



11th Circuit *Historical News*

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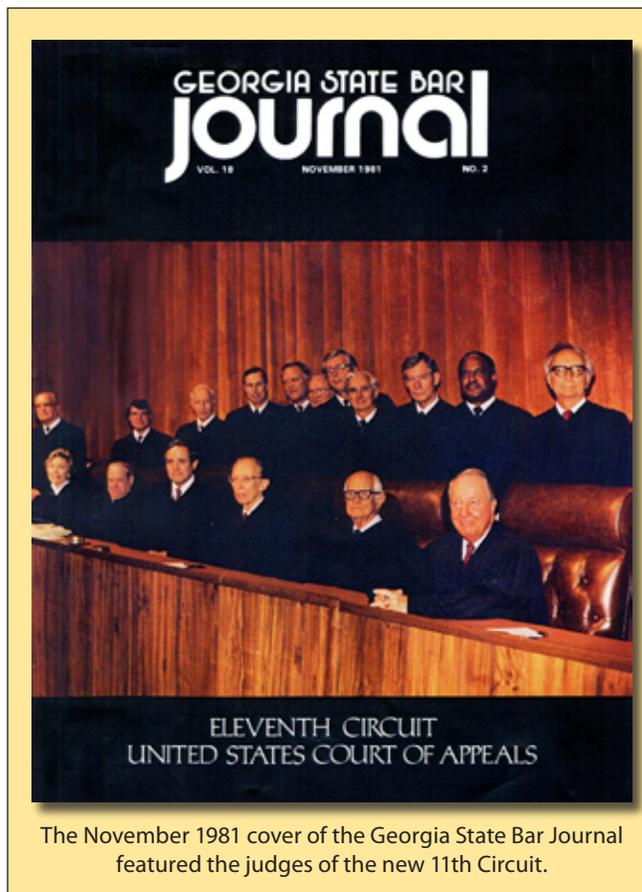
Special Issue – The beginning of the 11th Circuit

The Opening of the Eleventh Circuit United States Court of Appeals and the Decision in *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc)¹

By Patricia K. Olney

On Sept. 30, 1981, the 26 active members of the old Fifth Circuit Court of Appeals gathered for the last time in New Orleans to bring to a formal close the active – sometimes controversial – history of what had become the largest single court in the history of the federal judiciary. The Fifth Circuit Court of Appeals came into existence in 1891, but by 1980 the unparalleled growth of the Fifth Circuit and the attendant problems in managing its case load convinced Congress to split the Court into two, establishing a new Fifth Circuit and the Eleventh Circuit Court of Appeals. It had been over fifty years since the last Circuit Court of Appeals – the Tenth Circuit – had been carved out of the Eighth Circuit.

Following ceremonies in New Orleans marking the split of the old Fifth Circuit in two, twelve of the former active Fifth Circuit judges went to Atlanta, Georgia, to take their place for the first time officially as the Eleventh Circuit Court of Appeals. On Friday morning, Oct. 2, 1981, the new Court met to



The November 1981 cover of the Georgia State Bar Journal featured the judges of the new 11th Circuit.

conduct its first official piece of business – the *en banc* oral argument of the first case submitted to the Eleventh Circuit: *Bonner v. City of Prichard*. As counsel for the appellant, Larry Bonner, I had the singular honor and pleasure of taking part in that argument and being the first to address formally the new but familiar Court.

As my opponent, J. Randall Crane,² and I took our places along with counsel for the Alabama Board of Corrections, Thomas R. McAlpine³ (as *amicus curiae*, aligned with appellee, the City of Prichard), the courtroom began to fill to standing capacity with selected guests: judges and members of the State Bars from Alabama, Georgia, and Florida, the Staff of the new Court, and the families

of the judges of the new Eleventh Circuit. The senior judges of the Eleventh Circuit – Judges Elbert P. Tuttle, Warren L. Jones, David W. Dyer, and Lewis R. Morgan

See "Opening" page 10

Allow me to introduce Ben Harris, our new president . . .

By David Bagwell

Our new president is Ben Harris of Mobile, Ala., a partner in the long-respected Johnstone, Adams law firm in Mobile. Ben celebrated his 42nd birthday¹ on Sept. 12, 1979, when Hurricane Frederick hit Mobile that day, then the very worst storm to hit here in the 53 years since the giant storm of 1926.

Matter of fact, that storm of 1926 had a big effect on Ben, since it wiped out Zundel's Wharf, where the steamboats brought summer visitors from Mobile to Point Clear, on the Eastern Shore of Mobile Bay, where Ben's parents had a summer home, and where Ben spent all of his summers. They never rebuilt Zundel's Wharf – now called a "relict pier" under Alabama law, reserved for hook and line fishing – and Ben spent a big part of his adolescence fishing there for speckled trout out of locally built wooden boats. He and his brother even lost *two outboard motors* off the same boat at Zundel's Wharf, in one morning!

Not far off the Point Clear Beacon, Ben once caught a "blackfish" as we call them in Mobile ("tripletail" in Florida and maybe Georgia too), which would have been a state record, but they disqualified it on the ground that it was caught on a Calcutta cane pole. *Everybody* on Mobile Bay knows that you are *supposed* to catch blackfish with Calcutta cane poles, and only some *Communist* would ever say otherwise.

Ben finally grew up and went to college at Davidson,

and to the University of Alabama Law School, and became a lawyer and joined a fine old firm, and did a bunch of civil litigation – some of it was actually *boring*, not at all like they show on television – and became President of the Alabama State Bar in 1987 at age 50. He has been a member of the House of Delegates and Board of Governors of the American Bar Association, and was quite active in the formation by lawyers in Alabama of a professional liability insurance firm, Attorneys Insurance Mutual of Alabama.

Ben has been married for *almost* half a century to Martha Lambeth Harris, formerly of Richmond, and together they produced two fine sons– one a lawyer and one a Realtor like Ben's father was – and enough grandchildren to make life fun. Together Ben and Martha were some of the earliest runners on the streets of Mobile, and both were active in the local foot races including the famous and beautiful Azalea Trail Run in the spring.

Ben is what they call "an old Mobilian" hereabouts; around the turn of the last century, his grandfather owned a store in downtown Mobile, which sold its own brand of coffee, among other things, and was marked by a sign in the form of a huge tin coffee pot, now preserved in the Museum of the City of Mobile.

¹ Trying to figure out how very old Ben is? Well, if it helps, he was born the same day that Rudolph Caraccioala won the Italian Gran Prix at Livorno in his Mercedes. Ben is holding up a little better than that pre-War Mercedes.

The Eleventh Circuit Historical Society

P.O. Box 1556 • Atlanta, Georgia 30301
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MESSAGE FROM THE PRESIDENT



HARRIS

Many to thank for 11th Circuit Historical Society's success

I am honored to have the opportunity to serve as President of the Eleventh Circuit Historical Society. I will do my best. But, I am unencumbered with any notion that I can meet the high standards set by Emmet Bondurant, Jack Harkness and my good friend and law school mate Tommy Lawson.

We are all indebted to Emmet for his outstanding leadership and many accomplishments as President of the Society. Emmet worked with Dean Ralph Beard and located a publisher for the Georgia History Project, and for the past two years together, they marketed and sold the Georgia Federal Courts book on behalf of the Society.

Moreover, Emmet compiled a list of Georgia attorneys and wrote letters to solicit their membership in the Society. This effort met with much success. Further, Emmet formulated a plan to obtain the oral histories of all Senior District Judges throughout the Eleventh

Circuit.

I wish to express our deep appreciation to Judge Lanier Anderson for his service as Honorary Chairman of the Eleventh Circuit Historical Society. Judge Anderson's interest and support of the Society was a source of encouragement and inspiration to us. Likewise, we welcome Chief Judge Joel Dubina as the new Honorary Chairman of the Eleventh Circuit Historical Society and look forward to working with him. Like Judge Anderson, Judge Dubina has been interested in and supportive of the various projects of the Society.

We are most fortunate to have Wanda Lamar as our Executive Director. Wanda in large measure is the reason our newsletter is published, and among many other duties, prepares monthly statements of the Society's bank accounts, while at the same time manages to keep the Officers and Trustees motivated and focused and serves as our vital link with the Eleventh Circuit Judges.

It is my distinct pleasure to welcome our new Trustees: David Bagwell, Reggie Hamner and Harry Gamble in Alabama, Joel Eaton in Florida, and Kirk McAlpin Jr. in Georgia.

I encourage all Officers, Trustees and Members to seek new members and assist us in obtaining oral histories from our Judges. I look forward to serving as President and welcome the support of each of you. Please give me the benefit of your thoughts, suggestions and ideas.

The Historical News is published periodically by the Historical Society of the United States Courts in the Eleventh Circuit. To obtain a copy or information about the Society, please contact:

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This newsletter produced courtesy of The Florida Bar.

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Judge Edmondson honored as tenure ends as 11th circuit chief

Chief Judge Joel Dubina appointed Judge Susan Black and Judge Frank Hull to recommend an appropriate gift, personally given by all the circuit judges, to Chief Judge Edmondson for his seven-year service as Chief.

During his tenure, Chief Judge Edmondson did many good things, and one of them was to have a red stripe added to the Court flag in honor of Judge Robert Vance. The seal on the Court flag was originally done by the Army's Institute of Heraldry, and the Institute confirmed for Judge Edmondson the stripe's symbolic appropriateness and the proper placement and size of the stripe. He then had court pins made with both an American flag and the new Court flag. Judge Edmondson began the tradition of having the pins distributed to the Court's staff and new law clerks each year.

According to Judge Hull, Judge Black and she recommended to the Court that they have an artist paint



Painting of flags was given to Judge Edmondson to honor his service.

a picture of the pin for Judge Edmondson. They asked Anne Irwin (who owns a gallery – Anne Irwin Fine Art, 25-D Bennett Street, N.W., Atlanta, GA 30309, www.anneirwinfineart.com) to help them locate an artist to paint the pin. Irwin, who represents 25 nationally and locally known artists, highly recommended Michael McGovern, an artist from Vermont, who is a photo-realism painter.

Judges Hull and Black then sent Mr. McGovern the actual pin and a digital photo of the pin. Judge Hull observed that “Mr. McGovern’s painting captures the Court flag and pin so well that they look real!” She added that the artist also chose the background, which sets off the pin very well.

“Anne did the framing for us. So it was a great collaboration of the artist and his local representative Anne, and both went well and beyond to get the painting done in time and in Atlanta by the date of the Court dinner on June 1 honoring Judge Edmondson.”

Judge Kravitch honored by state bars, national association of women judges



Judge Kravitch in Atlanta chambers, Elbert Parr Tuttle Courthouse

At the 2009 Eleventh Circuit Judicial Conference in April, the state Bars of Alabama, Florida and Georgia presented 11th Circuit Senior Judge Phyllis Kravitch with a resolution and plaque honoring her years of service to the legal profession.

Bar Presidents J. Mark White, John G. White III and Jeffrey O. Bramlett signed the resolution commending Judge Kravitch for her untiring dedication to the practice of law and to the judiciary and for her contributions to women in the profession. They praised her for her unequivocal commitment to equality and fairness.

Judge Kravitch was also honored earlier in the month by the National Association of Women Judges (NAWJ). On April 3, at a reception held during the Association's Midyear Meeting and Southeastern Leadership Conference, the Judge was recognized for her pioneering efforts. She was presented with an award in the form of two scholarships given to a student at Georgia State University College of Law and a student at John Marshall Law School. The Equal Access to Justice Scholarships were awarded to Lisamarie Nellyn Bristol and Amber C. Saunders.

NAWJ created the scholarship to acknowledge female law students who have demonstrated a sustained and passionate commitment to the achievement of equality of opportunity and access in the system of justice.

See Resolution on adjoining page.

RESOLUTION OF THE STATE BARS OF ALABAMA, FLORIDA AND GEORGIA

HONORING

Eleventh Circuit Judge

Phyllis A. Kravitch

ON HER LIFETIME OF SERVICE TO THE LEGAL PROFESSION

Whereas, Judge Phyllis A. Kravitch, born in Savannah, Georgia, gave up her pink ballet slippers to accept a lifetime of donning black robes; and

Whereas, after graduating with honors from Goucher College in 1941 and the University of Pennsylvania School of Law in 1943, yet unable to find employment in her chosen profession as a result of her fair gender, Judge Kravitch returned to her Southern home to join the law practice of her storied father, Aaron Kravitch; and

Whereas, Judge Kravitch devoted her practice to representing the disadvantaged and at times the unpopular. In a manner both genteel and unflinching, Judge Kravitch advocated for civil rights for all and fought for the dignity of all her clients; and

Whereas, in 1975, Judge Kravitch was the first woman to be elected President of the Savannah Bar Association, and in 1976 was the first woman in Georgia to be elected to serve as a Superior Court Judge; and

Whereas, in 1979, Judge Kravitch was appointed by President Jimmy Carter to serve on the U.S. Court of Appeals for the Fifth Circuit, only the third woman to receive such appointment, and later became the first woman to serve on the U.S. Court of Appeals for the Eleventh Circuit after the Fifth Circuit split in 1981; and

Whereas, throughout her career Judge Kravitch made significant contributions to the practice of law and to the citizens she served, including: working to eliminate race- and gender-based discrimination in teachers' salaries and the use of sub-standard school buildings for minority children while serving on the Chatham County Board of Education; helping establish the Savannah Area Family Emergency (SAFE) shelter for battered women and the Savannah Rape Crisis Center; and assisting the Georgia Legislature in revising family, juvenile and child abuse laws to be gender-neutral; and

Whereas, Judge Kravitch took senior status in December 1996, yet has continued to serve the public and the judicial system by hearing appeals filed in the Eleventh Circuit and by accepting invitations to sit as a visiting judge in other circuits across the country; and

Whereas, Judge Kravitch has often been recognized by her peers, having received honorary Doctor of Laws degrees from Emory University and Goucher College; the American Bar Association's First Annual Margaret Brent Award in 1991; the Council of Jewish Women's Hannah G. Solomon Award in 1978; and the University of Pennsylvania Law School's James Wilson Award in Appreciation of Service to the Legal Profession in 1992; and

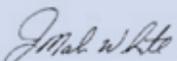
Whereas, Judge Kravitch has served as a role model for women in the profession, having overcome discrimination and adversity and by following the fine example set by her father for equality and fairness in the practice of law and the system of justice; and

Whereas, Judge Kravitch's life exemplifies the impact that one person can have in bringing about change, her gentle persistence in pursuing the practice of law in an era where women did not frequently participate in the courtroom having helped to usher in a generation in which women are as free to practice before a court as they are to sit on its bench.

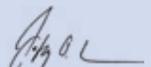
Now, Therefore, Be It Resolved By The Alabama, Florida and Georgia Bars, that we do hereby commend and honor Judge Phyllis A. Kravitch for her untiring dedication to the practice of law and to the judiciary and for her contributions to women in the profession; that we praise her for her unequivocal commitment to equality and fairness; and that we thank her for her lifetime of devotion to the legal profession.

Be It Further Resolved that a copy of this resolution be presented to Judge Phyllis A. Kravitch, and be adopted by the Alabama State Bar, the State Bar of Georgia and The Florida Bar.

This 30th day of April, 2009


John Mark White
President, State Bar of Alabama


John G. White, III
President, State Bar of Florida


Jeffrey O. Bramlett
President, State Bar of Georgia

Four friends and one day in 1981

By Naomi Godfrey, Senior Staff Attorney, 11th Circuit

I began work at what was the 5th Circuit Court of Appeals in Atlanta one beautiful and brisk day in January 1981. At that time, there were only 12 attorneys in the Staff Attorneys' Office in Atlanta, including 11 line attorneys and the Senior Staff Attorney. There were no supervisory attorneys.

From the beginning, everyone in the SAO was excited about being a part of the beginning of the new 11th Circuit in October of that year. We all wondered endlessly about which case would be chosen for the Court's first case and what law would be chosen to serve as precedent -- the law of the current 5th or that to be created by the new 11th Circuit. As fate would have it, the answers to these questions would be found, in part, in my very own past.

I was the only University of Georgia law graduate in the Staff Attorneys' Office, as most of the other attorneys in the office had been transferred to Atlanta from the 5th Circuit in New Orleans. I had thoroughly enjoyed my three years of law school at the University of Georgia. I found law school challenging but also invigorating. I also found, during the first few weeks of my first year there, three loyal and lifelong friends in Trisha Olney, Penny Haas, and Wendy Anderson. I do not recall how we met (we were all in Section W) and I really don't know how we became fast friends, but we did, and have remained friends to this day.

Trisha, Penny and Wendy were young and single while I was the odd person out in that I had been a high school English teacher, was older than the three of them, and was married with two children, ages three and six. But, undaunted, Trisha, Penny and Wendy embraced me and my children, and, except for classes, the law library, and forays to "the station," wherever the four of us went, there went my children.

Trisha is the daughter of a retired Air Force colonel who named her Patricia Kathleen Olney (to be called Trisha), so that her initials spelled out something "clever." Thus, she became TKO. A lover of all things Egyptian (she was first an Egyptologist), she honeymooned in Egypt. She also loves anything and everything that pertains to bunny rabbits, especially live ones. Several live on her screened-in patio and stare at you from pool side as you swim. Lithe, blond and beautiful, in 1981 Trisha worked for the firm of Reams, Tappan, Wood, Vollmer, Phillips & Killion in Mobile, Ala., after serving a year as law clerk to the late Justice James H. Faulkner of the Alabama Supreme Court.

Penny was in private practice in Savannah, Ga., and Wendy was in private practice at a large Miami, Fla., firm handling complex real estate and financial matters.

Imagine The Friends' surprise and absolute delight when we learned that Trisha would be arguing the very first case before the new 11th Circuit Court of Appeals. Trisha had been appointed to represent Larry Bonner, a prisoner who alleged that he was sprayed with a fire extinguisher while locked in a jail cell as a pretrial detainee at the city jail in Prichard, Ala.

Trisha, as is her style, threw herself into representing Mr. Bonner. Of course, The Friends never needed much of an excuse to get together, but this was a very special occasion for all of us and a unique occasion for Trisha. We decided to make it a weekend deal. On Thursday, Oct. 1, Trisha, Penny and Wendy arrived in Atlanta for the big weekend. Trisha, always the confident one, was

not the least bit nervous about her argument before the *en banc* Court the next day. We were, but she was not. So, we went out to dinner and then to my house for libations and girl talk, mostly about the points Trisha would argue at oral argument the next day. Trisha did not rehearse one line of her argument and we did not find



University of Georgia School of Law 1988 Reunion for Class of 1978. Left to right: Trisha Olney, Wendy Anderson, Naomi Godfrey and Penny Haas (now Judge Penny Freeseaman) of the Section W Study Group from 1975-1977.

that alarming, because we knew from past experience that she was well-prepared.

The next morning, my children were off to school and we set off, dressed in our best clothes, for oral argument at the 11th Circuit Courthouse in downtown Atlanta. Trisha did not disappoint us. She argued that the Court should adopt as precedent the case law of the former 5th Circuit and follow that court's decision in *Mitchum v. Purvis*, 650 F.2d 647 (5th Cir. 1981). She was perfect, and obviously thrilled to have been given the opportunity to argue the first case before the newest federal court of appeals.

After oral argument, the Court adjourned and reassembled for formal opening ceremonies in Symphony Hall at the Memorial Arts Center in midtown Atlanta. As part of the ceremonies, Chief Judge John Godbold read the Court's first ever opinion, with the Court unanimously adopting the law of the old 5th Circuit as it existed on Sept. 30, 1981, as the governing law of the 11th Circuit.

The en banc Court also decided that a panel decision of the old 5th Circuit could not be overruled except by an en banc court of the 11th Circuit; one panel could not overrule a decision of another panel. Having adopted the law of the old 5th Circuit, the Court then chose to apply *Mitchum v. Purvis*, holding that it is inconsistent with the due process rights of prisoners to dismiss civil rights cases filed by them merely because of their status and for the convenience of the court and other litigants.

We were thrilled! The 11th Circuit had chosen which body of law would serve as precedent for the Court and Trisha had won her case. That evening, there was a banquet at the Colony Square Hotel across the street from the Arts

Center where a joyful time was had by all who attended.

It is hard to believe that was so many years ago. The 11th Circuit Court of Appeals has evolved into one of the largest courts in the country. Although the 5th Circuit split into two separate circuits because of its tremendous case load, the 11th Circuit's caseload is now more than double what the 5th Circuit's caseload was at the time of the split, and it has developed into one of the most efficient courts in the country in spite of the heavy caseload.

And, although there are still only 12 active judges on the 11th Circuit bench, only one of the original active judges of the 11th Circuit, Judge Gerald Bard Tjoflat, remains on the Court as an active judge. The courthouse in downtown Atlanta is now called the Elbert Parr Tuttle Courthouse and will soon add the Tuttle Annex. The Memorial Arts Center is now called the Woodruff Arts Center.

The Staff Attorneys Office at the 11th Circuit has grown as well. The office now has 60 attorneys, including eight supervisors, a deputy, and a Senior Staff Attorney (me). The Friends have remained friends, exchanging emails frequently. So, too, have they grown in their respective legal careers. Trisha is a board certified admiralty and maritime attorney in Port Canaveral, Fla.; Penny is a superior court judge in Savannah, Ga.; and Wendy practices complex commercial law in Winter Park, Fla.

Now 52 years old, Larry Bonner has continued to visit the Alabama penal system from time to time and currently resides there, perhaps unaware of the importance his civil rights claim against the City of Prichard had on 11th Circuit jurisprudence and the memorable experience it afforded to four 1978 UGA law graduates many years ago.

The 11th Circuit's Foundation Case: *Bonner v. City of Prichard*

By David A. Bagwell

I bear a burden that you'd think might be almost unbearable. My burden is that the entire body of authority of the U.S. Court of Appeals for the Eleventh Circuit is built upon the correction of a judicial error that I am deemed to have made some 30 years ago. Back then, I was a young man, and I was the only full-time U.S. Magistrate for the Southern District of Alabama -- a position now inartfully called "U.S. Magistrate Judge"¹ -- a job now managed there by four such Article I worthies.

Yeah, yeah. I did it. I waive my right to remain silent, which I fully understand. It was all my fault. *Bonner v. City of Prichard*² was my case. You know; it was the case the spanking-new Eleventh Circuit decided and announced on its first day of existence, evidently designed to

reassure the doubting Thomases of the left that the new Eleventh Circuit would not abandon all that hard-fought civil rights precedent of the old Fifth Circuit, and all. You know. You heard about the 1981 Circuit Split while you were at the 2009 Judicial Conference in Birmingham, Ala., unless you were romantically involved with your Blackberry® or iPhone® at the time, or taking a nap.

Bonner reversed me on authority of my having been similarly reversed by the old Fifth Circuit in the identical case *Mitchum v. Purvis*,³ decided two and a half months earlier. Shame on shame!

Just after *Bonner* was announced, I told Judge Frank Johnson of the old Fifth and the new Eleventh Circuit (for
continued, next page

whom I had clerked when he was a District Judge) that “I am the only Judge in history to have been reversed by two different federal circuits on the same point of law,” to which he snapped with a smile “you’d think you’d have learned your lesson after the first time!”

As of this writing, the miracle of modern computer legal research helps us know that *Bonner* has been cited some five or six thousand times, almost all in the Eleventh Circuit. That’s more than one time per mile around the entire Earth at the Equator bulge, and all. My shame writ large and long.

But here’s the deal: I don’t feel at all guilty. Not at all. I’ll tell you why not.

Back in those dark days before congressional corrective action, more than one-third of the private civil docket of the Southern District of Alabama was prisoner Section 1983⁴ and *habeas corpus*⁵ cases,⁶ and since we stayed very current with them, unlike many districts, the percentage of filings was no doubt higher than that. While under suggested procedures from the Federal Judicial Center,⁷ the most common response in most districts was to throw those cases out either *sua sponte* or on motions, in the Southern District of Alabama we had an unusual radical response to those lawsuits: mostly we just tried ‘em. The Court declared the Prison Chapel to be a “Special Federal Court” and we took U.S. Marshals and a tape recorder and a Deputy Clerk and we held actual simple trials.

The trials were a little unusual, I admit. I sat on the dais just in front of a big dunking baptismal font. It said in big letters: “REPENT AND BE BAPTISED,” which is good advice generally and especially in prison. Behind me were two pictures of Jesus. On the left behind the altar there was a Protestant Jesus with incongruous Anglican-looking flowing light fine hair, and on the right behind the altar there was a Roman Catholic Jesus with “The Sacred Heart”⁸ glowing out of his chest. In between the two pictures of Jesus was an ecumenical hand-lettered sign that warned: “If You Lay Down You are Subject to Get Wrote Up,” which was also good advice. To my amazement, not one convict ever objected that any of this in a Federal Courtroom was an “Establishment of Religion” in contravention of the First Amendment. Thus divinely inspired, we tried cases, and we tried some more cases, and everybody had his day in Court, and that alone seemed to help clear the air; I mean, you’ll have to ask Dr. Phil or somebody else about that, since I was only a history major.

But there was one category of cases that was a

problem to the Court back then. On their way into the intake of the prison system, almost all of these convicts moved through city and county jails and thence graduated to the penitentiary, but on their fleeting journey through the jails they sometimes filed damage cases against the jailers over the usual things prisoners file suit over: food, reading and religious materials, security rules and mail, visitors, allegedly excessive force, shaves and haircuts, deprivation of medical care and the like.

Now, for pretty nearly all of those jails there were pending class actions in which there was being litigated the full panoply of jail rights, and the institutional claims were being made and litigated in those cases; the rights were not being ignored. These other cases I mention were individual cases for money damages, for the most part. So, how should we treat the individual cases? Should we issue the writ of *habeas corpus ad*

*prosequendum*⁹ to make the state bring **them** back from prison to stay in that same jail for trial, and issue the writ of *habeas corpus ad testificandum*¹⁰ to make the state bring **their witnesses** back from prison to stay in that same jail for trial? Ummmh. Not good.

A little earlier Judge Sam Pointer of the Northern District of Alabama – clearly a fine judge under any test¹¹ – had decided a prisoner case that went through the various problems of bringing back inmate witnesses and litigants, and essentially dismissed the case without prejudice to its being revived or re-filed upon the prisoner’s release.¹² Not only had Judge Sam Pointer been the Judge, which was pretty good indeed as authority goes, but the case had

been affirmed by the old Fifth Circuit without opinion,¹³ and certiorari had been denied by the U.S. Supreme Court.¹⁴ The case seemed sound, with all that. Especially because the statute of limitations under Alabama law was generally tolled during periods of incarceration, this seemed like a pretty good solution to a bad problem.

So, I discussed it with our District Judges about three decades ago, and we thought that Judge Pointer’s solution made a lot of sense, as usual. Back in those days before the Courts had computers or even fax machines – can we really be so old? – we made a standard document in the form of a Magistrate’s recommendation to the District Judge, we xeroxed it – yep, that’s right; we *xeroxed* it¹⁵ – and made some 12 or 15 copies and entered them in some 12 or 15 or so similar cases. The District Judges adopted my recommendations, and some several of the plaintiffs appealed, and the cases went up on

I told Judge Frank Johnson of the old Fifth and the new Eleventh Circuit (for whom I had clerked when he was a District Judge) that “I am the only Judge in history to have been reversed by two different federal circuits on the same point of law,” to which he snapped with a smile “you’d think you’d have learned your lesson after the first time!”

Appeal to the old Fifth Circuit like a flock of xeroxed doves or pigeons.

The first one of them in the flock hit the old Fifth Circuit in 1980, *Mitchum v. Purvis*,¹⁶ and the old Fifth Circuit reversed, saying that Judge Pointer's case involved the determination at the stage of the decision whether to issue the writs of *habeas corpus ad prosequendum*¹⁷ to make the state bring **them** back from prison to stay in that same jail for trial, and issue the writ of *habeas corpus ad testificandum*¹⁸ to make the state bring **their witnesses** back from prison to stay in that same jail for trial, and that it was error to decide the issue at the outset. Fair enough.

Yeah, well, but then remember that back then, all the liberals in the world were afraid that the new Eleventh Circuit would leave all of that glorious old Civil Rights precedent of the old Fifth Circuit in the dust, and start out all over again, and maybe even reinstate *Plessy v. Ferguson* or *Dred Scott* or something, and some signal flare had to be sent up to calm them down three clicks. So then somebody on the new Court – my old mentor Judge Frank Johnson is my nominee as the most likely suspect – said “hey, wait; remember that flock of xeroxed doves and pigeons that came up from the Southern District of Alabama? They were all exactly alike! That’s the best candidate for a *stare decisis* adoption of old Fifth Circuit precedent!” Or, something like that. It made a lot of sense, even I admit.

So, on the opening day of the new Eleventh Circuit on Oct. 1, 1981, the new Eleventh Circuit handed down *Bonner v. City of Prichard*, reversing me on authority of my having been earlier reversed by the old Fifth Circuit in *Mitchum v. Purvis*. For some reason, it took them to Nov. 3 to get the opinion out, instead of just saying “Reversed per curiam; see Local Rule 21” like they used to say in the good old days.

So, do I mind that they did that back almost 30 years ago? Do I mind that the entire body of Eleventh Circuit precedent is built upon what they say was my error 30 years ago? Why, heck no.

But I’ll tell you a little secret: I still think that Judge Pointer and I and the then-judges of the Southern District of Alabama were right. I still think that you can

do a whole lot worse than to follow the precedent of Judge Sam Pointer. That is, at least until it gets reversed by two different circuits. After that, I know to fall in line.

David Bagwell is now a solo lawyer in Fairhope, Ala., a failed utopian colony on a backwater slough of Mobile Bay in South Alabama, where he operates his own “white-shoe law firm”, white shoes at least from Easter to Labor Day. Although he is to his surprise listed as a “Superlawyer” in Antitrust litigation, a while back by reason of unrequested appointments he had represented – at the time of their execution – half of all the convicts executed in Alabama in the preceding 20 years, so evidently he is not a habeas corpus Superlawyer. From 1979 to 1985 he was U.S. Magistrate for the Southern District of Alabama.

Endnotes:

- 1 You can also blame me for the unwieldy name; I can hardly bear all these burdens. I complained about the old title “United States Magistrate” because the litigants and the criminal defendants didn’t understand it and thought I was some kind of Assistant U.S. Attorney or something. I complained to my senator, Sen. Howell Heflin, who thoughtfully invited me to complain to the Senate Judiciary Committee – most of the same members of which seem to still be there, maybe in different parties – which came up with the redundant name “U.S. Magistrate Judge.” Yuck. I suggested plain old “Judge,” but that did not go very far.
- 2 661 F.2d 1206 (11th Cir. 1981).
- 3 650 F.2d 647 (5th Cir. 1981).
- 4 42 U.S.C. §1983.
- 5 28 U.S.C. §2254.
- 6 Table C-3, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS (1982).
- 7 FEDERAL JUDICIAL CENTER, RECOMMENDED PROCEDURES FOR HANDLING PRISONER CIVIL RIGHTS CASES IN THE FEDERAL COURTS (1980).
- 8 Those of you who unlike me do not adhere to Popery might not recognize that “The Sacred Heart” – you know, the glowing heart with thorns all around it – was in visions between 1673-1675 of St. Margaret Mary, a French Visitation nun. But don’t feel bad; the convicts didn’t know that, either.
- 9 Then available under 28 U.S.C. §2241(c)(5).
- 10 Then available under 28 U.S.C. §2241(c)(5).
- 11 Any of you lucky enough to have heard Judge U.W. Clemons’ paen to Judge Pointer at Lunch during the 2009 Judicial Conference will know what I am talking about.
- 12 *Ball v. Woods*, 402 F.Supp. 803 (N.D. Ala. 1975).
- 13 529 F.2d 520 (5th Cir. 1976).
- 14 426 U.S. 940 (1976).
- 15 Don’t give me that “Holier than Thou” smirk, now; this was back before computers. Why should a computerized form order be morally superior to a xeroxed copy of a form order? As they radioed Admiral Nimitz in the Pacific, “the world wonders”.
- 16 650 F.2d 647 (5th Cir. 1981).
- 17 Then available under 28 U.S.C. §2241(c)(5).
- 18 Then available under 28 U.S.C. §2241(c)(5).

So, on the opening day of the new Eleventh Circuit on Oct. 1, 1981, the new Eleventh Circuit handed down *Bonner v. City of Prichard*, reversing me on authority of my having been earlier reversed by the old Fifth Circuit in *Mitchum v. Purvis*.

Visit the 11th Circuit Historical Society Web site: www.ca11.uscourts.gov.

Opening, from page 1

– then entered the Bar of the courtroom and took their places as honored observers of the proceedings. As senior judges on the old Fifth Circuit Court of Appeals, each of them had been given the opportunity to select the new court with which they would be associated – the Eleventh or the new Fifth. Along with Judge Richard T. Rives and Judge Bryan Simpson (who were unable to be present in Atlanta) and Judge Walter P. Gewin, who had passed away only a few months before, they had all chosen to stay with the appellate court having jurisdiction over their respective home states.

The case of *Bonner v. The City of Prichard* was a § 1983 action pending in the District Court in Mobile, Alabama, where I then practiced.⁴ I had been appointed counsel for Larry Bonner, an indigent state prisoner, by our local federal magistrate, Judge David Bagwell.⁵ With an overwhelming number of prisoner suits being filed in Mobile – many of which were of questionable merit – the District Court in Mobile had fashioned a remedy designed to alleviate the situation. A number of cases which did not challenge the conditions of the plaintiff's current confinement were being dismissed without prejudice *sua sponte*, subject to being refiled when the plaintiff was no longer incarcerated and better able to prosecute the action, if still interested. Such had been the fate of Larry Bonner's complaint, despite my contention that he had (from my investigation) a

potentially meritorious claim for an assault committed by his jailers while Bonner was a pre-trial detainee in the City Jail in Prichard, Alabama. Having accepted the responsibility of representing this man (and having interviewed witnesses now scattered throughout the Alabama prison system), I felt obligated to pursue an appeal on his behalf to correct what I believed to be an unwarranted infringement on his right of access to the courts.

Shortly after Bonner's appeal was briefed, a panel of the old Fifth Circuit announced its decision in a virtually indistinguishable case, also from Mobile: *Mitchum v. Purvis*, 650 F.2d 647 (5th Cir. 1981).⁶ When counsel for the City of Prichard and I read this decision, we naturally considered it controlling precedent in our appeal, and so I wrote to the Court asking to withdraw my oral argument request so as not to crowd needlessly the Court's oral argument calendar. A few weeks later we received calls instead from Norman Zoller,⁷ who was about to become Clerk of the Eleventh Circuit, asking us instead to argue the case before the new Court on Opening Day. Since our appeal would not be considered until after Oct. 1, 1981, it raised a crucial question for the new Court: Would the Eleventh Circuit follow existing Fifth Circuit law as precedent – binding or persuasive – or would it write on a clean slate? At the Court's request, counsel for the parties submitted supplemental briefing

on this question and made preparations to be in Atlanta to present argument on Oct. 2, 1981, when the Eleventh Circuit would convene for the very first time.

Surprisingly, there was little precedent to guide us on this critical issue. When the old Eighth Circuit had been split into the Eighth and Tenth Circuits in 1929, this particular question was never addressed in an opinion by either of those appellate courts. Only two district courts in the new Tenth Circuit considered the problem, and both determined that they were bound by decisions of the old Eighth Circuit which had been



U.S. Court of Appeals for the 11th Circuit, Oct. 1, 1981

First row, left to right: Gerald Bard Tjoflat, David W. Dyer, Elbert P. Tuttle, John C. Godbold, Warren L. Jones, Paul H. Roney and James C. Hill. Second Row, left to right: Thomas A. Clark, Joseph W. Hatchett, Frank M. Johnson Jr., Robert S. Vance, Peter T. Fay, Phyllis A. Kravitch, Albert J. Henderson and R. Lanier Anderson III. Not shown: Judge Lewis R. Morgan. Photo courtesy of Norman Zoller

rendered at a time when the district courts were seated in that Circuit. In their supplemental briefs all parties agreed that the Eleventh Circuit – needing some body of precedent to follow as does every court – should logically be bound by the decisions of the old Fifth Circuit, which had for almost a century served as the federal appellate court for those states that now composed the Eleventh Circuit.

Assuming the Eleventh Circuit chose to follow old Fifth Circuit law as binding precedent, the question remained, nevertheless, whether or not the Eleventh Circuit sitting *en banc* would be willing to overrule the old Fifth Circuit panel decision in *Mitchum v. Purvis*. Fortunately for Larry Bonner, one of the participants in the decision in *Mitchum v. Purvis* was none other than Judge Frank M. Johnson, Jr., who had also authored many of the Middle District of Alabama’s landmark Civil Rights decisions, which the old Fifth Circuit and the U.S. Supreme Court upheld, thereby transforming the Nation. Frank Johnson was known as a “law and order” judge, one who defended the Constitution with brilliant analysis and personal courage in the face of repeated threats to him and his family, including the bombing of his mother’s home and a cross-burning in his own yard.⁸

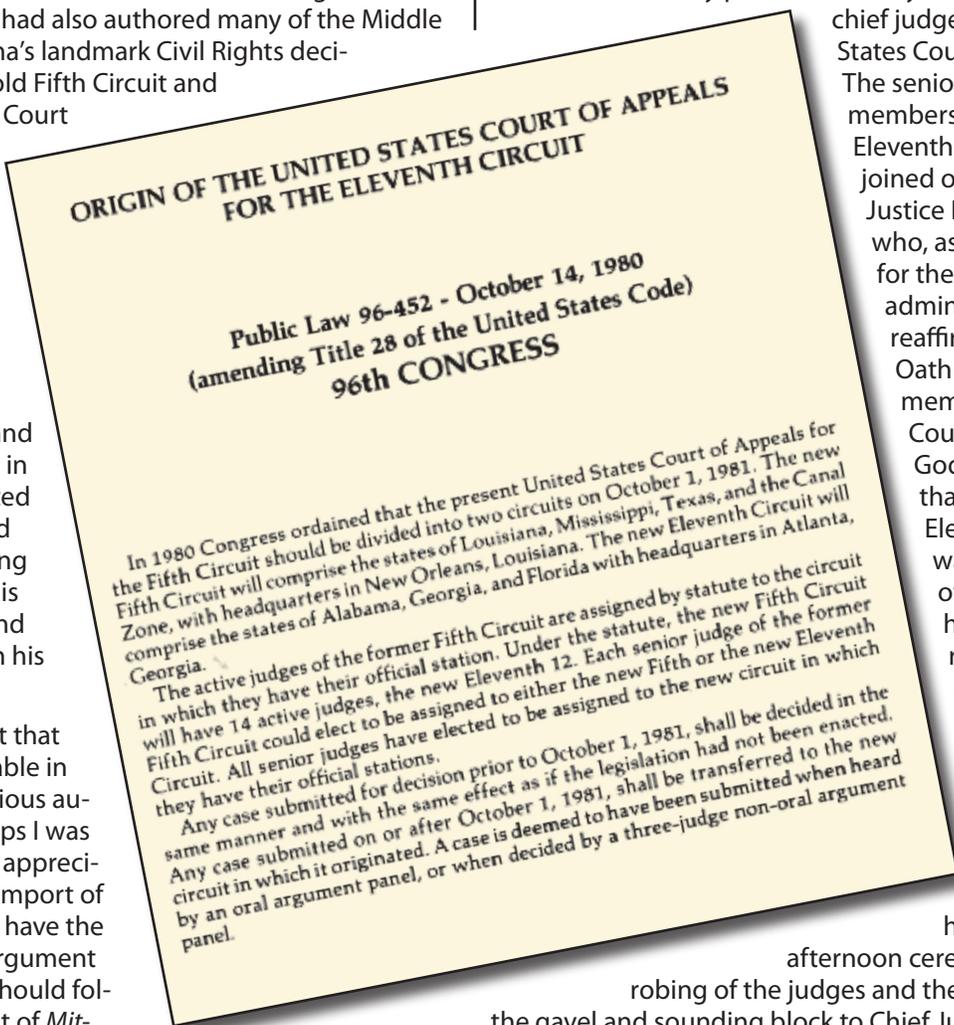
Oral argument that day was comfortable in spite of the illustrious audience – or perhaps I was just too young to appreciate fully the true import of the day (and I did have the best side of the argument – that the Court should follow the precedent of *Mitchum v. Purvis*). In accordance with its practice in *en banc* arguments, the Court allowed the attorneys to speak uninterrupted at the beginning of their respective arguments, but mid-way through the questions began, often from several directions at once. My recollection is that Judge Johnson asked few if any questions, but listened intently with a barely-perceptible smile.⁹ The privilege of arguing before him – one of the great jurists of the century – in support of a constitutional decision which he helped decide and may have

in fact authored, is one of the things that stands out the most for me to this day. As oral argument concluded and the Court adjourned until later that day, it was apparent that there was more than one possible resolution to the case and that the result may not have been quite the “foregone conclusion” that counsel for the parties had assumed it to be once *Mitchum v. Purvis* was released. It was then that we learned for the first time that the Court expected to announce its decision that day during ceremonies marking the formal opening of the Court.

That afternoon at 2:00, the Court reconvened at Atlanta’s Symphony Hall for the Opening of Court Ceremonies, with Chief Judge John C. Godbold presiding.¹⁰ As Chief Judge of the old Fifth Circuit in its last year, Judge Godbold is the only person in history to have served as

chief judge of two United States Courts of Appeals. The senior and active members of the new Eleventh Circuit were joined on the bench by Justice Lewis F. Powell who, as circuit justice for the Eleventh Circuit, administered the reaffirmation of the Oath of Office to the members of the new Court. When Judge Godbold remarked that the infant Eleventh Circuit was the only court of appeals that had never been reversed by the U.S. Supreme Court, Justice Powell replied with a broad smile, “Just give us time.”

Among the highlights of the afternoon ceremonies were the robing of the judges and the presentation of the gavel and sounding block to Chief Judge Godbold, an event which carried a unique history with it. The presentation was made on behalf of the Alabama State Bar by Broox Garrett of Brewton, Alabama, then Vice President of the Alabama Bar. The gavel and sounding block were made from white oak used in the construction in 1932 of the United States Courthouse in Montgomery, Alabama. The finishing of the gavel was done by Judge Frank Johnson, who had served in that courthouse since 1955, first as District Judge, then as Chief Judge for the Middle District of Alabama, and more recently as a Judge



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of the old Fifth Circuit Court of Appeals.

The presentation of the gavel was followed by the administration of the Oath of Office to the Court's Staff and the admission of attorneys to the Bar of the Court. The Court Executive, Thomas H. Reese,¹¹ and the new Clerk of Court, Norman Zoller, were among those taking the Oath. A total of 7,763 attorneys from the three states composing the Circuit were admitted on motion of their respective state bar presidents. Following these admissions the Court moved to substantive matters including the adoption of the Rules of Court and its Internal Operating Procedures as well as the announcement of its decision in the case of *Bonner v. City of Prichard*. We then experienced an event now usually confined to the history books or momentous decisions of the U.S. Supreme Court: the reading of the Court's decision from the bench as rendered by the unanimous en banc Court.

Chief Judge Godbold began by noting that the judges, attorneys, and citizens of the Eleventh Circuit were entitled to the Court's guidance on the essential question of precedence. He then announced that the Court had unanimously determined that it would follow the decisions of the old Fifth Circuit as that Court existed on Sept. 30, 1981, with the decisions handed down by that Court prior to the close of business on that day considered binding precedent for the federal courts of Alabama, Georgia, and Florida. Fortunately for Larry Bonner and myself, the en banc Court also agreed with the Fifth Circuit panel on the substantive merits of the panel's earlier decision and resolved en banc to follow that decision and the analysis of Judges Johnson, Roney and Henderson.¹² Needless to say, the reading of the decision authored by Chief Judge Godbold was for me the culmination of an exciting day.¹³

The formal ceremonies came to a close with the introduction of honored guests and remarks by a number of those present for the occasion. The Alabama Supreme Court Justice for whom I had clerked, the late Justice

James Faulkner, was introduced as a representative of the Alabama Supreme Court, along with Justices Hugh Maddox¹⁴ and Oscar Adams. Also on hand was Senator Howell T. Heflin of Alabama representing the legislative branch of the federal government as the senior member of the Senate Judiciary Committee from an Eleventh Circuit state.¹⁵ The federal judiciary was represented by Chief Judge Collins J. Seitz of the Third Circuit Court of Appeals – the most senior chief judge of the federal courts of appeal – and Chief Judge Charles Clark – the newest chief judge of a federal appellate court, having been sworn in only the day before as Chief Judge of the new Fifth Circuit. Chief Judge Clark was accompanied by a number of the senior and active judges of his new Court, who only days before had sat on the bench

of the old Fifth Circuit along with the new brethren of the Eleventh Circuit. The state courts were collectively represented by Chief Justice Allen Sundberg of the Florida Supreme Court. Telegrams congratulating the Court and wishing it a successful future were read from Chief Justice Warren Burger of the U.S. Supreme Court and from Attorney General William French Smith on behalf of



Opening of Court Ceremonies, Atlanta Symphony Hall (Photo courtesy of Norman Zoller).

President Ronald Reagan and the Executive Branch.

As a final highlight of the afternoon, Chief Judge Godbold took the opportunity to explain the new Court's official seal to the assembly. Unlike the other federal courts of appeal which utilize a standard seal, starkly simple in form, the Eleventh Circuit asked the U.S. Army Department of Heraldry to design an appropriate seal to symbolize the new Court. The dramatic seal of the Court shows the American eagle in a protective attitude symbolizing federal authority and the protection the law provides equally to all citizens. The eagle stands on a gold-edged book representing the law of the land. It is accompanied by the Scales of Justice bearing three stars symbolic of the three states composing the Eleventh Circuit. Inscribed underneath is the phrase "Equal Justice Under Law." The blue field in the center of the seal represents candor and fairness, while the white background along the edge of the seal – which bears the name of the Court – symbolizes truth, hope, and purity.

The seal has since been emblazoned on the flag adopted for the Eleventh Circuit, but with an addition marking the greatest tragedy the Court has faced. A red band has been added to the flag's outer edge as a memorial to Judge Robert S. Vance, who was sworn in to the new Eleventh Circuit on Oct. 2, 1981, and who heard and decided the case of *Bonner v. City of Prichard*. On Dec. 16, 1989, Judge Vance was assassinated at his home in Birmingham by a deranged litigant. The federal building and courthouse in Birmingham, Ala., has since been named in his honor.⁶

The formal ceremonies were followed by a reception in the Memorial Arts Center, and capped that evening by a black-tie dinner at Atlanta's Colony Square Hotel, during which Senator Heflin was the featured dinner speaker, regaling the dinner guests in his classic southern-lawyer style. Amidst toasts and good wishes, the judges, honored guests, attorneys, and friends of the Court brought to a close an historic day which all present have long remembered. Thus as the Eleventh Circuit looked forward to a promising future, it also looked back to the illustrious past of its predecessor, the old Fifth Circuit, and the jurists who made that Court the respected institution it had been for nine decades.

Since its rendition the Court's decision in *Bonner v. City of Prichard* has been cited repeatedly, whenever the Eleventh Circuit or other courts cite a precedent from the old Fifth Circuit for the proposition that it is binding on the courts within the Eleventh Circuit.¹⁷ As for Larry Bonner himself, since he had not suffered permanent physical injury, on our return to Mobile counsel entered into settlement negotiations once the case itself was remanded to the Southern District of Alabama. Those discussions culminated in a settlement whereby the City of Prichard agreed to pay Mr. Bonner a modest sum and to reimburse my law firm for its out of pocket expenses (including my travel expenses for investigating the case and for oral argument in Atlanta), with counsel and my law firm waiving any right to attorney's fees in what had proven to be a most interesting appeal. Since Larry Bonner was then serving a prison sentence (having been convicted of the crime that led to his original detention in the Prichard City jail), he advised me, "Miss Patricia, I want you to give my settlement money to my Momma, because she needs it." Thus the controversy concluded for a young man who had made a serious mistake, but who also made history for the courts – and who cared deeply for his Mother even from prison.

Note: The author would like to acknowledge the kind

assistance given in the preparation of the original of this article by Norman E. Zoller, the first Clerk of the 11th Circuit, and the late J. O. Sentell, Esq., then Clerk of the Alabama Supreme Court.¹⁸ More recently, the author would like to thank Ms. Wanda Lamar of the 11th Circuit Historical Society and the 11th Circuit's Staff Attorneys Office – especially David Maher, Esq., who assisted with editing, and Naomi G. Godfrey, Esq., Senior Staff Attorney for the 11th Circuit (also a Member of Col. Perry Sentell's Class of 1978 Section W at the University of Georgia School of Law) for their assistance in the article's updating and the opportunity to revisit this memorable time. The author presently practices law in Port Canaveral, Florida, where she is a Master Emeritus in the Vassar B. Carlton Inn of Court and is Board Certified by The Florida Bar in Admiralty & Maritime Law. Olney also serves on the Planning Committee for the 2011 Eleventh Circuit

Judicial Conference, scheduled for Orlando, Florida, and chaired by the Hon. John Antoon of the Middle District of Florida, Orlando Division.



Endnotes:

1 This article is a revision and update of an article originally written by the author for "The Alabama Lawyer", published in April 1982 (Vol. 43, No. 2 at page 208) in what was then the "Official Organ of the State Bar of Alabama".

2 Randy Crane is a 1977 graduate of Cumberland School of Law who continues to practice in Mobile, Alabama, with the firm of Lyons & Crane. He is a member of the Alabama Center for Dispute Resolution.

3 Tom McAlpine continues to practice in Mobile, Alabama, with the firm of Whitfield & McAlpine, PC.

4 At the time I was an associate attorney in Mobile, Alabama, having joined the firm of

Pillans, Reams, Tappan, Wood, Roberts, & Vollmer in 1979 after completing a year as Law Clerk to the late Justice James H. Faulkner of the Alabama Supreme Court. The senior partner to whom I was first assigned to provide support on a fairly complex federal case was Richard W. Vollmer, Jr., who became a U.S. District Judge for the Southern District of Alabama in 1990, serving until his death in 2003. His support and that of the other partners in the firm allowed me to devote the significant time needed to investigate the claims of Larry Bonner and later pursue relief for him on appeal.

5 Magistrate Judge David A. Bagwell, a 1973 graduate of the University of Alabama School of Law, clerked for Judge Frank M. Johnson, Jr., in 1973-74, while Judge Johnson was Chief Judge of the Middle District of Alabama. Bagwell served as a Magistrate Judge for the Southern District of Alabama from 1979-1985, then returned to private practice. He continues to practice law in the Mobile area, now maintaining an office in Fairhope.

6 The three judge panel which decided *Mitchum v. Purvis* for the old Fifth Circuit, Unit B, was composed of Judges Roney, Henderson, and Frank Johnson. The opinion was issued *per curiam*. On the precedential effect of Unit A and Unit B decisions of the old Fifth Circuit, see *Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982).

7 A graduate of Northern Kentucky State University College of Law, Mr. Zoller brought to the Court nine years' experience as the first Court Administrator for the state courts of Hamilton County (Cincinnati) Ohio. He later became Circuit Executive for the Eleventh Circuit and was instrumental throughout its establishment and growth until his retirement in February 2008.

8 A native of Haleyville, Alabama, and a true life version of Atticus Finch, Judge Frank Johnson was a graduate of the University of Alabama School of Law. In law school he was a classmate of future Alabama Governor George C. Wallace, with whom he would so often clash on issues of desegregation. A World War II veteran, Judge Johnson was appointed to the U.S. District Court in 1955 by President Dwight Eisenhower. In 1977 President Jimmy Carter

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asked him to head the FBI, but Judge Johnson had to decline for medical reasons. In 1979 he accepted an appointment to the Fifth Circuit Court of Appeals, from which he transferred to the Eleventh Circuit in October 1981, serving until his death in 1999.

In 1993 Judge Johnson was the second recipient of the ABA's Thurgood Marshall Award for his work for Civil Rights (Justice Marshall himself was the first recipient). In 1995 President Bill Clinton awarded Judge Johnson the Presidential Medal of Freedom, the country's highest civilian award, remarking that:

[D]uring 40 years on the bench, Judge Johnson made it his mission to see to it justice was done within the framework of law. In the face of unremitting social and political pressure to uphold the traditions of oppression and neglect in his native South, never once did he yield. His landmark decisions in the areas of desegregation, voting rights and civil liberties transformed our understanding of the Constitution:

The U.S. Post Office and Courthouse in Montgomery, Alabama, was later renamed "The Frank M. Johnson, Jr., Federal Building and U.S. Courthouse". Judge Johnson passed away on July 23, 1999. As journalist Bill Moyers once expressed it, he "altered forever the face of the South."

9 I also recall (though it may be wishful thinking) that as my argument drew to a close the last remarks from the bench were those of Judge Johnson, looking over the top of his reading glasses and saying, "Thank you, counselor. We think we understand your argument." Magistrate Judge David

Bagwell – himself a former law clerk to Frank Johnson and the author of the Report & Recommendation which was overturned that day – had previously told me that, when appearing before Judge Johnson, those words were the signal to sit down and be quiet, ones which should be instantly heeded. Similarly, any look over the top of Judge Johnson's reading glasses carried a world of import, and any attorney who failed to react appropriately did so at his or her peril.

10 A native of rural Alabama educated in the public schools of Selma, Judge Godbold is a World War II veteran who graduated from Auburn University in 1940 and Harvard Law School in 1948. He practiced law in Montgomery in the firm of Rives & Godbold with Richard T. Rives until the latter was appointed to the Fifth Circuit in 1951. Judge Godbold then joined his former law partner on the Fifth Circuit bench in 1966. For more than a decade he was active in efforts to divide the appellate court into two, culminating in the events of October 1981.

In 1986 Judge Godbold left active service on the Eleventh Circuit and subsequently became Director of the Federal Judicial Center in Washington, D.C., which conducts research and training for the federal judiciary. He returned to duty with the Eleventh Circuit in March 1990 and also began serving that year as the Leslie S. Wright Distinguished Professor at Cumberland Law School in Birmingham, Alabama. Judge Godbold is the author of "Twenty Pages and Twenty Minutes – Effective Advocacy on Appeal", 39 S.W.L.J 801 (1976). It is thought to be the most widely reprinted law review article

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DISTRICT JUDGES, BANKRUPTCY JUDGES AND MAGISTRATES OF THE ELEVENTH CIRCUIT

STATE OF ALABAMA

NORTHERN DISTRICT

DISTRICT JUDGES

Frank H. McFadden, Chief Judge*
Harlan Hobart Grooms, Senior Judge
Seybourn H. Lynne, Senior Judge
Clarence W. Allgood, Senior Judge
Sam C. Pointer, Jr.
James Hughes Hancock
J. Foy Guin, Jr.
Robert B. Propst
E. B. Haltom, Jr.
U.W. Clemon

BANKRUPTCY JUDGES

William E. Johnson, Jr.
William R. Vance
Stephen B. Coleman
L. Chandler Watson, Jr.
Edwin D. Breland
George S. Wright

MAGISTRATES

Glenn F. Manning
Edwin L. Nelson
James F. Reddoch, Jr.
R. Macey Taylor

MIDDLE DISTRICT

DISTRICT JUDGES

Robert E. Varner, Chief Judge
Truman M. Hobbs
Myron H. Thompson

BANKRUPTCY JUDGES

Leon J. Hopper
Rodney R. Steele

MAGISTRATES

John V. Denson, II
M. Lewis Gwaltney
James F. Martin

SOUTHERN DISTRICT

DISTRICT JUDGES

William Brevard Hand, Chief Judge
Daniel Holcombe Thomas, Senior Judge
Virgil Pittman, Senior Judge

BANKRUPTCY JUDGES

William G. Caffey, Jr.
Gordon B. Kahn

MAGISTRATES

David A. Bagwell
John H. Blanton

STATE OF FLORIDA

NORTHERN DISTRICT

DISTRICT JUDGES

William H. Stafford, Jr., Chief Judge
Winston E. Arnow, Senior Judge
Lynn C. Higby

BANKRUPTCY JUDGE

N. Sanders Sauls

MAGISTRATES

J. Ernest Collins
Robert L. Crongeyer, Jr.
Robert C. Dean
Wade Hampton, III

MIDDLE DISTRICT

DISTRICT JUDGES

George C. Young, Chief Judge
Charles R. Scott, Senior Judge
Ben Krentzman
William Terrell Hodges*
John A. Reed, Jr.
Howell W. Melton
George C. Carr
William J. Castagna
Susan H. Black

BANKRUPTCY JUDGES

George L. Proctor
Alexander L. Paskay

STATE OF FLORIDA, Continued

Continued

MAGISTRATES

Donald P. Dietrich
Paul Game, Jr.
Harvey E. Schlesinger
Howard T. Snyder
George T. Swartz
Thomas G. Wilson

SOUTHERN DISTRICT DISTRICT JUDGES

C. Clyde Atkins, Chief Judge
Charles B. Fulton, Senior Judge
Joe O. Eaton
James Lawrence King
Norman C. Roettger, Jr.
Sidney M. Aronovitz
William M. Hoeveler

SOUTHERN DISTRICT JUDGES,

Jose A. Gonzalez, Jr.
James C. Paine
James W. Kehoe
Eugene P. Spellman
Edward B. Davis
Alcee L. Hastings

BANKRUPTCY JUDGES

Thomas C. Britton
Sidney M. Weaver
Joseph A. Gassen

MAGISTRATES

J. Michael Brennan
Patricia Jean Kyle
Peter R. Palermo
Herbert S. Shapiro
Charlene H. Sorrentino

STATE OF GEORGIA

NORTHERN DISTRICT

DISTRICT JUDGES

Charles A. Moye, Jr., Chief Judge
Frank A. Hooper, Senior Judge
Newell Edenfield, Senior Judge
William C. O'Kelley
Richard C. Freeman
Harold L. Murphy
Marvin H. Shoob
Robert L. Vining, Jr.
G. Ernest Tidwell
Orinda D. Evans
Robert H. Hall
Horace T. Ward

BANKRUPTCY JUDGES

W. Homer Drake, Jr.
A. David Kahn
William L. Norton, Jr.
Hugh Robinson, Jr.

MAGISTRATES

Allen L. Chancey, Jr.
John E. Dougherty
Joel M. Feldman
J. Owen Forrester
Clinton J. Morgan
Henry N. Payton
John H. Smith

MIDDLE DISTRICT

DISTRICT JUDGES

Wilbur D. Owens, Jr., Chief Judge
William A. Bootle, Senior Judge
J. Robert Elliott

BANKRUPTCY JUDGES

Algie M. Moseley, Jr.
Robert F. Hershner, Jr.

MAGISTRATES

John R. Bennett
John D. Carey
Charles N. Davis
Lawrence F. Jones
William L. Slaughter

SOUTHERN DISTRICT

DISTRICT JUDGES

Anthony A. Alaimo, Chief Judge*
B. Avant Edenfield
Dudley H. Bowen, Jr.

BANKRUPTCY JUDGE

Herman W. Coolidge

MAGISTRATES

John W. Dunsmore, Jr.
James B. Franklin
Spence M. Grayson
Eugene Highsmith

* Members of the Eleventh Circuit Judicial Council include the 12 active circuit judges and one district court judge from each state: Frank H. McFadden, Alabama; William Terrell Hodges, Florida; and Anthony A. Alaimo, Georgia.

Minutes of the Meeting of the Board of Trustees and Membership of the 11th Circuit Historical Society

4:30 p.m. on April 30, 2009, Ross Bridge Resort, Birmingham, Ala.

I. Opening

Chairperson Emmet Bondurant called the meeting to order.

Judges in attendance: The Honorable R. Lanier Anderson, Senior Judge, U.S. Court of Appeals, 11th Circuit; The Honorable Susan H. Black, Judge, U.S. Court of Appeals, 11th Circuit; The Honorable Dudley H. Bowen, Judge, U.S. District Court, Southern District of Georgia.

II. Secretary/Treasurer's Report

Halsey Knapp, acting Secretary, delivered the Treasurer's Report on behalf of Treasurer John Tatum. Mr. Knapp reported the financial results reflected in the memo from Wanda Lamar dated April 27, 2009, a copy of which is attached hereto as Exhibit A, reflecting the Society's monthly account balances. Mr. Knapp also made available to the members of the Society the financial statements prepared by its accountants, Stephen M. Berman & Associates, LLC, for the fiscal years 2004 through December 31, 2008. There were no questions from the floor regarding the Treasurer's Report.

III. Trustees' Report

President Emmet Bondurant and Secretary Halsey Knapp reported the slate of nominees proffered by the Nominating Committee.

Ben H. Harris, Jr. of Mobile, Alabama was nominated to succeed Emmet Bondurant as the new President of the Historical Society. James L. North of Birmingham, Alabama was nominated to replace Ben Harris as Vice President.

Nominees for the Alabama Trustees, David A. Bagwell of Fairhope, Reginald T. Hamner of Montgomery, and Harry W. Gamble, Jr. of Selma, were approved by acclamation.

Nominee for the Florida Trustee, Joel D. Eaton, was approved by acclamation.

Nominee for the Georgia Trustee, Kirk M. McAlpin, Jr., was approved by acclamation.

IV. President's Report

The President delivered his report noting the following items:

1. U.S. Supreme Court Justice Clarence Thomas' acceptance of his Honorary Life Membership.
2. Membership totals of our Society have increased by 26 to a total of 654, and Keystone Firm Members have increased by two firms for a total of 48 since our last meeting in 2007.
3. The President acknowledged the \$1,000.00 gift made

to the Historical Society by the Federal Bar Association's Atlanta Chapter at its June 2008 meeting where U.S. Attorney General Michael Mukasey delivered the keynote address.

4. The President acknowledged receipt of a \$500.00 gift from the Community Foundation at Chattahoochee Valley Fort Trustee Fund in Columbus, Georgia.
5. The Society thanked Florida Trustee Jack Harkness for his continuing efforts on the newsletter and noted the particularly impressive 2009 newsletter issue dedicated to Judge Griffin B. Bell, who passed away on January 5, 2009 at the age of 90.
6. The History of the Federal Courts in Georgia book project has been completed and efforts were made to distribute copies to interested parties.

V. New Business

1. Proposed Amendments to the Bylaws were adopted, and the Bylaws attached hereto as Exhibit B were adopted unanimously.
2. The various oral history projects were reviewed and discussed, along with continuing solicitation of articles for the newsletter and efforts to increase our membership and Keystone Firms.

VI. Attendees

The attendees are listed in Exhibit C.

VII. Closing

In closing, our new President Ben Harris thanked Emmet Bondurant for his service. The Society rose as one and saluted Mr. Bondurant for his superb service. He was presented with a special gift by Mr. Harris to commemorate his service. The meeting was adjourned until the next Judicial Conference of the 11th Circuit.

This 30th day of June, 2009.

Halsey G. Knapp, Jr.
Secretary of the Society

[Exhibits A, B & C available upon request.]

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Opening, from page 14

written in the U.S. and is frequently used as a reference or teaching tool throughout the legal profession.

11 Col. Reese, who held a J.D. degree from the University of Utah, was the first person to serve two federal circuit courts as Circuit Executive. A veteran of World War II and the Korean Conflict, in 1969 he served as Staff Judge Advocate for General William Westmoreland. He retired from the Army a recipient of the Legion of Merit with 3 Oak Leaf Clusters, the Bronze Star, and the Air Medal. In July 1972 he became the first Circuit Executive of the United States Court of Appeals, Fifth Circuit. According to his obituary in the New Orleans *Times Picayune*, he was a published author in *The Military Review* with "the 'definitive expose' on 'An Officer's Oath' and in petition for restoration of U.S. citizenship for General Robert E. Lee, 'Robert E. Lee, No Citizen He.'" Col. Reese passed away on February 3, 2006.

12 *Bonner v. City of Prichard*, Alabama, 661 F.2d 1206 (11th Cir. Nov. 3, 1981).

13 Obviously, the opinion had been authored prior to the oral presentations of the young lawyers who appeared before the Court that morning.

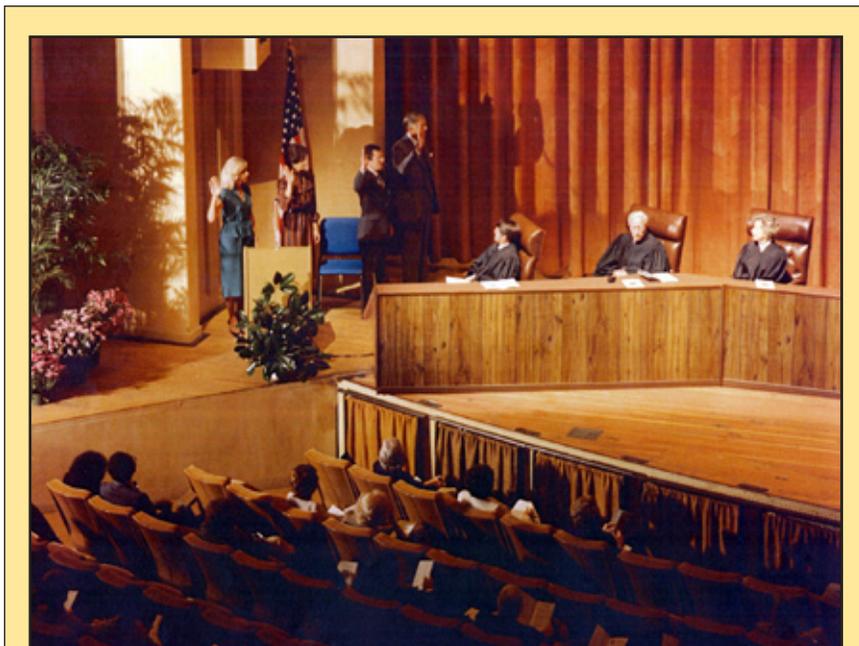
14 Justice Hugh Maddox is the author of a book on Alabama Procedure, among many other volumes. It is the book which actor Fred Gwynne references while on the bench in the movie, "My Cousin Vinny". Justice Maddox was also the founder of the first American Inn of Court in the State of Alabama, which Inn is now named for him.

15 Senator Heflin also served as Chief Justice of the Alabama Supreme Court from 1971 to 1977 prior to his election to the U.S. Senate, and was instrumental in Alabama's adoption of its modern Rules of Civil Procedure, patterned on those of the federal courts. A graduate of the University of Alabama School of Law, he served in World War II and was a law professor before being elected to the state bench. While serving three terms in the Senate he rose to serve as Chairman of the Select Committee on Ethics. Senator Heflin is also famous for producing one of the funniest press releases ever to come from Congress (Google: Senator Heflin and white handkerchiefs), considered to be "a political home run".

16 Judge Vance's wife, Helen, was seriously injured in the blast that killed her husband. His assassin also mailed bombs that were defused at the Eleventh Circuit in Atlanta and at the Jacksonville office of the NAACP, and he murdered Georgia Civil Rights attorney Robert E. Robinson. He remains on death row in Alabama, in addition to his federal sentence of multiple life terms.

17 As of July 24, 2009, the decision has been cited 8,288 times by various courts.

18 At the time J. O. Sentell suggested writing the original of this article, he was Editor in Chief of *The Alabama Lawyer* as well as a devoted student of Legal History. The cover of the April 1982 edition of *The Alabama Lawyer* which featured this article carried artwork personally commissioned by Mr. Sentell in honor of the formation of the new federal appellate court, the Alabama native who became its first Chief Judge, and the historic gavel which he was presented on opening day. Mr. Sentell served as the first president of the National Conference of Appellate Court Clerks and was an invaluable mentor to the author until the end of his life and to this day. Throughout his service to the Alabama Supreme Court, it was J.O. Sentell's custom on Fridays (decision release day) to call the appellate attorneys for each decision and advise them personally of the Court's ruling. It was a call that was invariably put through immediately.



Administration of Oath of Office

Right to left: Circuit Executive Thomas H. Reese, Clerk of Court Norman E. Zoller, Circuit Librarian Elaine P. Fenton, Staff Attorneys Director Karen C. Kincannon. Photo courtesy of Norman Zoller