Winter 1997

FSU Law Magazine (Winter 1997)

Florida State University College of Law Office of Advancement and Alumni Affairs

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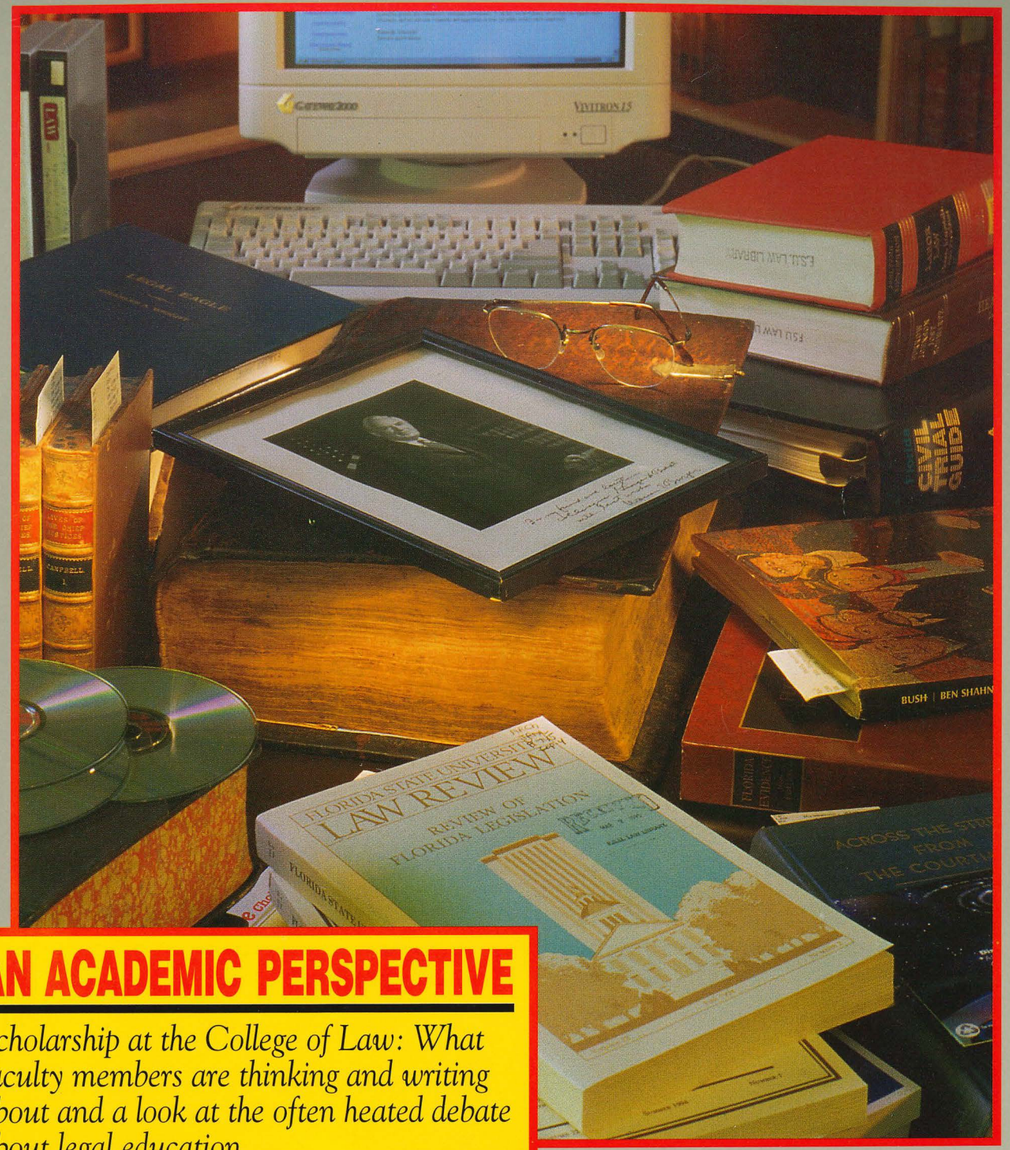

AN ACADEMIC PERSPECTIVE

Scholarship at the College of Law: What faculty members are thinking and writing about and a look at the often heated debate about legal education

Dean's Letter

Losing a friend, looking at scholarship, and good news on giving

This issue of *FSU Law* reports the passing of Richard Lillich, our Edward Ball Eminent Scholar in International Law. Professor Lillich was spending his fall semesters at the University of Virginia Law School, where he has long been the Howard W. Smith Professor of Law, and his spring semesters at Florida State. His passing is a great loss to the international human rights community, as well as to his students and colleagues at Charlottesville and Tallahassee. Richard was a superb teacher, scholar and lawyer. He enriched the quality of our intellectual and professional life by his own work and by the distinguished international law figures he brought to our campus. In addition, Richard was a wonderful "hands on" scholar who helped our students and our faculty generate the highest quality manuscripts for publication in our *Journal of Transnational Law and Policy* and elsewhere. And he was a delightful guy to have around. We shall miss him very much.

Law Faculty and the Profession

This issue of *FSU Law* includes a report of our faculty scholarly productivity for the last two years. I hope you will find it as impressive as I do. It reflects a wonderful mixture of topics and approach, on issues that are important to the legal profession and to society, with placements in some of the nation's most influential journals. The faculty essays included in this issue reflect some of these research efforts. We also feature an essay by David Morrill, offering a journalist's view of the legal education debate. These issues are also addressed in a forum on legal education, featuring University President Talbot "Sandy" D'Alemberte and several other law faculty.

Private Contributions

This issue of *FSU Law* summarizes the law school's private fundraising efforts for the 1995-96 fiscal year. I am delighted to report a 22% increase in contributions to the Annual Fund and a 24% increase in overall giving to the school. This growth is due in large part to the efforts of Ashley Frost, who has just completed her first year in the law school's development office. It is also due to the increasing success, generosity and support of our alumni and friends.

This year saw several very important major gifts to the law school's endowment. The Florida Bar Foundation made the first of two $150,000 payments to endow the Steven M. Goldstein Professorship at the College of Law. Steve's family contributed $100,000 to endow a scholarship fund to support students who will work under the supervision of the Goldstein Professor, and alumnus Bob Kerrigan also contributed $100,000 to this endowment. Each of these contributions, and every contribution to an endowment of at least $100,000, qualifies for a State of Florida matching gift of at least 50%.

Steel Hector & Davis has endowed the D'Alemberte Professorship at the College of Law, in honor of former partner, now University President, Sandy D'Alemberte, with a gift of $100,000. Alumni David Fonvielle and Don Hinkle have contributed $100,000 to endow the Fonvielle & Hinkle Professorship in Litigation, making Fonvielle & Hinkle the first Tallahassee law firm to contribute $100,000 to the College of Law. Finally, funding was completed for the Pat Dore Professorship in Florida Administrative Law, with generous contributions made by The Administrative Law Section of The Florida Bar and by alumnus Gary Pajcic.

For the first time, five graduating classes had contribution rates of over 20%. Special thanks go to Class Representatives J. Jerome Miller (Class of 1970—22.2%), F. Shields McManus (Class of 1972—23.7%), Mike Granger (Class of 1973—22.5%), Jane Rigler (Class of 1975—21.2%) and Beth Daniels (Class of 1979—21.8%). This improvement bodes extremely well for our future fundraising efforts. It would be wonderful if this current year a majority of classes would contribute at a rate of at least 20%. Every contribution is important to us, and our entire community thanks every one of you who contributed.

Alumnus Wayne Hogan has made a stunning contribution to the current year's fundraising efforts with his gift of $250,000 to create the Hogan Endowment in Civil Trial Justice. With the 50% state match bringing this endowment up to $375,000, Wayne's gift gives great impetus to our program in civil trial justice and to our Mock Trial program in particular. With Charles Lewis now on board as our Director of Advancement, we look forward to continuing to build an endowment that will permanently enhance the quality of our program.

Thank you all for your support.

Donald J. Weidner

DONALD J. WEIDNER, *DEAN, COLLEGE OF LAW*

About the Cover: A look at legal scholarship as the College of Law approaches the 21st century.

THE MAGAZINE OF THE FLORIDA STATE UNIVERSITY COLLEGE OF LAW

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THE MAGAZINE OF THE FLORIDA STATE UNIVERSITY COLLEGE OF LAW

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By David Morrill

Spreading the Bobby Jones Legacy

SIDNEY MATTHEW is widely acknowledged to be the foremost expert on Bobby Jones. Most of all, he wants to spread the message that Jones was far more than simply a great golfer.

When Sid Matthew talks about the man who has dominated much of his life for the last fifteen years, he speaks in a soft, deliberate tone that could easily be described as reverential. "No matter how much I talk about Bobby Jones, the subject is always fresh and exciting," says Matthew, who was called the "curator" of the Jones legend by *New York Times* columnist Dave Anderson.

Matthew's research gained the attention of Anderson and the rest of the nation in 1996, when his book, *The Life & Times of Bobby Jones: Portrait of a Gentleman*, made the *New York Times* Best Seller List. A companion documentary with the same title, which aired on CBS prior to the 1996 Masters Golf Tournament, was nominated for an Academy Award.

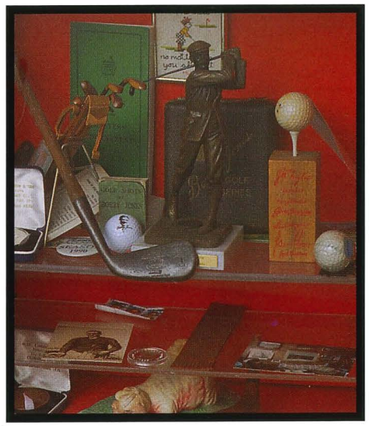
For Matthew, a Tallahassee lawyer and 1975 graduate of the College of Law, the story of Bobby Jones is not about simply the world's greatest golfer. Jones also was a successful attorney, inventor, writer, actor and businessman. He had degrees in mechanical engineering from Georgia Tech and English Literature from Harvard. He left Emory Law School after his first year when, on a lark, he took and passed the Georgia bar exam. An ardent partisan of the arts, particularly opera and literature, he developed a taste for European—especially British—culture. Asks Matthew, "How many sports stars have that kind of resume these days?"

Above all else, it is Jones's remarkable character that Matthew likes to talk about. "Jones's life is a testament to grace, humility, humanity and balance; of handling the greatest fame as well as the worst adversity," says Matthew. "He was a man who always put his friends and family first." Drawing a contrast with the often ostentatious millionaires of today's sporting world, Matthew refers to Jones as "a hero after five-o-clock."

The example set by Jones, says Matthew, is one that those in the legal profession would do well to examine. "There are a lot of lawyers who could stand to take some character lessons from Bobby Jones," he says.

Golf runs in Matthew's blood. "I was given my first golf club—a Sam Snead Blue Ridge putter—when I was five years old and, pretty soon, my brother and I were sneaking onto the putting green at the Cookville (Tennessee) Country Club course when all the regulars had teed off." By the time he was 12, after his family had moved south to Dunedin, he was immersed in the game and played the nearby Dunedin Country Club course, which had been home to the old PGA National, a tournament in which Jones had played in the 1920s. "I had a special education in golf because of the connection with Dunedin," says Matthew.

SIDNEY MATTHEW



Sid Matthew's Tallahassee office mixes the elements of his passions: golf, Bobby Jones and the practice of law.

In later years, Matthew, his brother and father bought the Dunedin course, updating and refurbishing it.

Matthew's scholarly interest took root in the early 1980s when he was a plaintiffs lawyer in Dalcon Shield litigation. His cases required him to take depositions at Jones Byrd and Howell, the Atlanta law firm founded by Jones's father. Jones Byrd represented AETNA Casualty, the insurance carrier for A.H. Robbins Co., manufacturer of the Dalcon Shield. "The Jones firm lawyers would let me work on a witness for 20 or 30 minutes, then they'd stop me to caucus. While I was cooling my heels during the breaks, I was looking at the Bobby Jones memorabilia on the walls and started talking to some of the law partners. They all loved to talk about him and I started to realize what an incredible, complex man Jones was."

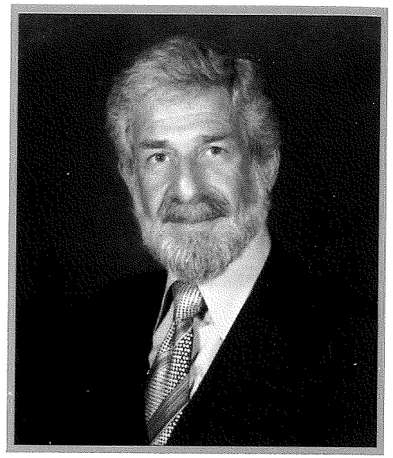
Matthew discovered that much of the Jones legacy was disappearing. "Many of the people who knew him best were dying off. I realized that if I wanted to preserve their memories, I would have to move fast." Over the following years, Matthew toured the southeast and made a number of trips to Britain, collecting photograhs and artifacts, videotaping conversations with friends and colleagues of Jones. Matthew enlisted fellow FSU law graduate and filmmaker Jack Sherry to help with the project.

As a golfer, Jones had no equal. Before one major tournament, a newspaper reported that "It was Jones against the field." Always playing as an amateur—he insisted he enjoyed golf too much to make a job of it—Jones won 23 of 52 tournaments he entered and never lost twice to the same opponent. He also established one of sports' most durable records.

According to Matthew, the plan to achieve the record is almost as impressive as the record itself. "Jones knew that most records are based on quantity—the most yards, the most victories, the most at bats, the most money," says Matthew. "Records like that will eventually be broken. What he wanted to do was something that had a reasonable chance to stand the test of time." Without telling even his closest friends, Jones targeted what was then called the "impregnable quadrilateral," later the Grand Slam of Golf, referring to the four major events of his day, the U.S. Open, the U.S. Amateur, the British Open and the British Amateur. In 1930, at the age of 28, Jones became the first—and last—to win them all in the same year.

Following the achievement, Jones did what today would be unthinkable. He retired. "These days you see people like Muhammad Ali, Magic Johnson, and Michael Jordan try and fail to retire at the height of their success," says Matthew. "They all have to make a comeback.They simply lack the discipline to walk away."

Following his retirement from golf, Jones put in more time with his father's Atlanta law practice, which he had joined in 1928, eventually serving as counsel to Coca Cola president R.W. Woodruff. He became a director of sporting goods manufacturer, the Spalding Company, where he used his engineering talents to design a revolutionary set of golf clubs that became enormously popular with the golfing public. He also helped found and organize the Masters Golf Tournament in nearby Augusta, working with noted Scottish golf course designer Alister MacKenzie in designing the European-in-



left: **Bobby Jones tees off in 1930**
above right: **Tobias Simon in 1975**

spired course.

Much of Jones's enduring reputation is a result of his ability to handle hardship. Following World War II, Jones was afflicted with a rare disease of the nervous system that denudes the spinal nerves of their protective sheathing. Although the brain is not affected, the disease is extremely painful and, ultimately, fatal. At first Jones used canes, then leg braces, before being restricted to a wheel chair. Despite excruciating pain, Jones maintained an active schedule, much of it involving work for charitable causes. Once, when he was asked about the tragic turn in his life, he answered, "I play it as it lays." When he died in 1971, at 69, he weighed less than 80 pounds.

Matthew's documentary, edited by Don Shebib, producer of TV's *Lonesome Dove* series and narrated by Sean Connery, is highlighted by a 1958 scene in which Jones received honorary citizenship to the borough of St. Andrews, Scotland. The only other American so honored was Benjamin Franklin, nearly two centuries earlier. Following introductory remarks by a borough dignitary, Jones, already severely crippled, rose from his chair, and with British royality seated behind him, guided himself with his hands along a table to the podium to deliver his acceptance remarks. After the ceremony, as Jones left the hall in an electric cart, a man in the audience of 1,700 sang the traditional Scottish tribute, "Will Ye Not Come Back Again?"

The program of the memorial service held at St. Andrew's Holy Trinity Church following Jones's death included the following inscription: "He never lost any of the values that make up the complete man."

One reason the Jones legend carries such significance for Matthew is his experience with his first law partner, Tobias Simon. "Toby Simon represented many of the qualities I found in Jones," says Matthew, who took courses from Simon, a College of Law adjunct professor, during his last year of law school and joined Simon's firm after he graduated in December 1975. "Toby was a consummate trial lawyer and he was impeccably honest," says Matthew. "He was also incredibly generous." Simon's legendary legal generosity has been memorialized in the Florida Supreme Court's annual Tobias Simon Pro Bono award.

During his two years with Simon, Matthew worked on the landmark 1975 Constello vs. Wainright case, in which overcrowded conditions in Florida prisons were ruled a violation of the Eighth Amendment. As a result, the system was placed under court supervision.

"What Jones and Toby teach us," says Matthew, "is that it's not an excuse to say that the old style of legal practice doesn't work anymore, especially when what you mean by old-style is the civil and respectful way of practicing law. We owe it to ourselves and to our profession to say, 'yes we can.'"

Matthew's downtown Tallahassee office displays the trappings of both his profession and his passion for golf and the Jones legacy. Sets of antique golf clubs and 19th-century British lithographs with golfing and lawyering themes are mingled with case files and law books. Matthew's law practice has the same eclectic makeup, though it focuses on products liability law, negligence law and corporate and tax law. Says Matthew, "I like the broad, wide-open approach because there's no telling who will walk in the door. There's no telling what case I might be working on tomorrow."

How has the Jones legacy affected Matthew? "A lot, I hope," says Matthew. "Jones's attitude was that your reputation, your family and your friends are your most valuable possessions. You can do a lot worse than remembering those priorities."

College of Law and International Law Community Lose a Giant

RICHARD LILLICH, FSU's Edward Ball Eminent Scholar in International Law, was one of the foremost lawyers and scholars in his field

Richard B. Lillich, Edward Ball Eminent Scholar in International Law at Florida State University, Howard W. Smith Professor of Law at the University of Virginia, and noted scholar, author and practitioner of international law, died of a heart attack at his farm in Charlottesville, Virginia, on August 3, 1996. He was 63.

Recognized as one of the early leaders in the international human rights law movement, Professor Lillich authored or edited seminal papers and books in the field. As president of the Procedural Aspects of International Law Institute, which he helped found (under a Ford Foundation grant, in 1965), he presided over the commissioning of numerous studies and the publication of many books on international law. He founded (in 1978) the International Human Rights Law Group, a leading activist human rights organization based in Washington, D.C., and served on the advisory boards of organizations including the United States Institute of Human Rights, the Urban Morgan Institute of Human Rights, and the International Law Association. Professor Lillich was an active member of many organizations, including the American Society of International Law, the American Law Institute, the Association of the Bar of the City of New York, the British Institute of International and Comparative Law, the International Law Association, and Interights. Considered "an international lawyer's lawyer," he was called upon at various times to serve as a legal consultant to U.S. government and United Nations agencies.

Professor Lillich held the Ball Chair as a Visiting Professor during 1992-93, and beginning in 1995-96, was to have spent each spring semester at the College of Law. He was last in residence in the Spring Semester of 1996. He joined the faculty of the University of Virginia School of Law in 1969, after having served on the law faculty at Syracuse University, where he established and directed its program in international studies. Professor Lillich also held distinguished visiting appointments in England at All Souls College at Oxford and Downing College at Cambridge University, at the Max Planck Institute in Heidelberg, Germany, and in the United States at Indiana University, New York University, the University of Georgia, and St. Louis University.

A long-time member of the board of editors of the American Journal of International Law, Professor Lillich was a consummate legal scholar. He was a widely respected authority on international claims, international investment law, the diplomatic protection of aliens and their property, the law of state responsibility, and international humanitarian law.

Richard Lillich was born January 22, 1933, in Amherst, Ohio. After graduating from Oberlin College (1954), where his father was a professor of music, he attended Cornell Law School. After graduating in 1957, he was briefly in private practice in New York City before earning his LL.M (1959) and J.S.D. (1960) degrees in international law from New York University. Twice during the 1960s he studied in England, first as a fellow of the Ford Foundation, later the Guggenheim.

He is survived by his wife Gerda Heidel of Charlottesville and Uppsala, Sweden, and by his three daughters, Victoria Antoinette Krüger, Olivia Parsons Hilton, and Jennifer Brady Lillich.

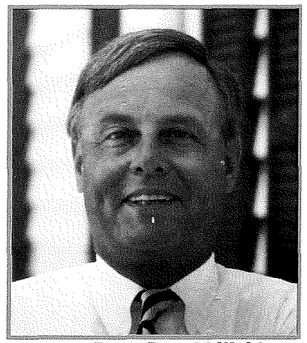
Memorial contributions may be made to the Schepens Eye Research Institute, Inc., Boston, or to the International Human Rights Law Group, Washington, D.C.

Dean Weidner To Step Down In June

At the helm since 1991, the law school's sixth dean plans to return to the classroom

College of Law Dean Donald J. Weidner has announced that he will step down on June 30, 1997, at the end of the 1996-1997 academic year. Following professional development leave during fall 1997, he will return to full-time teaching at the law school.

FSU President and former law school dean Sandy D'Alemberte praised Weidner as "a creative and energetic leader" who has helped bolster the law curriculum, particularly in the areas of international, environmental and administrative law. "He demonstrated in an extraordinary way the ideal of the law professor as law reformer," said D'Alemberte. He also noted that Weidner "continued his responsibility as a professor and nationally recognized scholar, successfully leading the drafting team that crafted a new Uniform Partnership Act for the United States." Weidner is co-author of *General and Limited Liability Partnerships under the Revised Uniform Partnership Act*, published earlier this year by West Publishing Company.



Dean Donald Weidner

Weidner, who assumed the deanship in 1991 and is today the senior of the deans at Florida's eight law schools, was also praised by FSU administrators for his effectiveness in increasing alumni and community support for the law school. During his term as dean, Weidner has obtained private funding for nine endowed professorships and established a successful Board of Visitors, made up of both alumni and non-alumni, which has provided guidance to the faculty, students and administration.

FSU Provost Larry Abele praised Weidner's efforts to strengthen the academic programs at the law school. "Don Weidner has worked hard to enrich the law school," he said. "His greatest passion has been championing the scholarship of his colleagues with enthusiasm and warmth. Few faculties, anywhere, have had such an eloquent spokesperson."

Abele's sentiments were echoed by Steve Edwards, FSU Dean of Faculties. "Dean Weidner has a passionate concern for the welfare of the law faculty, and an equally passionate commitment to excellence in the legal education provided the students. He has been an outstanding colleague with whom it has been a pleasure to work."

Weidner says he is particularly proud of the expansion of the academic programs at the law school during his tenure. In addition to environmental and international law, he cited "a whole range of expertise, from business law to feminist jurisprudence, from employment discrimination to administrative law" as examples of significant improvement in the law school's curriculum. "I think we have become an extremely competitive program," he said. "Now is a good time to step down."

Weidner holds a bachelor's degree in psychology from Fordham University and earned a J.D. degree with honors from the University of Texas in 1969. He began his legal career with the New York City law firm of Willkie Farr and Gallagher before joining the law faculty at the University of South Carolina. In 1976 he joined the College of Law faculty, becoming a full professor two years later. He served as associate dean for academic affairs during 1984-1985.

Search For New Dean Is Underway

FSU Provost and Vice President for Academic Affairs Larry Abele has appointed a committee to conduct a national search for a new College of Law dean. The successful applicant for the position will assume responsibilities July 1, 1997, when Dean Don Weidner's resignation takes effect.

The Dean Search Committee includes law faculty members Nat Stern, Donna Christie, Steve Gey, Elwin Griffith and Jean Sternlight as well as sociology professor Patricia Martin. Other committee members are Tallahassee attorneys Phil Blank and Carol Gregg, Florida Bar President John Frost, Jacksonville attorney Wayne Hogan and Fifth District Court of Appeal Judge Emerson Thompson. Law student Krista Mooney will act as ex-officio member.

"We are looking for someone who is firmly committed to teaching excellence, to further enhancing the national scholarly reputation of the law school faculty, and who is committed to the law school's public service mission," said Stern, who will chair the search committee. "We also want someone with the ability to build on our strong relationships with the Legislature and our alumni."

Abele and Stern expect the search to take about four months.

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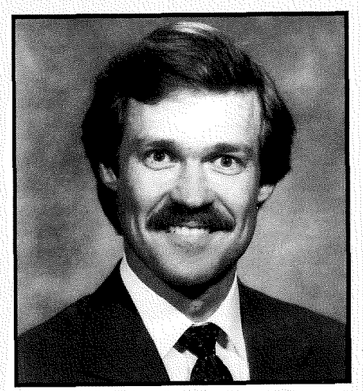
Write it down in your address book: http://www.law.fsu.edu. That's the law school's Web site address. From the main address you can get general information as well as find out about publications and programs, alumni activities and events at the law school.

You can send us information, too, by e-mail. Now it's easier than ever to forward class notes and alumni news.

Wayne Hogan's Gift Will Establish A $375,000 Endowment For Civil Trial Justice



Wayne Hogan '72

Jacksonville trial lawyer Wayne Hogan has announced that he will make a $250,000 gift to the FSU College of Law to promote civil trial justice. The gift is the largest by an alumnus in the law school's 30 year history. Following a 50 percent match of funds under the State of Florida Matching Gift Program, the Wayne Hogan Endowment in Civil Trial Justice will total $375,000.

The Hogan endowment will be used to bring nationally recognized speakers in the area of civil trial justice to FSU and to support faculty research and professional involvement in civil trial justice issues. Funds from the endowment will also help support the FSU mock trial program, sponsor the annual awards banquet and provide stipends for officers to devote more time to the program as well as to cover mock trial team travel and lodging expenses. The endowment creates and sponsors the annual E. Earle Zehmer Memorial Trial Competition, in conjunction with the Academy of Florida Trial Lawyers Research and Education Foundation.

In a letter to College of Law Dean Donald Weidner, Hogan credited the law school with offering him the opportunity to practice law "with fine lawyers in excellent firms on behalf of deserving clients, before independent judges and dedicated jurors." He paid special tribute to the vision of FSU's first law dean, Mason Ladd, for emphasizing trial practice education during the law school's early years.

Hogan, a 1972 graduate of the law school, appealed to other alumni "to help the College of Law build students into lawyers who, through trial lawyering, can independently and effectively defend rights and demand responsibility in the courts of an enhanced civil society."

Hogan is a partner in the Jacksonville law firm of Brown, Terrell, Hogan, Ellis, McClamma & Yegelwel, P.A., where he specializes in the field of product liability and toxic torts. In recent years, his practice has emphasized representation of victims of asbestos diseases.

Last year, Hogan was named by Governor Lawton Chiles to the team of attorneys representing the state of Florida in its lawsuit against the cigarette industry on behalf of taxpayers. He is a past president of the Academy of Florida Trial Lawyers and currently serves on the Civil Rules of Procedures Committee of the Florida Bar. He has served as Chair of the Florida Lawyers Action Group, a political action committee, where he helped develop and advocate the Academy's legislative agenda.

Hogan has served as Benefactor for the charitable organization Endowment for Academy Giving to Law and Education. He is a member of the Association of Trial Lawyers of America, the Trial Lawyers for Public Justice, the Civil Justice Foundation and the American Board of Trial Advocates.

Hogan, who also received his B.A. from FSU in 1969, is past president of the College of Law alumni association.

FSU MockTrial Captures Atlanta Championship; Moot Court Team Wins in Stetson Competition

The Florida State University College of Law Mock Trial Team captured first place in the Southeastern Invitational Mock Trial Competition, November 15 and 16 in Atlanta. Sponsored by the Georgia Bar, the event included six teams from Georgia law schools and six teams from other southeastern states.

The competition was based on an actual Georgia murder case in which a police officer was accused of killing an elderly woman and stealing her retirement pension.

FSU law students Marla Butler, Alan Denis, Candace Krause and Manny Papalas competed as advocates for the team while Holly Dincman, William Egge, Scott Roberts and Matt Willard served as witnesses.

The FSU Mock Trial Team was coached by Clinical Professor Ruth Ezell.

Meanwhile, the College of Law's moot court team grabbed top honors November 1 and 2 at the Stetson Law School's Environmental Law Competition in St. Petersburg. Heather Pinder and Lauren Stitt defeated a team from the University of Connecticut Law School in the final round of the event, with Stitt also winning the Best Oralist award.

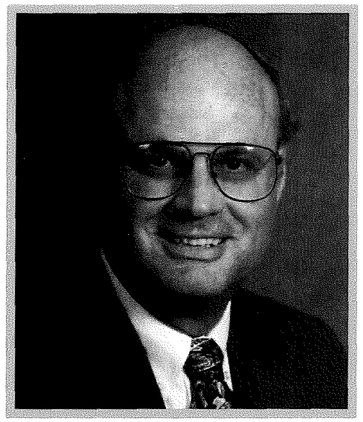
The competition involved international fishing rights disputes and was judged by a number of renowned environmental experts, including Laksham Guruswamy, co-author of *International Environmental Law and World Order*, Margaret Frailey Hayes, the National Oceanic and Atmospheric Administration's Assistant General Counsel for Fisheries, and Durwood Zaelke, President of the Center for International Environmental Law.

Runners-up in the twelve-team competition, were the University of California at Davis and the University of Mississippi. Coaches for FSU were Associate Dean Donna Christie and Professors Rob Atkinson and Larry Garvin.

New Continuing Education Institute Established To Benefit Law School

A new continuing legal education institute has been created to provide financial assistance to the College of Law. Organized in October, the Southeastern Law Institute conducted its first seminar November 8, in Orlando. The session, which included a number of FSU law alumni as speakers, focused on tort liability issues.

The institute is the brainchild of charter class graduate Jim McConnaughhay, the senior partner at McConnaughhay, Roland, Maida & Cherr, P.A. McConnaughhay is well-known not only for his legal work in the area of workers' compensation, but also for a series of continuing education programs he presents in the areas of workers' compensation, safety and managed care. He is chairman of the Florida Workers' Compensation Institute, which sponsors one of the nation's most successful educational conferences.



Jim McConnaughhay '69

McConnaughhay noted several reasons behind the establishment of the Southeastern Law Institute. "First, I'd like to see FSU law professors become more involved with the legal community and I think seminars put on by the Institute can help achieve that. Second, I think there is a need for high quality continuing education for both lawyers and laymen. Third, I think the law school needs an alternative method of fundraising." Adds McConnaughhay, "This is case where people can contribute to the law school while they receive a valuable professional service in return. To me, it's a win-win proposition."

McConnaughhay sees the Institute presenting seminars on a wide range of topical issues. "For example, when new legislation is passed, there is a big impact on lawyers and professional laypersons. My idea is to identify areas in which a seminar would help explain new laws and rules."

The November tort liability seminar included presentations by FSU law professor Chuck Ehrhardt and five law school alumni, including Wayne Hogan, Mel Martinez, John Frost II, Steve Rissman and McConnaughhay.

College of Law Dean Don Weidner called McConnaughhay's Institute "an exciting entrepreneurial effort. I urge our graduates to get behind this venture." He added, "This gives our alums an opportunity to help the law school while they receive something they have come to expect from their alma mater, high quality legal education."

First-Year Student Takes Honors

Lauren Stitt had just completed her first year at the College of Law when she participated in the Maguire, Voorhis & Wells, P.A. Moot Court Competition at Florida State University last June. Stitt received the best oralist award, standing out among more than one hundred first-year students from around the state.

The team of judges for the final competition included Florida Supreme Court Justice Harry Anstead and attorneys (and College of Law graduates) Christopher J. Weiss '77 and Carl D. Motes '74. This marked the tenth year that Maguire, Voorhis & Wells, P.A. has sponsored the event. The 71-attorney firm has offices in Tallahassee, Orlando, Melbourne and Tavares.

FSU President and former College of Law Dean Sandy D'Alemberte presents Attorney General Janet Reno with an award at the July Florida Bar meeting in Orlando.

By David Morrill

Rewriting *the* Law

DONNA BLANTON, a 1992 graduate, takes up an old law school interest as she helps revise Florida's Administrative Procedures Act

At a time when too many lawyers measure productivity in terms of billings and total immersion in the profession, Donna Blanton offers a striking counterpoint.

The 1996 recipient of The Florida Bar's Young Lawyers Section Most Productive Young Lawyer Award, Blanton is an advocate for balance between personal, professional and public service interests. "Nothing is more important to me than not overloading one aspect of my life at the expense of another," she says. "As a lawyer, I work hard because I love my work. But it's also important that, as a member of the legal profession, I'm involved in bar activities, and, as a mother, that I keep up with my 13-year-old son."

One component in her successful equation is maintaining a research interest she developed in law school involving administrative law.

In February, 1996, after a five-month stint as executive director to the Administrative Procedures Act Revision Commission, she delivered the most comprehensive rewrite of the Act since its original passage in 1974. The revision sailed through the Legislature and was signed into law by Governor Lawton Chiles. The APA, which governs a broad range of state regulatory matters, had come under increasing political criticism in recent years. It was a point of bitter contention during the 1995 legislative session, and revisions proposed during that session were vetoed by the governor.

Following the veto, Chiles appointed a 15-member commission, headed by Steel Hector & Davis partner Robert Rhodes, to conduct a top-to-bottom review of the APA. The commission included both Republicans and Democrats and represented a range of special interests with a stake in APA changes. The triumph of the nonpartisan process that helped forge the revised Act is a testament not only to the commissioners' consensus building, but to Blanton's craftsmanship in drafting legislation.

Rhodes, noting that Blanton's APA work received praise from members of the Legislature, said, "Her excellent work product formed the basis for the commission's success and ultimate passage."

Lawyering is Blanton's second career. Following seven years as capitol bureau chief for the *Orlando Sentinel*, Blanton found herself casting about for an alternative. "After covering the state government and the Legislature for several years, I found myself at a crossroads. I had a chance to move to the *Sentinel*'s Washington bureau, which would have been a logical step for me, but I decided that wasn't what I

wanted to do. I had a young child, and I wanted to stay in Tallahassee." Although she had thought about law school, it was always in the context of combining it with her journalism.

Having made the decision to attend law school, Blanton found she was a good fit. "I was able to apply myself and use my experience with deadlines. I approached it as job and did well." During her student years, Blanton was active with the *FSU Law Review*, serving as editor-in-chief her third year.

Although Blanton's interest in administrative procedure issues began during her years as a journalist, it was in law school that it "flowered," as she puts it. "I dealt with APA issues as a newspaper writer and had a pretty thorough knowledge of how government agencies worked. But I discovered in law school that I didn't know nearly as much as I thought I did. Pat Dore showed me legal aspects of APA that had never occurred to me as a journalist." Blanton says, without reservation, that Dore, the late administrative law professor, had a tremendous influence on her legal education. "I took every course she taught," says Blanton, who pursued her administrative law interest as a clerk with Katz, Kutter, Haigler, Alderman, Marks, Bryant & Yon during her third year of law school. "I made an effort to create a niche for myself in administrative law issues."

Following her graduation from law school in May 1992, Blanton went to work for Florida Supreme Court Justice Rosemary Barkett as a law clerk. Early in 1994, she joined Katz Kutter in Tallahassee, working primarily in general administrative law, insurance regulation and general appellate litigation.

Even as a beginning lawyer, Blanton's reputation as an administrative law expert was well-known, and she was asked by Rhodes to consider serving as the APA revision commission executive director. She accepted, and the Governor's office contracted with the firm for Blanton's time.

During the period she worked on APA revision, she was able to remain with Katz Kutter and carry on firm-related duties. "It was a great situation. The law firm was willing to let me take the job, and I was doing what I love most. Once I got into it, all the excitement that I had experienced when I was around Pat Dore resurfaced." Working with the committee and the Governor's office also was "a great experience," says Blanton.

"Pat Dore showed me legal aspects of APA that had never occurred to me as a journalist."

After 22 years worth of minor changes and additions, the APA had become cumbersome and, at times, illogical. The committee's focus was on providing greater flexibility in the application of rules and procedures, increasing accountability to both the public and the Legislature and generally simplifying the APA.

"Revised APA," notes Blanton, "requires agencies to use extreme care in adopting rules. Rules must not be overly burdensome. There's a provision for variance and waiver of rules if the intent of the rules can be maintained. And there is tightened accountability to the Legislature. Agencies will have to be more attuned to what legislative intent is."

At the same time, says Blanton, "The Legislature has given agencies the ability to accommodate unusual circumstances, to be less rigid than they have been at times in the past." She adds, "There will be some growing pains, but I think the changes are good ones." She won't be surprised, though, if a "glitch bill" is needed to fix a few problems in the rewrite. "With as much overhauling as we did, you can expect there will be areas that will need some adjustment."

Still, Blanton is relaxed as she anticipates the 1997 legislative session.

Outside of her professional life, Blanton's involvement in her son's development has led to a devotion to education issues. "My interest has basically followed his growing up," she says. "I was a room parent in kindergarten and first grade. Today, I work with groups in middle school."

"Working with kids is an important counterpoint to the adult world of lawyers and politicians," says Blanton. "It provides a healthy perspective on what's important in life."

Blanton is willing to get involved in making hard decisions about education. Last year, she served on the Heterogeneous Task Force at Raa Middle School in Tallahassee, a group charged with reviewing a controversial administrative decision to abolish division of students by skill level.

"I'm a strong advocate of public education," Blanton says, noting that much of the current criticism of education could be avoided with more parent involvement. "The kids I see succeed in school are the ones whose parents are active and interested. This sends the message to children that school is important." Blanton takes such pleasure in her son's progress, in fact, that she often feels like she's going to school herself. "I make him bring his textbooks home so I can see what he's studying. I say, 'Let's talk about it,' and it can be pretty challenging for me."

Blanton credits Barkett with reinforcing her sense of balance between her professional and personal life. "I've been fortunate since law school. My employers have understood the value of balance, and that attitude was part of the workplace culture," says Blanton. "Justice Barkett was very demanding. In the office you worked hard, you worked under pressure, but your personal and public service activities were important too. She was quite a model for me, given all the committees and organizations she worked on." Blanton says the tradition set by Barkett also was practiced at Katz Kutter and Steel Hector & Davis, which she joined last fall.

The demands on her time will always exceed the time at hand, but she learned an important lesson long ago. "Balancing your life requires a lot of organization and can be hard work. You have to recognize what you can and can't do. Sometimes you have to say 'no.'"

CLASS NOTES

'68

John W. Frost, II has been selected to appear as a Leading Attorney in the Personal Injury Defense Law General Chapter of the 1996/1997 edition of the *Florida Consumer Guidebook*, produced by Law & Leading Attorneys, a subsidiary of American Research Corporation.

'69

Terrence Russell of the Fort Lauderdale firm of Ruden, McClosky, Smith, Schuster & Russell, P.A., spoke on commercial and business torts litigation at The Florida Bar's 1996 Civil Trial Board Certification Review Course.

'70

A. J. Jim Spalla announces the opening of his law office at 537 East Park Ave., Tallahassee, FL 32301, phone (904) 224-4361. He specializes in eminent domain, mediation, and transportation law.

'71

Richard G. Rumrell announces a change in the name of his firm to Rumrell, Costabel & Turk. Offices are located at 10151 Deerwood Park Blvd., One Hundred Building, Suite 250, Jacksonville, FL 32256, phone (904) 996-1120.

'72

Richard Bennett and Lisa Bennett '73 coauthored "A Guide to the Use of the Declaratory Judgment Act in Common Fund Class Actions" in *The Florida Bar Journal*, July/August 1996.

Peter M. Dunbar, of Pennington, Culpepper, Moore, Wilkinson, Dunbar & Dunbar, Tallahassee, was appointed by former Speaker of the House Peter Wallace to a two-year term on the state Ethics Commission.

Wendell J. Kiser's firm, Zimmerman, Shuffield, Kiser & Sutcliffe, P.A., Orlando, was awarded the 1996 Legal Aid Society Award of Excellence for pro bono representation of the poor through the legal aid society of the Orange County Bar Association, Inc. The firm also won this award in 1988 and 1991.

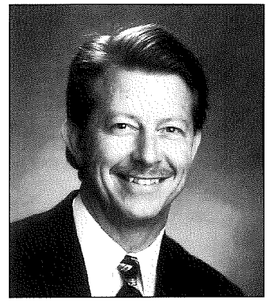
'73

Lisa Bennett and Richard Bennett '72 coauthored "A Guide to the Use of the Declaratory Judgment Act in Common Fund Class Actions" in *The Florida Bar Journal*, July/August 1996.

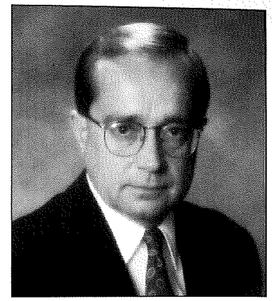
Canter Brown Jr., author of several books on Florida history, has joined the Tampa Bay History Center as its first "historian in residence."

William Corry of Skelding, Labasky, Corry, Eastman, Hauser & Jolly, P.A., was named a leading Florida attorney in civil-trial litigation in the American Research Corporation's *Law and Leading Attorneys*.

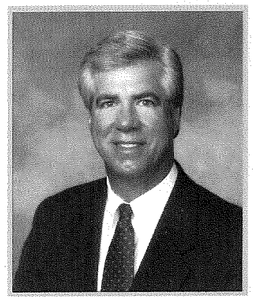
Frank A. Kriedler, Lake Worth, was awarded the Legal Aid Society of Palm Beach County's Human Rights Advocacy Award, in recognition of his pro bono work for individuals seeking to locate a homeless shelter in the local municipality. The litigation, sponsored by the ACLU of Florida, has been recognized by the ABA Commission on Homeless and Poverty as having national significance. Commander Kriedler, a 25-year member of the Naval Reserve, also was reelected presi-



William Corry '73



Frank Kriedler '73



KEN CONNOR '72 Wins One for Free Speech

REPRINTED FROM *THE TAMPA TRIBUNE*, JUNE 11, 1996

KEN CONNOR, '72, a 1994 Republican candidate for governor, didn't win his party's nomination, but he has been victorious in a court fight that every citizen ought to appreciate. He won a lawsuit over freedom of speech and assembly.

Connor sued Palm Beach County after he was threatened with arrest at DuBois Park in Jupiter on Labor Day Weekend in 1994. He had come there that day wearing a T-shirt with an American flag, and intended to do some campaigning for governor. Instead, he encountered a sheriff's deputy who told him he needed a permit to campaign in the park. Palm Beach County had an ordinance that required permits for political gatherings or campaign activities in public parks. Connor, a Tallahassee lawyer, was a busy fellow back then, but he was not too involved in the race to let this obvious trampling of basic civil liberties go unchallenged. He took the county to court, and two years later he has emerged the winner.

A U.S. District Court ruling has struck down sections of the Palm Beach County ordinance, declaring that it "infringes on [the] plaintiff's constitutional rights to freedom of speech and assembly."

Connor was defending a fundamental of liberty. The government has no business deciding whether to issue a "permit" for political activities in a public place.

Courageous patriots have spoken eloquently in defense of liberty down through the years. But this particular case of pipsqueak, stultifying bureaucratic interference in the American political process brings to mind a line from the 1948 Humphrey Bogart movie "The Treasure of the Sierra Madre." It is not the line itself, but the attitude behind it. To paraphrase: "Permits? We don't need no stinking permits."

Ken Connor deserves only honor for taking the time and trouble to defend this important point.

dent of the Palm Beach Chapter of the Naval Reserve Association, and was selected for inclusion in the 1996-97 edition of the Marquis Who's Who in American Law.

Peter W. Mettler has opened offices at 140 Royal Palm Way, Suite 202, Palm Beach, FL 33480, phone (561) 832-7600.

'74

Douglas C. Kearney announces the relocation of Kearney & Associates to new offices at 15105 Cypress Hills Dr., Dallas, TX 75248, phone (214) 458-8363.

Circuit Judge George S. Reynolds III, administrative judge of the Family Law Division for Leon County, received the Florida Chapter of the American Academy of Matrimonial Lawyers' 1996 Gavin K. Letts Award for outstanding contributions to the field of matrimonial law by a member of the judiciary.

Roosevelt Randolph, of Randolph Knowles in Tallahassee, completed a year of service as president of The Florida Bar Foundation.

George Tragos spoke to the Criminal Justice Section of The American Bar Association at its annual meeting in Orlando. His topic was "Undercover Sting Operations: How to Protect Professionals."

Michael M. Wilson is a vice president at Florida Power & Light Company. His office is at 801 Pennsylvania Ave., N.W., Suite 640, Washington, D.C., 20004, phone (202) 347-7082.

'75

Richard White, Jr. has relocated to 113 N.E. 16th Ave., Gainesville, FL 32601, phone (352) 372-1011.

'77

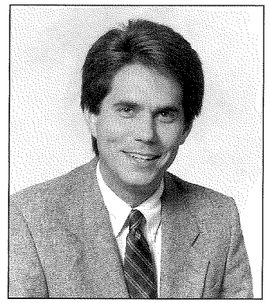
Peter C. Burkert has been selected to appear as a Leading Attorney in the Workers' Compensation Law Chapter of the 1996/1997 edition of the *Florida Consumer Guidebook*, produced by Law & Leading Attorneys, a subsidiary of American Research Corporation.

Benjamin H. Dickens, Jr.'s firm of Blooston, Mordkofsky, Jackson & Dickens has its offices at 2120 L Street, N.W., Washington, D.C., 20037, phone (202) 828-5510.

Charles W. Dodson has left the practice of law to teach high school mathematics at Godby High School in Tallahassee.

Debra Weiss Goodstone of Zack, Sparber, Kosnitzky, Truxton, Spratt & Brooks, was named Board of Governors Chair for the Bankers Club of Miami.

Simeon S. Tyler has relocated his practice. His new address is P.O. Box 4535, Winter Park, FL 32793-4535.



Christopher Weiss made two presentations in July, to the Orlando Chapter of the National Association of Women in Construction on "1996 Legislative Changes to the Homebuyers Protection Act," and to the Florida Society of Association Executives on "Contractual Issues Involved with Conventions." A shareholder with Maguire, Voorhis & Wells, P.A., Weiss leads the firm's 14-member construction litigation practice.

'78

Miguel A. Olivella announces his new address in the law offices of Cobb Cole & Bell, 131 North Gadsden St., Tallahassee, FL 32301, phone (904) 681-3233.

Ed Stafman was named the first-ever Tallahassee Civil Libertarian of the Year by the Tallahassee Chapter of the ACLU of Florida for being "our tireless ally, an outstanding lawyer, and a tenacious fighter for freedom."

'79

Michael Coniglio has been appointed Chair of the Public and Member Information Committee of The Florida Bar for the coming term. Bar President John Frost made the appointment.

'80

Franz Eric Dorn has relocated his practice. His new address is 1676 Providence Blvd., Deltona, Florida 32725.

Donald M. Hinkle co-chaired two daylong seminars on Premises Liability for Violent Crimes, presented in Miami and Orlando, sponsored by the Academy of Florida Trial Lawyers.

Randy Holland recently finished first in the 27th Annual World Series of Poker.

'81

Letitia E. Wood has become president of the Central Florida Chapter of the National Association of Women Business Owners.

Louis (Buck) Vocelle, Jr., a partner in the Vero Beach firm of Clem, Polackwich, Vocelle & Taylor, has been board certified as a specialist in the area of business litigation in addition to his board certification in civil trial law.

'83

Lawrence Orbe is the author of *Blind Hog: Memoirs of a Wall Street Maverick*, recently published by Carlton Press Corp.

R. Andrew Rock has become a partner in Rudnick & Wolfe, with offices at 101 East Kennedy Blvd., Suite 2000, Tampa, FL 33602, phone (813) 229-2111. He specializes in health care law.

Alan F. Wagner is a board certified trial lawyer and is a partner with Wagner, Vaughan & McLaughlin, Tampa.

Deborah Hardin Wagner is on the editorial board of the *St. Petersburg Times*. She works at the newspaper's main office in St. Petersburg.

'84

Martha J. Edenfield, of Akerman, Senterfitt & Eidson, P.A., in Tallahassee, has been appointed to the Florida Consumer's Council by Commissioner of Agriculture Bob Crawford.

Anne Lee McGihon has moved her firm McGihon & Associates, P.C., to new offices at 1675 Broadway, Suite 1100, Denver, CO 80202, phone (unchanged) (303) 436-1666.

Nicholas J. Watkins announces the formation of Robinson & Watkins, LLP. His practice is concentrated in the areas of real property and immigration law and the firm will serve both domestic and foreign clients. Watkins retains strong ties with his former firm, Steel Hector & Davis in Miami. Robinson & Watkins, LLP is located at Courvoisier Centre I, Suite 504. 501 Brickell Key Drive, Miami, FL 33131, phone (305) 377-1274.

High-profile Federal Prosecutor David McGee Goes into Private Practice

DAVID MCGEE, '76, has left his job as an Assistant U.S. attorney to join the Pensacola firm of Beggs and Lane. During his 17-year tenure as a federal prosecutor, McGee led some prominent investigations. Two years ago he prosecuted Paul Hill, the man who murdered a Pensacola doctor who did abortions, and earlier this year he made the government's case against F. Lee Bailey. During one high-profile case in the late 1980s, McGee succeeded in putting several major drug lords behind bars. According to McGee, his long-term effort, begun when he first took the job, to clear out the drug trade along much of Florida's coast is one of his proudest accomplishments.

Donald Williams and Marianne Williams announce the birth of their second child Clayton "Clay" Judge Williams.

'85

R. David de Armas has opened an Orlando office for George, Hartz, Lundeen, Flagg & Fulmer, at 225 E. Robinson St., Suite 505, Orlando, FL 32801, phone (407) 843-4646.

Ralph A. DeMeo coauthored, with R. Scott Ruth, an article entitled "Biomedical Waste Regulation in Florida," in *The Florida Bar Journal*, July/August 1996.

Loula M. Fuller has become a partner of the firm now known as Myers, Forehand & Fuller. The offices are located at 402 Office Plaza Dr., Tallahassee, FL 32301, phone (904) 878-6404.

Susan Voight Stucker announces the birth of daughter Cassidy, her first child.

'86

Joseph J. Bernardo announces his firm of Neel & Bernardo is located at 3440 Marinatown Lane, N.W., Suite 203, North Fort Myers, FL 33903, phone (941) 997-9677.

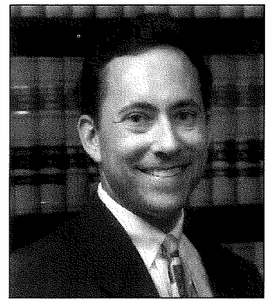
Pamela K. Frazier has moved to the firm of Ervin, Varn, Jacobs & Ervin, at 305 South Gadsden St., Tallahassee, FL 32301, phone (904) 224-9135.

Stephanie M. Gehres has been appointed General Counsel for the Department of Community Affairs. The Department's offices are located at 2555 Shumard Oak Blvd., Tallahassee, FL 32399-2100, phone (904) 488-0410.

Nancy A. Lauten has been named a shareholder in the law firm of Fowler, White, Gillen, Boggs, Villareal and Banker, P.A. She practices in the firm's Appellate and Insurance Coverage Group, Tampa offices, and is board certified in appellate law.

C. William Mangum is practicing with the Department of Labor in the Office of the Solicitor, Washington, D.C. 20210, phone (202) 219-4402. He has developed a specialty in black lung law.

Gary Shipman has joined the law firm of Pennington, Culpepper, Moore, Wilkerson, Dunbar & Dunlap, P.A., Tallahassee, as a partner.



Michael A. Shorstein of Shorstein & Kelly, P.A., Jacksonville, has been appointed by Governor Chiles to serve as a member of the Judicial Nominating Commission for the Fourth Judicial Circuit.

'87

David C. Ashburn is now practicing with the firm of Gunster, Yoakley, Veldes-Fauli & Stewart, P.A., in their offices at 5515 North Adams St., Tallahassee, FL, phone (904) 222-6660.

Ricky L. Polston announces the opening of his office at Highpoint Center, 106 East College Ave., Suite 900, Tallahassee, FL 32301, phone (904) 513-0404.

Tim Ramsberger served as a venue manager for the Atlanta Committee for the Olympic Games.

Derrick J. Roulhac has become president of the T.J. Reddick Bar Association.

Mary Scriven has joined the faculty of Stetson University College of Law in St. Petersburg, Florida.

'88

Michael Markham and Stephanie Markham announce the birth of their second daughter, Sheridan Elaine Markham.

Robin Nystrom has become a vice president of Enterprise Florida, the business-government consortium that will be in charge of the state's economic development efforts. Previously, she served as chief of staff of the Florida Senate.

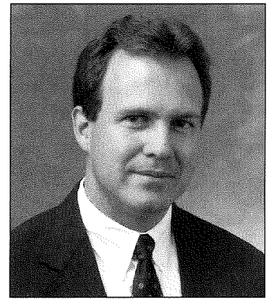
Dawn L. Pompey-Whitehurst has given birth to twin boys, Terrence and Terrell.

John A. Rogers, Jr., CAE, Senior Vice President, Governmental Affairs for the Florida Retail Federation, has recently been appointed to a three-year term on the Institute for Organizational Management Board of Regents at the University of Notre Dame

Paul J. Ullom has been elected a shareholder in the firm of Carlton Fields, Tampa. His practice is primarily in the areas of commercial and real estate litigation.

'89

Kathryn Bessmer Hoeck (formerly Bessmer Nixon) announces her marriage and name change. She is an attorney with the Orlando firm of Akerman, Senterfitt & Eidson, P.A.



Jack C. McElroy has been appointed shareholder in the law firm of Maguire, Voorhis & Wells, P.A. He practices in the firm's Orlando office in the areas of commercial and land use litigation.

Stevan D. Mitchell is a trial attorney in the computer crime unit of the U.S. Department of Justice Criminal Division. His office is located at 1001 G Street, N.W., Suite 200, Washington, D.C., 2001, phone (202) 514-1026.

'90

Rafael Gonzalez, a partner in the firm of Barrs, Williamson, Stolberg, Townsend & Gonzalez, P.A., Tampa, spoke at the Sixth Annual Florida Workers' Advocates Educational Conference on How to Establish Permanent Total Disability Entitlement Via the Social Security Disability Route. He made the same presentation at the 1996 Florida Workers' Compensation Educational Institute Conference in September. He will also make a presentation on workers' compensation issues at the annual Bridge the Gap Seminar.

'91

Ferman M. Fernandez has become associated with the firm of Cole, Stone & Stoudemire in their offices at Jacksonville Center, 76 South Laura St., Suite 1700, Jacksonville, FL 32202, phone (904) 353-9664.

Dennis Hernandez announces the opening of his private law practice at 500 East Kennedy Blvd., Suite 220, Tampa, FL 33602, phone (813) 221-8500.

Michele Lellouche was one of the contributors to the reference work *Historical Dictionary of the Modern Olympic Movement* (Greenwood Press, 1996).

Stefan R. Latorre has opened law offices at 217 Millwood Lane, Charlotte, NC 28270, phone (704) 366-7229.

Flavia E. Logie has been appointed to chair the Public Contracts/Bid Protests Subcommittee of the American Bar Association Construction Litigation Committee. She is General Counsel for the Virgin Islands Housing Finance Authority, St. Croix.

Andrew McIntosh has joined the firm of Rudnick & Wolfe, in their offices at 101 East Kennedy Blvd., Suite 2000, Tampa, FL 33602, phone (813) 229-2111.

Charles Daniel Sikes has opened offices at 407 West Georgia St., Starke, FL 32901, phone (904) 964-2020. He specializes in criminal, civil, and administrative litigation and appeals.

'92

Donna Blanton and Robert M. Rhodes coauthored "Florida's Revised Administrative Procedure Act" in *The Florida Bar Journal*, July/August 1996. Both were instrumental in rewriting the Act.

Octavio E. Mestre has become a partner in the firm of Katz & Mestre, Coral Gables. His practice focuses on commercial litigation and real estate, and he is an expert in matters regarding the Perishable Agriculture Commodities Act.

'93

W. Keith Bryant has joined the firm of Lidell, Sapp, Zirley, Hill & LaBoon, L.L.P. in Dallas. His office address is Suite 900, 2200 Ross Avenue, Dallas, TX 75201.

Robert McNeely, of McFarlain, Wiley, Cassedy & Jones, P.A., has authored the Supplement on Parental Responsibility in "The Florida Bar's Manual, Florida Dissolution of Marriage," 4th ed.

Barbara Rudolph Smith has moved her law office to 4704 Edgewater Dr., Orlando, FL 32804, phone (407) 523-0757.

Mable H. Smith-Pittman announces the opening of her law office at 701 Hill Point Ct., Chesapeake, VA 23322, phone (757) 546-9011.

Alan S. Wachs announces his association with the firm of Crabtree, Bartlett, Heekin & Morehead in their offices at 8375 Dix Ellis Trail, Suite 401, Jacksonville, FL 32256, phone (904) 464-0665.

Kenneth E. Spahn is General Counsel for Commerce Group, a commercial real estate development company, with offices at 1280 West Newport Center Dr., Deerfield Beach, FL 33442, phone (904) 570-3514.

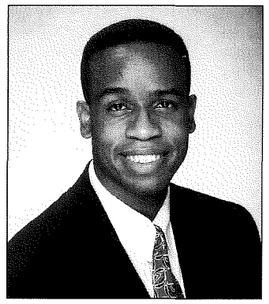
'94

Russell S. Kent has relocated from Orlando to become associated with the firm of Watson, Spence, Lowe & Chambless, 320 Residence Avenue at North Jefferson St., Albany, GA 31720, phone (912) 436-1545. He will concentrate his practice in the area of medical malpractice and product liability defense. He and his wife Susan also announce the birth of their son Grayson.

'95

Cecilia Fannon Birk and **Ed Birk** were married in May.

George Boring has taken a position with Langston, Hess, Bolton, Znosko & Helm. Offices are located at 111 South Maitland Ave., Suite 200, Maitland, FL 32794.



Marlon A. Hill ia an associate in the Miami office of Adorno & Zeder, P.A., 2601 South Bayshore Dr., Suite 1600, Miami, FL 33133, phone (305) 860-7359. He will concentrate in the areas of corporate development, real estate transactions, and governmental affairs.

Leenette McMillan has taken a position with the State Attorney's Office in Taylor County. Her office is in the Taylor County Courthouse, 108 North Jefferson, Room 301, Perry FL 32347, phone (904) 584-2886.

Greg Shelton has joined the firm of Gunster, Yoakley, Valdes-Fauli & Stewart, P.A., in the litigation department. Offices are located at 2 South Biscayne Blvd, Ste 3400, Miami, FL 33131-1897, phone (305) 376-6000.

Meredith Trammel has taken a position as an Assistant State Attorney to prosecute for the Second Judicial Circuit State Attorney's office in Leon County.

Francisco J. Vinas presented a seminar for the Institute of Police Technology and Management regarding DUI case preparation and courtroom testimony. Topics included making arrests, preparing reports, collecting and submitting evidence, and giving depositions and courtroom testimony.

'96

Brett A. Brosseit is practicing real estate law at Quarles & Brady, in the Barnett Center, 4520 Tamiami Trail, North, Suite 300, Naples, FL 33940.

A. Kimberly Rockwell Brosseit is with Trieser, Kobza & Volpe, with offices in The Northern Trust Bldg, 4001 Tamiami Trail North, Suite 330, Naples, FL 33950. Her practice is primarily land use law.

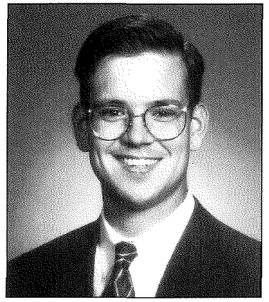
William E. Clague has taken a position in the Orange County Attorney's Office in Orlando.

David O. Doyle, Jr. has taken a position with the law firm of Adams, Hill, Reis, Adams, Hall & Schieffelin. Offices are located at 1417 East Concord St., Ste 101, Orlando, FL 32803, phone (407) 896-0425.

Mitch Golden is associated with the firm of Fowler, White, Gillen, Boggs, Villareal & Banker, P.A., in their offices at 501 First Ave., N., Suite 900, St. Petersburg, FL 33701.

Jason Lazarus has joined the Orlando law firm of Adams, Hill, Reis, Adams, Hall & Schieffelin.

S. Hunter Malin has taken a position with Crabtree, Bartlett & Heekin, 8375 Dix Ellis Trail, Suite 401, Jacksonville, FL 32256, phone (904) 464-0665.



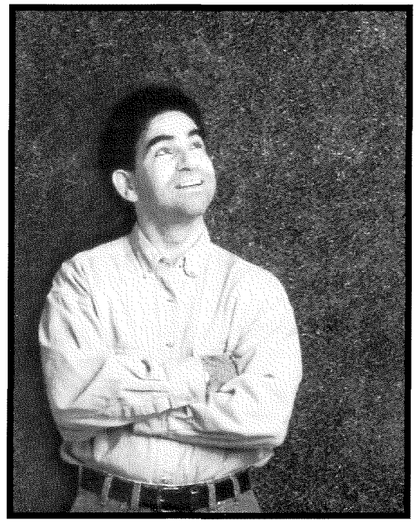
Keith R. Kyle has joined the Fort Myers firm of Henderson, Franklin, Starnes & Holt, P.A., where he is concentrating in defense of auto and premises liability cases and federal litigation matters. His address is P.O. Box 280, Fort Myers, FL 33902-0280, phone (941) 334-4121.

Craig D. Varn has taken a position with Ruden, McClosky, Smith, Schuster & Russell, P.A., P.O. Box 10888, 215 South Monroe St., Suite 815, Tallahassee, FL 32302, phone (904) 681-9027.

In Memoriam

Stephen D. Hopkins '92, died on August 10. He was a resident of Tampa, and a member of the law firm of Carlton, Fields, Ward, Emmanuel, Smith and Cutler.

Miguel A. Olivella, Jr. '78 Specializes in Cutting Legal Fees



BY JOHN D. MCKINNON
REPRINTED WITH PERMISSION FROM FLORIDA TREND (MAY 1996).

For at least one Florida lawyer, the state's nationally known mediation laws have helped him land a nationally known client.

Over the last four years, attorney Miguel A. Olivella, Jr., of Daytona Beach-based Cobb, Cole & Bell, has used his Florida mediation experience to develop an award-winning settlement program for the Toro Co., maker of lawn mowers, weed cutters and wood chippers.

In the early 1990s, Toro became interested in the idea as a way of trimming its fast-growing litigation costs. It turned to Olivella, then a Central Florida litigator, after he settled a couple of injury cases for the company within weeks of getting the files. Toro's new program gave Olivella first crack at handling virtually all the Minneapolis-based company's personal-injury litigation around the country.

Olivella says Florida's laws, which allow judges to order cases into mediation, gave him "a leg up" over other lawyers in the Toro representation. "Right off the bat, I was much more familiar with how to obtain the result desired by the client—i.e., a settlement," says Olivella, 41, a former Florida assistant attorney general who's now a partner in his firm's Tallahassee office.

So far, Olivella's association with Toro has produced more results than even he had hoped. Of the 125 files he's handled, 95% have reached a settlement. And a recent study by Toro showed that the program had lowered the company's average cost per claim by $45,000. That's more than $5.5 million in direct litigation costs saved. Further, the company says that it also has saved $1.8 million a year in reduced insurance costs. To date, that's total savings of $10.9 million.

The results recently landed the company an award from the New York-based CPR Institute for Dispute Resolution, a business-backed group devoted to finding lower-cost alternatives to traditional litigation.

For Toro, the program helped solve a problem that went beyond the usual unjustified claims by people who stuck their hands in running lawn mowers. In addition, Toro was finding that its own litigation lawyers around the country too often were racking up large numbers of billable hours defending claims to the hilt, only to do an about-face and recommend settlement just before trial. That was forcing Toro to pay high legal expenses of its own, plus plaintiff's costs that were inflated by high legal expenses, too.

Other defense lawyers told Toro that the lengthy preparations were necessary to evaluate claims adequately. But Olivella thought differently. Together with Toro Assistant General Counsel James J. Seifert and other officials, he developed a system for gathering the crucial facts of a case quickly. Now when Toro gets wind of a consumer claim, Olivella quickly offers the claimant's lawyer the opportunity to question company engineers, in exchange for a similar statement from the injured consumer. That saves months or years of costly discovery and expert investigation. As an additional incentive, the statements can't be used as evidence in court if the mediation breaks down. That makes plaintiff attorneys more willing to expose their clients to searching questions early in the game.

Another important feature of the program: Olivella serves on a flat-fee basis, thus removing any incentive to generate hours. "I have no pot of gold at the end of the rainbow, so I go all out," he says.

While the results achieved from mediation in the case of Toro might be unwelcome news for some tradition-minded litigators, it could represent the beginnings of a new niche for Florida attorneys. They've gained lots of valuable experience in mediation since landmark 1987 legislation that made the state a pioneer in the area.

"Florida really is leading the nation in court-annexed mediation," says University of Florida law professor Robert Moberly. Cobb, Cole & Bell has created an entire practice group for court alternatives, headed by attorney John J. Upchurch. Firm lawyers conduct training sessions for would-be mediators. Olivella himself is helping to develop the firm's practice in mediation representation. Other big Florida firms also are rapidly expanding their mediation services.

The state moved to mediation in part to save on judicial resources, but also because studies showed people prefer the results it produces. Since Florida's program went into effect, trial rates have dropped, Moberly says, while the number of mediations has begun to reach significant levels. Exact numbers aren't available, but the state Center for Dispute Resolution estimates that 25,000 or more civil cases in circuit court—the highest state trial court—are referred to mediation each year. Florida has roughly 500,000 circuit-level filings annually.

Recently, a whole new law school, Florida Coastal School of Law, started in Jacksonville with the stated purpose of augmenting the traditional law school curriculum by training new generations of lawyers in mediation and other alternative dispute resolution techniques.

Unfortunately, some critics say, the Florida mediation system may be taken over by lawyers with all the problems that entails. The reason is that the Florida Supreme Court's rules strongly favor an attorney in the role of mediator for non-domestic civil cases, unless the parties demand someone else. Most other states allow a broader range of backgrounds for mediators.

The Toro program is especially suited to big companies that generate considerable litigation. But Olivella believes more and more clients will begin demanding similar techniques.

"I'd like to think I have some unique quirk of personality or talent that's directly responsible for this success, but I'm not God's gift to law," he says. "Toro thinks I walk on water. But I tell them it's not me; it's the program."

FACULTY NOTES

Margaret Baldwin's article "Public Women and the Feminist State" will appear in the spring 1997 issue of the *Harvard Women's Law Journal*. She has been appointed to a statewide steering committee established by the Florida Coalition Against Domestic Violence to develop a legal research and advocacy agenda to be funded by the federal Violence Against Women Act. She was also elected to the Board of Directors of Refuge House, a Tallahassee spouse abuse service.

Laura Cantral has published a book review of William T. Burke's *The New International Law of Fisheries* (1994) in the latest *Ocean Development & International Law*.

April L. Cherry has published "A Feminist Understanding of Sex-Selective Abortion: Solely a Matter of Choice," in the *Wisconsin Women's Law Journal*.

Donna Christie spoke to the Governor's Coastal Management Citizens' Advisory Committee on development of state ocean policy.

Charles W. Ehrhardt presented a two-day Evidence course at the Advanced Judicial College conducted by the State Court Administrator's Office (May), and "Evidentiary Issues in the High Profile Criminal Case" to the Florida Conference of Circuit Judges (June). He co-presented two-day seminars in Orlando, on Florida and Federal Trial Evidence (August), and on Trial Evidence for the Institute of Continuing Education of Georgia (September). He also conducted a Trial Advocacy Seminar in Miami, sponsored by The Florida Bar (September). His *Florida Evidence and Trial Objections, Expanded Edition* (with hypertext) was recently released by West Publishing Company. In September he appeared before the Governor's Ad Valorem Task Force to discuss burdens of proof and other evidence subjects.

Ruth Ezell was appointed to the Community Services Block Grant Advisory Committee by Secretary James Murley of the Department of Community Affairs.

Beth Gammie made a presentation in May on gender discrimination in the workplace at the Stetson University Business School, DeLand.

Steven Gey made several presentations in recent months: on First Amendment issues to the American College of Family Trial Lawyers Annual Conference, in Naples (April); on the proposed Religious Equality Act to the Americans United Annual Conference, in Washington, D.C. (October); and the Keynote address, on the First Amendment, to the Florida Circuit Judges Educational Conference, in Clearwater (September).

Elwin Griffith has been appointed to the Cave Hill Campus Council, the governing body of the University of West Indies in Barbados. His article entitled "The Meaning of Language and the Element of Fairness in the Fair Debt Collection Practices Act" has been published in the *University of Toledo Law Review*.

Lawrence Krieger made presentations at the 1996 AALS Conference on Clinical Education on "Confronting the Financial Realities of Clinical Education" (May), to a CLE Workshop sponsored by Florida Lawyers' Assistance (July), and to the Florida Conference of Judges.

Mary LaFrance's article "Trouble in Transamerica: Deferred Compensation, Contingent Debt, and Overstated Basis" has been published in the *Virginia Tax Review*.

John Larson made Florida Bar presentations on Partnership Breakups, Buyouts and Liquidations.

Jarret Oeltjen's most recent article, "Florida Pawnbroking: An Industry in Transition," has been published in the latest edition of the *FSU Law Review*.

Jim Rossi presented a paper at the American Bar Association's annual meeting, in Orlando, on "The Revised 1996 Florida Administrative Procedure Act: A Rulemaking Revolution or Counter Revolution?" An expanded version of the paper appears in the Fall 1996 *FSU Law Review*. He is coordinating the Virtual Democracy Project, an on-line computer link-up that will allow citizen participation in the revision process of Florida's Constitution in 1997. The project has been authorized by the steering committee of the Constitutional Revision Commission. He is also founder and editor of the ABA Administrative Law Database, developed in conjunction with the ABA's Section of Administrative Law & Regulatory Practice.

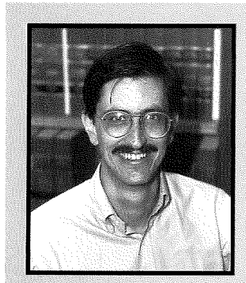
Mark Seidenfeld is the author of *Microeconomic Predicates to Law and Economics*, published by Anderson.

Jeff Stempel presented a talk in June on "How Do Judges Read Reinsurance Contracts?" to the Reinsurance in the Real World Conference in West Palm Beach. He is also the principal author of The New York Bar Association's Committee on Professional Responsibility report on the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States's *Uniform Ethics Rules in Federal Court: Jurisdictional Issues in Professional Regulation*.

Jean Sternlight is the author of "Symbiotic Legal Theory and Legal Practice: Advocating a Common Sense Jurisprudence of Law and Practical Applications," in the July 1996 *University of Miami Law Review*. She is also the author of "Panacea or Corporate Tool?: Debunking the Supreme Court's Preference for Binding Arbitration in the recent *Washington University Law Quarterly*.

Ken Vinson has published "Disentangling Law and Fact: Echoes of Proximate Cause in the Workers' Compensation Coverage Formula," in the *Alabama Law Review*, and "Fred Rodell's Case Against the Law," in the *FSU Law Review*.

Dean Donald J. Weidner made a presentation to the Annual Meeting of the Southeastern Association of American Law Schools, in July, in Destin on "The Crises of Law Schools: Context and Opportunities." He also made presentations at Florida Bar Programs on Fiduciary Duties and on Partner Authority and Property Transfers in Miami and Tampa in November. Dean Weidner's text, *General and Limited Liability Partnerships under the Revised Uniform Partnership Act*, co-authored with R. Hillman and A. Vestal, has been published by West. He also chaired a meeting at Washington & Lee University on Freedom of Contract and Fuduciary Duty.



ASSISTANT PROFESSOR GARCIA RECEIVES FULBRIGHT GRANT

FSU College of Law assistant professor Frank J. Garcia has been awarded a Fulbright grant to lecture and conduct research in Uruguay during the spring 1997 semester. Garcia's work at the University of the Republic in Montevideo will focus on international trade issues.

For Garcia, the grant presents the opportunity to work and study with some of the foremost international trade experts in Latin America. "Uruguay has a reputation of being a leader in trade matters in this hemisphere," says Garcia. "A number of the people who have helped to build that reputation are on the faculty of the university in Montevideo."

Garcia, who teaches international law at FSU, is one of about 1,600 U.S. recipients of Fulbright grants who will study abroad during the 1996-97 academic year. Established under Congressional legislation sponsored by former Arkansas Senator J. William Fulbright, the program's stated purpose is "to increase mutual understanding between the people of the United States and the people of other countries." This year marks the 50th anniversary of the program.

SPECIAL SECTION

FLORIDA STATE UNIVERSITY
COLLEGE OF LAW

AN ACADEMIC PERSPECTIVE

A law school is measured as much by the scholarly output of its faculty as by the men and women it sends into professional life. The Florida State University College of Law is proud of its achievements on both counts. The following special section offers a sampling of the scholarship at FSU in the form of a number of short essays by faculty followed by a complete listing of faculty publications during the past two years. This section also examines the debate about legal education in America. Are law schools drifting away from the legal profession? Are they properly training the nation's lawyers? Has abstract theory displaced doctrine as the basis of legal scholarship? The debate is both vigorous and contentious, and the dialogue it generates, along with mounting budgetary and political pressures, will play a crucial role in determining the future of the nation's law schools.

ESSAYS

Lawyers and Liberation: Divergent Parallels in *Intruder in the Dust* and *To Kill a Mockingbird*.....Rob Atkinson
Managing Resources/Managing People.....Donna R. Christie
The FTAA: Building the Framework for 21st Century Trade and Business in the Americas.....Frank J. Garcia
A Lawyer's Perspective on Microeconomics.....Mark Seidenfeld
The Caribbean Law Institute and Law Reform in the Caribbean.....Elwin J. Griffith
Property Rights in Florida.....Sylvia R. Lazos Vargas
Civil Rights and Employment at Will: Time for a Federal Statute.....Ann C. McGinley
Jurisprudential Inconsistency and the Felt Necessities of the Time: The Supreme Court's Functional and Formal Arbitration Jurisprudence.....Jeffrey W. Stempel
Binding Arbitration Jeopardizes Constitutional Rights.....Jean R. Sternlight

FACULTY PUBLICATIONS, 1994-1996

COMMENTARY

The Legal Education Debate Heats Up.....David M. Morrill

FORUM

A Discussion of the State of Current Legal Education and Legal Scholarship and the Disjunction Between Law Schools and the Legal Profession.....Robert E. Atkinson, Talbot "Sandy" D'Alemberte, Frank J. Garcia, Jean R. Sternlight and Donald J. Weidner

Lawyers and Liberation: Divergent Parallels in *Intruder in the Dust* and *To Kill a Mockingbird*[1]

BY ROB ATKINSON

William Faulkner in *Intruder in the Dust* and Harper Lee in *To Kill a Mockingbird* have given us strikingly parallel accounts of lawyers as liberators in the most literal and compelling sense. Faulkner's Gavin Stevens and Lee's Atticus Finch work against great odds to release innocent Black clients from incarceration, where they stand falsely accused of capital crimes, crimes attributed to them largely because of their color. Both of the would-be liberators are presented as progressive southerners, but southerners in good standing.[2] Both are aided by children, through whose awakening eyes we see much of the stories. And both stories are widely used in courses and scholarship on legal ethics.

Yet the stories also differ markedly. Most saliently, Faulkner's defendant lives to regain his freedom; Lee's dies fleeing from prison. In a sense, Gavin Stevens succeeds, and Atticus Finch fails — more precisely, Lucas Beauchamp saves himself; Tom Robinson gets himself killed. In Faulkner's story a Black man coolly uses a white lawyer and his nephew, often very much against their wishes, to deliver himself from the law's deeply human limitations; in Lee's story a white lawyer and his daughter, despite their sincerest and most strenuous efforts, ultimately fail to save a Black man who runs, panic-stricken, before the law's promised deliverance.

As the stories differ, so have their receptions. From the novels' first appearances, critics have hailed Atticus and castigated Gavin.[3] Hollywood immortalized Atticus in an Academy-award winning portrayal by Gregory Peck;[4] the movie version of *Intruder*, though directed by Clarence Brown, is mostly forgotten.[5] Legal scholarship and bar journal articles have been full of glowing allusions to Atticus, and the current professionalism movement has canonized him as something of a patron saint.[6] Gavin, by contrast, has gotten the equivalent of an occasional *see also* or *but cf.*

In legal scholarship, however, a re-assessment, if not quite a reversal of fortunes, is afoot. Scholars on the Left, particularly those influenced by feminist jurisprudence and critical race theory, are pointing with growing insistence to Atticus's shortcomings, including his paternalism toward Blacks and women.[7] From a somewhat different direction, scholars of the law and literature movement are discovering unexpected virtues in Gavin, or at least looking for silver linings in what critics once dismissed as clouds on his character.[8] In the loquaciousness their predecessors found irritating, scholars now credit Gavin with subtle uses of narrative to educate his nephew and protégé, Chick Mallison. Even in Gavin's more politically incorrect monologues, scholars are finding the foils for his nephew's maturer vision of race and gender; an earlier generation of critics heard only the crudely fictionalized conservatism of Faulkner himself. In scholarly exchanges, Atticus's stock is trading at something of a discount; Gavin's fortunes are on the rise.

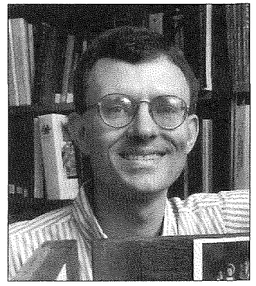
These adjustments are, I think, long overdue. Moreover, as I shall try to show in my comparison of the two novels, these adjustments are at once more closely and more complexly related than has yet been appreciated. The current revisionism is not merely a matter of exaggerating the faults of Atticus, a southern liberal, and minimizing the faults of the more conservative Gavin. On a crudely bipolar political spectrum, Atticus and Gavin are not noticeably far apart.

What distinguishes Atticus and Gavin is less what they think than how they act, in particular, how they interact with their Black clients and with other social outsiders. Put somewhat differently, critical focus has shifted from the individual characters of Atticus and Gavin to the stories of which they are but part. From this perspective, what distinguishes one novel from another is less the lawyer's story than the place of the lawyer, and indeed, law itself, in the client's story.

In *Mockingbird*, Atticus the lawyer takes center stage, preaching the Gospel of equality before the law. He is the prophet of New Dealish progressivism, and his incrementalist, technically oriented professionalism is the new priesthood. His practice has shown him that equality before the law is "a living, working reality."[9] Hope here lies in the prospect that, supported by women and children, right-thinking laymen will follow Atticus's lead in recognizing the legal equality of Blacks, who in their turn will have the patience to await law's processes. Blacks, in Atticus's world, pose no threat to elite whites; the benign songbird of the book's title conveys the character of the best of them, those like Atticus's client, Tom Robinson. In the course of his trial, he declares, "Mr. Finch, if you was a nigger like me, you'd be scared, too."[10]

In *Intruder*, Gavin's own client places him in the background, because Gavin's lawyerly mindset obscures to him the novel's central fact: Lucas is not just innocent, he is virtuous. Moreover, Lucas's virtue is from a moral order very different from that of high school civics and Sunday School Christianity. Lucas is self-consciously not just a man; he is a mensch, if not an uber-mensch. He is not only legally equal to his white oppressors; he is morally superior to his lawyerly liberator. His very presence is an unassimilable intrusion into the world of their inherited prejudices. Even before *Intruder* begins, Lucas has already declared to his white cousin, the legal owner of their ancestor's plantation: "I'm a nigger" ... "But I'm a man too. I'm more than just a man."[11]

Gavin is slow to see this not despite his legal training and practical wisdom, but precisely because of them. His lawyerly professionalism, the skills and habits formed in years of law practice, are not only not the solution; they are as much a part of the problem as the more obvious racism of his red-neck compatriots. The outsiders in the novel — Blacks, women, the elderly, children — teach him what he cannot see because his vision is narrowed and lowered by business — more precisely, by the busy-ness of practicing law. The outsiders themselves have not so much answers as other ways of approaching problems. Gavin's hope — and the hope for the future of their shared moral world — lies in continued, mutually respectful conversation and openness to radically new possibilities of social order.



Rob Atkinson teaches Property, Professional Responsibility, Legal Ethics, and Law and Literature. Before joining the FSU College of Law faculty in 1987, he practiced law in Washington, D.C., with Sutherland, Asbill, and Brennan. He has written extensively on nonprofit organizations and legal ethics, including, most recently, "How the Butler Was Made to Do It: The Perverted Professionalism of *The Remains of the Day*," Yale Law Journal, and "A Dissenter's Commentary on the Professionalism Crusade," Texas Law Review (both 1995). Professor Atkinson is a 1982 graduate of the Yale Law School and a 1979 graduate of Washington and Lee University.

If this is so, then the greater appeal of *To Kill a Mockingbird* may tell us something less than wholly laudable about us, those to whom it appeals.[12] That appeal suggests, in the shadow of Nietzsche, that we who would be liberators prefer Lee's liberal-democratic vision at least in part because, in insisting that our job is to lift others up, we implicitly place ourselves always above them. Before we liberate them, they need us; afterward, they should be thankful to us. Abstractly and formally, we are never more than equal to them; practically and historically, they are always beholden to us.[13] We have it both ways, at their expense, all the time.

Faulkner's feudal-aristocratic vision radically reverses this arrangement, very much at our expense. At the end of *Mockingbird*, one hopes to save Tom Robinson, or at least to reap glory and honor in the trying.[14] At the end of *Intruder*, we despair of being Lucas Beauchamp. Worse still, we are tempted to resent having to be his instrument, the means by which he transcends not just the redneck rabble, but also us ourselves.

And yet there is a positive message here, too, and a very ancient, even religious, message, one that Nietzsche—perhaps caught in his own resentment—never saw.[15] To be humbled with Gavin is not necessarily to be humiliated, and to insist on the virtue of humility is not necessarily either to assume a false pride or to abase the properly proud, Lucas and his lordly kind. We can do our part, which may not be the center, and certainly will not be the whole. In more traditionally religious terms, we can be thankful that we are the means of grace, not resentful that we are not the Messiah, or God.[16] In the words of the Lord Protector Cromwell's minister, "They also serve who only stand and wait."[17]

There is also, I believe, something more generally salutary about the new appreciation for the relative merits of *Intruder in the Dust*. When both books are fairly weighed in the balance, *Mockingbird* is much the lighter tale.[18] Before its Pulitzer triumph and Hollywood apotheosis, it was possible to see it as "respectable hammock reading."[19] The fact that legal scholars are now digesting meatier fare (or, if you prefer, more complex carbohydrates) bodes well for legal education now

and for law itself in the long run. In law and in life, as in *Intruder in the Dust*, the hard questions do not have simple answers, and the best answers are not always those our predecessors gave us. If we are to create satisfactory answers to those questions, we, like Gavin's nephew, must look for help to those of our predecessors who show us how to move beyond their traditional solutions, even their accustomed modes of thought. That, of course, is what the Socratic method is ultimately supposed to teach us. In that, for all his flaws, Gavin succeeds; there, for all his virtues, Atticus fails.

In writing a paper on two bildungsromans, I have been constantly reminded of my mentors and my protégés, those who have taught me, and those whom I have taught. I am most thankful for those times when the distinction has disappeared, when we have ceased to be teacher and student, and become simply friends, fellows questing and questioning. That happens in only one of these novels; that, ultimately, is why I must hold it the better.

Notes

[1] This essay is adapted from the introduction of a proper law review article I submitted for publication in the fall of 1996 with the able research assistance of Jeremy E. Cohen and the generous support of the FSU College of Law.

[2] *See generally* Thomas Shaffer, *Growing Up Good in Maycomb*, 45 Ala. L. Rev. 531, 556-57, 557 n.119 (1994) (noting Atticus's insistence that Maycomb is his family's home and that his opponents in Robinson's trial are their friends and citing this as a theme in *Intruder* as well).

Lest there be confusion on the point, I should say that "progressive southerns in good standing" includes George Washington, Thomas Jefferson, Patrick Henry, John Marshall, James Madison, Andrew Jackson, Robert E. Lee, Woodrow Wilson, Hugo Black, Martin Luther King, Jr., Fannie Lou Hamer, Lyndon Johnson, Barbara Jordan, Jimmy Carter, Andrew Young, and William Jefferson Clinton (not to mention Harper Lee and William Faulkner). In a less biased world, the point could be made with a shorter list.

[3] For a summary of these early critics, *see* Jay Watson, *Forensic Fictions: The Lawyer Figure in Faulkner* at 111 (1993); Richard Weisberg, *Poethics* at 82-83 (1992); Cleanth Brooks, *The Yoknapatawpha Country* at 280-81 (1963 Yale, 1990 LSU).

[4] *To Kill a Mockingbird* (Universal Pictures 1962.)

[5] *Intruder in the Dust* (MGM 1949). *See* Regina K. Fadiman, *Faulkner's Intruder in the Dust: Novel into Film* 41-42 (describing film as *succes d'estime* and noting Brown's receipt of the British Academy Award for Best Director in 1949) (1978).

[6] *See, e.g.*, Talbot D'Alemberte, *Remembering Atticus Finch's Pro Bono Legacy*, Legal Times, April 6, 1992, at 26. For the lawyerly equivalent of *The Imitation of Christ*, *see* Mike Papantonio, *In Search of Atticus Finch: A Motivational Book for Lawyers* (1996). Tellingly, the volume of legal scholarship on *Mockingbird* significantly outweighs the literary. *See* Claudia Durst Johnson, *To Kill a Mockingbird: Threatening Boundaries* at 20 (1994).

[7] Monroe Freedman, *Atticus Finch: Right or Wrong*, 45 Ala. L. Rev. 473 (1994); Theresa Godwin Phelps, *The Margins of Maycomb: A Rereading of To Kill a Mockingbird*, 45 Ala. L. Rev. 511 (1994). Professor Freedman first questioned Atticus's character in the popular legal press, *Atticus Finch, Esq., R.I.P.*, Legal Times, Feb. 24, 1992, at 20, and *Finch: The Lawyer Mythologized*, Legal Times, May 18, 1992, at 25, evoking a storm of protest that caught the attention of the New York *Times*. David Margolick, *At the Bar*, N. Y. Times, Feb. 28, 1992, at B7. *See also* Johnson, *Threatening Boundaries*, at 15 (noting efforts on the part of Blacks in the East and Midwest to censor *Mockingbird* on account of its "condonation of institutional racism"). Thomas Shaffer, the dean of *Mockingbird* scholarship, has long noted and criticized the paternalism at the root of what he calls "the gentleman's ethic," of which he takes Atticus to be the exemplar. *See American Lawyers and Their Communities* at 86-97 (1991).

[8] Chief among these are Richard Weisberg, *Poethics* at 81-92 and Jay Watson, *Forensic Fictions* at 109-39.

[9] Harper Lee, *To Kill a Mockingbird* at 208 (1960) (Popular Library ed. 1962).

[10] *Id.* at 198.

[11] William Faulkner, *Go Down, Moses* at 46 (1942) (Vintage International Ed. 1990). In analyzing *Intruder*, I follow other scholars in making intertextual comparisons with Faulkner's other works set in his fictional Yoknapatawpha County, Mississippi. For the classic statement that Faulkner's Yoknapatawpha cycle should be read as a single, unified work, *see* Malcolm Cowley, ed., *The Portable Faulkner* at xi-xvi.

[12] *See* Richard H. King, *Lucas Beauchamp and William Faulkner: Blood Brothers*, in *Critical Essays on William Faulkner* 233, 238 (Arthur F. Kinney, ed. 1990) ("In general such novels [which King calls "racial thrillers"] are moral melodramas for moderate, well-intentioned white readers who can have their essential moral decency reaffirmed and can in turn look down their moral noses at the backwardness of poor whites.").

[13] *See* King, *Blood Brothers* at 239: "For the only way an oppressed people can become the psychological equal of their oppressors is by self-liberation."

[14] This, for example, was the initial reaction of Morris Deas, founder and current director of the Southern Poverty Law Center:

> On a warm June night in 1966, I saw *To Kill a Mockingbird* at a local drive-in theater. ... When Atticus Finch walked out of the empty courtroom after the jury ruled against his client and the upper gallery, still packed with black folks, rose in his honor, tears were streaming down my face. Why couldn't I be a lawyer like Mr. Finch?

Morris Deas, *Foreword*, *In Search of Atticus Finch* 5, 7. *See also In Search of Atticus Finch* at 68 ("Are there any among us who would not trade several million dollar verdicts for such an expression of appreciation and admiration?"); Timothy L. Hall, *Moral Character, the Practice of Law, and Legal Education*, 60 Miss. L. J. 511, 519 (1990) ("We want a lawyer hero, and by the time the book is over we have one in Atticus's defense of Robinson.").

[15] It is also a message consistent with, if not rediscovered by, some branches of feminism, at least as early as George Eliot's concluding elegy to Dorothea in *Middlemarch*.

[16] *See* Thomas Shaffer, *American Lawyers and Their Communities* at 86-96 (criticism of the Southern gentleman's ethic for being "optimistic" rather than "hopeful," for its members' insisting that they can avert the suffering of others, instead of manifesting the Christian "hope" that the fate of others is in the hands of "the Ruler of the Universe"). As I have urged elsewhere, one can find insight in Shaffer's traditional religious terminology without embracing any particular theological orthodoxy or theism in any form. Atkinson, *How the Butler Was Made to Do It*, 105 Yale L. J. 177, 181 n.14 (1995); Atkinson, *A Dissenter's Commentary of the Professional Crusade*, 74 Tex. L. Rev. 259, 269 (1995).

[17] JOHN MILTON, Sonnet XIX ("When I consider how my light is spent"), THE COMPLETE POETICAL WORKS OF JOHN MILTON 190 (1965).

[18] Flannery O'Connor, in the candor of a private letter, put the matter more bluntly, explaining *Mockingbird*'s popularity "by the fact that it is a child's book and that the average American reads on a child's level." Timothy Hoff, *Influences on Harper Lee*, 45 Ala. L. Rev. 389, 398 n.56 (1994).

[19] *Atlantic*, August 1960, at 98.

Managing Resources/Managing People

BY DONNA R. CHRISTIE

During the past several years, property owners have become extremely vocal and activist about the effects of land use and environmental regulation on the use and value of land. Many landowners feel that society has elevated the rights of migratory birds, endangered species, and other elements of the environment above the rights of people. Landowners have also found that the legal system has inadequately responded to the burden that many people perceive as being disproportionately borne by a few. Together these perceptions have led to the revolt commonly called the property rights movement.

A large part of the problem may be that regulators have lost sight of the fact that they are not in reality regulating resources or habitat or pollution: they are regulating people and the effects of the activities of people on resources and ecological systems.

The Regulatory Environment

Garret Hardin's famous 1968 *Science* article, "The Tragedy of the Commons,"[1] suggested that governmental regulation was the only response to the short-sighted, economic interests of polluters and developers using common resources. With a strong public sentiment reinforcing the environmental movement through the 1970s, environmental and land use regulation exploded. During the early days of the environmental movement, science also provided a great deal of new information about the effects of pollution and the way ecological systems function. This new information formed the basis for extensive schemes for pollution control, protection of endangered and other species, protection of wetlands and other habitat, and other land use restrictions. Since that time, the amount of regulation has continued to escalate, but the strong public consensus supporting environmental regulation has eroded. Although science has continued to generate information, the nature of science has not always provided landowners a degree of certainty concerning the negative effects of their activities or sufficient evidence that the effects are proportionate to the degree of restriction on property uses. It is maintained that permits are often denied with "boilerplate" language providing little explanation of the proposed activities' negative effects or alternative activity that might be practical. Many now view regulators as unrestrained and unaccountable.[2] It seems clear that the era of purely "command and control" regulation is over, and that new approaches to environmental policy and regulation need to be explored.[3]

Legal Remedies for "Taking" of Property

Environmental and land use regulations can have drastic effects on the value and uses of land. Although landowners have never had the right to do anything they want with their land, as some people suggest, the ethic in the United States has clearly elevated land ownership and the right to develop land to something closely akin to a constitutional right.[4] In *Pennsylvania Coal v. Mahon*,[5] the U.S. Supreme Court first recognized that regulation could devalue property to an extent that presented the functional equivalent of an act of eminent domain. This concept has been called "regulatory taking" and requires compensation under the Fifth Amendment. In the more than a half of a century since this doctrine was first announced, surprisingly little has been accomplished to clarify the situations in which compensation would be available.[6] Cases are determined primarily on an ad hoc basis by balancing a number of factors, making it almost impossible to predict an outcome in any given situation.[7] Strict procedural and ripeness requirements also make it difficult and expensive to bring claims.[8] To many, this remedy seems largely illusory.

Property rights legislation in many states, including Florida,[9] has sought to establish lower thresholds and clearer criteria for determining when landowners should be compensated for the impacts of regulation on their property interests. The property rights movement can have serious consequences for environmental and land use regulation, however. As Justice Holmes stated in *Pennsylvania Coal*, the case that introduced the regulatory takings doctrine, "[g]overnment could hardly go on if to some extent values incident to property could not be diminished without paying for every such change in the general law." With budget cuts and reform also a priority of legislatures, it may be that government will "hardly go on." In addition, the focus on the market value of land has been almost exclusive of the consideration of the effects of a proposed use of land. The movement virtually ignores some fundamental concepts underlying much of environmental and land use regulation: the

principle that development should internalize many of the external costs it imposes on society, and the fact that much regulation creates reciprocal benefits as well as costs.[10]

Policy Research Needs to Facilitate Environmental Regulation

What has happened between 1970 and 1990 to make the public become so hostile to environmental regulation? What can be done? As Justice Holmes noted in the early part of the century, it is obvious that government cannot simply pay for the effect on market value of all regulations. Are there alternatives to compensation for decreases in land value and have these alternatives been sufficiently explored?

Education may be one alternative that is an important element for successful protection of the environment. There is a need not only for a broad understanding by the public of effects of activities on their environment, but also an understanding of the nature and role of science.[11] The notion that education will lead to an era of enlightened self-interest and widespread support for environmental protection has, however, been referred to as a romantic and naive approach. But whether it is called education or another title, information must be widely available "both for public policy and for the political process" to function.[12] Information flow operates in both directions between the public and the government and "preference shaping" or "norm creation" can be effected by either side.[13] The public support for growth management in the mid-1980s is an excellent example of preference shaping.

Government also needs new tools. In addition to the fact that command and control regulation has generated a virtual revolt from the regulated public, it has been very unsuccessful in dealing with environmental problems like nonpoint source pollution and ecosystem management.[14] New ideas, like economic incentives, need to be considered. Florida's new property rights legislation explores a great deal of new ground in areas of governmental accountability, consideration of alternatives by developers and regulators, and use of alternative methods of dispute resolution. A great deal of analysis and application of the law must be done before it will be clear how it will function, however.

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Conclusion

The days of environmental regulation as usual are over. However, environmental problems persist, and we have not developed new approaches and new tools to deal with this new era. Command and control regulation seemed simple, direct and easy; to the public, it has turned out to be complex, arbitrary, and inflexible. In addition, it is not capable of dealing with the problems of the next century that we now place under the heading of "sustainable development." There is a great deal of policy work needed to determine *how* to protect the environment and the economy once science has provided the direction concerning *what* must be done.

NOTES

[1]162 Science 1243 (1968).

[2]*See, generally*, Carol M. Rose, Property Rights, Regulatory Regimes and the New Takings Jurisprudence - An Evolutionary Approach, 57 Tennessee Law Review 577 (1990).

[3]*See, e.g.*, John DeWitt, Civic Environmentalism, Alternatives to Regulation in States and Communities (1994).

[4]Frank Michelman, Property as a Constitutional Right, 38 Washington and Lee Law Review 1097 (1961).

[5]260 U.S. 393 (1922).

[6]Goldblatt v. Town of Hempstead, 369 U.S. 590 (1960) ("There is no set formula to determine where regulation ends and taking begins").

[7]*See, e.g.*, Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978) (listing factors and providing a balancing test for determining when a regulation constitutes a taking).

[8]*See, e.g.*, Gregory Overstreet, The Ripeness Doctrine and the Taking Clause: A Survey of Decisions Showing Just How Far Federal Courts Will Go to Avoid Adjudicating Land Use Cases, 10 Journal of Land Use & Environmental Law 91 (1994).

[9]1995 Fla. Laws ch. 95-181.

[10]*See generally*, Joseph L. Sax, Takings, Private Property and Public Rights, 81 Yale Law Journal 149 (1971).

[11]In general, the public expects science to provide answers - not probabilities. When individuals incur losses to the potential value of land, they often want science to provide a certainty that is not possible.

[12]DeWitt, *supra* note 3 at 259.

[13]Professors Mark Seidenfeld and Jim Rossi of the Florida State University College of Law are currently researching the role of preference shaping by agencies in administrative law. *See also* Carol M. Rose, Rethinking Environmental Controls: Management Strategies for Common Resources, 1991 Duke Law Journal 1 (1991).

[14]DeWitt, *supra* note 3, at 40.

The FTAA: Building the Framework for 21st Century Trade and Business in the Americas

BY FRANK J. GARCIA

At the 1994 Summit of the Americas in Miami, hemispheric leaders (except Castro, who was not invited) committed their peoples to a broad vision of the future of free trade: development of a new Free Trade Area of the Americas (FTAA) by the year 2005.[1] Although many details have yet to be worked out, it is already clear that the FTAA, and the Summit process designing it, will fundamentally alter the nature of trade and business in the Western hemisphere. In order to understand this process and its implications for firms and for the international economic system generally, it is important to consider both the nature of free trade agreements and the history of free trade in this hemisphere, as well as the particular FTAA commitments.

What is the FTAA?

As its name implies, the FTAA is intended to be a free trade area, or FTA. While FTAs are the most basic "entry level" form of economic integration,[2] they can be quite complex, especially in the case of regional FTAs among several neighboring states, such as the North American Free Trade Agreement, or NAFTA. No exception, the FTAA will likely be comprehensive in scope and exact a high degree of trade liberalization, building on the results of NAFTA and the Uruguay Round of the GATT. In addition to reducing or eliminating tariffs over a broad range of goods, the FTAA will, among other goals, attempt to reduce non-tariff barriers to the movement of goods such as arbitrary or discriminatory product standards and customs regulations; regulate investment conditions and trade in services; require signatories to offer significant intellectual property protection; and develop new strategies for dealing with the labor and environmental issues raised by trade agreements generally.

Due to the economic and political influence of the U.S., NAFTA will have a substantial impact on the form and substance of the FTAA. However, NAFTA is not the only regional trade agreement in the Western hemisphere, and other existing agreements will have an important effect on the ultimate nature and role of the FTAA.

Free Trade in the Americas.

Historically the U.S. has been reluctant to enter into regional free trade agreements despite their trade-enhancing potential. The reasons for this are complex. However, since the early 1960s Latin America and its sub-regions have been involved in a series of attempts to achieve integration through the mechanism of free trade agreements. Early efforts included the Central American Common Market, the Andean Common Market, the Caribbean Common Market and the Latin American Free Trade Association. The range of aspirations for these integration efforts has varied from a "simple" free trade agreement to a more complex model resembling the European Community. Yet even "simple" economic integration has proven a frustrating and elusive goal for Latin America, and by the early 1980s the various regional and sub-regional efforts had on the whole stagnated.

As part of the resurgence of many of the region's economies, Latin America is once again actively pursuing economic integration through trade. Old efforts have been revitalized, and new efforts such as MERCOSUR (comprising Brazil, Argentina, Paraguay and Uruguay) and the G-3 (Mexico, Colombia and Venezuela) have been initiated. Due to the rise of the European Community, and increasing frustration with certain aspects of the multilateral trade framework, the U.S. has also become more willing to explore regional trade arrangements, with NAFTA as the primary result.

The FTAA represents a confluence of these trends. The FTAA's goal of formal integration is ambitious in three ways: it attempts to integrate developed countries such as the U.S. and Canada with newly industrialized countries such as Argentina, Chile and Brazil, and less developed countries such as Paraguay and Bolivia; it aims to advance the state of the art in certain controversial areas of trade regulation such as intellectual property and environmental protection (the so-called "NAFTA-plus" option); and, finally, it attempts to accomplish all this on a broad hemispheric scale. The most pressing question now facing hemispheric leaders is how precisely to bring all these goals, trends and existing agreements together.

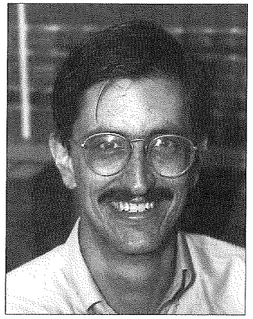
If You Build It, Trade Will Come.

Integration is currently proceeding along four parallel tracks. First, there is the Summit process, in which the Summit coun-

tries have established a series of working groups in which to lay the groundwork for the substantive FTAA discussions which lie ahead. Second, existing regional trade agreements, especially the G-3, NAFTA and MERCOSUR, continue to consolidate and establish their basic integration regimes. Third, both NAFTA and MERCOSUR are facing the question of accession by Chile and others, a potentially significant link in the FTAA's evolution. Finally, the process of unilateral programs of North-South trade preferences and bilateral trade relationships continues, although at a diminished pace.

Building the FTAA by the year 2005 will involve some form of convergence of these four tracks. The complexity of existing trade arrangements in the hemisphere makes devising the route to the FTAA more difficult. My research explores some of the questions raised by this process. For example, in a recent article, I utilize existing economic theories and studies of regional integration to analyze several issues arising if accession to NAFTA is employed as a route to the FTAA.[3] I conclude that individual "piecemeal" accession to NAFTA by leading members of Latin American regional trade agreements such as Argentina or Venezuela might result in adverse economic effects for their remaining FTA partners. It may be a wiser course for NAFTA accession to proceed "bloc by bloc," with *all* members of a trade agreement such as MERCOSUR acceding together simultaneously.

The goal of moving from the existing pattern of trade and regional integration in the Americas to a hemispheric FTA in ten years involves a significant leap forward, in part due to the present complexity of trade and business relationships in the Americas. For this reason, an interim step in this process, some form of treaty relationship short of a full-blown FTA, might serve a useful purpose in bridging this considerable gap. My most recent article explores how the European Union's program of interim agreements associating the European Community with potential future members, which is designed to accomplish a degree of pre-accession integration, might be adapted to serve as a model for an interim stage of association between NAFTA and existing Latin American FTAs.[4]



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Implications for Hemispheric Trade and Business

It is too early to tell if the necessary political will exists to tackle the huge challenges ahead in building the FTAA, despite its potential economic benefits. However, if successful, the FTAA could create dynamic new economic opportunities throughout the hemisphere, benefitting many firms and, in conjunction with domestic political reforms, the most needy elements of hemispheric society.

On a public level, the FTAA would strengthen the mechanisms for a coordinated hemispheric approach to problems of resource management, environmental protection, human rights, democracy and development. On a private level, the FTAA would provide hemispheric businesses with new markets and new sources of low-cost inputs, and increased flexibility of capital and labor flows. Of course, enterprises will face new competition from across the hemisphere as well, often in markets long considered "their own." Finally, businesses and their legal advisors will need to investigate and analyze several overlapping sets of trade and business rules, on the domestic, multilateral (e.g., GATT), regional (e.g., NAFTA) and FTAA levels in order to develop an effective business strategy.

Regardless of the success of the FTAA, the Summit process is highlighting the importance of regional markets, and the need for even modest business concerns to plan on a regional, if not hemispheric basis. Western hemispheric integration is already a powerful concept whose influence will only increase in the decades ahead.

NOTES

[1] This commitment is more political than legal. The instrument setting forth this vision, the Summit Declaration and Plan of Action, although in the form of an international agreement, is not designed to be a binding, enforceable treaty. See Summit of the Americas: Declaration of Principles and Plan of Action, 34 I.L.M. 808 (1995).

[2] Progressively more complex arrangements include a customs union, a common market, an economic community and an economic union.

[3] NAFTA and the Creation of the FTAA: A Critique of Piecemeal Accession, 35 Va J Int'l Law 539 (1995).

[4] Americas Agreements - An Interim Stage in Building the Free Trade Area of the Americas, 35 Colum J Transnat'l L ___ (1996) (forthcoming).

A Lawyer's Perspective on Microeconomics[1]

BY MARK SEIDENFELD

Law and Economics focuses on using economic theory to help apply, understand and evaluate law. Economics enters into law in at least three ways. First, legal outcomes in particular cases depend on the facts of those cases. Economics can help one make factual determinations. For a simple example of how economics can facilitate such fact-finding one need look no further than a tort case in which a worker has been disabled. If the worker prevails on her claim, she is entitled to receive compensation for the harm caused by the tortious act. But what is the value to her of the wages that she loses because of the disability? Economics indicates how to reduce a future income stream to a single present value.

Second, some laws regulate conduct in explicit economic terms. In order to understand these laws, one must understand the economic concepts on which they rely. For example, antitrust law prohibits monopolization. Economics gives a definition of monopoly and explains why monopolies generally are not good for society. These economic concepts, in turn, give meaning to the law and help courts and regulators fashion legal doctrines to implement the law effectively.

Third, economics provides some measure of what is "good." Thus, lawyers can use economics to critique legal doctrine. In addition, borrowing the economic notion of "goodness" allows a litigator to generate persuasive arguments about whether legal rules should be changed or the bounds of their application limited. An example is whether to allow a tort action against a manufacturer for producing a product that causes harm even if the product is nonetheless valuable and the manufacturer has taken sufficient care in its production to minimize such harms. In other words, should society prefer strict liability to negligence for harms caused by products? Although economics will rarely provide "the right answers" to such a question about the strictures of legal rules, it will help illuminate the impact of adopting one rule versus the other, and will give some guidance about which is likely to make society as a whole better off.

The branch of economics which most directly bears on legal issues is microeconomics. Microeconomics is the study of how a decision-making unit, such as an individual, a firm, a governmental body, or even a judge, reacts to changes in economic circumstances, such as prices, costs, income and even legal rules.[2] As such, we should not be surprised that microeconomics has much to say about law. Microeconomics addresses how decision-makers will behave in response to circumstances and, after all, law is the means by which the government constrains and influences behavior.

Microeconomics posits a theory of human behavior, which it calls economic rationality, and makes simplifying assumptions about the attributes of the market or of the transaction of interest. It uses this theory and its simplified description of the relevant economic world to create analytically rigorous models that predict the outcome that would occur in this simplified world. By comparing the economic model to the real world, microeconomics can often predict approximate real world outcomes. Perhaps of greater significance for actors on the legal stage, microeconomic models can give insights into the reasons that these results occur, allowing lawmakers to tailor legal rules so that these rules are more likely to induce the behavior that society seeks. This is the positive or descriptive aspect of microeconomics.

In addition to providing descriptions and explanations of economic outcomes, microeconomics also has a normative aspect. It defines a measure of economic "goodness," which it calls efficiency. By predicting how resources will be allocated under various legal rules and comparing these predictions to its measures of efficiency, microeconomics provides a means to evaluate whether particular legal outcomes are preferable to others.

Unlike in the straight study of economics, using the concept of efficiency in legal analysis is controversial. Many economists see their role as describing economic outcomes or evaluating which of several outcomes is preferable, **accepting as given individuals' own assessment of what they like and the economic definition of efficiency**. Many economists would not include questioning the definition of efficiency within the scope of their tasks. Lawyers, however, concern themselves with such grand notions as justice and fairness. Frequently laws are intended to influence

individual's fundamental values and personal ethics. Thus, the study of microeconomics for lawyers stresses different aspects of the subject. In addition to creating economic models to predict and evaluate outcomes, we spend a great deal of time questioning the assumptions underlying those models. We ask whether those assumptions are unrealistic in a way that influences the models' predicted outcomes. Finally, we ask whether the assumptions, even if realistic, bias the analysis towards outcomes that society would consider improper or unjust.

At this juncture, an example of an economic model that bears on a legal question will help illuminate the possible interplay between economics and law, as well as limits on that interplay. Consider the question of whether the government should raise the minimum wage. Standard economic models analyze such a raise as an increase in the cost of labor to producers. They predict that an increase in the minimum wage will result in fewer low wage jobs. The decrease in such jobs may be so great that it is unclear whether low wage earners as a class will benefit: some will benefit as a result of the increased wage, but others will be hurt because they will be out of work due to the decease in jobs.

Thus far, the model has been merely descriptive. The normative aspect of economics, however, counsels that increasing the minimum wage will be inefficient. There will be some workers out of a job who would be willing to work for less than the new minimum wage, and some employers who do not offer jobs at the new wage who would be willing to do so at a lower wage. These workers and employers would both be better off if the government let them bargain for a wage below the increased minimum. Raising the wage will increase the class of individuals who would be willing to reach such a bargain.

Nonetheless, society might prefer the increased minimum wage despite its inefficiency for several reasons. First, the descriptive economic model might be inaccurate: there is some data suggesting that workers facing decreases in pay do not behave as economically rational actors.[3] Because feelings of self worth are often tied to the wage one receives, employees might derive a value from a high wage independent of the buying power of the money she receives. In such a case, workers might choose to refuse to work at a lower wage than she believes she deserves, even if she cannot garner her just wage anywhere in the job market. Ultimately, this might effect how an employer values the work of his employees. In other words, raising the minimum wage might affect the values that workers place on their work that in turn will effect their willingness to work for a lower wage and an employer's willingness to offer them a higher wage.

Second, even if the model is descriptively accurate, society may choose not to act efficiently. Cultural norms might lead citizens to prefer a minimum wage that pays "an honest wage for an honest day's work." In other words, people might value notions of fairness above efficiency so that as a society they would gladly pay the price of a just, if inefficient, minimum wage.

This example illustrates the potential power of economic models and their potential limitations. Armed with an understanding of microeconomics, and keeping in mind caveats about the use of microeconomic models in evaluating legal issues, a lawyer can be a more formidable adversary and a better advocate for socially beneficial changes in legal doctrine.

Mark Seidenfeld teaches Administrative Law, Environmental Law, Law and Economics, Media Law, and Regulated Industries. Prior to joining the College of Law faculty in 1987, Professor Seidenfeld clerked for Judge Patricia M. Wald on the D.C. Circuit, then served for three years as Assistant Counsel for the New York State Public Service Commission. He often writes on federal administrative law and has published a textbook *Microeconomics Predicates to Law and Economics* in 1996. Other recent publications include "Demystifying Deossification: A Comment on Recent Proposals to Modify Judicial Review of Notice and Comment Rulemaking," *Texas Law Review* (1996), and "A Big Picture Approach to Presidential Influence on Agency Policy," *Iowa Law Review* (1994).

NOTES

[1]Adapted from the Introduction to my textbook on microeconomics for law and economics courses, MARK SEIDENFELD, MICROECONOMIC PREDICATES TO LAW AND ECONOMICS 1-3 (1996).

[2]The other major branch of economics, macroeconomics, deals instead with the relationships and movements of aggregate economic measures such as gross national product, unemployment rates, inflation rates and money supplies.

[3]*See* LESTER THUROW, GENERATING INEQUALITIES 77 (1975).

The Caribbean Law Institute and Law Reform In the Caribbean

BY ELWIN J. GRIFFITH

It was sometime in 1987 when (then) DeanTalbot "Sandy" D'Alemberte raised the possibility of developing a project between Florida State University (FSU) and the University of the West Indies (UWI) to promote the reform and harmonization of commercial laws in the Commonwealth Caribbean. The idea took hold and FSU and UWI began discussions about this cooperative venture.

Once both institutions agreed that it was a worthwhile project, the Caribbean Law Institute (CLI) was founded. There was still the small matter of funding. The dean garnered support for a congressional earmark and the United States Agency for International Development (USAID) gave CLI its first grant in 1988. CLI's work began that year with a conference on the harmonization of shipping legislation in the Caribbean Community.

Organization

In addition to the CLI office at FSU, there is a recently organized CLI Center located at UWI in Barbados. The board of directors comprises three representatives each from FSU and UWI, and one representative each from the Organization of Eastern Caribbean States (OECS), the Caribbean Community (CARICOM), and the commercial sector.

Each project has an advisory committee composed of members of the legal and business communities. Once a project is selected, a reporter is responsible for producing draft legislation for the committee's consideration. The committee meets several times before agreeing on a final draft. Once the committee reaches a consensus, the committee submits the draft for approval to the CLI Fellows.

The Fellows are the attorneys general of the seventeen beneficiary countries served by CLI, and representatives from the private Bar and the commercial sector. Once the Fellows approve a draft, it is then ready for consideration by the countries in the region.

CLI Activities

Early in its history, CLI identified company law, shipping law and arbitration as priorities for reform. One of CLI's first tasks was to develop and administer a Commercial Law Survey, which defined the state of commercial law in the region and provided background information to guide the selection of other projects. As a result, CLI has produced model bills on consumer law, insolvency, banking, insurance, and arbitration. It also made certain recommendations concerning a draft shipping bill prepared by a CARICOM technical committee. CLI's efforts have contributed to the passage of new Companies Acts in Trinidad and Tobago, Grenada, Antigua and Barbuda, St. Vincent and the Grenadines, Dominica and St. Lucia.

In addition to its law reform activities, CLI has published several issues of *Caribbean Law and Business*, a journal containing articles on legal and commercial topics. CLI's annual *Commercial Law Reports* has found favor with lawyers and businessmen alike, since it contains recent cases from Caribbean courts. CLI also produced a significant publication in 1992 entitled *The Environmental Laws of the Commonwealth Caribbean*, which identifies critical environmental legislation in priority areas and makes certain recommendations for reform.

CLI has given training grants for government officials to attend professional conferences abroad. It has also co-sponsored several seminars with other organizations so that local professionals could benefit from participation without leaving their own countries. In addition, CLI has held several workshops in the Caribbean to discuss its model bills.

The Process

Most of the CLI action takes place in the advisory committees, where disagreement about a simple paragraph in a bill can lead to more than a few minutes' discussion. During that discussion one may hear comments from committee members from different backgrounds and constituencies. It is not unusual to have an attorney general, a law professor, a Queen's Counsel, a banker, and an entrepreneur on the same committee.

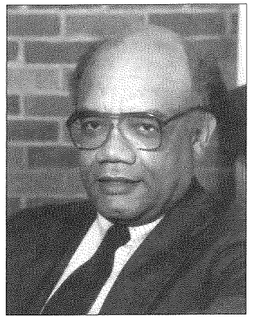
Quite often they see the issues from different perspectives and are happy to say so. There is a wealth of talent on every committee, and the final draft is the product of healthy debate.

The advisory committees meet in different places, from Belize in the west to Barbados in the east. This rotation gives CLI greater visibility and allows committee members more opportu-

nities to interact with their colleagues across the region.

There is even more professional interaction during the workshop sessions, which provide a public forum for comments on CLI drafts. There is a happy mixture of representatives from the public and private sectors at these sessions, and no one is surprised to find the country's attorney general or the president of the Bar Association in the chair.

When the CLI draft reaches the Fellows, one can be sure that it is in the right form. The attorneys general, who constitute the majority of that group, will then take the approved draft back to their respective countries for consideration on their legislative agenda.



Elwin J. Griffith has served as the Executive Director of the Caribbean Law Institute since 1988. He also teaches Commercial Paper, Immigration Law and Law and Psychiatry. Before joining the faculty in 1986, Professor Griffith taught at Drake Law School, and the University of Cincinnati Law School, and was dean at DePaul University College of Law. Recent publications include "Problems of Interpretation in Asylum and Withholding of Deportation Proceedings Under the Immigration and Nationality Act," *Loyola of Los Angeles International and Comparative Law Journal*, and "The Meaning of Language and the Element of Fairness in the Fair Debt Collection Practices Act," *University of Toledo Law Review* (both 1996). Professor Griffith is a 1963 graduate of Brooklyn Law School and received his LL.M. in International Law from New York University in 1964.

Institutional Cooperation

The CLI exercise has produced a marvellous opportunity for several constituencies to cooperate on a project that will contribute to the reform and harmonization of law in the Caribbean.

Representatives from the Caribbean and the United States have worked together on CLI's committees. FSU faculty members have played a significant role in drafting, research and presenting papers. Professors Jim Alfini and Joshua Morse started the ball rolling with arbitration and shipping law, respectively. Professor John Larson followed with insolvency, Professor Donna Christie with environmental law, and Professor John Yetter with antitrust. CLI has also cooperated with the CARICOM and OECS Secretariats in organizing its program of activities, and it is largely through the efforts of the respective CARICOM/OECS legal advisers, Brynmor Pollard and Barrymore Renwick, that CLI has been able to form a strong link with the attorneys general of the Caribbean.

CLI has also enticed some FSU alumni into the law reform exercise and this makes the FSU role even more meaningful. But FSU and UWI faculty members have established a cooperative relationship that extends beyond CLI. It stands to reason that CLI is promoting not only law reform and harmonization, but also a closer institutional bond. The establishment of the CLI Center at the UWI campus in Barbados has given additional strength to the law reform program in the Caribbean. One hopes that CLI will get the necessary support to carry on its work. There is so much to be done. In the words of one colleague, "law reform is not like instant coffee."

Property Rights in Florida[1]

BY SYLVIA R. LAZOS VARGAS

Florida is one of a handful of states that has enacted a property rights act. In May 1995, Governor Lawton Chiles signed into law the Property Rights Act or the Bert Harris, Jr. Act, as it is more readily known (the "Act").[2] It has been in effect since October 1995. Property rights proponents, who had battled since the early 1970s for legislation similar to the Act, proclaimed this a great victory; others, namely, the current administration, considered the Act a reasonable compromise; yet others, described the Act as an ill-advised response to the political quandary of balancing private interests against the need for governmental regulation of the State's resources. The answer may lie somewhere in between.

The Property Rights Act provides a separate compensation remedy for property owners who because of state regulatory action have been permanently denied reasonable use of their land. This remedy is in addition to those already available under existing law, principally litigation under a constitutional takings or due process claim. In addition, the Act provides the property owner with additional procedural avenues for relief: (I) legislatively mandated negotiation during the initial 180-day period following the filing of her claim; (II) litigation of her compensation claim in state court following this initial 180-day period; and (III) a special master hybrid mediation-arbitration procedure that she can pursue in lieu of, or in addition to, litigation.

First, under section 1 of the Act, a property owner files a written claim with the governmental entity which triggers an obligation on the part of the government entity to make a written "settlement offer" to the property owner within 180 days.[3] Agencies are directed to fashion "appropriate relief necessary to prevent the governmental regulatory effort from inordinately burdening the real property."[4] In addition, during this period the governmental entity must issue a "ripeness decision" in which the regulatory entity clearly identifies what uses are permitted for the parcel.[5] Although the Act explains only cursorily what is required in the "settlement offer" and "ripeness decision," the Act's overall intent is to require land use entities to respond promptly and less bureaucratically to property owners' concerns. In addition, the Act seeks to make governmental bureaucracies more accessible to citizens by instituting informal processes of communication that purportedly do not require professional legal expertise in order for property owners to obtain relief. In sum, this 180-day period provides new substantial remedies to property owners: first, the property owner can pin down the governmental entity as to its regulatory intentions, something courts do not always require under their interpretation of due process and takings law. Second, the regulatory agency must reconsider its decision in the process of making a "settlement offer" to the property owner. Third, the 180-day period provides a structured opportunity for parties to privately settle their differences.

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If the property owner and the governmental entity fail to resolve their differences, the property owner, and only the property owner, has two additional alternatives: she can litigate her compensation claim in state court, and with the court's approval, costs and attorneys' fees of litigation will be assessed to the loser; or she can elect to invoke a special master procedure, with costs of this process being shared by both parties. The Act gets property owners to the courtroom faster than present alternative remedies, because the Act expressly provides that upon passage of a 180-day period following a property owner's initial filing of her claim the property owner's claim will be deemed "ripe" (or justiciable) for purposes of seeking compensation under the Act.[6]

If she chooses to litigate, under the Act's compensation remedy, the property owner must show that the regulatory action "inordinately burdens" real property or vested rights in the existing use of real property "directly" and "permanently."[7] The Act states that there is an inordinate burden when a) the property owner is permanently unable to attain her reasonable, investment-backed expectation for the existing use of her property or vested rights, with respect to the property as whole, or b) the property owner is left with an existing use, or vested right, that is unreasonable, which is defined as a governmental action that places a disproportionate burden on an existing use that, in all fairness, should be borne by the public as a whole.[8] The Act incorporates the public nuisance exception of takings law, by expressly excepting public nuisances or noxious uses from the inordinate burden definition.[9]

Instead of litigating her claim, a property owner may elect to invoke a "special master" procedure.[10] This is a hybrid mediation-arbitration process, which is currently not widely used elsewhere in the United States. The parties first select a special master, a private individual with some kind of experience in land use disputes, but not necessarily anyone with professional certifications, and they are jointly responsible for her fee. Then, with the help of the special master, the parties attempt to negotiate a solution. If they fail to come to an agreement, the special master

is required to make a recommendation. It is nonbinding; either party may reject the recommendation. If the landowner is not happy with the outcome, she may still elect to pursue litigation.

What is there to critique about the Act? On the surface, it appears to provide new, creative avenues for resolving land use disputes, which too often have proven to be intractable, protracted, and costly for everyone involved. Moreover, many of the Act's reforms were fashioned with the small property owner in mind. The claims process, particularly the initial 180-day negotiation period, is designed to make governmental decision makers more accessible and more responsive to the concerns of property owners. No longer can agencies hide behind bureaucratese and endless paper shuffling.

However, on closer analysis, the Act could inflict significant harm on that amorphous "public interest." First, the public loses its ability to monitor decision making under the Act. Although the Act is silent on this issue, it envisions the negotiation process as private. Unlike Florida's growth management statute which courts have interpreted broadly to provide standing to a wide variety of parties that are interested in monitoring whether the state entity is enforcing the public interest, the Act envisions no such role for third parties.

Second, in terms of its substantive compensation claim provision, the Act adds to present doctrinal confusion. The key question, when has government regulated too much, remains unanswered. Instead, the Act duplicates the many legal lacunae that takings law has struggled with for over three-quarters of a century, using much more ambiguous language and truncated concepts than those already developed by the common law of takings. What is an "inordinate burden" that is compensable? When has a governmental action permanently impaired a "reasonable investment backed expectation"? When should allowances for the public interest counter an unreasonable shifting of the regulatory effort to a single individual? The Bert Harris Act answers none of these questions, nor even attempts to provide an analytical framework. Instead, the work is left entirely to judges who have already struggled, with differing degrees of success, to answer these questions under takings law.

Third, the Act subtly shifts the playing field in favor of opportunistic, well-funded property owners. The Act expressly protects developmental interest in property, so long as the proposed developmental use is "suitable" for the property and "compatible" with neighboring properties, and is "nonspeculative."[11] Each of these terms lends itself to many levels of interpretation, as is testified by the thousands of cases litigated on these very same issues under takings law. But further than this, the Act arms the property owner with more weapons that it can use to pressure the governmental entity into a settlement that it finds acceptable. Assuming self-interested rational behavior, bargaining results favor the party that can place itself in a better strategic position. A party's strategic position in a negotiation depends on (I) her assessment of the likelihood of succeeding in litigation, (II) costs, that is, transaction costs as well as direct and indirect costs of the negotiation and a successful (or unsuccessful) litigated claim, and (III) information about the object of the negotiation, in this case the property, or vested right, and potential uses. All these factors favor the sophisticated, well-funded property owner.

First, as explained previously, the Act creates more uncertainty than ever before as to the outcome of a compensation claim. Uncertainty favors the party with more resources and with more confidence about the outcome. Who is more likely to have that edge, a sophisticated well-funded developer or a land use entity, under funded and under attack from a public who has little forbearance for any governmental regulatory effort?

Second, transaction costs and direct and indirect costs of the negotiation and eventual litigation put the governmental entity at a marked disadvantage. As property owners become informed about how easy and advantageous it is to file a claim under the Act, governmental entities will have to handle more claims. Moreover, the Act reduces property owners' litigation costs by making it easier to get into court after only 180 days and eliminating ripeness requirements. This increased litigation, in turn, entails costs for government agencies in the form of the transaction costs, administrative costs, payment of successful awards and reimbursement of attorneys' fees for successful litigants (even with everything remaining as before, with more cases filed, more claimants will be successful). However, state agencies have not received any additional funding under the Act, an issue which could still render the Act unconstitutional under the unfunded mandates provision of Florida's Constitution.[12] But assuming that the Act stands and that, as promised by Florida's political leaders, the Legislature continues to cut back on agencies' funding, then government entities vis-a-vis a sophisticated and well-financed developer, will be at a funding disadvantage, and will perceive the risk of losing out on a property owner's claim with more trepidation than ever before.

Yet another factor encourages property owners in settlement negotiations. The 180-day negotiation period is crucial for government agencies, because they must defend their negotiation offers to the court in any subsequent litigation.[13] Unlike settlement procedures in a litigation setting where the parties have access to discovery, the governmental entity does not have access to any additional information about the property or the case. Rather, it is the property owner who owns and knows the property who has an informational advantage over the governmental entity. The party with informational advantage has an edge in negotiations.

In sum, uncertainty, increased direct and indirect costs to agencies caused by the Act's lack of funding and the financial and administrative costs of handling increased claims filed against entities which have the same or less resources, and informational advantages that favor property owners, all work towards influencing governmental entities to settle. Because these strategic factors favor the sophisticated and well-funded property owner, we should anticipate that these settlements will more often reflect a solution that these property owner deems desirable. Will these settlements necessarily be in the public interest? That question remains unanswered and may be unanswerable. Court review is required only when the proposed settlement goes against existing law. (Yes, you read right; the Act envisions "solutions" that fall outside the law.)[14] And the state attorney general is only notified as to the claim,[15] and does not otherwise intervene in the negotiation process or litigation.

As of September 1996, only one case has been reported to the state attorney general. Very preliminary data collected by the Florida Growth Management Resolution Consortium show that so far the special master procedure has been invoked in 22 cases, over half of them in one county, Lake County, which is the county that Rep. Dean Saunders, a key sponsor of the Act, represents. There is no data as to how many negotiated settlements have been made under the Act, or how uniform these settlement are. We also do not know how the Act influences routine land use determinations, such as zoning decisions, variances and amendments to comprehensive plans. Sparse anecdotal evidence suggests that the Act has been used as a scare tactic to pressure public decision makers into pro-development decisions.[16]

The Act is a pioneer effort to address much of what the public perceives has gone wrong with land use law. But is the Act a good "fix" or a "mixed bag of tricks" that can undermine Florida's widely supported land use and environmental laws? The Act requires close monitoring, particularly since preliminary analysis indicates that the Act may lead to outcomes not intended by the Legislature.

NOTES

[1] For a fuller exposition of the views expressed below, see Sylvia R. Lazos Vargas, *Florida's Property Rights Act: A Political Quick Fix Results in a Mixed Bag of Tricks*, 23 Fl. St. L. Rev. 315 (1995).

[2] 1995, Fla. Laws. ch 95-181, codified at Fla. Stat. ch. 70 (1995).

[3] §70.0001(4)(a).

[4] §70.001(4)(d)1.

[5] §70.0001(5)(a).

[6] Id.

[7] §70.001 (2),(3)(e).

[8] §70.001(3)(e).

[9] *Id.*

[10] §70.51.

[11] §70.001 (3)(b).

[12] Under the Florida Constitution, counties and municipalities do not have to comply with general laws that require expenditure of county or municipal funds, unless the Legislature has determined that such law fulfills an important state interest and the law passes by two-thirds membership of each chamber of the Legislature. Fla. Const. art. VII, §18.

[13] §70.001 (6)(a).

[14] The Act goes so far as to provide expressly that an entity's settlement offer may "contraven[e] the application of a statute as it would otherwise apply to the subject real property" so long as the "public interest" is served. §70.001(4)(d)2.

[15] §70.001(4)(b).

[16] The Wall Street Journal recently reported that in Palm Beach County, planning officials wanted to increase preservation area boundaries bordering the Everglades. They desisted in their plans because they feared lawsuits under the Property Rights Act. Peter Mitchell, New Property Rights Law Sends Planners Scrambling for Cover, Wall St. J., Oct. 25, 1995, at F1, F3. The article also reports that in Manatee County, Charlotte County, and the City of Deland, the Act has had a chilling effect as well on conservation efforts. In another article Gainesville City Attorney Marion Radson characterized the Act as "hav[ing] a chilling effect...[i]t is going to be very difficult to try and be a responsible government when it comes to land use." Lucy Beebe, New Law to Chill Planning, Zoning Sarasota Herald-Trib., Oct 8, 1995, at B1.

Civil Rights and Employment at Will: Time for a Federal Statute

BY ANN C. MCGINLEY[1]

The enactment of the Civil Rights Act of 1991 appeared to signal that civil rights in employment are thriving in this country. There are serious obstacles, however, facing employment discrimination plaintiffs that the 1991 Act fails to address.

Because the employment discrimination law is a narrow exception to the employment at will doctrine, judges deciding

employment discrimination cases often rely on the employment at will doctrine to defeat the plaintiff's case. In essence, these courts conclude that the employer has a "license to be mean."[2] By this I mean judges often rely on the employment at will doctrine to conclude that the mere fact that the plaintiff proved that he was wrongfully discharged is insufficient to establish illegal discrimination.[3] Often the courts are unwilling to permit a jury to infer that the employer's negative animus is based in discrimination.

In many cases the federal courts justify their cramped interpretation of the employment discrimination statutes by relying on the plaintiff's burden of proving intentional discrimination. Intent is an element that is very difficult to prove given the ever increasing subtlety of discrimination. The combination of the plaintiff's burden of proof, the requirement that the plaintiff prove discriminatory intent and the underlying employment at will doctrine places deserving plaintiffs who possess no direct evidence of discrimination in a precarious position.

While federal courts curtail civil rights, state courts have expanded employee rights by creating exceptions to the employment at will doctrine. Courts have avoided the employment at will doctrine by creating public policy exceptions, recognizing implied covenants of good faith and fair dealing, finding that employers have defamed their employees, and using policy manuals to create contractual rights.

Nonetheless, the employment at will doctrine continues to thrive. Despite the statutory and common law exceptions to the employment at will doctrine, today's employees may have less job security than in the past. In a bygone era, large corporate employers rewarded employee loyalty with job security. Increasingly, today's employers ignore years of loyal service; the bottom line governs decisions concerning employee retentions or dismissals.[4]

Unfortunately, the exceptions to the employment at will doctrine have heightened employees' expectations beyond reality. Even though the exceptions provide only thin protection to the common worker, many employees believe that the law will protect their interests to be treated fairly in the workplace.

Although unrealistic given the state of the law, worker expectations of industrial justice are not silly or radical. As other scholars have noted, the employment at will doctrine which thrived during the industrial revolution, has no place in today's society. During the industrial revolution there were many more temporary jobs than today. Employees could move more easily from one job to another. Today employees need more job security since they will have less opportunity to find new jobs once they lose their old jobs.

Moreover, European workers have more job security than their counterparts in the United States. In virtually every other industrialized country besides South Africa, employers must have just cause to dismiss employees.

Finally, to the extent that the employment at will doctrine is based on a freedom to contract notion, the employer unfairly benefits by the doctrine if the employee enters work believing that he has rights he does not possess.

Recognizing the need for increased job security, the National Conference of Commissioners on Uniform State Laws has proposed a Model Employment Termination Act that would require an employer to have "good cause" before firing an employee. Although the Model Act goes a long way toward achieving justice in the workplace, an approach abolishing the employment at will doctrine through state legislative enactment is flawed conceptually. By its nature, state legislation must exclude federal employment discrimination claims from its coverage, failing to marshall the political power of civil rights advocates to support strong protective measures for all workers. The result is inevitable. Because individual employees have no power base, their representatives must compromise heavily with employers, creating a Model Act that is unacceptable to employees. This is exactly what has happened in the case of the Model Act.

The exclusion of federal (and state) anti-discrimination law from the coverage of a wrongful discharge law ignores the causal link between anti-discrimination acts and common law exceptions to the employment at will doctrine. It is based on the incorrect assumption that the anti-discrimination statutes effectively protect individuals from discriminatory discharge.

Given the failure of anti-discrimination law to protect against unlawful discharge and the move toward job security in the states, Congress should create a consistent national employment discharge policy that would protect all workers from unjust dismissals, replacing the current patchwork of civil rights laws regulating workplace discharge. This law should abolish Title VII of the Civil Rights Act of 1964 insofar as it protects individuals from discriminatory discharges other than sexual harassment. It should abolish the ADEA protection for individual employees. In their place, the new Act should create protections for all workers, including those who currently are members of protected classes under Title VII and the ADEA, from arbitrary discharges, properly placing the burden on the employer to prove that it had just cause to fire an employee.

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NOTES

[1] This article is an outline of some of the ideas developed fully in an article to be published in Volume 57:4 of the Ohio State Law Journal. *See* Ann C. McGinley, Rethinking Civil Rights and Employment at Will: Toward a Coherent National Discharge Policy, 57 Ohio St. L. J. (1996).

[2] *See* Ann C. McGinley and Jeffrey W. Stempel, Condescending Contradictions: Richard Posner's Pragmatism and Pregnancy Discrimination, 46 Fla. L. Rev. 193 (1994).

[3] *See, e.g.* Independence Bank v. Wyskocil, 771 F. Supp. 1510, 1513 (C.D. Calif. 1991)(holding that an unfair or immoral reason for firing a person is not age discrimination); *see also* Visser v. Packer Engineering Associates, Inc., 924 F. 2d 655 (7th Cir. 1990)(en banc).

[4] IBM, Kodak, and Xerox, for example, have long harbored reputations for taking care of their employees. *See* Matt Murray, Thanks, Goodbye: Amid Record Profits, Companies Continue to Lay Off Employees, Wall St. J., May 4, 1995, at A1; Laurie Hays, Blue Period: Gerstner Is Struggling As He Tries to Change Ingrained IBM Culture, Wall St. J., May 13, 1994, at A1.

Jurisprudential Inconsistency and the Felt Necessities of the Time: The Supreme Court's Functional and Formal Arbitration Jurisprudence

BY JEFFREY W. STEMPEL

One of Justice Oliver Wendell Holmes' many pithy quotations posited (in best legal realist fashion 40 years prior to the Legal Realist movement) that judges decide cases not only on the basis of precedent but also based on the "felt necessities of the time."[1] During the past two decades, the United States Supreme Court has devoted a good deal of its energies to the jurisprudence of alternative dispute resolution, most prominently arbitration. Its decisions in this arena comfortably fit Holmes' maxim: there exists a widespread view that society is choking on baroque litigation and needs streamlined dispute resolution. Not surprisingly, a Supreme Court holding this view can be expected to render decisions promoting arbitration and other forms of ADR.

Although much of the Court's impact in the area has been positive, its approaches to construing the Federal Arbitration Act, the linchpin of these decisions, have been marred by vacillation between a wooden formalism and a freewheeling sort of purposive dynamic interpretation—some would say a rewriting—of the Act. Despite the dangers present whenever courts take a less-fettered approach to statutory construction, the Court should resolve this jurisprudential split personality in favor of a consistently purpose-oriented approach to construing the Arbitration Act that promotes arbitration without losing sight of other legal and social values.

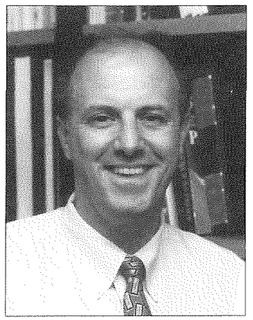
Although the Court's reconsideration of arbitrability began during the 1970s,[2] the 1980s and 1990s saw something of a revolution in the Court's approach to arbitration. In 1983, the Court issued a strong opinion favoring the use of court injunctive power to enforce predispute arbitration agreements.[3] In 1984, it went one better by not only requiring arbitrability of a franchise dispute in the face of arguably contrary state law, but also declaring that the Federal Arbitration Act, passed in 1926,[4] established substantive federal law applicable in both state and federal proceedings.[5] This 1984 decision of *Southland v. Keating* marked a major change in the Court's reading of the Act, much to the consternation of Justice O'Connor, who viewed the Act as merely setting forth the procedural rules regarding enforcement of arbitration clauses in federal court.[6]

During the next dozen years, expansive arbitration opinions continued. In 1987, the Court signaled another major reversal of field by holding that claims brought under the 1934 Securities Exchange Act were subject to arbitration.[7] In 1989, it went the next yard and held that claims under the 1933 Securities Act

were arbitrable,[8] expressly reversing a 1953 decision (and giving some posthumous revenge to Justice Frankfurter, who had strongly dissented).[9]

In 1991, the Court required a broker alleging age discrimination claims to arbitrate[10] even though earlier Court precedent had suggested that civil rights and job discrimination claims were inapt for arbitration,[11] and even though the broker was required by New York Stock Exchange Rules to sign the arbitration agreement as a condition of his employment. In addition to the obviously coercive undertones of the arrangement, the Arbitration Act provides that it does not apply to a "contract of employment."[12] The Court avoided this limitation through the sort of reasoning that would give most first-year law students a chuckle: the arbitration provision was not part of a "contract of employment" since it was a separate document between the employee and the NYSE. The Court conveniently ignored that the employee only came to sign with the NYSE because his employer compelled him as part of the employment relationship. Justice Stevens provided a typically terse and insightful dissent that fell on deaf ears.

After a decade of substantial change in arbitration law, one might have expected a rest from the Court. However, during the Court's 1994 Term, it decided four arbitration cases.[13] Arguably, all were unnecessary in that these decisions did not clarify the law (much) or reach out to decide pressing national issues.



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In 1996, the Court struck down Montana's attempt to require that arbitration clauses be more clearly presented to contracting parties (to lessen the danger of a party being bound to arbitrate due to clauses quietly slipped into the fine print of lengthy boilerplate contracts).[14] Only Justice Thomas dissented, on grounds of states' rights rather than consumer fairness or contractual consent.[15] Justice O'Connor, apparently weary of the fight to hold the Arbitration Act to its pre-1984 meaning, did not even join the dissent.

This is not to decry the generally proarbitration thrust of the Burger and Rehnquist Courts. For the most part, I am a fan of arbitration and am happy to see the demise of the older precedents regarding ADR as evil and courts as sublime. Prior to the court's quiet revolution on arbitration, contracting parties frequently used judge-made "exceptions" to arbitrability simply as tactical ploys for forum shopping or other efforts to gain a step on litigation opponents. As a lawyer, I found it a bit embarrassing that sophisticated businesses were once permitted to avoid arbitration commitments merely by adding an antitrust claim (since statutory claims were once thought inapt for arbitration).[16]

But in its drive to usher in the new era and reduce the court monopoly on dispute resolution, the Court's decisions have exhibited a disturbing intellectual expediency, an insensitivity to serious problems of consent and fairness, and a preference for departing from its general proarbitration thrust in the service of what appear to be litigants less deserving of a respite from the arbitration juggernaut.

For example, at the same time the Court was moving to restrict access to the courts for investors who had signed brokerage house arbitration clauses, it also ruled that AT&T Technologies could not be compelled to arbitrate a dispute with its union based on the arbitrator's construction of the scope of the collective bargaining agreement.[17] The Court required a judicial determination of the scope of the clause prior to arbitral consideration.

A year later, as it stood on the threshold of overruling precedent to require more extensive arbitration of investor securities fraud claims, the court held that a choice of law clause in a contract operated to invoke state arbitration law, thereby precluding arbitration of a contract dispute.[18] The beneficiary of this arguable deviation from the Court's expanding affection for arbitration? Powerful, respected, rich Stanford University, law school alma mater of Justices Rehnquist and O'Connor. Justice O'Connor recused herself from participation in the case. Chief Justice Rehnquist did not.

Of the 1994 Term's "gang of four" arbitration holdings, three continued in the proarbitration vein. *Terminix* held that the interstate commerce clause was sufficiently broad (the Arbitration Act depends on the Commerce Clause for its scope, as the Act applies to contracts "evidencing a transaction in interstate commerce") to mandate enforcement of an arbitration clause contained in a homeowner's termite removal contract. As one commentator noted, *Terminix* requires state law to conform "to the dispositions and basic objectives of the FAA if they are applied in a context that even remotely resembles interstate commerce."[19] Oddly, this broad view of commerce was handed down at almost the same time the Court was constricting the

reach of the Commerce Clause to strike down a "gun-free school zone" law.[20]

Mastrobuono was a more mixed bag in that it continued to express support for arbitrability but held that a plaintiff subject to an arbitration clause was not barred from seeking punitive damages on the basis of a choice of law clause in the contract. The selected law—that of New York—forbids arbitrators from awarding punitive damages, even where the arbitration agreement provides for punitive awards in cases of outrageous misconduct. The New York rationale, much criticized by commentators, is the now-outdated one positing that only judges are permitted to lay down the punitive power of the state. Because New York's ban on punitive damages in arbitration is a minority view, *Mastrobuono* is arguably a more pro-arbitration decision than a pro-consumer decision, although it has elements of both.

Oddest among the 1994 Term decisions is *First Options v. Kaplan*, which relieved a spousal team of commercial entrepreneurs from a lower court order compelling arbitration. *Kaplan*'s approach is troublesome in that the Court focuses on the particular arbitration clause at issue, parses the words of the arbitration agreement and interprets its scope narrowly to allow a seemingly sophisticated party to avoid arbitration (the Mastrobuonos were well-educated but commercially unsophisticated). The Court devotes little attention to the intent of the parties, the purpose of the arbitration clause, or the fairness of the outcome.

The 1996 decision striking down Montana's full-disclosure provision favored the Subway sandwich shop chain in a dispute with dissident franchisees.[21] The stridency of the Court's resistance to this form of state contract policing is surprising in light of the frequent criticisms by franchisees that they are treated unfairly by franchisers. For example, one critic of Subway quoted in a 1994 *Wall Street Journal* article equated ownership of a franchise to "basically buying yourself a low-paying job." Among the complaints of Subway franchisees in particular were allegations that the parent company permitted competing franchises to locate too closely together, cannibalizing business from one another, and that logistical and advertising support for the franchisees was substandard (having seen the Subway's "The Bucky Stops Here" advertisements, I can understand some franchisees' marketing concerns).

Undoubtedly, there are multiple sides to the dispute and Subway's parent organization may be in the right, with the Montana franchisees in the wrong. But in light of the substantial fairness issues that have been raised about franchising generally, arbitration clauses in franchise agreements would seem a particularly good candidate for full disclosure laws such as Montana's. Certainly, the preemptive scope of the Federal Arbitration Act can be read as prohibiting state efforts of this type. But a less formalistic and wooden view of the Act would prohibit state efforts to stand in the way of enforcing arbitration agreements but nonetheless permit states to provide nonburdensome ground rules for ensuring that arbitration agreements were truly knowing and voluntary, an assumption that along with dispute resolution efficiency was a driving force behind the Federal Arbitration Act.[22]

The Court's arbitration decisions, although largely useful in reducing judicial monopoly and hostility toward ADR, have failed in part because this body of Court opinions presents two quite different modes of statutory analysis inconsistently applied by the Court. On one hand are the Court decisions that have interpreted the Arbitration Act to fulfill its purpose and to make it a more useful statute in current times. Other arbitration decisions, however, are marred by a surprising formalism coupled with hyperliteral textual construction.

On the whole, the formalist forces have dominated. Even what I regard as a "good" decision (*Southland v. Keating*, which held the Arbitration Act to create substantive federal law applicable in state proceedings as well as federal courts) reaches this result through a revisionist history of sorts, deciding on the basis of little evidence that Congress has a collective intent not only to require federal judges to shed hostility to arbitration but also to impose new federal law on state judges as well. The *Southland* Court also placed great emphasis on the Act's language which states that arbitration contracts evidencing a transaction in interstate commerce "shall be valid, irrecoverable, and enforceable save upon such grounds as exist at law or in equity for the revocation of any contract."[23]

The *Southland* Court viewed these words as by definition sweeping any contrary state law before them. But hitching interpretation to language that predated the 1938 *Erie v. Tompkins* revolution in federal and state judicial relations is at best superficial and potentially incorrect as well. In addition, the 1930s and 1940s also brought a revolutionary broadening in the Court's notions of what constituted interstate commerce. In 1926, the connotation of commerce was sufficiently narrower, making it quite possible, perhaps even likely, that the enacting Congress envisioned that that Act would really only apply in cases otherwise eligible for federal court jurisdiction.

Nonetheless, *Southland* can be well-defended on grounds that some of the Justices would be loathe to acknowledge. Construing the 1926 Arbitration Act to create substantive federal law "updates" and modernizes the statute to make it more useful in an era of growing caseloads and interest in ADR.[24] When confronted with an interpretative fork in the road, there is nothing inherently wrong with the Court using these factors to decide the case so long as other more commanding factors do not compel the court to chose a different path.

Undoubtedly, such "dynamic" statutory interpretation, which

stresses statutory purpose, application, and legal evolution more than the law's text or congressional intent, holds the potential for judicial arrogation of power over the legislative and executive branches. While this may be a real danger for certain currently contested social or economic issues, the dynamism of *Southland* can be defended as legitimate in view of the less than clear text of the law (whatever some members of the Court might assert), similarly murky intent, a consistent purpose, modern public policy favoring ADR, and "signals" from Congress that it supported arbitration even if it was not readily moving to amend the 1926 Act to make it more sweeping. This sort of judicial activism (and *Southland* is judicial activism on behalf of businesses, demonstrating that judicial activism not exclusively a liberal enterprise) simply enlists the Court in improving the statute in a manner likely to be consistent with current (and perhaps past) congressional sentiment.

Furthermore, if the Court is "wrong," the Congress has a realistic possibility of correcting the Court's error through legislation. The political entities "harmed" by *Southland* are the states, a powerful political group that has a realistic means of seeking legislative reversal. The same is not so true of the diffuse, disorganized, poorer, and weaker employees who are compelled to arbitrate job claims against an employer under *Gilmer*. States are arguably the losers in the most recent Subway sandwich case (*Casarotto*) as well, but states vary in their support of "full disclosure arbitration laws." Consequently, states are unlikely to storm the ramparts to legislatively overrule the Court on this point, particularly if the interest group pushing them is a group of diffuse franchisees earning modest incomes rather than franchisers and other powerful commercial interests that desire minimal state regulation of their contracts.

If the recent cases had little import to other cases, why did the Supreme Court grant certiorari and decide them? Legal scholars have criticized the Court for taking so many personal jurisdiction cases during the 1980s only to render highly fact-specific opinions that did little to increase the doctrinal guidance given to lower courts.[25] The same can be said of the court's punitive damages cases of the 1980s and 1990s, which indicate (often by one-vote majorities) an increasing resistance to large punitive damages awards but fail to provide readily applied measures for determining whether such awards are excessive. One school of thought posits that the judges (perhaps not unlike law professors and students) just get carried away on subjects they enjoy without paying enough attention to whether the system needs any additional court decisions in the area.

But the personal jurisdiction and punitive damages cases differ from the arbitration cases in one major respect. The former, even if annoyingly indeterminant, have largely been decided under the same consistently flexible approach that seeks to vindicate important due process values. Even if one disagrees with the Court's personal jurisdiction and punitive damages opinions, the Court is at least trying to decide these cases through the same technique and probably the right technique: a functional or instrumental approach that seeks to protect defendants but also to permit courts to continue to be used to bring tortfeasors and others to justice. Perhaps the Court should have stopped speaking to these topics several opinions ago, but at least the Court is consistently trying to be part of the solution rather than a part of the problem regarding personal jurisdiction and punitive damages.

By contrast, the Court deciding arbitration cases bootstrapped the Arbitration Act into greater prominence through flexible, purposive, dynamic, public policy-oriented interpretation. Since then, however, the Court has enforced the newly empowered Act with a wooden methodology of hair-splitting textual interpretation combined with formalistic syllogism, of which the *Gilmer* Court's assertion that employee Gilmer was not really forced to sign an arbitration clause in his contract of employment is only the most embarrassing. Even among what I see as the most correctly decided cases such as *Southland* and *Mastrobuono* (allowing the defrauded customers to retain an arbitrator's punitive damages award), the decisions are presented in more formalist garb, although they are best explained by a functional and purpose-vindicating analysis. But it is disturbing and perhaps partisan that the Court ventures into dynamic statutory interpretation in favor of arbitration but resists it in cases where it would likely lead to constricted arbitrability.

Before more ink is spilled on the Arbitration Act, the Court would profit from taking cues from other cases where it has avoided formalist solutions. On the same day the Court denied the protections of state law to Subway sandwich franchisees,[26] it struck down a state constitutional amendment aimed at homosexuals in *Romer v. Evans*.[27] The amendment sought to prevent municipalities from enacting gay rights legislation. The formalist response to this case might simply have declared that a specific state constitutional amendment governs absent a specific federal Bill of Rights prohibition.

The Court wisely eschewed this simplistic answer in favor of a more nuanced analysis designed to protect vulnerable citizens from the occasional excesses of the majority. Having struck both a political and jurisprudential blow for gay citizens and other minorities, it seems odd that the Court remains so attracted to arbitrability formalism even when weaker parties are disadvantaged and a state has sought to intercede. Having given arbitration the beachhead it deserves as a valuable dispute resolution tool, the court should move from a mechanical jurisprudence of defending the beachhead and instead adopt a more purpose-based approach that will minimize the dangers of involuntary, lower quality justice in ADR.

NOTES

[1] Oliver Wendell Holmes, The Common Law 1, n. 11 (1881). This article's analysis of the Court's arbitration jurisprudence is discussed at greater length in an upcoming commentary in Volume 63, *Brooklyn Law Review*, Securities Arbitration Symposium.

[2] *See, e.g.*, M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1974)(enforcing arbitration clause in towing contract entered into by damaged vessel and salvage operation). *Bremen* was seen as a decision friendly to arbitration but limited to the international context. In 1960, the Court strongly endorsed arbitration in the "Steelworkers Trilogy": United Steelworkers of Am. v. American Mgf. Co., 363 U.S. 564 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); and United Steelworkers v. Enterprise Wheel & Car Co., 363 U.S. 593 (1960). But the impact of the *Steelworkers Trilogy* on other arbitration situations was seen as limited because it involved labor law, where arbitration was seen as part of the dispute resolution system.

Despite signs of more support for arbitration, other Court decisions in the 1970s and 1980s rebuffed arbitration of certain statutory claims, making the area one ripe for substantial change in the mid-1980s. *See, e.g.*, Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974)(Title VII); Barrentine v. Arkansas-Best Freight System, Inc., 450 U.S. 728 (1981)(Fair Labor Standards Act); McDonald v. City of West Branch, Mich., 466 U.S. 284 (1984)(42 U.S.C. §1983 civil rights claims).

[3] Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp., 460 U.S. 1 (1983).

[4] 9 U.S.C. §§ 1-15.

[5] Southland Corp. v. Keating, 465 U.S. 1 (1984).

[6] *See* 465 U.S. at 23 (O'Connor (with Rehnquist) dissenting). In particular, Justice O'Connor relied on the Court precedent of Bernhardt v. Polygraphic Co. of Am., Inc., 350 U.S. 198 (1956), which held that in diversity jurisdiction cases, state law on arbitration was controlling.

[7] *See* Shearson/American Express, Inc. v. McMahon, 483 U.S. 1056 (1987).

[8] *See* Rodriguez v. Shearson/American Express, Inc., 490 U.S. 477 (1989).

[9] *See* Wilko v. Swan, 346 U.S. 427 (1953).

[10] *See* Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991).

[11] *See, e.g.*, Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974)(Title VII claims inapt for arbitration); Barrentine v. Arkansas-Best Freight System, Inc., 450 U.S. 728 (1981)(Fair Labor Standards Act); McDonald v. City of West Branch, Mich., 466 U.S. 284 (1984)(42 U.S.C. §1983 civil rights claims).

[12] 9 U.S.C. § 1.

[13] Allied-Bruce Terminix Co., Inc. v. Dobson, 115 S.Ct. 834 (1995); Mastrobuono v. Shearson Lehman Hutton, Inc., 115 S.Ct. 1212 (1995); First Options of Chicago, Inc. v. Kaplan, 115 S.Ct. 1920 (1995), and Vimar Seguros Y Reaseguros v. M/V Sky Reefer, 115 S.Ct. 2322 (1995).

[14] Doctor's Associates, Inc. v. Casarotto, 116 S.Ct. 1652, 1996 U.S. LEXIS 3244, 64 U.S.L.W. 4370 (Sup. Ct.)(May 20, 1996).

[15] *Id.* at *15.

[16] *See, e.g.*, American Safety Equipment Corp. v. J.P. McGuire & Co., 391 F.2d 821 (2d Cir. 1968)(antitrust claims incompatible with arbitration due to statutory nature and public interest).

[17] AT & T Technologies, Inc. v. Communications Workers of America, 475 U.S. 643 (1986).

[18] *See* Volt Information Sciences v. Board of Trustees of Leland Stanford Junior University, 489 U.S. 468 (1989).

[19] Thomas E. Carbonneau, Beyond Trilogies: A New Bill of Rights and Law Practice Through the Contract of Arbitration, 6 Am. Rev. of Int. Arb. 1 (1995).

[20] *See* United States v. Lopez, 115 S. Ct. 1624 (1995).

[21] Doctor's Associates, Inc. v. Casarotto, 116 S. Ct. 1652, 64 U.S.L.W. 4370 (Sup. Ct ed.)(May 20, 1996).

[22] I have reviewed the entire legislative history of the Act, which is hardly a major accomplishment in light of its slimness. A fair reading of the congressional materials shows that the states' rights concerns of Justices O'Connor and Thomas can not be foreclosed and that the drafters were a good deal more concerned about worker rights to avoid coercion into predispute arbitration clauses than was the *Gilmer* Court.

[23] 9 U.S.C. § 2.

[24] This appears to have been Justice Stevens's view in his *Southland* concurrence:

"Although Justice O'Connor's review of the legislative history of the Federal Arbitration Act demonstrates that the 1925 Congress that enacted the statute viewed the statute as essentially procedural in nature, I am persuaded that the intervening developments in the law compel the conclusion that the Court has reached."

465 U.S. at 17 (Stevens, J., concurring in part and dissenting in part).

[25] *See* Samuel Estreicher & John Sexton, *Redefining the Supreme Court's Role* (1986).

[26] The Montana position in the case was hardly weak. Justice Stevens in his 1984 *Southland v. Keating* concurrence would have granted even more leeway than was sought by Montana: "the general rule [favoring arbitration] is subject to an exception based on 'such grounds as exist at law or in equity for the revocation of any contract.'" I believe that exception leaves room for the implementation of certain substantive state policies that would be undermined by enforcing certain categories of arbitration clauses." 465 U.S. at 18.

[27] 64 U.S.L.W. 4353 (Sup. Ct.)(May 20, 1996).

Binding Arbitration Jeopardizes Constitutional Rights[1]

BY JEAN R. STERNLIGHT

The Supreme Court's recent decisions promoting binding arbitration over litigation have placed our Constitutional rights to a civil jury trial and to procedural due process in serious jeopardy. While the Seventh Amendment still provides that a jury trial "shall be provided for all claims at common law in excess of twenty dollars," and while the Fifth and Fourteenth Amendments continue to assure "due process," the Court's recent decisions are allowing companies to privatize our system of justice and effectively eliminate these Constitutional protections.

Many have praised binding arbitration for being less formal and therefore quicker, cheaper and more amicable than litigation. Two or more parties may use arbitration contracts to agree

in advance on how and by whom a certain kind of dispute will be resolved. For example, they may agree to allow a particular arbitrator to resolve the dispute, that the arbitrator should apply the law of a certain state, that the hearing should be held in a specified location, and may preclude the arbitrator from awarding any punitive damages or attorney fees. Arbitration that is "binding" may be appealed only on extremely limited grounds such as fraud or bias. Given these characteristics most would agree that two companies with roughly equal bargaining power ought to be allowed to use this technique to resolve their disputes, just as they should be allowed to settle a dispute without litigation.

Far more controversially, however, large companies are increasingly requiring customers, employees, franchisees, and patients to sign form agreements that contain arbitration clauses hidden in the fine print. Such form agreements are now frequently part of contracts reached between individuals and insurance companies, banks, securities brokers, hospitals, employers, and even pest exterminators. Nor need the agreements even be signed to be valid.[2] One bank sent all of its customers a notice (in small type) providing from that point forward customers could not sue the bank in court, but must arbitrate all disputes. The customers signed nothing and were given no benefit for the new term and yet the court found the customers had lost their right to bring a lawsuit.[3] By contrast to arbitration agreements that are negotiated knowingly by two willing parties, these form arbitration agreements are often imposed on persons who have no idea what they are agreeing to.

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Rather than strike such "agreements" as unfair or violative of persons' Constitutional rights, courts have increasingly held they are enforceable and indeed should be interpreted broadly. The Supreme Court, in particular, has repeatedly enunciated that the Federal Arbitration Act of 1924 ("FAA") requires that arbitration be "favored" such that ambiguous agreements should be interpreted to provide for arbitration rather than litigation,[4] and such that defenses against arbitration should be narrowly construed.[5] The Court has also recently overruled its own prior decision, now holding that persons who have (perhaps unknowingly) agreed to arbitrate federal securities or employment discrimination claims are precluded from bringing such claims in court or before a jury.[6] Finally, the Court has greatly expanded the scope of the FAA and its preference for arbitration, now holding that the FAA preempts virtually all state legislation geared to protect consumers or others from unfair arbitration agreements.[7]

The Court's recent arbitration decisions imply that it has always interpreted the FAA to favor arbitration over litigation and to preempt protective state legislation. However, a study of the history of the Act reveals this is untrue. Congress originally intended that the Act should apply to agreements reached consensually by two or more merchants and that the Act would apply in federal but not state courts. The Act required courts to accept arbitration agreements that had been consented to by the parties but not to prefer arbitration over litigation absent such agreement. Only since the mid 1980s, as court dockets were perceived to burgeon, did the Supreme Court begin to interpret the FAA to aggressively favor arbitration over litigation.

If binding arbitration were truly better for everyone than litigation, the Supreme Court's misinterpretation of history would be wrong, but not disastrous. In fact, however, companies can often draft form arbitration agreements to secure significant advantages over their opponents. By definition such agreements eliminate the jury trial, well reputed to favor the little guy over the big corporation. Companies may also use arbitration agreements to choose substantive law, a geographic forum, and an arbitrator that will benefit the company. Moreover, the arbitration agreement may prevent parties from engaging in substantial discovery, using class actions, or obtaining punitive damages or even compensatory damages or injunctive relief. That is, although arbitration may be quicker and cheaper than litigation, it also may be structured to prevent consumers or others from winning many large claims. Because consumers and employees are often ignorant as to the significance of the arbitration clause, market forces cannot be relied upon to protect the interests of consumers or other weaker parties.

The Court's misinterpretation of the FAA is not only unwise but also deprives persons of their Constitutional rights to a civil jury trial and to due process. Specifically, by interpreting ambiguous agreements to favor arbitration, rather than litigation, the Court is putting its finger on the scale to oppose the exercise of

Constitutional rights. The Court is assisting one set of private parties in depriving another of the jury trial and due process rights to which they would normally be entitled. Congress could not constitutionally eliminate the court system and require all persons to take their claims to binding arbitration instead of to court. Nor can the Supreme Court more subtly accomplish the same end by assisting private parties in causing consumers and others to unknowingly give up their rights to go to court.

While the Court has long held that certain Constitutional rights are waivable, it has never before held that a party can cede a Constitutional right by ignorantly agreeing to a contract that only perhaps waives the right. In the criminal context the Court has insisted that waivers must be knowing, intelligent and voluntary.[8] Even in the civil context the Court has always previously required some degree of knowledge, and has certainly never used a presumption to favor waiver of a Constitutional right.[9] Thus with arbitration, as well, the Court should interpret the agreements so as to protect parties' Constitutional rights from unfair deprivation. The Court should set aside its selfish interest in reducing court dockets and refuse to recognize as valid purported arbitration agreements that were entered without knowing consent.

If the Court fails to change its course, Congress should clarify federal law to ensure that individuals are not forced to waive their Constitutional rights unknowingly and unfairly. Specifically, Congress should amend the FAA to clarify that it favors arbitration agreements that are entered knowingly, voluntarily, and fairly, but not those which are forced surreptitiously on weaker parties. It should similarly amend the FAA to allow states to protect consumers and others from arbitration that is imposed without fair notice or is substantively unfair. Arbitration is potentially a wonderful dispute resolution technique that can allow parties to resolve their disputes more cheaply, quickly and amicably than through litigation. However, we must work together to ensure that companies do not unfairly use arbitration agreements as a tool of oppression to deprive weaker parties of their Constitutional rights.

NOTES

[1] This article is drawn from Jean R. Sternlight, Panacea or Corporate Tool?: Debunking the Supreme Court's Preference for Binding Arbitration, 74 Wash. U.L.Q. 637 (1996) and from Jean R. Sternlight, Rethinking the Constitutionality of the Supreme Court's Preference for Binding Arbitration: A Fresh Assessment of Jury Trial, Separation of Powers and Due Process Concerns (draft on file with author).

[2] Federal Arbitration Act, 9 U.S.C. Section 2 (requiring arbitration agreement to be written, but not signed).

[3] Badie v. Bank of America, (Cal. App. Dept. Super. Ct. Aug. 18, 1994) 1994 WL 660 730.

[4] Moses H. Cone Memorial Hospital v. Mercury Const., 460 U.S. 1, 24-25 (1983).

[5] *Id. See also* Cohen v. Wedbush, Noble, Cooke Inc., 841 F.2d 282, 285-285 (9th Cir. 1988) (given federal policy favoring arbitration, such defenses to arbitration as unconscionability must be interpreted narrowly). Earlier, in Prima Paint Corp v. Flood & Conklin Mfg. Corp., 388 U.S. 395 (1967), the Supreme Court had held that claims of fraud or unconscionability directed toward the contract as a whole, as opposed to the arbitration clause in particular, must be decided by the arbitrators themselves, thereby prohibiting courts from voiding contracts on that ground.

[6] Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991); Rodriguez de Quijas v. Shearson/American Express, Inc., 490 U.S. 477 (1989). *Rodriguez* explicitly overruled the Court's prior decision in Wilko v. Swan, 346 U.S. 427 (1953) (prohibiting mandatory arbitration of federal securities fraud claims).

[7] Doctor's Associates, Inc. v. Casarotto, 116 S. Ct. 690 (1996) (voiding Montana notice provision requiring arbitration provisions be placed on first page of contract).

[8] Brady v. United States, 397 U.S. 742, 748 (1970); Johnson v. Zerbst, 304 U.S. 458, 468-69 (1938).

[9] Fuentes v. Shevin, 407 U.S. 67, 95-96 (1972) (rejecting argument that plaintiff had waived civil due process rights where defendant made no showing plaintiff was aware of significance of the fine print and where the contract included no clear waiver of rights); D.H. Overmyer v. Frick Co., 405 U.S. 174, 184-186 (1972) (allowing waiver of due process rights in civil context where criminal waiver standard was met, but not deciding whether lower standard might be sufficient).

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The Legal Education Debate Heats Up

BY DAVID M. MORRILL

CRITICS OF AMERICAN LEGAL EDUCATION CHARGE THAT LAW SCHOOLS HAVE STRAYED FROM THEIR CENTRAL PURPOSE OF EDUCATING LAWYERS. THEY SAY THAT LAW FACULTIES ARE PURSUING THEORETICAL INTERESTS AT THE EXPENSE OF CASE LAW AND DOCTRINE. SOME PREDICT MAJOR CHANGES AHEAD.

When Federal Judge Harry Edwards leveled criticism at law schools and the legal profession in a 1992 article in the *Michigan Law Review*, a veritable howl went up from the generally noncommittal readers of academic legal journals.

Edwards's charges in "The Growing Disjunction Between Legal Education and the Legal Profession" were, in fact, nothing new: that the nation's law schools and the legal profession have abandoned traditional roles and responsibilities, and, in the case of law schools, that traditional, doctrinal studies are being supplanted by theoretical work. Said Edwards, "While law schools are moving toward pure theory, the firms are moving toward pure commerce, and the middle ground—ethical practice—has been deserted by both."

Although Edwards's criticism was aimed primarily at the nation's elite law schools, it is clear that he had most of American legal education in his sights, given the considerable trickle-down influence of the premiere schools. Unlike his claims against law schools, his indictment of the legal profession went largely unchallenged.

The heated reaction can be attributed to a combination of factors, including timing and Edwards's stature as a judge on the United States Court of Appeals for the District of Columbia Circuit, and former Harvard law professor. Most provocative, perhaps, was the sheer bluntness of his message.

The article drew so much response that the *Michigan Law Review* devoted a 1993 symposium issue to the debate. For his part, Edwards reported being overwhelmed with letters of support. Many of the correspondents, he said, including a number of law school deans, indicated a reluctance to enter the debate publicly. But Edwards suggested that his views were shared, if not by a silent majority of legal academicians, certainly by a sizeable minority.

The debate over legal education covers a vast, constantly changing landscape. In addition to the theory vs. doctrine dispute and the widely acknowledged rift between law schools and the legal profession, other issues, most notably clinical legal education, play a part in the discussion. Looming on the horizon, and sure to enter the debate in coming years, are changes to higher education that will be wrought by budgetary pressures and political demands for tenure overhaul and accountability to established standards.

Viewed within the university context, the debate is not dissimilar to debates in other disciplines. Citing the influence of the cultural relativism and deconstructionist movements, Australian historian Keith Windschuttle claims that theorists are well on their way to routing empirical scholars in all realms of the academy, particularly the social sciences. In *The Killing of History: How a Discipline Is Being Murdered by Literary Critics and Social Theorists* (1996), Windschuttle claims that "...although they [the theorists] still like to portray themselves as embattled outsiders, they are today the ones...devising the new courses, contracting with publishers, filling the new jobs and attracting the postgraduate students."

Edwards's position is that theory should inform and complement doctrine in the development and administration of the law. Although he indicates tolerance for a limited amount of what he calls "impractical theory"—which he defines as being based in the social and behavioral sciences—he claims that theoretical interests have come to dominate legal pedagogy and scholarship. Such a trend, he says, has created an imbalance that has dramatically changed American legal education and short-changed students' education.

As evidence of the imbalance, Edwards offers the growing number of law subdisciplines, including law and economics, law and literature, critical legal studies and critical race theory. The connection between theory and practice is often missing, says Edwards. "Law should have interdisciplinary scholars, but not scholars whose work serves no social purpose at all."

Edwards takes strong exception to the suggestion of Yale Law Professor George Priest that law "can best be understood with the methods and theories of the social sciences," and that the division between law schools and the profession is both inevitable and healthy. This is the kind of thinking, Edwards contends, that is leading the charge away from the traditional teaching of black letter law and has led to the devaluation of teaching in law schools. In his 1983 *Journal of Legal Education* article, cited by Edwards, Priest described what he perceived as the evolution of the law school into an interdisciplinary institution, a kind of university within the university. This model has been advanced and reinforced, Edwards says, by the tendency of many law schools to hire new faculty with little or no practical legal experience but with graduate degrees in the social sciences.

Edwards laments the waning prestige of the "practical legal scholar who integrates theory with doctrine," and who at one time was held in high esteem by both the profession and academia. Not only are such scholars, most of them of late middle age or older, no longer appreciated, Edwards says, they often are ridiculed by theory-oriented colleagues. "Quite simply," says Edwards, "they are made to feel unwelcome and not a part of the faculty." Such an attitude is passed on to students, says Edwards. "They are told that legal practice is grubby work, and a moral sell-out. This is hardly a healthy introduction to the practice of law."

Edwards reserves particularly harsh words for the trend in scholarly work toward social science theoretical interests and away from what he considers its proper role, providing guidance to lawyers and judges. According to Edwards, current legal scholarship has virtually no influence on the law as it is practiced.

The articles responding to Edwards in the *Michigan Law Review* symposium present a spirited melange of reactions, most of them critical of the judge's positions, many mixing criticism and agreement. A number of writers dismiss Edwards's arguments as being out of step with changes to both legal education and society in general, as representing a kind of lament for a discredited good ol' boy system. Stanford law professor Robert Gordon views Edwards's critique to be a product of "formalism and his judge-centeredness." Stanford law dean Paul Brest claims that Edwards ignores some of the most significant changes in modern legal scholarship and education: the impact of women and minorities for bringing gender and race issues into the legal arena. Others maintain that law and fill-in-the-blank disciplines have contributed solidly to the law. Brest points to the broad impact of law and economics scholarship in the area of antitrust law and in the governmental deregulation movement.

New York University law professor Derrick Bell, writing with former student Erin Edmonds, bluntly says that the shift to a social sciences orientation is a natural reaction to a legal profession that has lost its bearings. "Interdisciplinary scholarship among law faculties is the only hope for a corrupt legal profession," they say, claiming that the much-revered traditional practice of law was, in fact, both racist and sexist.

Although Seventh Circuit U.S. Court of Appeals Judge Richard Posner agrees with many of Edwards's points, and has, in fact,

written a book about the division between law schools and the profession, he defends broad latitude for legal research. "Where is it written," he asks, "that legal scholarship shall be in the service of the legal profession?" Posner, like other symposium contributors, points to the usefulness of social science theory in shaping the law in a dynamic culture, and suggests that Edwards too narrowly defines useful theory.

Both Posner and Priest disagree with Edwards's suggestion that law schools should instill high moral standards in new lawyers. "The study of ethics will not turn bad people into good ones," writes Priest.

A number of the *Michigan* responses give Edwards mixed reviews. While she takes Edwards to task for ignoring the impact that racial and gender scholarship have had on case law, J. Cunyon Gordon, a Chicago attorney and visiting lecturer at Boston University Law School, agrees that there is a strong anti-practice sentiment among law faculties. Recounting her own experience, she suggests that academics should confront the irony that they prepare students for a life they themselves do not find meaningful. "Scholarship, not teaching," she writes, "is the be-all, and end-all in academia, the coin of the realm, and scholars, even traditional ones, consider law practice the province of the brain dead."

Although critical of many of Edwards's arguments, Professor Gordon agrees that legal scholarship is in serious trouble. Complaining about "schlock economics, schlock history and schlock philosophy," he says that far too much scholarly writing is "puffed up with self-indulgent posturing, clumsily practicing intellectual modes that people in other fields execute with much more grace and precision."

As something of an after-the-smoke-had-cleared assessment of the *Michigan Law Journal* debate, University of Virginia law professor Graham Lilly examines a range of legal education issues in a 1995 article in the *Virginia Law Journal*. Although he takes issue with some of Edwards's positions, principally the claim that today's law school graduates are less prepared for the practice of law than those of two or three decades ago, Lilly agrees that the drift toward theory has created an imbalance in law schools. He claims, in fact, that the situation is deteriorating, particularly with regard to the relationship between law faculties and the legal profession. Writes Lilly, "Beneath these seemingly placid currents lies a major realignment, not between students and faculty, or even between students and practitioners, but rather between the faculties of major law schools and the bench and Bar."

In addition to reinforcing a number of Edwards's arguments, Lilly introduces new ones. He disagrees with colleagues who claim that law faculties are more diverse than ever. Questioning the enormous influence the elite law schools have on American legal education, and the almost obsessive reliance on academic pedigree by law school hiring committees, he cites the fact that five schools provide nearly a third of the faculty at the country's 175 law schools. He quotes from a 1980 American Bar Association study committee report that speculates, "Were we biologists studying inbreeding, we might predict that successive generations of imbeciles would be produced by such a system."

In the conclusion of his article, Lilly warns legal academics not to become "starry-eyed" over the social sciences. "There is a tendency to forget that these disciplines, too, can be value-laden and manipulable, proceed from normative premises, [and] rest upon unproven (and often questionable) factual assumptions."

One of the more serious charges against the growth of abstract theory in legal education is that it has led to a deemphasis of teaching. Says Los Angeles lawyer and former judge Harold Honniker: "I've read dozens of mission statements written by law school faculties in recent years, and I'd venture to say that the majority don't even mention educating lawyers. I think this would strike most reasonable people as rather amazing."

Florida State University president and past ABA president Talbot "Sandy" D'Alemberte agrees. "Laws schools are trade schools intended to train lawyers. You can substitute the word 'professional' for 'trade' and 'educate' for 'train,' if you like, but it's impossible to ignore the fact of what we are all about." D'Alemberte served as dean of the FSU College of Law in the mid-1980s.

Theory-oriented faculty claim that modern legal education simply reflects a broader definition of both law schools and legal practice. "Law is the institution, above all others, through which we work out our definition of ourselves," says Michigan law professor James Boyd, responding to Edwards in the *Michigan* symposium. "Lawyers and judges are constantly called upon to maintain and reform the central institutions of our society."

As for the charge that theory is replacing doctrinal training in the classroom, a number of FSU law professors describe the need to play "catch-up" in providing a liberal arts education to many of their students. "Most incoming law students are simply not equipped, from a social sciences standpoint, for the practice of law," says Assistant Professor Frank Garcia, suggesting that modern legal practice requires an understanding of the societal values that undergird the law. Rob Atkinson, another FSU professor, agrees, arguing that law faculty must play the role of cultural custodians both in and out of the classroom. "It is our job to broaden the culture and to make sure lawyers don't become glorified paralegals. The law remains a profession that helps shape the course of cultural values, and it should not just deal in rote memorization and consistent application of preexisting rules." Adds Atkinson, "Others may consider such an argument an excuse for not teaching traditional law skills. I contend that we should teach those skills and much more."

D'Alemberte agrees, "to a point," with this argument, but suggests it runs the risk of becoming arrogant. "My response is that this is fine for a year, maybe two, of law school but at some time, we need to turn our attention to the fact that our graduates expect to be professionals and we need to equip them to lead that life."

A more immediate issue at many law schools than the often slippery doctrine vs. theory debate, is the controversy over clinical, or skills, education. It is a conflict, says Lilly, that, ironically, often unites hard-line doctrinalists and abstract theorists. Both sides contend that clinical education is being overemphasized in law schools and that lawyering skills are best learned on the job, after students have graduated

Although a part of legal education programs for more than thirty years, skills training has been pushed hard by the organized bar in recent years. The issue became front page news in 1992 following publication of the ABA's MacCrate Report that recommended law schools adopt skills requirements as a standard component of their academic programs. Many law schools chafed at what they perceived as an external mandate, and response to the MacCrate recommendations has been decidedly mixed. Many of those who helped write the report claim their suggestions have not been taken seriously by most law schools. Says D'Alemberte, an original member of the MacCrate committee, "I wish law schools had paid more attention to what the report proposed. For the most part, they've ignored it."

Within law schools, there is not only dissention about clinical education itself, but also about those who teach it. At many schools, clinical faculty report that they routinely are turned down for positions on faculty hiring and policy committees because they are not "real faculty." The relatively small number of clinical instructors who eventually assume tenured and tenure-track positions complain that they often are referred to by the code term, "back door hires." For their part, many traditional faculty consider clinicians inadequately trained for full faculty privileges, often because of a lack of theoretical or doctrinal orientation. The situation may be changing, however. Recently approved changes by the ABA require, as a condition of accreditation, that clinical faculty receive substantially the same treatment as other faculty.

As a result of the debate over issues such as clinical education and the rift between theoreticians and doctrinalists, a number of commentators on legal education trends note increased tensions within law faculty ranks. Lilly and others refer to the "balkanization" of faculties and say they hear frequently from deans who report a disconnectedness among their law professors. Many deans would agree with Lilly that their faculty meetings often are contentious, unpleasant affairs, with votes on even minor issues decided by narrow margins.

The growing factionalization creates problems for administrators trying to clarify their institutional mission and present a unified front to the outside world. FSU law dean Donald Weidner describes what he calls a "battle for the middle ground." He explains, "It's important that a law school faculty have a core culture, that it have a conception of where it stands as an institution," he says. "Without a solid core you run the risk of becoming a Tower of Babel."

Although he supports "a broad intellectual approach" to legal teaching and scholarship, Weidner, like Lilly, worries about the drift of the academy away from the profession. In a paper he delivered at the July meeting of the Southeastern American Association of Law Schools, he expressed concern for the lack of faculty involvement with the profession. "There are too many arenas of continuing legal education, of law reform and of public service into which law professors seldom venture," he said. "And there are too many professors who have given the impression to too many students, practitioners and judges that they have nothing but disdain for the practice of law. We are reaping what we have been sowing."

That harvest of disdain is much more evident to law school administrators than to the faculty at large. In meetings with alumni, deans and alumni development officers are accustomed to hearing the complaints of graduates who feel alienated by their alma maters. "Where is the quid pro quo?" they ask, claiming that their opinions about law school affairs receive a hearing only

when they are asked to contribute to the annual fund. Although alumni by no means present a unified voice about what constitutes the best legal education, they agree overwhelmingly that the relationship between the academy and profession is not good and is getting worse.

Weidner made the point in his July AALS presentation that law schools, like all of higher education, will be forced by tightening budgets and political mandates to make significant operational changes. Florida's State University System Board of Regents, for instance, is considering rules that would make teaching productivity a key element of tenure reviews. Most predict that political pressures will intensify.

Many law faculty clearly are disturbed by the gap between law schools and the profession. "If we, as law professors, don't put a high priority on the interests of law students and the legal profession, we're not doing a very good job," writes FSU assistant professor Jean Sternlight. In a recent *University of Miami Law Review* article in which she tackles both the theory vs. doctrine issue and the division between the profession and law faculty, Sternlight takes academics to task for not communicating with those in the profession. "Academics need to present their theories in forms that can be readily understood by nonacademics...," she writes in "Symbiotic Legal Theory and Legal Practice: Advocating a Common Sense Jurisprudence of Law and Practical Applications." Her point, she writes, "is not that *all* theorists need to do applied work, but rather that all theorists should value such work and that *substantially more* legal academics need to devote themselves to connecting theory to practice."

In addition to increasing theory and practice connections, Weidner stresses the need for more hands-on interaction between the faculty and the bar. "We need to get out into the professional world to demonstrate that our skills and knowledge are valuable outside the academy." He adds, "I think many lawyers would be surprised by the breadth and depth of expertise on law faculties."

Although he places the primary bridge-building burden on faculty, Weidner would like to see some "affirmative action" from the bar and bench. "It's common that lawyers and judges come to the law schools to share their knowledge and talents in the capacity of adjunct professors. Why shouldn't professors work with the courts and law firms in areas where their experience would be valuable? I think this is a possibility that deserves some exploration."

Where, then, is the current debate taking us? Many theorists claim there is no crisis, only a natural evolution that others happen to object to. Many doctrinalists, clinicians and members of the bar contend that legal education is at a critical juncture with nothing less than the future of the American justice system hanging in the balance.

There are a few who claim that the pendulum may soon reverse course among law faculties. Michigan law professor James White perceives a shift in many younger faculty away from theory and toward practical legal interests. "Perhaps the fashions in research, teaching and writing are cyclical," he says, and law schools, partly as result of market forces, will begin to move back toward the bar. On the issue of legal professionalism, U.S. Court of Appeals Second Circuit Judge James Oakes also sees better days ahead. Citing his observations at the Fordham law school, Oakes predicts, "The next several years will see a blossoming of professional responsibility education, not a withering."

Others are less optimistic. Lilly fears that the will for making significant changes to the legal education system simply is not there. "Faculties at the leading law schools are tending toward academic inbreeding, not diversity, and this imbalanced pedagogy will only accelerate the law schools' divergence from the practicing bar. Law students, who must bridge the widening gap, and practicing alumni, who expect law schools to educate lawyers, will increasingly bear the brunt of the divergence."

Most agree that if changes are not made within the academy, they will be dictated in the political arena and in the marketplace. The debate, certainly, will get hotter.

Legal Education: What kind of Job Are Law Schools Doing?

CRITICS OF LEGAL EDUCATION, SUCH AS FEDERAL JUDGE HARRY EDWARDS, CONTEND THAT LAW SCHOOLS HAVE DRIFTED FROM THEIR PRIMARY PURPOSE OF SERVING THE LEGAL PROFESSION AND TRAINING LAWYERS. THEY CHARGE THAT LAW FACULTIES ARE EMPHASIZING ABSTRACT THEORY AT THE EXPENSE OF DOCTRINE AND BLACK LETTER LAW. FIVE MEMBERS OF THE FLORIDA STATE UNIVERSITY COLLEGE OF LAW FACULTY DISCUSS THESE AND OTHER ISSUES IN THE DEBATE.

Forum participants:

ROBERT ATKINSON teaches legal ethics, professional responsibility, real property and tax exempt organizations. He has written extensively on legal ethics and nonprofit organizations.

TALBOT "SANDY" D'ALEMBERTE is president of Florida State University and remains on the faculty. He is a past president of the American Bar Association and has served as dean of the College of Law.

FRANK GARCIA teaches international law and international trade law. He has written on international trade agreements and will spend the Spring 1997 semester in Uruguay on a Fulbright Fellowship.

JEAN STERNLIGHT teaches civil procedure and family law. One of her recent articles examined the relationship between law schools and the legal profession.

DONALD WEIDNER is dean of the College of Law. He served as reporter for the Revised Uniform Partnership Act and is the author, with others, of a textbook on the new Act.

Many in the legal profession and the judiciary, including Federal Judge Harry Edwards, say law schools have abandoned their proper role by emphasizing abstract theory at the expense of practical scholarship and teaching. Is this a fair appraisal?

ATKINSON: I think it's a false dilemma. There's a flaw at the root of Judge Edwards's position. To make his case he conducts an admittedly unscientific poll of his law clerks. He can't make an argument without doing a social science survey. His process points out the irony: you can't do law late in the 20th century without social sciences and an interdisciplinary approach. Think of some of the major cases in the last few decades. To understand Roe vs. Wade you need to know some medicine. For Brown vs. The Board of Education you need an understanding of sociology.

D'ALEMBERTE: I agree with the core point. Others beside Harry Edwards have made this argument. Judge Richard Posner wrote an excellent book, *Overcoming Law*, that deals with this problem. Anthony Kornman, dean of the Yale Law School, wrote *The Lost Lawyer*, also about this issue.

First, let me say, that I am delighted that we have a strong commitment to theory. I don't object to that at all. Theory is essential in informing the study of law. My feeling, though, when I look at the entire landscape of legal education, is that we have progressed too far on the side of theory. It's a very legitimate question to ask, where's the balance? I think it is important to learn about law and economics and be exposed to critical race theory and critical legal studies, but if that becomes the focus of our legal education, then shame on us. We've come up with some pretty thin offerings since, as law professors, we're here to train lawyers.

GARCIA: I think you have to look at the issue in context. Historically, law professors could assume that students came to law school with a solid liberal arts background and would bring that perspective to the study of law. Law students tended to be an elite group and generally had traditional undergraduate educations. This is no longer the case, with the possible exception of students at the elite law schools. There is a need to provide a certain amount of liberal arts background and perspective so students are able to understand the law. I think this is a major factor in what is perceived as a drift toward theory.

STERNLIGHT: I believe abstract theory has an important place in legal education and in practice. The problem is that professors often don't do a very good job of explaining how a theory relates to what they are teaching or how it can be used in the real world. That link to practical application is essential, since students often come to law school with a bias against abstractions. Many have not had an undergraduate background in economics or philosophy or other areas from which a theory may be drawn. So, the link to the real world is important.

WEIDNER: There are different markets for legal scholarship. A professor seeking academic advancement and mobility will aim for the academic market rather than for the market of practicing lawyers and judges. The academic market, at the top end, values meta-theory that rises above the level of ordinary discourse. Currently, it also values interdisciplinary efforts. Because of this, it is fashionable in the legal academy to write articles emphasizing such things as literary analysis, game theory or political theory. This kind of scholarship often leaves the practicing lawyer or judge or legislator cold. They are written by people who try and who succeed at setting themselves above the fray. Sometimes they produce works of great genius. Often they produce works that few will read. Often they slight important aspects of our social agenda, part of Judge Edwards's point. How many law faculty are writing on the delivery of low-income housing or on the nitty-gritty issues of the delivery of health care? Very few, I suspect.

Everyone seems to agree that there is a growing division between law schools and the bar and judiciary. What, if anything, should be done about it?

ATKINSON: I agree that there is a split between judges and lawyers and law schools, but I think it has to do mostly with the way law is practiced. Lawyers and judges feel real pressure on their time that precludes them from doing the deep background study that makes for good law. If you look at judges like Edwards and Posner, you notice that they aggressively borrow from cross-disciplinary work. The trouble is, most lawyers and judges, because of the press of cases before them, have little time to keep up with developments in other areas. They don't have time to do their homework. All they can manage are their in-box and out-box. Naturally, they are eager for the short-term, largely superficial help that Edwards wants academic scholars to provide. What Edwards, and others who agree with him, basically want scholars to do is summarize and systematize existing doctrine.

In a way, Edwards's call for more help for judges and scholars is a symptom of a problem rather than a call for a cure. There are good sociological reasons lawyers and judges want help from scholars, particularly in the area of writing briefs.

D'ALEMBERTE: The disconnection between law professors and the practicing bar is unwholesome. There have been great things accomplished where there have been connections. The American Law Institute and the Commissioners of Uniform State Laws have done an enormous amount of good work that is both scholarly and practical and also very important. Too much of the work of law faculties now is extremely theoretical and is really not connected in any way to professional activities.

There's also a problem of attitude of many law faculty toward the profession. You find some law faculty openly saying, 'our role is not to train lawyers but to train students to think like lawyers.' We've been hearing this for a long time, but think about how patently absurd it is. What if our music faculty said, 'our job is not to train musicians, but to train students to think like musicians.' Or if history or nursing faculty were to say the same thing. Few other academics would be arrogant enough to make that kind of statement. You can imagine how lawyers feel when they hear law professors talking like this.

Law schools exist to train lawyers. That's the primary purpose of all law schools. Law schools have failed to make the philosophical connection that nursing schools and business schools, and accounting departments have made. There's always been a need among law professors to show how academic we are, how theoretical and detached from the profession we were. Many other parts of the university achieve high distinction teaching in a conservatory format. At FSU, we have a great film school and a great music school where students don't just think about film and music but actually produce films and perform music.

STERNLIGHT: I have a sense the rift is widening. When I went to Harvard I had a lot of older professors who had practiced law for fairly substantial amounts of time, both in the public and private sectors. The trend now is to hire new law professors with a limited amount of practice—two, three or four years seems to be the norm. Some practice may be better than none, but you really don't learn an awful lot about practice in three or four years. I think law schools should look for a wider range of experience when they hire. There should be some hires with a lot of practical experience and some with none. The current trend is not healthy and tends to widen the gap between law schools and the profession. It also sends the message to students that we don't respect the practice of law.

I also think there's a misconception among academics that legal practice is nonintellectual and deadening. My experience, having practiced, is the opposite. I found many of the lawyers I worked with to be more exciting, more creative, and more alive intellectually than many people in academia.

WEIDNER: I think it is important to reward academics who interact with the profession, for example, by contributing to law reform or by delivering continuing legal or judicial education. I also think it is important that the bench and the bar reach out more to the academy. Each law school I know of regularly uses practitioners and judges as adjunct faculty, visiting professors or co-teachers with full-time faculty. It would help if law firms and courts were similarly inclined. Putting professors in residence, even part-time, would enrich everyone.

What about legal scholarship? Has it become irrelevant to the legal profession?

D'ALEMBERTE: It's curious to me that so much of legal research doesn't really take us anywhere. I don't see law schools dealing with public policy issues that have a great impact on the country. For example, take the law and order mentality that has been a driving force behind public policy recently. We spend enormous amounts of resources keeping people locked up. What are we getting for this? If I want to learn something about this issue I would turn to economists or criminologists, not to a legal researcher. I think this is too bad.

I see it as a failure that law schools haven't taken the initiative to move into areas that deal with real problems of society. The question of legal scholarship is not simply one of whether it is of use to the practitioner, but whether it is useful in formulating public policy. I believe, for the most part, it fails on both counts.

GARCIA: Much of the best modern critical and theoretical legal scholarship is raising disturbing questions about the nature of law itself and its relation to or dependence on other disciplines. Far from being irrelevant, these questions are fundamental to the profession. Unfortunately, to the extent many practicing lawyers, and legal academics, find such questions and the modern theories of knowledge and language motivating them, to be not only unsettling but alien, there is a tendency to label such scholarship as irrelevant. It must be recognized that as a human activity, law is subject to the scrutiny of fields such as literature, linguistics and social theory. As these fields evolve, so must our understanding of law. The charge of irrelevance may, in many cases, mask our reluctance to surrender comfortable traditional understandings of law.

STERNLIGHT: Ideally, legal scholarship should educate practitioners, judges, and legislators as well as other academics. Unfortunately, the primary readers of law reviews, to the extent there are readers, are other academics. Articles tend to be written with the goal of impressing those academics. In fact, it's thought in most of academia to be a negative to write an article that is practitioner-oriented. That sort of scholarship doesn't have the same cachet as a piece geared to other academics.

WEIDNER: I believe that too many academics live in fear of being judged by their worst article—worst in the sense of being pedestrian. Many academics have a lot to say that they withhold for fear it will regarded by the academic community—their relevant market—as insufficiently pathbreaking, interdisciplinary or erudite.

Where do the trends in legal education leave students, most of whom will go on to practice law?

STERNLIGHT: The division between law professors and the practitioners is not healthy for students. Students come to law school to learn to be lawyers, and if they feel they are not being properly prepared for legal practice, or that we don't respect the profession, they may not pay a whole lot of attention to what's being taught. That's too bad because they'll miss out on things that could have made hem better lawyers.

What is the law faculty's responsibility in teaching skills to law students?

ATKINSON: The place to learn skills is on the job. The work environment cannot be simulated by law schools and it is unrealistic to try. We in the academy have no comparative advantages in providing that kind of training.

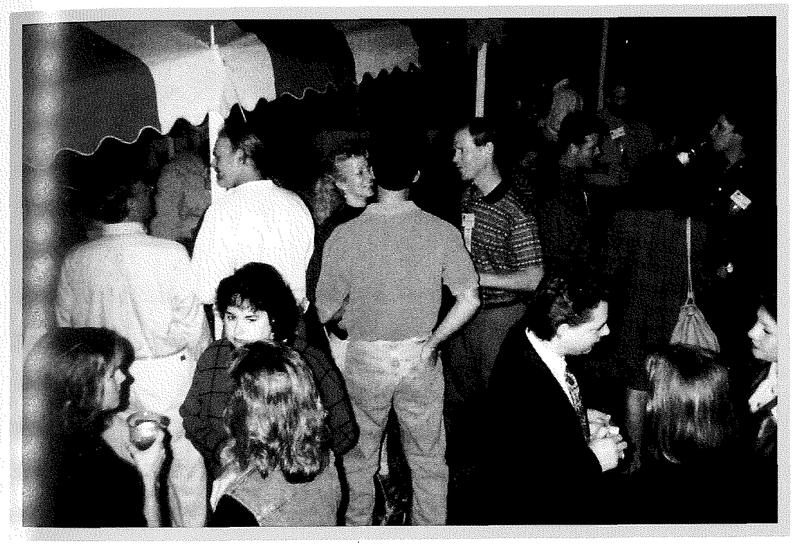
D'ALEMBERTE: The ABA's McCrate Report deals with this issue and makes some excellent recommendations. I was priveliged to serve on the committee that developed the report, though I had to resign before it issued the report when I became ABA president. I have to say that I'm disappointed that law schools have not picked up on more of the ideas in the report.

STERNLIGHT: Many academics say we can't provide skills training and we shouldn't, that it's up to practitioners to teach negotiation and drafting and other lawyering skills. I disagree. We can't teach everything. You need a practice environment to learn some things. But I think law schools can teach a lot more than they currently do.

Many say that law faculty do not take teaching seriously enough, that teaching has taken second billing to scholarship and that students get short-changed in the process.

WEIDNER: I reject the dichotomy between teaching and scholarship. Overall, a faculty's productive scholars are its most professionally engaged and dynamic faculty. On the other hand, the faculty at most law schools tend to be oversatisfied with the job they do in the classroom. Most tend to rationalize student dissatisfaction or disinterest by saying that students with low standards shrink from their high expectations. The task as a faculty is to move the greatest number of students as far ahead as possible.

Homecoming '96 Draws A Crowd



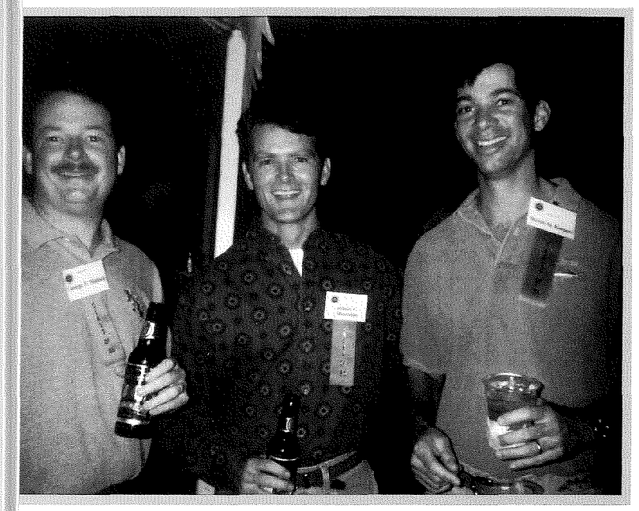
Reunions of the classes of 1971, 1976 and 1986 helped renew acquaintances at Dean Weidner's home, Friday night, Oct. 25

For the first time in several years, the College of Law's annual homecoming weekend was held in conjunction with FSU's homecoming, October 25-26 in Tallahassee. The excellent turnout made the change a winner.

Those who joined in the festivities, which included reunions for the classes of 1971, 1976 and 1986, enjoyed a wide range of activities including a hard-fought football victory by the Seminoles over the University of Virginia Cavaliers.

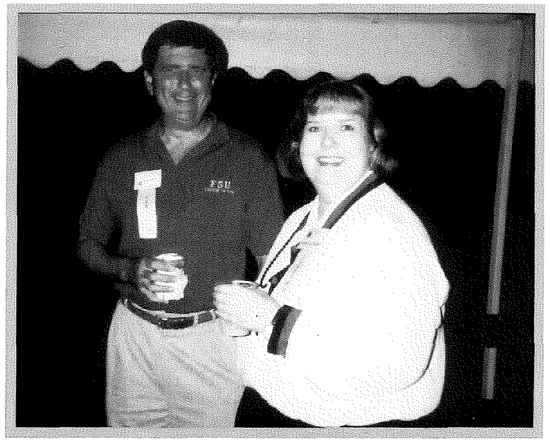
Festivities kicked-off with reunion gatherings at the home of Don and JiJi Weidner Friday night. Saturday morning it was down to business with the Alumni Association Board of Directors meeting, followed in short order by a gala pregame party under the big top on the law school's Thompson Green.

Attendance at all alumni events totaled more than 350.

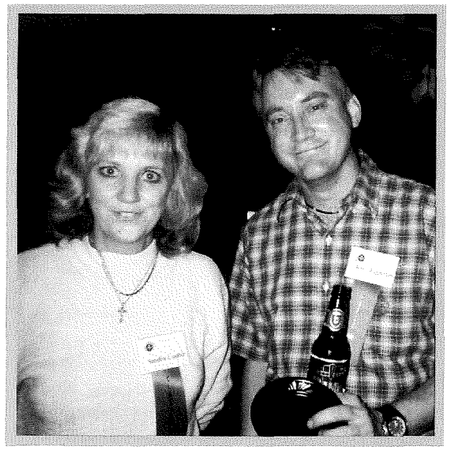


From left: George Matlock '86, Robert Shearman '86 and Steven Koeppel '86

Jim Brainerd '76 and Angela Hughes '76



Becky Martinez, Professor VanDercreek and Ralph Martinez '76

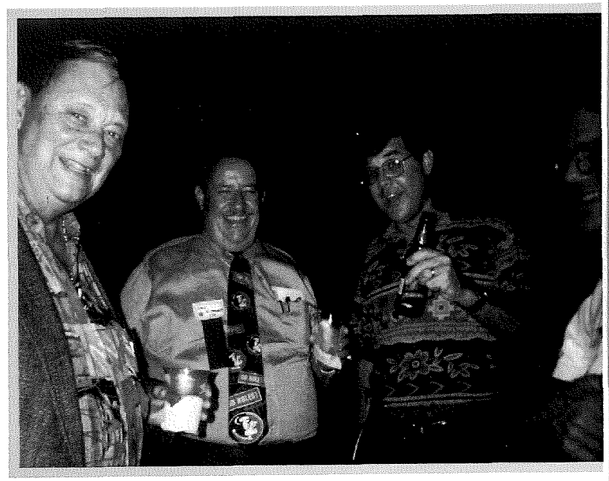


Sandra Coulter '86 and Jerry Eggleston

Debbie Huey, Cheri Woods and Mike Woods

Priscilla Quinones '86 and Rebecca Daffin '86

Professor VanDercreek, Don Gifford '70, Kent Lilly '76 and Joe Mawhinney '76



ANNUAL REPORT

The 1995-96 Annual Report of the Florida State University College of Law includes all gifts received during the fiscal year that began July 1, 1995 and ended June 30, 1996.

SUMMARY OF CONTRIBUTIONS (Through 6/30/96)

Annual Fund*	$126,576.58
Book Awards	$ 58,625.02
Restricted Giving**	$388,250.51
Other Grants & Scholarships	$235,767.00
CLEO	$ 31,075.00
Florida Bar Foundation	$204,692.00
TOTAL GIFTS:	**$809,219.11**

* Annual Fund: any non-designated gift or any designated gift of $1,000 or less that is not a gift to endowment.
** Restricted: any gift made to endowment or any non-endowed gift in excess of $1,000 that is for a designated purpose.

ANNUAL REPORT BRIEFS

STEVEN M. GOLDSTEIN MEMORIAL FUND AND PROFESSORSHIP ARE FUNDED

The Steven M. Goldstein Endowed Professorship and Memorial Fund have been funded to assure the continuation of Steve Goldstein's work at the College.

The Florida Bar Foundation has made a gift of $300,000 to endow a professorship at the College for someone to "be like Steve." The professorship will carry his name and will be used to support the efforts of a professor who will carry on Goldstein's important work at the College of Law. In addition to his academic duties, Steve worked innumerable hours to provide representation to those in need of it. For example, he helped provide, and encouraged others to provide, legal services for death-sentenced individuals, Haitian refugees and other unpopular clients.

The Goldstein family donated $100,000 in scholarship monies, which will be added to the scholarship endowment gift of $100,00 contributed by Bob Kerrigan '71. Other friends and admirers of Goldstein have also made gifts to the fund.

It is anticipated that the scholarships will be awarded to students who will work with the Goldstein Professor.

TALLAHASSEE FIRM OF FONVIELLE & HINKLE ESTABLISHES A PROFESSORSHIP

The Tallahassee law firm of Fonvielle & Hinkle has announced its commitment to establish a professorship at the FSU College of Law. The firm's $100,000 gift, to be made over a five- year period, will be matched by $50,000 in state funds.

Firm partners David Fonvielle and Don Hinkle are alumni of the College of Law. Fonvielle is a 1972 graduate while Hinkle graduated in 1980. The firm specializes in plaintiffs' personal injury litigation.

Fonvielle, who serves on the College of Law's Board of Visitors, considers the gift a means of "paying back" the law school for his education. "We thank God for the professional success we have been blessed with and are pleased to give back to the University, which gave us the foundation in the law we needed to become effective trial advocates for our clients," he said.

According to College of Law Dean Donald Weidner, the professorship, to be named the Fonvielle & Hinkle Professor of Litigation, marks a milestone in the law school's fund raising efforts. "This is the first professorship established by a Tallahassee firm," Weidner says, noting that nearly 30 percent of the law school's alumni live in the Tallahassee-Leon County area. "This is an important leadership gift from a firm that has supported us over the years. It allows the law school to provide continuing incentive and recognition for outstanding faculty."

***(left)* Tallahassee lawyers Don Hinkle and David Fonvielle *(right)* FSU President and former College of Law Dean Talbot "Sandy" D'Alemberte**

For Hinkle, the gift represents ongoing involvement in FSU. "I considered myself an activist while I was in college, both as an undergraduate and as a law student. I'd like to think this extends that involvement by helping future law students." While he was a student in the 1970s, Hinkle was active in organizing the student consumer advocacy group, the Florida Public Interest Research Group (FPIRG). For as long as he can remember, he has wanted to be a plaintiffs' personal injury attorney, Hinkle says. As a law student he founded a student chapter of the Association of Trial Lawyers of America.

Fonvielle said he hopes his firm's gift will prompt other firms to make a commitment to the College. "In addition to us, there are many attorneys who have enjoyed success as a result of their education at FSU. I encourage them do what we've done for the College of Law."

Other FSU law school graduates in the firm include Paul Vazquez, William Garvin and John Foote. Garvin, a 1986 graduate, will serve as a volunteer adjunct instructor of complex litigation at the College this spring.

STEEL HECTOR & DAVIS, LLP, ENDOWS D'ALEMBERTE PROFESSORSHIP

Steel Hector & Davis, LLP, one of Florida's largest law firms, has committed to establishing a professorship at the College of Law. The professorship, funded by a $100,000 gift to be made over a ten year period, will be named for former law school dean and current FSU President Talbot "Sandy" D'Alemberte. D'Alemberte was a partner with the firm until his 1994 appointment as FSU president.

Steel Hector & Davis managing partner Joseph Klock said of the gift, "This commitment is intended to provide support for, or to otherwise supplement, an outstanding professor at the law school. We would like the professorship to be named in honor of our former partner, Sandy D'Alemberte." Klock added that the firm will designate an area of law that the chair will support at a later date.

College of Law Dean Donald Weidner called the announcement "further recognition for our outstanding faculty." Weidner added that the professorship is particularly significant because it will bear the name of former Dean D'Alemberte.

With offices in Miami, West Palm Beach, Key West, and Tallahassee, Steel Hector & Davis has 165 attorneys, 14 of whom are College of Law graduates.

PATRICIA A. DORE ENDOWED PROFESSORSHIP

College of Law Assistant Professor Jim Rossi has been named The Patrcia A. Dore Professor in Florida Administrative Law.

The $100,000 professorship was endowed at the College of Law in honor of Pat Dore, with special gifts from the Administrative Law Section of The Florida Bar and alumni Gary Pajcic and Elizabeth McArthur. Pat Dore served on the law school faculty from 1970 until her death in January 1992. Dore was a widely known and highly respected expert on Florida administrative law. In 1978 she served as a consultant to the Constitutional Revision Commission, drafting Section 23, Article I, commonly known as the "privacy amendment." She also played a key role in the development and enactment of the state's Administrative Procedures Act. Alumna Vivian Garfein was the moving force behind the Dore Professorship.

FLORIDA BAR FOUNDATION FUNDS SEVERAL PROGRAMS AT THE COLLEGE

The Florida Bar Foundation funded several programs at the College, including Public Service Fellowships, a pro bono activities grant, a Children First Grant to benefit the College's Children's Advocacy Center and funding for African American Law Student Scholarships. "The Public Service Fellowship program enables the school to place a special emphasis on public service within the institution and orient students to public service as part of their professional obligation," said Dean Don Weidner, "and the Children's Advocacy Center has become a critical component in our professional skills training program." The Children's Advocacy Center is a "live-client" clinic in which students earn academic credit by representing clients under the supervision of a clinical professor. The Foundation's total contributions in these areas exceed $204,000.

The Florida Bar Foundation provides support for a number of public service projects, focusing on legal defense for the poor and on children's issues.

THE BOOK AWARD PROGRAM

The College of Law's Book Award program provides an important source of discretionary funds for a variety of critical law school needs. In addition to helping to fund financial aid to deserving students and emergency student loans, Book Award proceeds support student organizations as well as functions such as graduations, receptions and alumni reunions. Each student who receives an award receives a cash prize and carries the name of the Book Award as a credential for life.

The program enables an individual or law firm to sponsor a specific law course by agreeing to make an annual contribution of at least $1,000 for each of three years. Book Awards are fully tax deductible, and payments can be made on a schedule convenient to the sponsor. For more information about the Book Awards program, contact Dean Don Weidner at (904) 644-3071 or Ashley Frost, Assistant Director of Advancement and Alumni Affairs, at (904) 644-0231.

THE ENDOWED PROFESSORSHIP PROGRAM

The law school takes pride in a faculty that is seen by its peers in the legal profession as highly competitive and successful. While the College is in its infancy compared with other law schools in the nation, members of our faculty have already distinguished themselves both nationally and internationally as leaders in their respective areas of expertise. It is not uncommon for our faculty to be represented through articles published in the most prestigious legal publications and to be speakers at continuing legal education programs and other conferences dealing with issues of national or international importance.

Over the past five years, faculty members at the College have received an annual salary increase of only 2%. If we are to be successful in attracting and retaining professors who are top quality scholars and effective teachers, we must seek alternative areas of support. One effective avenue to accomplish this is through gifts to establish endowed professorships. These endowed professorships are an excellent way to reward outstanding scholarship in a given field and to undergird that scholarship through salary supplements and research support.

For these reasons, the College of Law is seeking gifts of $100,000 or more to endow professorships. The State of Florida, recognizing the positive impact that such private gifts can make on universities, will match $100,000 contributions with $50,000 through its Major Gift Challenge Program, providing total endowment funds of $150,000. With such a gift, an annual payment schedule of up to five years can be arranged.

For more information about the Endowed Professorship Program, contact Dean Don Weidner at (904) 644-3071, or Charles Lewis, Director of Advancement and Alumni Affairs, at (904) 644-5160.

1995-1996

BOOK AWARDS & SPONSORED COURSES

Level One: $5,000

Chris Cadenhead - Criminal Law and Procedure
Foley & Lardner - Insurance Law
Frost, O'Toole & Saunders, P.A. - Evidence
Wayne Hogan - Trial Practice

Level Two: $3,000

BAR/BRI - Contracts
Fonvielle & Hinkle - Trial Practice
Kerrigan, Estess, Rankin & McLeod - Criminal Law and Procedure
McConnaughhay, Roland, Maida & Cherr, P.A. - Workers' Compensation

Level Three: $2,000

Cobb Cole & Bell - State Constitutional Law
Cummings, Lawrence & Vezina, P.A. - Administrative Law
Fixel & Maguire Book Award in Eminent Domain
Nicholas R. & Mary B. Friedman - Moot Court
J. William Kirkland, P.A. - Torts
Peggy Rolando - Real Estate Transactions
Judge Hugh M. Taylor (Bryant, Miller & Olive) - State Constitutional Law
Tom & Julie Thornton - Torts
Young, van Assenderp & Varnadoe, P.A. - Florida Administrative Practice

Level Four: $1,000

Ausley & McMullen - Corporate Tax
Ausley & McMullen and Macfarlane Ferguson & McMullen - Legal Writing & Research
Billings, Cunningham, Morgan & Boatwright, P.A. - Trial Practice
Terry Bowden - Constitutional Law
Justice & Mrs. Joseph A. Boyd, Jr. - Real Estate Transactions
George Cappy - Conflicts
Clark, Partington, Hart, Larry, Bond, Stackhouse & Stone - Professional Responsibility
Mark S. Ellis & Molly Tasker - Comparative Constitutional Law
Gray, Harris & Robinson - Securities Regulation
Gretchen Klayman - Florida Dissolution of Marriage
Macfarlane Ferguson & McMullen - Environmental Litigation
Martinez, Manglardi & Diez-Arguelles - Civil Procedure
Ruth E. Meyer (Memorial Book Award) - Commercial Law
Moore, Hill, Westmoreland, Hook & Bolton, P.A. - Evidence
Douglas & Margot G. Morford - Alternative Dispute Resolution
Novey, Mendelson & Adamson - Family Law
Brian D. O'Neill - Administrative Law
Gary C. Pajcic - Professional Responsibility
Mary Jo Peed & Kevin Wood-Real Estate Development & Finance
Shackleford, Farrior, Stallings & Evans, P.A. - Litigation Skills
Douglas & Judy Spears - Trial Practice
Vincent G. & Julie Torpy - Contracts I
Buck Vocelle, Jr. - Torts
Edwin Walborsky & Stephen Preisser - Ocean & Coastal Law
Schef Wright - Federal Jurisdiction
Zimmerman, Shuffield, Kiser & Sutcliff, P.A. - Legal Writing

CONTRIBUTORS BY AMOUNT

$100,000 and up

Florida Bar Foundation
Family of Steven M. Goldstein

$10,000 to $99,999

C. David Fonvielle, III
Helyn S. Goldstein
Donald Mark Hinkle
Ruden, McClosky, Smith, Schuster & Russell, P.A.
Eugene E. Stearns
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
Steel Hector & Davis, LLP
Lenny & Jane Zwik

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Craig A. Reutlinger
George S. Reynolds, III
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George E. Ridge
Kenneth Ray Ridlehoover
Peter D. Ringsmuth

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R. Andrew Rock
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Glenn Neil Smith
Pamela Joy Smith
William M. Smith
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Daniel Mark Soloway
A. J. Spalla
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Susan Tassell Spradley
Linda June Stalvey
Jean Sternlight
Marilyn Strauss
Jesse F. Suber
Mary Lee Sweet
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Norman Adam Tebrugge
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Robert D. Vandiver
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Cheng-Shou Wang
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W. David Watkins
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Shawn Willson
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Lori Wilson
Walton M. Wilson
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Melitha L. Woods
T. Michael Woods
Robin L. Young
Roseanne V. Ziaukas

1995-1996

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James C. Brady - '73
Bruce W. Jolly - '75
Thomas L. LaSalle - '69
Linda Rae Spaulding - '85

Jacksonville
Thomas M. Jenks - '81
Richard K. Jones - '82
Frederick J. Lotterhos, III - '79
Martin J . Mickler - '70
Douglas H. Morford - '69
John A. Sampson, III - '74

Miami
Louise T. Jeroslow - '85
J. William Kirkland - '71
William F. Murphy, III - '80
John B. Ostrow - '70
J. Thompson Thornton - '82

Orlando
Joseph R. Flood, Jr. - '82
John R. Gierach - '75
Rex A. Hurley - '84
Thomas F. Lang - '75
Francis H. Sheppard - '84
Donald N. Williams - '84

Pensacola
Terence Gross - '79
Patricia D. Lott - '77
Stephen P. Preisser - '80
Edwin Walborsky - '79
E. Gary Work, Jr. - '75

Tampa
George B. Cappy - '72
Stann V. Givens - '74
Bruce D. Lamb - '80
James M. Landis - '69
Robert S. Wise - '81

1995-1996

TOTAL CONTRIBUTIONS BY CLASS

1969
Total: $2,811.50
Number in class: 87
Number of Donors: 11
Participation: 12.6%
Average Gift: $255.59

1970
Total: $4,720.83
Number in class: 90
Number of Donors: 20
Participation: 22.2%
Average Gift: $236.04

1971
Total: $8,880.50
Number in class: 80
Number of Donors: 15
Participation: 18.8%
Average Gift: $592.03

1972
Total: $49,994.50
Number in class: 139
Number of Donors: 33
Participation: 23.7%
Average Gift: $1,514.98

1973
Total: $7,198.00
Number in class: 151
Number of Donors: 35
Participation: 23.2%
Average Gift: $205.66

1974
Total: $5,224.72
Number in class: 171
Number of Donors: 34
Participation: 19.9%
Average Gift: $153.67

1975
Total: $21,165.83
Number in class: 165
Number of Donors: 35
Participation: 21.2%
Average Gift: $604.74

1976
Total: $3,760.00
Number in class: 133
Number of Donors: 23
Participation: 17.3%
Average Gift: $163.48

1977
Total: $4,053.00
Number in class: 155
Number of Donors: 24
Participation: 15.5%
Average Gift: $168.88

1978
Total: $6,915.50
Number in class: 153
Number of Donors: 29
Participation: 19.0%
Average Gift: $238.47

1979
Total: $6,896.50
Number in class: 170
Number of Donors: 37
Participation: 21.8%
Average Gift: $186.39

1980
Total: $15,778.00
Number in class: 173
Number of Donors: 24
Participation: 13.9%
Average Gift: $657.42

1981
Total: $5,379.50
Number in class: 187
Number of Donors: 34
Participation: 18.2%
Average Gift: $158.22

1982
Total: $12,505.11
Number in class: 156
Number of Donors: 25
Participation: 16.0%
Average Gift: $500.20

1983
Total: $9,110.00
Number in class: 197
Number of Donors: 37
Participation: 18.8%
Average Gift: $246.22

1984
Total: $4,398.00
Number in class: 193
Number of Donors: 25
Participation: 13.0%
Average Gift: $175.92

1985
Total: $5,291.50
Number in class: 195
Number of Donors: 30
Participation: 15.4%
Average Gift: $176.38

1986
Total: $4,493.00
Number in class: 210
Number of Donors: 27
Participation: 12.9%
Average Gift: $166.41

1987
Total: $2,353.00
Number in class: 170
Number of Donors: 20
Participation: 11.8%
Average Gift: $117.65

1988
Total: $2,430.50
Number in class: 167
Number of Donors: 26
Participation: 15.6%
Average Gift: $93.48

1989
Total: $2,164.00
Number in class: 163
Number of Donors: 22
Participation: 13.5%
Average Gift: $98.36

1990
Total: $2,277.00
Number in class: 171
Number of Donors: 25
Participation: 14.6%
Average Gift: $91.08

1991
Total: $1,953.00
Number in class: 247
Number of Donors: 20
Participation: 8.1%
Average Gift: $97.65

1992
Total: $901.00
Number in class: 159
Number of Donors: 15
Participation: 9.4%
Average Gift: $60.07

1993
Total: $1,177.00
Number in class: 209
Number of Donors: 21
Participation: 10%
Average Gift: $56.05

1994
Total: $1,506.50
Number in class: 169
Number of Donors: 19
Participation: 11.2%
Average Gift: $79.29

1995
Total: $1,005.00
Number in class: 221
Number of Donors: 18
Participation: 8.1%
Average Gift: $55.83

1996
Total: $375.00
Number in class: 179
Number of Donors: 14
Participation: 7.8%
Average Gift: $26.79

GRAND TOTALS

Total Donations: $194,717.99
Number of Alumni: 4,660
Number of Donors: 695

Overall Participation: 14.91%
Average Alumni Gift: $280.17

ANNUAL FUND CAMPAIGN BY CLASS

Class of 1969
Class Representative:
Ronald A. Mowrey

Number in Class: 87
Number of Donors: 11
Class Participation Rate: 12.6%
Total Gifts: $2,811.50
Average Gift: $255.59

Class of 1970
Class Representative:
J. Jerome Miller

Number in Class: 90
Number of Donors: 20
Class Participation Rate: 22.2%
Total Gifts: $3,720.83
Average Gift: $186.04

Class of 1971
Class Representative:
Samuel R. Neel, III

Number in Class: 80
Number of Donors: 15
Class Participation Rate: 18.8%
Total Gifts: $5,380.50
Average Gift: $358.70

Class of 1972
Class Representative:
F. Shields McManus

Number in Class: 139
Number of Donors: 19
Class Participation Rate: 13.7%
Total Gifts $8,261.50
Average Gift: $434.82

Class of 1973
Class Representative:
Michael L. Granger

Number in Class: 151
Number of Donors: 34
Class Participation Rate: 22.5%
Total Gifts: $6,298.00
Average Gift: $184.24

Class of 1974
Class Representative:
Charles L. Keesey

Number in Class: 171
Number of Donors: 32
Class Participation Rate: 18.7%
Total Gifts: $4,224.72
Average Gift: $132.02

Class of 1975
Class Representative:
Jane Rigler

Number in Class: 165
Number of Donors: 29
Class Participation Rate: 17.6%
Total Gifts: $7,247.58
Average Gift: $249.92

Class of 1976
Class Representative:
Eric B. Tilton

Number in Class: 133
Number of Donors: 21
Class Participation Rate: 15.8%
Total Gifts: $3,160.00
Average Gift: $150.48

Class of 1977
Class Representative:
Peter C. Burkert

Number in Class: 155
Number of Donors: 23
Class Participation Rate: 14.8%
Total Gifts: $2,553.00
Average Gift: $111.00

Class of 1978
Class Representative:
J. Burke Culler, Jr.

Number in Class: 153
Number of Donors: 27
Class Participation Rate: 17.6%
Total Gifts: $4,715.50
Average Gift: $174.65

Class of 1979
Class Representative:
Elizabeth J. Daniels

Number in Class: 170
Number of Donors: 35
Class Participation Rate: 20.6%
Total Gifts: $5,996.50
Average Gift: $171.33

Class of 1980
Class Representative:
Lawrence P. Bush

Number in Class: 173
Number of Donors: 22
Class Participation Rate: 12.7%
Total Gifts: $3,528.00
Average Gift: $160.36

Class of 1981
Class Representatives:
David F. Pleasanton

Number in Class: 187
Number of Donors: 31
Class Participation Rate: 16.6%
Total Gifts: $4,804.50
Average Gift: $154.98

Class of 1982
Class Representative:
Robert M. Ervin, Jr.

Number in Class: 156
Number of Donors: 18
Class Participation Rate: 11.5%
Total Gifts: $4,118.00
Average Gift: $228.78

Class of 1983
Class Representative:
George C. Bedell, III

Number in Class: 197
Number of Donors: 31
Class Participation Rate: 15.7%
Total Gifts: $4,910.00
Average Gift: $158.39

Class of 1984
Class Representative:
Anne McGihon

Number in Class: 193
Number of Donors: 24
Class Participation Rate: 11.4%
Total Gifts: $2,623.00
Average Gift: $119.23

Class of 1985
Class Representative:
Susan V. Stucker

Number in Class: 195
Number of Donors: 29
Class Participation Rate: 14.9%
Total Gifts: $4,291.50
Average Gift: $147.98

Class of 1986
Class Representative:
Mary Ann Morgan

Number in Class: 210
Number of Donors: 26
Class Participation Rate: 12.4%
Total Gifts: $2,793.00
Average Gift: $107.42

Class of 1987
Class Representatives:
Craig A. Meyer
Gina G. Smith

Number in Class: 170
Number of Donors: 19
Class Participation Rate: 11.2%
Total Gifts: $2,253.00
Average Gift: $118.58

Class of 1988
Class Representative:
Lawrence G. Walters

Number in Class: 167
Number of Donors: 26
Class Participation Rate: 15.6%
Total Gifts: $2,391.50
Average Gift: $91.98

Class of 1989
Class Representative:
Kevin J. Vander Kolk

Number in Class: 163
Number of Donors: 20
Class Participation Rate: 12.3%
Total Gifts: $1,964.00
Average Gift: $98.20

Class of 1990
Class Representative:
Randall P. Mueller

Number in Class: 171
Number of Donors: 23
Class Participation Rate: 13.5%
Total Gifts: $1,827.00
Average Gift: $79.43

Class of 1991
Class Representative:
Guillermo Pena

Number in Class: 247
Number of Donors: 19
Class Participation Rate: 7.7%
Total Gifts: $1,703.00
Average Gift: $89.63

Class of 1992
Class Representative:
Robert F. Mallett

Number in Class: 159
Number of Donors: 15
Class Participation Rate: 9.4%
Total Gifts: $901.00
Average Gift: $60.07

Class of 1993
Class Representative:
Stephanie A. Taylor

Number in Class: 209
Number of Donors: 21
Class Participation Rate: 10.0%
Total Gifts: $1,177.00
Average Gift: $56.05

Class of 1994
Class Representative:
Charles Dudley

Number in Class: 169
Number of Donors: 19
Class Participation Rate: 11.2%
Total Gifts: $1,506.50
Average Gift: $79.29

Class of 1995
Class Representative:
Joan E. Briggs

Number in Class: 221
Number of Donors: 18
Class Participation Rate: 8.1%
Total Gifts: $1,005.00
Average Gift: $55.83

Class of 1996

Number in Class: 179
Number of Donors: 14
Class Participation Rate: 7.8%
Total Gifts: $375.00
Average Gift: $26.79

GRAND TOTALS

Number of Alumni: 4,660
Number of Alumni Donors: 636
Overall Class Participation Rate: 13.65%
Average Alumni Donation: $151.79
Total Annual Fund Donations for Alumni: $96,540.63

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The Oxford program celebrates its 25th anniversary

FSU's Program of Law at Oxford will celebrate its 25th anniversary by hosting a six-day reunion of alumni, friends and their families, July 27 through August 1, 1997.

The longest-running legal study program at Oxford operated by an American university has hosted hundreds of law students through the years. This year's program, housed in St. Edmund Hall, Oxford, will offer a variety of courses, taught by FSU and Oxford faculty, during two three-week sessions. The program is directed by FSU Law Library Director Ed Schroeder.

The reunion features a welcoming dinner Sunday night, July 27, and day-trip excursions to Stratford, home of William Shakespeare, and London, where guests will have lunch at the Inns of Court. The reunion also includes an end-of-term banquet July 31.

A number of rooms, offering both single and double accommodations, have been set aside for the reunion. School age children are welcome. Anyone interested in participating should contact Ed Schroeder at (904) 644-7486.