

MESSAGE FROM THE PRESIDENT

Collegiality makes 11th Circuit special

This is my first letter as president of the Historical Society. I am honored to serve in this role. Much is owed to Leonard Gilbert, my predecessor, who tirelessly and wisely led this organization. Thank you, Leonard. We will miss your steady hand. I also thank the officers and trustees of the society for their continuing, unwavering commitment to serve the court.

Our circuit has welcomed four new judges confirmed by the U.S. Senate in the first half of this year: Judge Elizabeth "Lisa" Branch of the Eleventh Circuit, Judge Michael Lawrence Brown of the Northern District of Georgia, Judge Tilman Eugene "Tripp" Self III of the Middle District of Georgia, and Judge Annemarie Carney Axon of the Northern District of Alabama.

In July and August, five additional judges were also welcomed by our circuit upon their confirmations by the U.S. Senate: Judge Britt Cagle Grant of the Eleventh Circuit, Judge Emily Coody Marks of the Middle District of Alabama, Judge Jeffrey Uhlman Beaverstock and Judge Terry Fitzgerald Moorer both of the Southern District of Alabama, and Judge R. Stan Baker of the Southern District of Georgia.

They have all hit the ground running after filling vacancies sorely needing to be filled.

The arrival of new judges is always a joyful occasion for a court, and not just because it helps to spread the workload (although in itself this is likely a substantial source of joy). There is a much more important reason for joy: collegiality. I write you today in my first Message from the President to highlight and celebrate the collegiality of the Eleventh Circuit and the courts within, which is essential to their work and to the health of our republic.

Collegiality in any profession is not to be taken for granted. But it especially may not be taken for granted in the federal courts, where judges routinely issue



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opinions on matters that the public deems to be inherently partisan in nature. Recently, public dialogue about the nomination and confirmation of judges might give the impression that the judiciary is a political branch of government, accountable primarily to partisan interests. One need only glance at news coverage of the process to replace Supreme Court Justice Anthony Kennedy to appreciate the intensity of this narrative.

Of course, the idea held by many that courts constitute a third political branch runs counter to the ideal of judicial independence embedded in our Constitution. Alexander Hamilton wrote: "The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be

the substitution of their pleasure to that of the legislative body."¹ In other words, we might as well have "no judges distinct from" the legislature if judges are to have no different aims.² The judiciary must be different. Our outgoing president sent a message to this society just before the presidential election in 2016 emphasizing this point and quoting the late Richard Arnold of the Eighth Circuit: "There has to be a safe place."³

This is not to say, of course, that courts do not directly have a hand in some of the most important political events of our time. They necessarily do. Judge Elbert Tuttle once mused in an interview that he originally thought his appointment to the former Fifth Circuit would allow him to "retir[e] to a quiet life on the court."⁴ But his appointment followed the Supreme Court's 1954 decision in *Brown v. Board of Education* by only a couple months, and his legacy grew in part from what observers perceived as courageous and unpopular decisions he made in *Brown's* wake. Said Judge Tuttle of his own application of precedent, however, "I don't know whether we ought to be recognized for doing something naturally."⁵

Judge Tuttle's use of "we" is as instructive as his refusal to take credit for what others branded activism. Collegiality is the glue that holds our courts together despite pressure from the outside world to toe a different line. It is an essential respect our judges have for their colleagues that arises from the shared understanding that all are on the same mission to uphold the rule of law — together. This shared understanding, in turn, is built on trust that colleagues are committed to faithful application of precedent despite individual disagreements. Fortunately for us, the Eleventh Circuit has a proud tradition of collegiality. It isn't clear that every other circuit is as fortunate.

One of the purposes of this society is to foster public appreciation of the federal court system, which I believe

includes advocacy on behalf of this essential and redeeming collegiality in our courts. As a public, we must never forget how much we benefit from courts that do not see themselves as yet another forum in which a polarized political climate divides everyone neatly into teams.

1 The Federalist No. 78 (Alexander Hamilton), available at http://avalon.law.yale.edu/18th_century/fed78.asp.

2 *Id.*

3 Leonard H. Gilbert, "The Importance of Civic Education," 11th Circuit Historical News, Vol. XIII, No. 3, Winter 2016, available at <https://sites.google.com/site/circuit11history/2016-newsletters>.

4 Ronald Smothers, "Atlanta Journal; Granite to Honor What Words Built," New York Times (June 11, 1990), <https://www.nytimes.com/1990/06/11/us/atlanta-journal-granite-to-honor-what-words-built.html>

5 *Id.*

SHARE YOUR NEWS!

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

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