



# 11th Circuit Historical News

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THE HISTORICAL SOCIETY OF THE U.S. COURTS IN THE ELEVENTH CIRCUIT

## “There is More to Life Than All This”: How Judge Joel F. Dubina Gave His Life to the Court Without Losing It<sup>1</sup>

LAUREN VICKROY PURDY  
AND BEN B. ROBINSON

Some might think themselves exceptional to have achieved a life appointment as a federal judge. So few people attain the honor of one, let alone two, presidential nominations and Senate confirmations, not to mention selection as a magistrate judge. It would be easy to allow the positions and the important work accompanying them to define, if not consume, one's life.

Judge Joel F. Dubina has resisted these temptations for nearly 40 years. While universally recognized as a hardworking and exceptional jurist, he has kept his bearings by remembering his blessings and focusing on the parts of his life that predate and transcend the title and responsibilities of his judgeships. As family, friends, colleagues, law clerks, and members of the bar unanimously attest, Judge Dubina's tenure on the courts has been marked by two seemingly incompatible characteristics: his tireless devotion to his work as a member of the judiciary and steadfast enjoyment and appreciation of his friends and family. These aspects of his character and personality have made an indelible

> SEE JUDGE JOEL DUBINA | PAGE 2

## Judge Robert Hinkle: The Northern District of Florida's Unassuming Referee<sup>1</sup>

LAUREN VICKROY PURDY  
AND TIFFANY A. RODDENBERRY

Judge Robert Hinkle sometimes describes his role as a judge like this: “You know there is a problem if you start noticing the referees at a basketball game.”

Much like Chief Justice Roberts, who once professed his job was to simply call balls and strikes, Judge Hinkle likens his job to that of a referee. The game is not about the referee. When a referee does his job well, you don't (or shouldn't) notice him. A good referee ensures the game runs

smoothly and fairly without regard to the teams involved and without fanfare.

Lawyers, litigants, and judges alike agree Judge Hinkle is one of the finest referees the judiciary has to offer. As Barry Richard, a giant of the Florida legal community, says, “Every lawyer I know who appears before Judge Hinkle, regardless of ideology or political affiliation, has great respect for him. He looks at every case objectively and treats every lawyer and litigant fairly.” Judge Hinkle's first judicial law clerk and colleague on the Northern District of Florida, Judge Mark Walker, agrees: Judge Hinkle “personifies everything a federal judge should be. He is without question the best of us.”

Judge Hinkle has spent his more than 25 years on the federal bench working hard to

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Daughters Britton and Martha and son Mitchell were all born within Judge Dubina's law school career or early law practice. Martha remembers a "wonderful childhood," where Judge Dubina was "so present" for each of them. (Left to right) Judge Dubina, Martha Dubina Roby, Beth Dubina, Mitchell Dubina and Britton Dubina Laughlin (1983).

impression on the Eleventh Circuit Court of Appeals and all who know him.

## Beginnings

Joel Fredrick Dubina began his life on Oct. 26, 1947, the first son of three children born to George and Marjorie Dubina. George and Marjorie met during World War II while George served in the War Crimes section of the nascent Office of Strategic Services, or OSS, which later became the Central Intelligence Agency. George was an accomplished young man, fluent in five languages. Although he was not a trained lawyer, he assisted in the compilation of evidence for the Nuremberg trials against Nazi war criminals.

The Dubinas moved often in the early years of their marriage and family. If you have spent a minimum of a few seconds listening to Judge Dubina's perfected Southern gentleman's drawl, you would be surprised to discover he was born in Elkhart, Indiana. Fortunately for Alabama and the Eleventh Circuit, the family relocated to Montgomery in 1950 after George declined an invitation by the U.S. government to move to China. George settled into a career in academia, serving as the Command Historian of the Air University at Maxwell Air Force Base. Marjorie eventually started teaching high school English—a career that endeared her to many people for decades to come.

Joel Dubina attended Montgomery's largest public high school, Sidney Lanier, along with more than 2,500 other students. As a teenager, he watched the Montgomery County Board of Education grapple with federal court orders requiring integration of public schools, including Lanier. He remembers watching state highway patrolmen accompany the first African American students into the school in 1964. The group included his future colleague, retired Magistrate Judge Delores Boyd. These orders came from another future colleague and mentor, Judge Frank M. Johnson, Jr. While there was positive social change in the 1960s, Dubina also admits he was impacted by the cultural tumult at the national level, including the assassinations of John F. Kennedy and Robert Kennedy and the war in Vietnam. As he remembers things, "It seemed like the country was falling apart."

But during these days at Lanier, he met the love of his life, Elizabeth "Beth" Gordy. Judge Dubina recounts first seeing Beth while she was campaigning for a class office. She pinned a button on him and asked him kindly for his vote. He boldly told her he thought he had seen all the pretty girls at their school already, but he had never seen her before. Beth moved on, saying hello to Dubina's best friend, Arthur Britton, who was standing beside him and who acknowledged Beth by name. Dubina was somewhat affronted that Arthur had "sandbagged" him and never introduced him to this beauty. Arthur retorted: "That's my goody-two-shoes cousin. You better stay away from her, or she'll bring us both down."

As it turns out, Beth has only and always brought and held Judge Dubina up, serving as his "rock," according to their daughter, Martha Roby. Dubina and Beth both wound up attending the University of Alabama in Tuscaloosa where they each earned bachelor's degrees. During his senior year of college, Dubina joined the Air National Guard in service to his country as the war in Vietnam escalated. They married in August 1969, and Beth soon began work serving mentally disabled children and adults. In the interim after college graduation, Dubina spent about a year working the night shift in a meat packing plant in Tuscaloosa as a laborer. This experience gave him an appreciation for blue collar work ethic and would someday prove helpful to his confirmation to the bench.

## Pursuing the Law

As he finished college, Dubina believed he wanted to pursue a career in business. His father had a serious conversation with him and proposed that he attend law school, as many people in business earned law degrees. Judge Dubina still wonders whether his father regretted not going to law school himself, as many men George Dubina encountered in his work for OSS made strides into the legal profession, most notably U.S. Supreme Court Justice Robert Jackson. Although Dubina was not interested in practicing law, he would honor this advice and attended Cumberland School of Law in Birmingham.

Although he loved law school and did well there, Dubina still did not have any

interest in practicing law when he graduated in 1973. He is clear: “I had no desire to be a lawyer.” Yet Dubina applied for and accepted an offer to clerk for U.S. District Judge Robert Varner in the Middle District of Alabama—an opportunity that changed the trajectory of his life and steered him into the spotlight of this article. When he returned to Montgomery for his clerkship, Dubina was exposed not only to Judge Varner as a mentor, but also to then-District Judge Frank Johnson and Fifth Circuit Judges John Godbold and Richard Rives. The clerkship granted Dubina and his co-clerk, now-well-known Alabama trial lawyer Joe Espy, III, near constant access to the courtroom for motion dockets and trials. The clerks especially loved observing jury trials where skilled attorneys demonstrated polished lawyering. After watching others excel in the courtroom, and encouraged by the bench and colleagues like Espy, Dubina was persuaded that he did want to be a lawyer after all.

Judge Varner gave Dubina and Espy these learning opportunities, along with all manner of unenviable tasks, like driving to the country in the pouring rain and to transport catfish in tanks in the trunk of his old Lincoln. As Espy recalls things, it was a Friday, and the two clerks were told to move the fish to Judge Varner’s farm to stock his pond. They flung fish into the water as fast as they could. But in their haste to get out of the weather, they failed to secure a gate, leading to Judge Varner’s cattle escaping the property. And worse, they left behind a fish in the trunk which tainted the car and forced Judge Varner eventually to sell it. Espy can only laugh about it but still does not understand why Judge Varner was only mad at him the next Monday and not Dubina. As Espy has become an endearing courtroom presence in Alabama, we wonder at the potential of Judge Dubina the litigator, whose charm exceeded Espy’s and helped him evade the wrath of Judge Varner.

The two clerks each began practicing law in Montgomery when their clerkships ended. These young lawyers had a far different experience in the 1970s and 1980s than most new associates today. Af-

ter three months in law practice, Dubina was appointed to defend a Pakistani bank robber in a criminal trial in federal court before District Judge Truman Hobbs. The experience gave Dubina quick confidence, and he continued to regularly try more cases—both civil and criminal, in both state and federal court. Espy remembers Dubina was always well prepared for court and incredibly “versatile,” while other lawyers often became pigeon-holed into working in just one or two areas of law. Dubina became a partner in his firm, Jones, Murray, Stewart & Yarbrough, in five years.

According to Judge Dubina, “It was a great time to practice law. There was no mediation or arbitration. Attorneys did not make as much money as they do now, so costs were not as high. There were fewer than 100 lawyers in Montgomery County then. The bar was collegial, social, and we trusted one another.” If it can be believed, Judge Dubina only remembers filing one motion to compel the entire time he practiced law.<sup>2</sup>

Somehow, amidst trying between 30 and 40 jury trials, arguing before the Supreme Court of Alabama, and serving as counsel for the state of Alabama in massive federal court litigation concerning the State of Alabama’s mental health system,<sup>3</sup> Dubina managed to grow his family and spend time with them. Daughters Britton and Martha and son Mitchell were all born within Judge Dubina’s law school career or early law practice. Martha remembers a “wonderful childhood,” where Dubina was “so present” for each of them when he could have spent his spare time on himself.

Judge Dubina and Beth also helped partially raise Melissa, his paternal uncle’s daughter who was tragically orphaned at age 15. The Dubinas were about 30 years old when they suddenly became her guardians. Melissa became like a daughter to Judge Dubina, and he considers her as much of his legacy as his own children.

Years later, at a commencement for Cumberland School of Law, Judge Dubina shared with the graduates what he said was the most important advice he could tell them: “You make this journey through life only once, and some things can be done only during a certain part of your life. You can’t tell an 18-year-old that at long last,

you have time and are ready to play with him or her.” So while the law is a demanding profession, we must all “live every day to its fullest and learn to live a balanced life.”<sup>4</sup> Even as his standing in the bar grew and his professional prospects rose, Dubina always remembered to live by this maxim and took care to give equal attention and energy to both his professional and personal life.

## The Fork in the Road

There are many forks in the road of life, places where one decision or another can inalterably change one’s path. One of the biggest forks in Joel Dubina’s life occurred in 1983.

But to understand that fork, one must first go back to 1978. Despite having never been involved in politics and being a registered member of the Democratic Party at the time, Joel Dubina was asked by former Chief Justice of the Supreme Court of Alabama, Howell Heflin, to be Montgomery County campaign chairman for his U.S. Senate campaign against the assumed Democratic nominee, George Wallace. Dubina had appeared and argued before Chief Justice Heflin in the Supreme Court Alabama, and while honored at the request, he explained he was an associate in his firm and working towards making partner. He asked Chief Justice Heflin to get his partners’ blessing to work on the campaign, which they gave enthusiastically and with their full support.

At some point, George Wallace dropped out of the campaign, leaving Chief Justice Heflin to run against Tuscaloosa Congressman Walter Flowers. On election night, Montgomery County went 2-1 in favor of Heflin. Given the absence of a Republican challenger for the Senate seat, Chief Justice Heflin was elected to represent Alabama in the U.S. Senate. Little did Judge Dubina know then how significant that win would become to the trajectory of his own life.

Not long after, and now a partner in his firm, Dubina received a call from the District Director for the Republican Party of Alabama. The director asked if he would serve on the Executive Committee for the statewide party and be the chair for Montgomery County. In the late 1970s, the Republican Party in Alabama could be



described as barely fledgling. The Democratic Party held almost all local and statewide offices and most judgeships. Dubina replied that he was not a Republican (though he had voted Republican at the presidential level) and that most of his friends were Democrats, too. Nevertheless, he decided to change party affiliations and worked to build the party up during the several years he was the chair for Montgomery County. Jeremiah Denton was later elected as the first Republican Senator from Alabama in 1981 when Ronald Reagan won the presidency.

### Magistrate Judge Appointment

Back to that 1983 fork in the road. Due both to his standing as a lawyer and his political connections, Dubina was offered the U.S. Attorney position for the Middle District of Alabama—a position that in those days was often a precursor to the federal bench. By this time, he had realized he would like to follow in the footsteps of his mentor, Judge Varner, and the other distinguished members of the federal judiciary in Alabama and become a judge himself.

But in what he has described as one of the “biggest gambles in my life,” Dubina turned down the U.S. Attorney position. He thought the position involved too much administration and not enough lawyering, and he would not enjoy it. Instead, he applied for the open magistrate judge position in the Middle District of Alabama.

To understand the gamble, consider this: Joel Dubina was only 35 years old; there were dozens of other applicants, many of whom were extremely well-regarded and

more seasoned lawyers; political connections were irrelevant because only the district judges had a vote after the Merit Selection Committee’s recommendation; and there was only one position available. But Dubina had extensive federal court experience, had appeared before all the judges many times, and had practiced with some of them before they went on the bench. So he felt he had a good chance, even if nothing was assured.

When asked how he could have decided to turn down the virtually certain appointment as the U.S. Attorney in favor of applying for the magistrate judge position, Judge Dubina has explained his deep faith was essential to the decision. “There are two ways to pray: pray to God that something will happen or pray to God that if it is not His will, to not let it happen.” After beating out many exceptional candidates, Joel Dubina was appointed U.S. Magistrate Judge in 1983, beginning his distinguished career on the bench that now spans almost 40 years.

From 1983 until 1986, Magistrate Judge Dubina enjoyed what he has described as perhaps his favorite position in the federal judiciary. He worked closely with federal agents from the FBI, postal inspectors, secret service agents, ATF, and others. He found the work to be “fascinating,” particularly search warrants and other criminal law issues that had not arisen as often in his heavily civil law practice. Recognizing that the very first judicial officer anyone in this country sees is the magistrate judge, Judge Dubina took his role as the face of the judiciary very seriously and cherished his time in the position.

Magistrate Judge Kelly Pate, who clerked for Judge Dubina from 2004-05, believes Judge Dubina liked being a magistrate judge because it allows the judge to engage with the lawyers and litigants, including pro se parties. “I bet he was spectacular about calming pro se litigants’ nerves and helping them without advising them or crossing the line. He can put people at ease, so they feel heard and respected and not intimidated.”

### Service as a District Judge

In 1986, Judge Varner decided to take senior status, leaving his district judge position open in the Middle District of Alabama. With three years’ experience as a magistrate judge, along with extensive federal court experience in private practice, and equipped with relationships within the Republican Party under President Reagan, Dubina notified Senator Denton he would like to be considered for the district judge opening. But again, he faced stiff competition from seasoned and well-regarded trial lawyers in Alabama, including Ira De Ment, who would go on to be confirmed as a district judge several years later. While Dubina worried slightly that his departure from politics since going on the bench would hurt his chances, he also believed his relative youth at 38 years old would be an advantage, given President Reagan’s penchant for nominating younger candidates to the bench.

Dubina was summoned to Washington, D.C., to be interviewed by six lawyers from the Department of Justice in the Office of Legal Policy. Among those lawyers was 28-year-old John Roberts who would one day become Chief Justice

# SHARE YOUR NEWS

Submit items for publication in the *11th Circuit Historical News* to Wanda Lamar, executive director of the Society ([wanda\\_lamar@ca11.uscourts.gov](mailto: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.

PHOTO COURTESY OF THE DUBINA FAMILY



Bill's Fish Camp, Suwannee, Fla., in October 1992. (Left to right) Grover "Buster" Asmus, Bobby Black, Judge Joel Dubina, Earl Moorer, Judge Frank Johnson, Judge Lanier Anderson, Judge Gerald Tjoflat, Curtis Caver, Pat Sims and of course, the Camp dog.

of the U.S. Supreme Court. When Dubina was later appointed a member of the Judicial Conference of the United States, Chief Justice Roberts introduced Judge Dubina and remarked that he was one of the young lawyers who interviewed him. Judge Dubina sheepishly admitted he did not remember him, which Chief Justice Roberts good-naturedly remarked was to be expected.

During the six hours of interviews, Dubina was never asked his personal views on any hot-button issue like abortion or capital punishment. But upon returning, he remarked to Judge Johnson that the interview was like "taking an oral bar examination in constitutional law."

It must have gone well, though. About a month later, President Reagan called Judge Dubina to inform him he would be the nominee for Judge Varner's seat.

Having secured the nomination, the confirmation process began. Dubina was admittedly a little worried because he had seen examples of difficult confirmation hearings and wondered how his would go. But his old friend, Sen. Heflin, was on the Judiciary Committee, which put him at ease. Sen. Strom Thurmond chaired Dubina's confirmation hearing, and both Sens. Chuck Grassley and Mitch McConnell, who still serve in

the Senate, attended as well, along with five other members of the committee. Sen. Paul Simon, a Democrat from Illinois, may have asked him the toughest questions. But Sen. Simon did remark that he appreciated Judge Dubina had worked as a laborer in a meat packing plant and opined that his having done so with a college degree would make him a better judge. Twenty-two-year-old Joel Dubina could have never predicted that more than 15 years later, his short stint as a laborer would influence a U.S. Senator's vote to support his confirmation as a U.S. District Judge.

Judge Dubina would go on to be unanimously voted out of committee, and the confirmation process moved swiftly after that. His hearing was on Aug. 13, 1986, and he was confirmed and in office a month later on Sept. 15, 1986.

Judge Dubina served as a District Judge for the Middle District of Alabama for four years. He insists, "I will go to my grave believing the most important judge in the federal system is the district judge." The reason is simple: more than 80% of all cases litigated in federal courts end at the district court level, meaning the District Court is effectively the court of last resort for most people appearing in the federal system.

The role was important, and Judge Dubina enjoyed it immensely. A self-described people person, Judge Dubina loved interacting with the lawyers and being around the witnesses, not to mention trying cases—particularly jury trials. Even after he was elevated to the Eleventh Circuit, Judge Dubina has occasionally, even recently, sat at the District Court by designation so that he can continue to try cases.

According to Joe Espy, Judge Dubina was widely considered an exceptional trial judge who was always prepared and always treated all lawyers and litigants "first class." Judge Dubina's lifelong maxim to live a balanced life that recognizes the importance of both professional and personal priorities was also reflected in actions he took as a trial judge. Espy once tried a case in front of his old co-clerk. During the trial, he asked Judge Dubina if they could adjourn at 4:15 p.m. so that he could coach a youth sports team that had a game that evening. Espy observed that while many judges may have denied the request, Judge Dubina recognized the importance of the commitment and gladly adjourned early for the day.

Judge Dubina did, however, carry the concerns of his work home at times. His daughter, Martha, recalls an "Atticus Finch" moment, where Dubina had to make a decision that was potentially unpopular locally in his wider social circle. Martha says there was never a question in her dad's mind that he had to follow the law, and the children admired and learned from his resolve. As an adult, when Martha entered local politics at the city council, Judge Dubina reminded her: "If everyone's happy with you, you're not doing your job."

Judge Dubina invited his children into dinner table discussions about the law and issues passing through his docket. "We were expected to be home for dinner. Our dinner table was a very important place, and the conversation could be intense! There was lots of [healthy] debate. He forced us [kids] to take a position and defend it." Yet Dubina also used these times to help the children learn to disagree without being disagreeable—one of the hallmarks of his character and part of his legacy on the bench.

## Vacancy on the Eleventh Circuit

Judge Dubina's elevation to the Eleventh Circuit has its roots in one of the greatest tragedies that has occurred on the court. On Dec. 16, 1989, Judge Dubina and Beth were preparing to throw an engagement party for a friend's child. At about 4 p.m., the phone rang. Beth answered. It was Judge Johnson calling for Judge Dubina, but something was wrong. Judge Dubina remembers hearing these words: "Joel, this is Frank Johnson. [Eleventh Circuit Judge] Bob Vance has been blown up. He is dead. Helen Vance (his widow) is in critical condition. She has nails in her brain and in her liver. She might not make it." Investigators later learned that Walter Leroy Moody had mailed a pipe bomb to Judge Robert Vance at his home in Mountain Brook, Alabama. Another bomb was mailed to Savannah civil rights attorney, Robert Robinson, who was also killed. The Jacksonville office of the NAACP and the Eleventh Circuit's Atlanta headquarters were also targets, though the bombs mailed there were defused without casualties.

Judge Johnson asked Judge Dubina for the name of the interim U.S. Marshal in Montgomery. In shock, Judge Dubina went totally blank. When they hung up, Judge Dubina called the FBI to notify them of the assassination and to ask if they could send agents to Judge Johnson's house to protect him, given the uncertainty of more attacks. Twenty minutes later, agents arrived at Judge Dubina's house, and agents were sent to Judge Johnson's house, and the homes of other judges as well. The agents instructed Judge Dubina to make arrangements for Britton, Martha, and Mitchell to stay elsewhere for the time being. And for several months, agents followed Judge Dubina wherever he went, even when he went jogging, until investigators ultimately identified Moody and arrested him.<sup>5</sup>

## Nomination and Confirmation to the Eleventh Circuit

The tragic loss of Judge Vance left an opening on the Eleventh Circuit, an opening that Judge Dubina had never considered for himself. He received a phone call from Judge Johnson asking him to come to his chambers to talk. It was a Friday.

Judge Johnson came out very directly: "How would you like to be on the Eleventh Circuit?" Judge Dubina could not believe it. Judge Samuel Pointer, one of the great federal district judges in the country, was under consideration for the spot. Judge Dubina thought Judge Pointer would be nominated, but Judge Johnson did not. He instructed Dubina to think about it over the weekend and let him know his decision on Monday.

While Judge Johnson's question was "one of the greatest honors of [his] life," Dubina loved being a trial judge and was conflicted about what to do. He called all of the Eleventh Circuit judges he knew who also had been trial judges: Judge Peter Fay, Judge James Hill, Judge Lewis Morgan, Judge Albert Henderson, and Judge Emmett Cox. He asked if any had any regrets about going on the Eleventh Circuit. All of them encouraged him to put himself up for consideration. Knowing his great devotion to his family, some of his future colleagues told him to consider how the differing demands of an appellate judge could allow him to have a more predictable schedule that would allow him to spend more time with his wife and children. As long as he was not sitting or traveling for some other court commitment, Judge Dubina need not miss Mitchell's baseball games or Britton and Martha's high school functions because of jury deliberations, for example. And he could contribute to the federal judiciary and his country in a new way.

The conversations with his future colleagues, along with serious deliberation with Beth, persuaded Judge Dubina to apply. That Monday morning, he told Judge Johnson he would like to be considered for the Eleventh Circuit's vacancy. From there, the process was even swifter than the district court. He traveled to Washington, D.C., for another round of interviews, this time lasting only three hours. Shortly thereafter, he was informed he was President George H.W. Bush's nominee.

By that time, the Senate had changed. The Democrats were in power, and Judge Dubina was the former chairman of the Republican Party in Montgomery County. Then-Sen. Joe Biden was the chair of the Senate Judiciary Committee. And now the stakes were higher—this was the Eleventh

Circuit Court of Appeals after all. How would this go? As it turned out, that decision in 1978 while an associate attorney to work on Sen. Heflin's campaign, a decision made before Dubina ever imagined himself as "Judge Dubina" at all, became critical. Sen. Heflin called Sen. Biden to ask for a hearing for Judge Dubina's nomination. Sen. Biden indicated he was too busy to chair the hearing but offered to let Sen. Heflin handle it instead. Only two senators appeared at the hearing: Sen. Heflin and Sen. Ted Kennedy. Sen. Richard Shelby, then a Democrat who had recently defeated Sen. Denton, agreed to introduce Judge Dubina. As such, Judge Dubina, nominated by a Republican president and a former chairman in Republican politics, had the support of both Democratic senators from his state. The hearing was uneventful, and he was confirmed shortly thereafter.<sup>6</sup> He has served on the Eleventh Circuit since Oct. 1, 1990.

In thinking about the circumstances of his appointment as a magistrate judge and nominations and confirmations as a district and appellate court judge, Judge Dubina has said, "Getting to be a federal judge is almost like being struck by lightning. And no one gets anywhere in life on their own. You don't get to be any kind of success at anything without the help of a lot of people." While it could be easy for a person with Judge Dubina's life story to think himself somehow uniquely worthy or deserving of the opportunities he has been afforded, Dubina remains ever humble about the direction his life has taken. It is a characteristic his colleagues, law clerks, friends and family have seen demonstrated throughout his life, despite or perhaps because of, his many accolades and accomplishments on the bench.

## Legacy on the Bench and Beyond

Judge Dubina admits he was "extremely intimidated" when he joined the Eleventh Circuit. Some of the great legal giants and larger than life personalities in the court's history were on the bench at the time, including Judge Elbert Tuttle, for whom the Atlanta courthouse is named. But he soon developed a well-earned reputation among his colleagues as a prepared, exceptional jurist, who is always willing to





PHOTOS COURTESY OF THE DUBINA FAMILY

Judge Joel Dubina received the prestigious American Inns of Court Lewis F. Powell, Jr. Award for Professionalism and Ethics. The award was presented at the U.S. Supreme Court on Oct. 9, 2013. (Back row, left to right) Riley Roby, Mandy Dubina, Martha Dubina Roby, Britton Dubina Laughlin, Mitchell Dubina, and John Laughlin. (Front row, left to right) Beth Dubina, Marjorie Dubina, and Judge Dubina.



High atop Mount LeConte in the Great Smoky Mountains National Park. (Left to right) Judge Dubina, Leigh Elizabeth Black Israel, Judge Frank Hull, and Judge Susan Black (2005).



Judge Joel Dubina's first ascent to the top of Mount Kilimanjaro on Sept. 21, 2005. Notably, Judge Dubina had already summited Mount Rainier in August 2002. (Left to right) Riley Roby, Jim Roby, Dubina, and John Laughlin.

deal respectfully and kindly with the other judges on the court, even in matters where consensus is not achievable. And by the way, Judge Dubina is also great fun to be with (more on that below).

Judge Frank Hull, Dubina’s colleague for more than 25 years, observed that he is “a fast reader and a quick study of the briefs,” and “[h]e never gets behind—in part because he knows all parties are patiently, often stressfully, waiting for the answer. He cares about even those he does not know.” It is this commitment to serving the parties that has kept Judge Dubina fully current on his work and always prepared for oral arguments for more than 30 years on the Eleventh Circuit.

And yet even when presented with challenging cases garnering national attention, Dubina has remained unfazed. Magistrate Judge Philip Lammens clerked for Judge Dubina from 2004 to 2005. He remembers that for Dubina, “Even an emergency was not a crisis. Judge remained calm and thoughtful. Every case got due attention.” That example has helped Judge Lammens manage his own work.

Judge Dubina has also impacted the court through his writing style, which is distinctive in two ways. First, he practices “lean writing” as Judge Susan Black characterizes it. “He does not use legalese. He wants to communicate to the lawyers and their clients in layman’s terms.” Judge Dubina impressed upon his law clerks that the Eleventh Circuit had a duty to both

the bar and the litigants to make the law clear. When a non-lawyer approached him once to say she had read and understood “almost every word” of an opinion he had written, Judge Dubina felt highly honored.

Second, Judge Hull has observed his cogent and clear opinions “never contain sharp words or criticisms of the litigants or his colleagues. No matter the serious disagreement he may have with a colleague or party, his opinions never attack or use a clever phrase at the expense of a party or a colleague.” As a mentee of Judge Dubina, Judge Pate agrees that Dubina has a profound humility in correcting others. “He has an ability to expose an opposing argument without making the person making the argument feel embarrassed or wrong.”

That collegial approach to writing extends to commentary about a ruling from a district judge that is being reversed. Judge Robert Hinkle said probably the only instance where he has chosen to speak with a Court of Appeals judge about a reversal of one of his orders, he told Judge Dubina, “I appreciated the [very professional] tone of an opinion he had just written reversing me in a high visibility case. The tone was just what it ought to be.” Judge Dubina acknowledged the issue was one on which reasonable minds could disagree and told Judge Hinkle something along the lines of: “The issue was something that people could decide either way. And there was no reason to have the tone be any other way.”

While Judge Dubina strives for consensus and avoids dissents where he can, he is also well known for not compromising his principles and understanding his role as a judge. Judge Lammens recalled an instance in which a panel was deciding a particularly high-profile case, and he remembered Judge Dubina saying something like, “Sometimes we work on cases where I know my friends would not be happy with the outcome, but that cannot be a factor in the decisions we make.” The rule of law is paramount to Judge Dubina’s decision-making, regardless of his personal views on the issue before him. In a 2020 address to law students and attorneys in Birmingham, Dubina admitted he has “agonized over many cases,” particularly death penalty cases, but ultimately, “the law compelled the result.”<sup>7</sup> Accordingly, as every fellow judge or law clerk who has broken bread with him will attest, he will always toast “to the Constitution!”

Judge Black called the Dubinas “stalwarts” in promoting unity among the court. Judge Dubina and Beth continued an existing culture of hospitality and “family” among the Eleventh Circuit—hosting visiting panels and their law clerks in their home during almost every oral argument scheduled in Montgomery, even when Judge Dubina was not participating on the panels. Martha recalls knowing the members of the court and being intimidated by none of them, even the intimidating ones, because each

## CONTACT US

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judge was regarded as extended family. Judge Dubina often enjoys time spent with people, including colleagues who are ideologically opposed, because he is so interested in them personally. During Dubina's term as chief judge, Ruth Williamson said Judge Dubina always made certain to visit the staff in the Clerk's Office during every visit to Atlanta to thank them for their work. "You need people to carry this [collegiality] on. Without it, the court will change," says Judge Black.

It is no surprise that Judge Dubina's exemplary service to the courts, understandable communication style, commitment to the rule of law, and magnanimous example have influenced generations of law clerks whom he has often called his "munchkins." A few munchkins have been elevated to the federal bench, perhaps dropping their munchkinhood. Seventy-four clerks in total, including your authors, have had the privilege of knowing and learning from Judge Dubina and Beth. There might have been more clerks, but career law clerk Ruth Williamson has faithfully served on Judge Dubina's staff for more than 25 years. Every clerk would say that Judge Dubina gave them his time mentoring and empowering them like a father would for his own children. When his daughter Martha was elected to represent Alabama in the U.S. House of Representatives, it did not seem exceptional to her that she was a woman achieving that position. "Dad always told us 'you can be anything you want to be, and we believed him.'" He has said the same to us munchkins.

Of course, Judge Dubina's legacy on the court is also one of fun (sometimes mischievous fun), and the ability to appropriately prioritize both the important work of the Eleventh Circuit and his family and other outside interests.

Whenever Judge Dubina is done with his work for the day, so is everyone else in chambers. Going home to your family and personal life is nonnegotiable. Every judicial assistant and law clerk knows that at the end of the day, "There is more to life than all this." No one works later than Judge Dubina; everyone rides the chambers elevator down together. While some people leave work and retreat into their thoughts or a book or a TV show, Dubina continues

pressing into time well spent with family and friends, usually inviting them into his adventures. Among those countless adventures are legendary mountain climbs to the summits of Mount Rainier and Mount Kilimanjaro, hunts in Alaska, hot air balloon rides in Africa, and many more. His capacity to fully experience life and not let it pass him by is remarkable.

Judge Black has said that she and Judge Hull agree: "If there is an afterlife, and we get to choose, we want to come back as Judge Dubina. We laugh when we say it, but we are serious." Judge Dubina has found a way to be "an excellent judge, lawyer, friend, father, and husband." "He does not cheat his work. He does not cheat his family. He lives a full and rich life." That life is and will remain defined most by his faith, Beth, his three children and now seven grandchildren, and his countless friendships with others both inside and beyond the courts.

Your authors deeply thank Judge Dubina for his service, mentorship, and example. ●

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## Endnotes

1. The content of this article is based on recorded interviews of Judge Dubina dated May 6, 2002, and June 23, 2014, as well as a Zoom interview of Judge Dubina conducted on Feb. 8, 2022. Additionally, the authors are very grateful to Eleventh Circuit Judges Susan Black and Frank Hull, District Judge Robert Hinkle, Magistrate

Judges Kelly Pate and Philip Lammens, attorney Joe Espy, Judge Dubina's career law clerk, Ruth Williamson, and Judge Dubina's daughter, Martha Roby, for their willingness to either be interviewed or submit a written statement in connection with this article.

2. The collegiality and friendship amongst the Montgomery Bar extended to Judge Dubina's tenure on the bench. In what may be one of the most farcical "trials" in Montgomery history, Judge Varner held court at what is now the Capital Oyster Bar, more commonly known as the Marina, located along the Alabama River north of downtown Montgomery. The dispute was over local lawyer Jimmy Garrett's beloved bird dog, Lady, who died during a quail hunting trip attended by Judge Dubina, and local lawyer, Philip Butler. Garrett, Judge Dubina and Butler were each "represented" by three of the most distinguished lawyers in Montgomery. Most of the local bar turned up at the Marina for the hilarious spectacle of Judge Varner conducting a fake trial involving Judge Dubina, then on the Eleventh Circuit, along with Butler, serving as defendants, and Garrett serving as the plaintiff. The "trial" ended with each side buying the beer of the other, and the question of the cause of Lady's death never being determined.
3. *See* Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971) (the first of many federal orders and injunctions in that litigation).
4. *Don't Schedule Your Life Away, Judge Dubina Tells Cumberland Grads, SAMFORD UNIVERSITY* (May 17, 2013): <https://www.samford.edu/news/2013/Dont-Schedule-Your-Life-Away-Judge-Dubina-Tells-Cumberland-Grads>.
5. Moody would later be convicted of murder and sentenced to seven federal life sentences. An Alabama state court jury later convicted him of Judge Vance's murder and sentenced him to death in 1997. He was executed by lethal injection in 2018.
6. According to Joe Espy, as much as his friends and colleagues were happy for him, the local bar selfishly lamented Judge Dubina's elevation to the Eleventh Circuit because they would no longer have him to preside over their trials.
7. Judge Joel Dubina, Address at the Cumberland Law Review Symposium (Feb. 28, 2020).

# THE ELEVENTH CIRCUIT HISTORICAL SOCIETY

The Eleventh Circuit Historical Society is a private, nonprofit organization incorporated in Georgia on Jan. 17, 1983. Although the Society has no legal connection with the U.S. Court of Appeals for the Eleventh Circuit or the federal government, its primary purpose is to keep a history of the courts of the Eleventh Circuit as institutions and of the judges who have served these courts. In this regard, the judges in the old Fifth Circuit from the states of Alabama, Florida, and Georgia are included in the Society's area of interest.

In addition, the Society has a broader mission to foster public appreciation of the federal court system in the states encompassed by the Eleventh Circuit.

The formation of the Society came shortly after the creation of the Circuit in 1981. This timing has allowed the writing of history as current history, not as research history. The Society is devoted to preserving our courts' heritage through the collection of portraits, photographs, oral histories, documents, news articles, books, artifacts and personal memorabilia.

The Society's permanent office is in the Elbert Parr Tuttle U.S. Court of Appeals Building in Atlanta. Its Board of Trustees is composed of lawyers and legal scholars representing the historical interests of Alabama, Florida, and Georgia.

While the Society's archival activities are partially funded by grants and other special gifts, it primarily depends on members for financial support. Take pride in knowing that, through your membership, you are helping to recapture memories of past events and thus supplementing historical knowledge that will enlighten and enrich present and future generations. In essence, the Society's accomplishments belong to you.

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