

The Twenty-Seventh Annual
Chester Bedell Memorial Lecture

"THE INDEPENDENCE OF THE AMERICAN LAWYER"

*Presented to The Florida Bar
By
The Chester Bedell Memorial Foundation
in cooperation with
The Trial Lawyers and Criminal Law Sections*

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THE HONORABLE BELVIN PERRY, JR.

Orlando, Florida

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The Honorable Belvin Perry, Jr. is Chief Judge of the Ninth Judicial Circuit of Florida.

Judge Perry is a native of Orlando who earned a Bachelor of Science degree in History in 1972 from Tuskegee University and a Master of Education from Tuskegee in 1974. Judge Perry received his Juris Doctorate degree from Texas Southern University's Thurgood Marshall School of Law in 1977.

Judge Perry served as an Assistant State Attorney for the Ninth Judicial Circuit prior to his election in 1989 as a Circuit Judge in Osceola County, Florida. He has served on the Circuit bench of the Ninth Judicial Circuit of Florida ever since, including service as Chief Judge from 1995 through 1999 and from 2001 to the present.

Judge Perry has been involved in some of Central Florida's most highly publicized trials. He was lead attorney for the prosecution in the case of Florida v. Buenaño in which Judy Buenaño was tried and convicted of killing her son and her husband. As a Circuit Judge, Judge Perry presided over the case of State v. Casey Anthony, in which Ms. Anthony was charged in the death of her daughter Caylee Anthony.

Judge Perry has served as Chairman of the Trial Court Budget Committee for the State Court System and as Chairman of the Florida Conference of Circuit Judges. Most recently, he served as Chairman of the Florida Supreme Court's Innocence Commission to conduct a comprehensive study of the causes of wrongful convictions and measures to prevent such convictions. After two years of diligent work, on June 27, 2012 the Commission submitted its Final Report to the Florida Supreme Court.

THE INDEPENDENCE OF THE AMERICAN LAWYER

MR. PILLANS: On behalf of the Chester Bedell Memorial Foundation, each year at the Bar convention we present a lecture in Mr. Bedell's honor because Mr. Bedell had such an influence on many of the great lawyers who are still practicing here in Florida.

Mr. Bedell believed first and foremost in the independence of the American lawyer and he advocated that. And that has been the theme of our lectures every year.

I would like to now call on Sylvia Walbolt, our chairman, to introduce our lecturer this year.

MS. WALBOLT: Thank you, Mr. Pillans.

It is my privilege to introduce Judge Belvin Perry, who is accompanied here today by his wife, LaDrean. Thank you for joining us.

I heard Judge Perry yesterday receive the Hoever Award at the Judicial Luncheon. And as I sat there and heard that, I thought I could stand up here today and say that and it would speak for itself and I can sit down. But I am a lawyer, so I couldn't be quite that short. But it is a wonderful honor for you to have received that.

Judge Perry is a native of Orlando. He was born and raised here. His father was the first African-American police officer in Orlando. It tells you something of how far we have come just in a generation. He paid tribute to his parents yesterday. Obviously, public service is in his family.

Before he went on the Bench, Judge Perry worked as a prosecutor. And he was lead prosecutor in a very notorious case where a woman was accused of murdering her son. And, of course, as we all know how very recent he presided over an equally notorious criminal case in which a woman was charged with the death of her daughter. He secured a conviction in his case and presided over an acquittal in the other case.

Judge Perry has been on the bench since 1989. He currently is the Chief Judge of the Ninth Judicial Circuit.

In addition to all of these responsibilities, he served for the last two years as a chair of Florida Supreme Court's Innocence Commission. And as Scott and I can personally attest, and Hank and others who are in the room who are on the Commission, it wasn't always easy because of persons with very strong, differing views on many of the issues. But he steered us on a steady course with patience. And we are expecting a final report shortly. And you are going to receive a preview of it today.

HONORABLE BELVIN PERRY: Good afternoon.

It is indeed a pleasure to be here today with you.

When I think of the Innocence Commission and the amount of time that I spent with Professor Fingerhut, Ms. Walbolt and Hank Coxe, to put it mildly, it was quite an experience dealing with various personalities that were involved in our Innocence Commission.

It was a mere 225 years ago this summer that a very bright and very committed group of attorneys and statesmen gathered in Philadelphia to hammer out what would eventually be our nation's constitution. People like Alexander Hamilton, Benjamin Franklin, George Washington, and James Madison, along with many others gathered with the sole purpose

of revising the Articles of Confederation and establishing a strong federal system of government that would stand for the people.

These were brave, independent thinking men. Virtually every one of them took part in the American Revolution. They had experienced tyranny. They understood the meaning of injustice. They knew what was at stake. And they knew that their efforts would not only change the history of America, but the history of mankind.

I say it was merely 225 years ago because over the tens of thousands of years of civilization, it was only yesterday in those steamy halls in Philadelphia that we, as a species, truly embraced individual freedoms and God given rights. When you look at the timeline of humanity, liberty is still very young and there is nothing that guarantees that it will last forever.

As I come before you today to speak on the independence of the American Lawyer, I think it is appropriate that we reflect on where we came from and the responsibilities that we have inherited in order to maintain our freedom. As an American lawyer, you serve at the intersection where rights and freedoms are decided every day. Like our forefathers, there is much at stake in what you do.

You and I are the keepers of justice in our time. We carry a torch that is fueled by truth, justice, fairness and equality. Our charge is to maintain that flame so that it burns hot and bright until a day when we will pass it to those who will come behind us. What is at stake if we fail? What is at stake if we take our eyes off of that flame?

Today I am humbled by the opportunity to join the distinguished ranks of past lecturers, each of whom has offered their own unique perspective on the subject of the independence of the American lawyer.

I am also honored to stand before you in the memory of the great Chester Bedell. He was a man of great character, the consummate attorney's attorney, who saw that the independence of the American Lawyer as essential to the profession and vital to the preservation of liberty.

Similar to Chester Bedell and the lecturers who have stood here before me, I, too, hope to impart a few tidbits of wisdom that will strengthen and improve the important work we all do as we strive to serve truth and justice in this great state and in this great nation.

The financial journalist Jane Bryant Quinn once stated that, "Lawyers are the operators of the toll bridge across which anyone in search of justice has to pass." I am not altogether certain of the context of her statement, but, regardless, I do see the analogy in her truth.

For everyday citizens, the legal process is viewed as a swift river with a whirling vortex and jagged rocks. Navigating across to the far bank where justice resides can be treacherous for the unassisted litigant. Attorneys offer safe passage through their skills and understanding of the law. They are not simply tools of the process, but rather partners in justice for both the client and the court. The American lawyer truly serves as a bridge that allows people to cross those turbulent waters between conflict and resolution.

However, to serve in this capacity, attorneys must be empowered to work and make decisions as individuals. They must be encouraged to sacrifice their personal needs and ambitions to preserve what is right. They must be willing to do what is unpopular, especially when it ensures access

to justice for those who would otherwise be denied.

I've had the opportunity to see firsthand this side of the independent American lawyer through my work on the Florida Innocence Commission, and that is something that I am looking forward to sharing with you now.

The beginning of the Florida Innocence Commission came on December 11, 2009, when a Petition for a Rule Establishing an Actual Innocence Commission was filed with the Supreme Court of Florida. The petition was filed on behalf of 68 petitioners by the hand of one of our nation's greatest attorneys and legal scholars Sandy D'Alemberte.

And for those of you who don't know Sandy, and I cannot imagine anyone in this room not knowing him, but he is simply a trial lawyer's lawyer. He was the individual that got cameras in the Florida courtrooms. He served as ABA President, former member of the Florida House, and the former president of Florida State University.

At the time the petition was filed, 11 Florida citizens were confirmed to have been convicted and wrongfully imprisoned according to the Florida Innocence Project. The petition was filed on the basis that there has never been any official analysis or potential reforms in court procedures, improvements in attorney's training, consideration of evidence rules, and development of new ethical standards or other steps to reduce the numbers of wrongful convictions in Florida.

Innocence commissions were already in place in many other states, including California, Connecticut, Illinois, New York, North Carolina, Pennsylvania, Texas, and Wisconsin. The fact that Florida should move to do the same wasn't a surprise. In fact, it was about time.

Wrongful convictions harm society. The most obvious is that the innocent suffers loss of freedom, time to be with their families and loved ones, future goals, income, and reputation of perhaps even life itself. This is truly a grave injustice.

Adding salt to the wound, taxpayer dollars are used to house, feed, and provide basic medical care for the wrongfully convicted while the criminal goes free. Beyond this I question the price that we pay as a society in maintaining trust and confidence in our legal system when these horrific mistakes are made on the innocent. Personally, I think there is a lot more at stake than we realize.

In Florida it was time to establish an Innocence Commission. And thanks to the vision and determination of a few independent Florida lawyers, it became a reality.

On July 2nd, 2010, Chief Justice Charles T. Canady established by administrative order the Florida Innocence Commission. The Supreme Court Order charged the Commission with conducting a comprehensive study of the cause of wrongful convictions and an in-depth consideration of measures to prevent the conviction of the innocent.

I have had the honor to serve as chairman of the Florida Innocence Commission, and I can tell you honestly it has been one of the most significant and one of the most fulfilling roles in my career.

The Commission consisted of State Representatives from both the House and the Senate, Appellate and Trial Court Judges, representatives from the Public Defenders, State Attorneys, law enforcement, legal scholars,

and, of course, numerous representatives of the Bar. It was a well-rounded powerhouse of legal professionals and a tremendously dedicated group of individuals.

Over the past two years the Commission met 13 times. We were permitted to study and review cases where wrongful convictions were officially acknowledged, not cases of unproven innocence. We conducted research of the other innocence commissions around the country. We sat through expert presentations. We delved into case law. We reviewed criminal procedures, scrutinized jury instructions, and worked through various law enforcement protocols. Every stone in sight got turned over.

After much review and consideration by the Commission, we narrowed our focus down to five main causes of wrongful conviction: Eyewitness misidentification, false confessions, informant/jailhouse snitches, improper or invalid scientific evidence, and professional responsibility and accountability of prosecution and defense attorneys, as well as law enforcement.

Eyewitness misidentification was found to be the leading cause of the wrongful convictions. According to the Florida Innocence Project, eyewitness misidentification has played a role in more than 75 percent of the convictions subsequently overturned by DNA testing.

Eyewitness identification is powerful because witnesses are often completely convinced that they are correct in identifying the perpetrator. It is also very persuasive for a jury to hear an in-court identification by a witness.

The United States Supreme Court Justice William J. Brennan, Jr., wrote in a 1981 dissent, quoting from a legal study that, "There is almost nothing more convincing than a live human being who takes the stand, points a finger at the defendant, and says, That's the one."

Working through the research, the Commission found groundbreaking social science studies over the past 30 years that have shown that confidence does not necessarily correlate with accuracy and that many factors can lead to eyewitness misidentification, including cross racial identifications, the presence of a dangerous weapon during the crime, and the type of lineup law enforcement shows to witnesses. As an example, sequential versus simultaneous presentation of photographs or individuals for witness identification or whether or not to utilize a blind administrator for the lineup.

So, what is at stake when we don't give consideration to issues of eyewitness misidentification?

James Bain: Late on the night of March 4, 1974, the victim was taken from his bedroom through a window to a nearby field and raped by an unknown male. When the victim returned home, he was wearing only a white T-shirt and Jockey underwear. The police collected his underwear and sent it to the FBI for serological testing.

In this case the victim gave the officers a physical description of his assailant, which included very prominent sideburns, and said he identified himself as Jimmy. The description was then given to the victim's uncle who stated that he knew an individual named Jimmy Bain who fit the description. After the uncle stated Bain's name, the victim adopted Bain as his assailant.

The police took the victim to the police station along with his father and uncle and presented him with a photo lineup. Bain's photo was included in the lineup, along with four or five other males, only one which had sideburns.

Rather than asking the victim to pick out the photo of his assailant, the police suggestively and improperly instructed him to pick out Bain's photograph and he did. While it was not the only factor that led to Bain's wrongful conviction, misidentification was one of the contributing factors at trial.

On December 12, 2009, James Bain was freed from prison after post-conviction DNA testing proved his innocence of the 1974 rape and kidnapping. At the time of his release, Bain's 35 years spent in prison was the longest time served by any of the DNA exonerees nationwide.

It is popular opinion and assumed that an innocent person would never confess to a crime that he or she did not commit. This has been found to be untrue now with conclusive DNA evidence revealing the innocence of many who have confessed in the past.

Research into cases and psychological studies have shown that people are more apt to confess to a crime when subject to certain interrogation techniques and that some categories of people, such as juveniles and mentally incapacitated, are especially susceptible to making any false confession. Reports of wrongful conviction based upon DNA evidence demonstrate that 25 percent were the result of false confessions. Of the 11 exonerees in the state of Florida, three were related to false confessions.

The Commission took a hard line with this topic organizing a workgroup to thoroughly review the causes of false confessions. The final work product of the group was titled Standards for Electronic Recording of Custodial Interrogations, and it focused on the central theme that law enforcement officers should be required to electronically record all custodial interrogations.

Electronic recording promotes reliability through standardization and allows for critical review of interrogation techniques. It promotes efficacy by ensuring constitutional rights, reduces claim of misconduct, and it identifies errors caused by language barriers, mental incompetency or substance abuse. Prosecutors even claim that recordings help them assess the strength and weakness of the State's case.

What is at stake if we simply choose to overlook the premise of false confessions?

Anthony Caravella was exonerated on March 25, 2010, after post-conviction DNA testing proved his innocence of a 1983 rape and murder in Broward County.

The crime involved a 58-year-old woman who had been sexually assaulted, strangled with a ligature from behind and stabbed 29 times as she walked home from a local bar. Initially police had no leads and made no arrests.

Almost two months after the crime was committed Anthony Caravella was arrested on an unrelated juvenile charge. He was 15 years old at the time of his arrest with an IQ of 67.

Caravella was interrogated for the crime, giving four recorded statements and one oral statement made over a five-day period while he was

in custody on the juvenile charges. Each statement was different from the others and drastically contradicted the physical evidence in the case. With repeated questions through interrogation techniques and suggestive questioning by law enforcement, he spiraled into admitting to a greater and greater role in the murder/rape and ultimately confessed that he committed the crime alone.

At the trial the State's case rested exclusively on his statements. The prosecution sought the death penalty but Caravella was sentenced to life imprisonment after being convicted of first-degree murder. His exoneration came after DNA testing conclusively eliminated him from the crime scene. He spent 26 years of his life in prison for a crime that he did not commit.

Of the exonerees released from death row, 45.9 percent were convicted, in part, due to false informant testimony. Further studies have shown that informant perjury is a factor in nearly 50 percent of wrongful murder convictions which points to the fact that fabricated testimony is a leading cause of wrongful convictions in capital cases.

In the courtroom jurors are left to determine the credibility of the witness or an informant, even a jailhouse informant. But a recent study of a person's ability to detect deception by actual inmates shows that deceit is not always caught. The study's highest rate for detecting inmate deception was only 64 percent, and that was with a test group of U.S. Secret Service agents, people trained to read body language and evaluate responses and behavior.

Numerous commission reports from different states have focused on four main ways to reduce the risk associated with the jailhouse informant testimony. They include:

- Requiring that the informant's testimony be corroborated with other evidence;

- Provide cautionary jury instructions that tell jurors to weigh the testimony of an informant;

- Holding pre-trial reliability hearings similar to the ones held for the admission of expert testimony;

- And making it a requirement that the prosecution disclose information, such as an informant's criminal history, testimony in other cases, financial compensation, or reduction in sentence to the defense.

So why should we be concerned about the validity of jailhouse snitches and other informants? What is really at stake?

William Dillon: On the morning of August 17, 1981, James Dvorak was found murdered at Canova Beach. He had been brutally beaten to death and left in a wooded area.

Mr. Dillon became the suspect because several days after the murder he was hanging out at the beach. He was approached by the police who were questioning him about the crime. Dillon had read about the murder in the newspaper and had seen the yellow police tape in a wooded area near the beach, so he knew more than the police expected about the incident. It was thought that he may have further information about the crime, so he was brought in for questioning. After several days and multiple interrogations, police arrested him and charged him for the murder.

At his trial the State's case was largely based on the testimony of four key witnesses. One of them being a jailhouse snitch. Robert Dale Chapman was facing pending charges for the rape of a 16-year-old girl when he claimed that Dillon confessed to the murder and reenacted it during a dining experience in the dining hall.

Despite the presence of other inmates, however, there were no other witnesses to this alleged confession. Chapman's testimony was suspect from the outset as it included numerous details that were at odds with the facts of the case. Regardless, his testimony was used at trial. After testifying the State dropped the rape charges against Chapman. Other evidence and other testimony was used against Dillon at trial; however, Chapman's testimony certainly contributed to his wrongful conviction.

On November 18, 2008, William Dillon was freed from prison after 27 years when post-conviction DNA testing demonstrated his actual innocence of the 1981 murder.

Improper or invalid scientific evidence is a factor in just under half of the cases of wrongful convictions. This is not altogether surprising since DNA testing has only been readily available since the late 1980s and early 1990s. In fact, DNA testing can be credited for the formation of most innocence commissions throughout the various states.

This relatively new evidence has not only led to the overturning of many convictions, it has also shed light on how unreliable or inaccurate other science truly is. Examples of those would be bite mark analysis that was often considered to be individualized to one defendant; or a dog sniffing and the belief that a dog could sniff a defendant's scent at a crime scene long after the fact. It also involves human factors where the science was correct in some cases but the analysis was incorrect.

In this investigation the Commission not only looked at the science but also the cost concerns as this will continue to grow in importance as DNA testing becomes more and more common and becomes more sophisticated. We must face the fact that cutting edge scientific testing and analysis in crime scene investigation has become the norm. To deny it based on cost would be denying justice.

So, what is at stake if we don't work toward leading scientific evidence?

On July 8, 1981, three men forced their way into a Tampa home where they threatened and robbed five victims at gunpoint. Two victims, a 38-year-old woman and a 12-year-old girl were taken from the home and driven to a wooded area where both were raped. They were left tied to trees where they were able to free themselves and go to a nearby house to contact the police.

The robbery victims left tied up in the home managed to record the license plate number of the Buick that the assailants were driving and provided it to the police.

In the investigation law enforcement ran the license plate and determined that the car's owner was incarcerated at the time of the crime, but that a Douglas James had borrowed the car. After a series of photo lineups of the car owner's known associates, which included James; James' brother, Corlenzo and Alan Crotzer, all were positively identified as assailants with Crotzer identified as a rapist of both victims and the assailant wielding the gun.

At trial Corlenzo James pled guilty to robbery and burglary charges. Douglas James and Alan Crotzer were tried together. James pursued a consent defense with regard to the adult rape victims, while Crotzer continued to claim that he was never there, never participated in any of the crimes and had no knowledge of the event. He also testified that he had been with his girlfriend on the night of the crime.

Anthony Crotzer spent 24.5 years in prison. It was not until 2003 that Crotzer was able to secure access to the evidence from his trial for DNA testing. The tests confirmed what Crotzer had claimed since his arrest, he could not have been the man that raped the victims. Specifically, the spermatozoa found on a slide recovered from the rape kit of the adult female rape victim came from an unknown male. Further, Douglas James has confirmed that he and his brother committed the crime with a childhood friend, not with Crotzer.

Folks, these are just a few examples and a few of the faces of those who were unjustly deprived of life and liberty in Florida's Department of Corrections. Ironically, they are the lucky ones who have been exonerated. Without question, there are other innocent men and women still on the inside. When we talk about the work of the Innocence Commission, we talk about the good work of an attorney who seeks only what is true and what is just. This is what is at stake.

To date there have been 292 post-conviction DNA exonerations in the United States. Thirteen of those were in Florida, eight were serving life sentences and one was on death row. Together they served an average of 20 years in prison. Twelve of the 13 enjoy freedom today. One, Frank Lee Smith, was exonerated 11 months after dying of cancer while on death row.

To say wrongful conviction is a grave injustice is simply an understatement. Our country was created to defend its citizens against this very issue. There should be no question that our forefathers had this in the back of their minds when they set up our system of government and certainly when they drafted Article Three of our Constitution. Wrongful conviction of the innocent is a bitter wind that threatens to extinguish the torch of justice that you and I carry.

If there is a silver lining to this dark cloud of injustice, it would have to be the dedication, persistence, and will of those who would not simply stand idle and allow this travesty to go unchecked. Behind each exonoree is one, maybe two and sometimes a team of attorneys, who did more than just advocate for the innocent. Their efforts served as a catalyst for the formation of the Florida Innocence Commission and the work of that Commission will forever change lives and preserve freedom. These individual lawyers kept their eye on the flame of justice, and today it burns hotter and brighter as a result.

I think Chester Bedell would be proud of the progress made by the Florida Innocence Commission. However, I think he would be even more proud to know that the Commission's work would not have been conducted if not for the concern, sacrifice, and determination of the true guardians of freedom -- the true guardians of freedom -- the independent American lawyer.

Thank you.

THE BEDELL LECTURERS

David Boies.....	1986
Hon. Parker L. McDonald.....	1987
Robert W. Meserve	1988
Benjamin R. Civiletti	1989
Brendan V. Sullivan	1990
Julius LeVonne Chambers	1991
Roxanne B. Conlin	1992
Joe Stamper	1993
William Steele Sessions	1994
Lord William of Mostyn QC.....	1995
Ambassador Sol M. Linowitz	1996
Warren B. Lightfoot	1997
Lawrence E. Walsh	1998
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Michael E. Tigar	2001
Morris S. Dees, Jr.	2002
Paul Morella	2003
Arthur R. Miller.....	2004
Talbot (Sandy) D'Alemberte	2005
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Martin A. Dyckman	2009
Stephen B. Bright.....	2010
Barry Richard	2011
Hon. Belvin Perry, Jr.	2012

The Chester Bedell Memorial Lecture on "The Independence of the American Lawyer" is an annual event at the Trial Lawyers' Section luncheon meeting at the Convention of The Florida Bar. The Bedell Foundation, which receives tax-deductible contributions for support of the lecture, was created by the Jacksonville Bar Association in 1981 to help preserve the independent bar and to extend that sense of history, duty and destiny that Bedell exemplified in more than 50 years of practice in the courtrooms of Florida