



**PERSONAL RECOLLECTIONS OF PROFESSOR ROBERT F.
WILLIAMS**

*Helen Hershkoff**

When Professor Justin Long contacted me about a Festschrift for Professor Robert F. Williams, I was honored to join in the tributes and dismayed at the thought of Professor Williams' retirement. For as long as I can remember, going back to the Reagan presidency and my days as a poverty lawyer, I've associated Bob with state constitutions—as the Hon. David Schuman stated in this law review just two years ago, “Bob’ Williams has long been the godfather of state constitutional law scholarship.”¹ Bob’s work has been called not only “impressive,” but also a “tour de force”; his treatise, *The Law of American State Constitutions*, was heralded as “a milestone for the field,”² and state supreme courts routinely cite to his work as authoritative.³

My gratitude to Bob is long standing and personal: Bob organized the first academic conference that I attended on state constitutions (indeed, probably the first academic conference of any sort that I attended), and looking back I am doubly impressed by his decision to have invited not only law professors, but also practitioners (I was then an ACLU lawyer). I cannot over-emphasize how eye-opening his scholarship was to my law practice and later to my scholarship, pointing me to differences among state constitutions in terms of their structure, provision for individual and collective rights, and founding histories, and between a specific state constitution and the federal. It is no secret that Bob’s knowledge of state constitutional law is comprehensive and deep; it may be less well known that Bob’s collegiality is exemplary. In particular, Bob has been

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1. Hon. David Schuman, *Comments on Robert Williams’s State Constitutional Protection of Civil Litigation*, 70 RUTGERS U. L. REV. 975, 975 (2018).

2. Jim Rossi, *Assessing the State of State Constitutionalism*, 109 MICH. L. REV. 1145, 1145, 1161 (2011).

3. Rutgers Law School, *Celebrating Prof. Robert F. Williams at the Rutgers Law Review Banquet*, YOUTUBE (Mar. 19, 2019) <https://www.youtube.com/watch?v=QF6qlOmsYNQ> (stating Williams is the third most cited legal authority on state constitutions by state supreme courts).

consistently generous and enthusiastic when I've asked him to review drafts of scholarly articles, brainstorm an idea, or organize an amicus brief. A quick phone call to Bob, or an email with the germ of a request, always has been enough to mobilize him into action—writing me detailed comments, sending me off-prints, directing me to unpublished decisions that might otherwise be missed even with electronic search engines, and sharing court papers that are rich in argument and filled with insight.

Over the years, Bob routinely has returned in his own writing to the question of access to justice and how the state courts can protect the property and liberty interests of plaintiffs and defendants alike. In his paper delivered before the influential Pound Civil Justice Institute's 2018 Forum for State Appellate Court Judges, Bob offered a survey of state constitutions and their protections for civil litigation processes—provisions that he acknowledged lacked visibility and salience to most judges, lawyers, and law professors.⁴ Bob's interest in access to justice was not simply an abstract concern, but rather a professional commitment to which he was dedicated in practice throughout his career. In 1971, as a new lawyer, Bob became a staff attorney at Legal Services of Greater Miami in Florida, which was founded in 1966—eight years before Congress established the Legal Services Corporation—and led by the legendary Howard Dixon, one of the lawyers in the *Gideon* litigation.⁵ At the time, poor people in Florida had a hard time securing free, quality legal representation in civil matters; the Florida Bar reported in 1972 that there was “[a] vast unmet need for legal services”⁶ (today, Florida appropriates no state funds for civil legal aid).⁷ Even after he became a law professor, Bob remained an engaged citizen, by, for example, serving as pro bono amicus curiae counsel for groups that included the American Civil Liberties Foundation at Rutgers Law School.

In one early case, Bob represented J.A. Freeman in an eviction proceeding for alleged non-payment of rent due under an oral agreement

4. Robert F. Williams, *State Constitutional Protection of Civil Litigation*, 70 RUTGERS U. L. REV. 905, 906–07 (2018).

5. Paul M. Rashkind, *Gideon v. Wainright: A 40th Birthday Celebration and the Threat of a Midlife Crisis*, 77 FLA. B.J. 12, 16 (2003) (stating Dixon was of counsel for the Florida Civil Liberties Union as amicus curiae in *Gideon*, and that he founded Legal Services of Greater Miami); Barbara M.G. Lynn, *Opening Statement: The Road Less Traveled*, 25 LITIG. 1, 2 (1999) (stating that Dixon was executive director of Legal Services of Greater Miami beginning in 1966).

6. Stephen T. Maher, *No Bono: The Efforts of the Supreme Court of Florida to Promote the Full Availability of Legal Services*, 41 U. MIAMI L. REV. 973, 975 (1987) (footnote omitted).

7. James J. Sandman, *The Role of the Legal Services Corporation in Improving Access to Justice*, DÆDALUS 113 (Winter 2019), <https://www.amacad.org/publication/role-legal-services-corporation-improving-access-justice>.

with the landlord.⁸ The deputy sheriff served process by “attaching” the summons “to some part of the premises,” arguing that under Florida law constructive service was proper because the defendant could not be found in the county, had no usual place of abode in the county, and had no family member above the age of 15 in the county to accept service.⁹ In support of that position, the sheriff testified that he had gone to the premises on June 22, 1971 at 9:00 a.m. and found no one at home; he went back at 12:30 p.m. and again found no one at home, and “that he saw no one in the vicinity from whom he could inquire as to the whereabouts of the defendant.”¹⁰ The appeals court noted that June 22 was a Tuesday—presumably a day when tenants were at work, at school, or engaged in ordinary life activities like doing laundry or grocery shopping—and affirmed the trial court’s order to squash service.¹¹ Forty years later, Bob’s case still is cited in *The Landlord’s Guide to the Perfect Eviction* as a warning to landlord attorneys: “Service is one of the few defenses that can potentially derail a landlord in his quest to evict a tenant.”¹² Bob did not win every case in which he appeared; he appreciated that even with the best legal representation, indigent litigants would not consistently succeed in their struggle for equity and respect. For example, as amicus curiae on behalf of the American Civil Liberties Foundation, Bob supported a challenge to a Pennsylvania law that permitted the use of medical assistance funds for abortions only where the procedure was necessary to save the mother’s life or where the woman was the victim of rape or incest.¹³ Plaintiffs lost, as they had under the Federal Constitution, as well.¹⁴

Justice William J. Brennan famously urged state courts to “step into the breach” and safeguard rights that the federal courts declined to enforce out of concern for comity and federalism.¹⁵ Bob unquestionably

8. Knight Manor No. One, Inc. v. Freeman, 254 So. 2d 375, 375 (Fla. Dist. Ct. App. 1971). The 1973 Florida Residential Landlord and Tenant Act “significantly eases” the requirements of the case. Robert F. Williams & Phillip B. Phillips, *The Florida Residential Landlord and Tenant Act*, 1 FLA. ST. U. L. REV. 555, 589–90 (1973). Williams served as Reporter for the Florida Law Revision Council on the drafting of the Act. He has reported to the author that the change was a concession in return for a pro-tenant provision elsewhere in the Act.

9. *Id.* at 375–76.

10. *Id.* at 376.

11. *Id.*

12. Matthew Sackel, *Pay Up or Get Out: The Landlord’s Guide to the Perfect Eviction*, 66 U. MIAMI L. REV. 973, 981 (2012).

13. Fischer v. Commonwealth, 444 A.2d 774, 775 (Pa. 1982) (per curiam). See Fischer v. Dep’t of Pub. Welfare, 502 A.2d 114, 116, 126 (Pa. 1985).

14. Harris v. MacRae, 448 U.S. 297, 301, 326–27 (1980); Fischer, 502 A.2d at 126.

15. William J. Brennan, Jr., *The Bill of Rights and the States: The Revival of State Constitutions as Guardians of Individual Rights*, 61 N.Y.U. L. REV. 535, 548 (1986); see

championed state constitutions as an independent source of protection for rights and liberties. But it would be a mistake to say that Bob embraced state constitutionalism as “a liberal ratchet,” to be approached instrumentally and to reach a bottom line.¹⁶ To the contrary, Bob’s scholarship paid special attention to state constitutional structure, history, and context, providing the primary materials that are foundational to a theory of when and why a state court’s interpretation of its constitutive text should differ from that of the federal. More importantly, Bob retained sight of the human dimension of law and its role in expanding or narrowing real people’s chances in life.¹⁷ Bob was that rare law professor who combined scholarly excellence with passion and ethics, and I remain forever grateful for his work and example. I hope that even with retirement, he will continue to take my calls, to answer my emails, and to provide his wise comments and counsel.

Helen Hershkoff, Comment, *William J. Brennan, Jr., The Bill of Rights and the States: The Revival of State Constitutions as Guardians of Individual Rights*, 61 *N.Y.U. L. REV.* 535 (1986), 75 *N.Y.U. L. REV.* 1554, 1554–55 (2000).

16. See Goodwin Liu, *State Courts and Constitutional Structure*, 128 *YALE L.J.* 1304, 1312 (2019) (book review).

17. See, e.g., Richard A. Goldberg & Robert F. Williams, *Farmworkers’ Organizational and Collective Bargaining Rights in New Jersey: Implementing Self-Executing State Constitutional Rights*, 18 *RUTGERS L.J.* 729, 731–32 (1987).