

A Tribute to Ben F. Overton

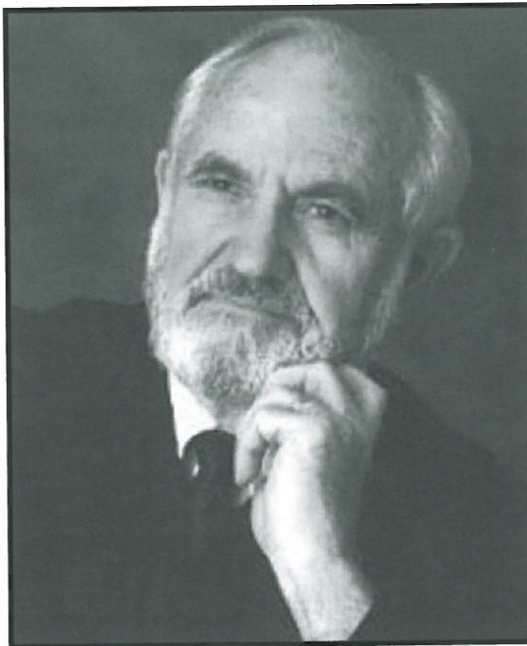
By John Upchurch and Catherine Klasne

The first Florida Supreme Court Justice to be chosen through the state's merit selection and retention process, Ben F. Overton brought a peacemaker's heart, a teacher's credibility and a visionary's passion to his years as a dispute resolution specialist. On Dec. 29, 2012, two weeks after turning 86, Overton died of post-surgical complications in Gainesville's Shands medical center at the University of Florida, close to the school where he had earned his law degree in 1952.

Overton's death sparked tributes and newspaper stories throughout the state of Florida and beyond. In a *Gainesville Sun* article, he was described as grading papers up to two days before his death; he was still an adjunct professor at the university. He continued to mediate for the Florida- and Alabama-based group Upchurch Watson White & Max until July 2012.

Overton had been active in national organizations, including the American Judicature Society and the American Bar Association. Overton's activities in the ABA, of which he became a member in 1956, spanned decades; in the late 1970s, he chaired the ABA committee that drafted standards for judicial discipline. He worked on numerous other ABA committees and projects, including serving as Chair of the Section of Dispute Resolution from 2000 to 2001. Until just a few weeks before his passing, he had been leading committee projects for the ABA's Criminal Justice Section.

Overton's legal career was varied. After graduating from law school, he served as St. Petersburg city attorney and special assistant attorney general and worked in private practice. For nearly 10 years he served as



circuit judge in the civil and criminal divisions of the 6th Judicial Circuit of Florida and then as chief judge of that circuit for almost four years. He was appointed to the Florida Supreme Court in 1974, served as Chief Justice from 1976 to 1978, and at the time of his retirement in 1999, was the senior member of the court.

One of Overton's friends since the 1970s, James Alfini, said the justice's contributions were indispensable in putting Florida at the forefront in the world of dispute resolution: "You need top judicial leadership of some sort. ... In Florida, they had it in Ben Overton. He was the intellectual and spiritual leader for dispute resolution in

Florida. He always made things move more quickly. That was his signal accomplishment."

During her 20 years in the Florida state court administrators' office running the Dispute Resolution Center, Sharon Press was often in touch with Overton. "In 1978, before I was in Florida, he appointed the first Supreme Court committee on dispute resolution alternatives. He was in the forefront in thinking that courts had a role in alternative dispute resolution, and he, in his role on the Florida Supreme Court, was very active in promoting that work. He had a strong sense of the role that alternative dispute resolution could play in a community," Press continued. "Early on, he encouraged ADR options for small claims and community disputes, and he always had a strong commitment to families. ... He was great at encouraging folks to look at family disputes in a different way, to make the process as humane as possible, especially for the children."



John J. Upchurch is founder, President and CEO of Upchurch Watson White & Max, a mediation group with offices in five Florida and Alabama cities. He was among the first to become certified as a mediator by Florida's Supreme Court and then served as chairman of the mediation group of the Cobb Cole & Bell law firm in Daytona Beach, from which Upchurch Watson White & Max evolved. He specializes in the resolution of complex multiparty disputes and commercial litigation and recently was certified as an e-discovery specialist. He can be reached at jupchurch@uww-adr.com. **Catherine Klasne**, a longtime features editor and writer for local newspapers, is media manager for Upchurch Watson White & Max. She can be reached at cklasne@uww-adr.com.

As a mediator, Overton was known as a definitive source for outlining possible judicial outcomes in specific disputes. "I used Ben often to help break settlement logjams in the bigger cases," said Lawrence Watson, principal of Upchurch Watson White & Max, who recalled asking Overton to serve as the third-party neutral in cases where the parties had substantially differing positions on the law. The parties, Watson said, welcomed the opportunity to argue their side of the legal debate to Overton and secure valuable information concerning possible aspects of an adjudication option for resolving the dispute. The former justice sometimes would respond to the arguments, "Well, when I wrote the opinion in the case you are citing, here is what we intended to establish . . ."

In fact, Overton wrote more than 1,400 well-crafted opinions while on the court, according to his eulogist Robert H. Jerry II, Dean and Professor at the Fredric G. Levin College of Law at the University of Florida. Overton, Jerry recalled, lightheartedly referred to Jerry as "Boss" during Overton's time at UF.

Overton was a leader in embracing many kinds of innovations within the court system. During his time on the bench, Florida became one of the first states to allow television cameras in the courtroom, and he was very

involved in making the state's Supreme Court one of the first to have its own web site. Dean Jerry recollected one of Overton's many writings: "All members of the legal community should recognize the emergence of the information age and the rapid changes we see emanating from both science and industry. We must not be afraid of new technology or new ideas. Instead, we should use these evolving technologies in ways that best serve our legal community."

Overton traveled a great deal across Florida and the entire continent. He and his wife, Marilyn (who died in 2005), used their RV to visit family and attend professional meetings. "Ben was an enthusiastic traveler," said Larry Watson. "We'd see him at American College of Civil Trial Mediator retreats in Maine, New Hampshire and, if I'm not mistaken, Banff [in Canada]. Ben would also drive anywhere in Florida to conduct mediations."

As James Alfini noted, "Overton was everybody's cheerleader, helpful, giving of time, always very insightful." Overton was able to look ahead and not be stuck in the present. He also served as a role model for how to make the best of our "senior" years. Even with his great wisdom and experience, he was always willing to learn something new. His friends and colleagues deeply miss his positive and energetic presence. ♦

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