$9,800 verdict. The yacht owner's case was thrown out. The difference, said the court, was that the marina had met the statutory requirement of posting a “Bad Dog” sign.

During oral argument the previous October, Justice Parker Lee McDonald seemed incredulous at the idea that a marina could put up a “bad dog” sign and avoid any obligation to control the dog. “You don't think the court's going for that, do you?” But it did, 5-2, with McDonald and Ben Overton dissenting.

I began covering the trial courts of St. Petersburg in 1977. I arrived in Tallahassee in September 1980. Covering the Supreme Court was one of the most fun things I ever did as a journalist. I had no idea how much material there would be for this history volume III.

There are seven or eight books on the 2000 election, which is just one chapter in this volume. There are multiple books on the Florida death penalty, in addition to hundreds of opinions. My goal is to find an enjoyable mix between the fun or illustrative stories, like Dog Day, and the most significant episodes.

Even after I finish the manuscript (Labor Day is my goal), the University Press of Florida expects to take a year in editing, production and printing. But by the time of the society's dinner next January, we hope to be ready to take pre-publication orders.

<sup>1</sup> 247 So.2d 40 (Fla. 1971).

<sup>2</sup> James C. Adkins with Leonard K. Samuels and Paul Hampton Crockett, *Eighteen Years in the Judicial Catbird Seat*, 11 Nova L. Rev 1, 4 (1986).



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