

Florida State University Law Review

Volume 47
Issue 1 *In Tribute to Talbot "Sandy" D'Alemberte*

Article 5

Fall 2019

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Recommended Citation

Stephen R. Senn, *A Toast to Our Own Giant of the Law*, 47 Fla. St. U. L. Rev. 21 (2019) .
<https://ir.law.fsu.edu/lr/vol47/iss1/5>

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A TOAST TO OUR OWN GIANT OF THE LAW

STEPHEN R. SENN*

The year 2019 marked the 30th anniversary of the graduation of the Florida State University College of Law's Class of 1989. Earlier that year, the Class of '89 lost our Dean, Talbot "Sandy" D'Alemberte. Sandy served as Dean of the College of Law from 1984 through our graduation. We were his last class as Dean, but over the following three decades he continued to teach at the law school.

As one does at a reunion, there was much waxing nostalgically back to our days as law students. That of course included thoughts about our Dean. At one of the reunion gatherings, he was remembered with a toast. Subject to some modest license, what follows is a pretty close restatement:

I would like to propose a toast, but it may take some time to get to the drinking part, so be patient. No need to raise your glass just yet. You have time for a refill if you need one.¹

As graduates of the College of Law, we shared formative years which shaped our maturation and development, and allowed us to enter the profession of law. We learned enough to make a living, but law school also fine-tuned us, finished us out, and made us different in some ways from who were before entering those first year classes.

Our legal education included studying some of the giants of the law: the lawyers and judges whose words and reasoning we tried to understand as best we could. Whether we appreciated it at the time or not, we also had giants of the law among us. Some of us took a seminar entitled The Tobias Simon Civil Liberties Lectures. Envisioned by the Dean, this brought to our campus such leading lights of our profession as Jack Greenberg, Derrick Bell, Elizabeth Schneider, Jack Boger, Norman Dorsen, Kent Greenawalt, Michael Tigar, and Tobias Simon, each of whom brought for our edification their perspectives on law, and on the societal impact lawyers can achieve. Sandy wanted us to hear from lawyers who produced real changes in advancing the cause of justice, and to realize from this that as lawyers we might be able to make some positive difference in the world.

Speaking of lawyers who made an impact, let us now remember: a man who by his incessant efforts to improve the legal profession and legal institutions towered enormously over our profession; a visionary

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1. This applies also to you, dear reader. Fill a glass with something tasty. And if you had the good fortune to have ever been a student of Sandy D'Alemberte, think of yourself now as being among your classmates, and remembering that time.

who always seemed to think outside the box, and who brought an electrical storm of ideas to challenge any perceived injustice (or to handle whatever project happened to be on his desk);² an idealist who had the commitment, energy, and courage to push his best ideas forward, and to expand the possible window of what might be accomplished with enough dedicated effort; an agreeable optimist, who saw the best in everyone, and always looked for a path to work with anyone who might be an adversary on ninety-nine issues, but who was amenable on that 100th issue, where progress might be made; a compassionate soul who found injustice repugnant, but instead of turning away dove in to advocate for a just outcome; a “simple lawyer from Chattahoochee” (as he would describe himself), who left behind a record of achievements so extensive it is hard to believe he accomplished so much in just short of eighty-six years. What a glorious life.

Today, we can recognize Sandy D'Alemberte as among the most respected attorneys, bar leaders, and educators, not just in the Florida, not just in the United States, but in the world. But back when he served as our Dean, we students may have known no more than a few high points of his resume. He had a habit of speaking from the podium about significant advances without ever mentioning his central role in bringing them about. If someone should happen to mention his role, he would quickly defer credit to any others who had been involved.

We may have heard of our Dean's prior service as Chair of Florida's Constitutional Revision Commission,³ and most knew that

2. The volume of ideas erupting from Sandy's creative mind was staggering, but the ideas were not of uniform quality. As even a young law student commented back in the day, there was much chaff among the wheat, and it was real work to discern and gather the choice kernels, and sweep away the rest. As Hank Coxe put it: “One of the best descriptions I have heard of Sandy was that he would awake each day and begin by throwing 10 new ideas against the wall, but only one of them would stick. Invariably what stuck would improve the quality of life for all citizens.” Byron Dobson, *Sandy D'Alemberte, A Pillar of FSU with a Brilliant Legal Mind, dies at 85*, TALLAHASSEE DEMOCRAT (May 20, 2019), <https://www.tallahassee.com/story/news/2019/05/20/sandy-dalemberte-pillar-fsu-brilliant-legal-mind-dies-85/3749117002/>; see also Martha W. Barnett and Jon L. Mills, *In Memoriam: Talbot “Sandy” D'Alemberte*, 71 FLA. L. REV. vii (2019) (“Sandy was a well-known serial visionary. He constantly came up with new ideas. Some of them were farfetched, but some were pure genius.”).

3. But we almost certainly did not appreciate how influential our Dean had been in shaping Florida's Constitution to its present form. As a young legislator, Sandy was involved with proposals leading to the 1968 overhaul of the Florida Constitution. He later wrote the Commentary to these revisions for publication in West's Florida Statutes Annotated. The Supreme Court would later refer to Sandy as the “father” and “drafter” of the 1972 revisions to the Constitution. See *Amendments to the Florida Rules of Appellate Procedure*, 696 So. 2d 1103, 1111 (Fla. 1996). He next served as Chair of the 1977–78 Constitutional Revision Commission. These experiences made him uniquely qualified to write authoritative texts on Florida's Constitution: Talbot “Sandy” D'Alemberte, *The Florida Constitution* (Greenwood Press 1991); and Talbot “Sandy” D'Alemberte, *Florida*

he had successfully petitioned the Supreme Court of Florida to allow cameras in courtrooms.⁴ We also may have had some vague idea that he had left a successful appellate and media law practice in Miami to join the College of Law, and return to his roots in north Florida.

We would have understood the value our Dean placed on pro bono service, and heard him emphasize its importance as being necessary to equal justice for people unable to afford lawyers to represent them in court. And we were there when he imposed a pro bono publico requirement for students of the College of Law. This is now common, but at the time only one other law school had such a requirement.⁵

In the years after we graduated, we may have felt a touch of pride to hear that our own Dean had been elected to lead the American Bar Association. By virtue of our connection with him, we may have even read some of his President's Messages in the ABA Journal, and kept up in this way with Sandy and his projects. If we happened to read in one of those Messages that not just lawyers, but all Americans, pledged to support "justice for all" every time we pledged allegiance to the flag of the United States of America,⁶ we could recall hearing him say the same thing to us in class.⁷

Constitutional Law (2d ed Oxford Press 2016). See generally Jon L. Mills, *The Florida State Constitution by Talbot "Sandy" D'Alemberte*, FLA. B.J. 50 (June 1991).

4. See *In re Petition of Post-Newsweek Stations, Fla., Inc.*, 370 So. 2d 764 (Fla. 1979). Only years later, when preparing to introduce Sandy at a fund-raising dinner for Florida Rural Legal Services, did I learn that in appreciation for his work in opening courtrooms to cameras, the Academy of Television Arts and Sciences presented him with an Emmy Award.

5. Sandy's own pro bono efforts were herculean, and extended throughout his career. In encouraging lawyers and law students to take on pro bono work, he would describe his pro bono cases as some of the most interesting he had the chance to work on, and as providing opportunities that may not otherwise be available in our legal careers. A common sales technique he employed would be to contrast the drudgery of discovery and document review with the opportunity to go to court with a client, like a real lawyer. This was his prescription for lawyers unhappy with their work.

6. Talbot "Sandy" D'Alemberte, *Florida's New Pro Bono Program: A Bold Step Toward Access to Justice*, ABA J. 8 (April 1992). Relatedly, we might recall him frequently quoting a portion of the oath we would later take upon being sworn into the Florida Bar: "I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice. So help me God."

7. In addition to his own extensive pro bono work, Sandy sought systemic changes to encourage attorneys to take on more pro bono work and to support the "tributaries of justice" necessary to afford essential legal representation in court to all who need it. See Talbot "Sandy" D'Alemberte, *Tributaries of Justice: The Search for Full Access*, 25 FLA. ST. U. L. REV. 631 (1998). Not the least of his efforts for systemic improvements are the petitions he brought to formally adopt pro bono service as a requirement for members of the Florida Bar. This began with what was referred to as the "D'Alemberte Petition," requesting adoption of an amendment to the Rules Regulating the Florida Bar to make clear that attorneys have a duty to provide pro bono service to indigents. See *In re Amendments to Rules Regulating The Florida Bar—1-3.1(a) and Rules of Judicial Administration—2.065 (Legal Aid)*, 573 So. 2d 800, 806 (Fla. 1990). This led to a second, and then a third petition, which ultimately resulted in the adoption of Florida's pro bono plan, which requires lawyers to annually report their pro bono hours, and which encourages each member of the Florida Bar to either provide at least twenty hours of pro

Sandy's ABA presidency coincided with the collapse of the Soviet Union. He seized that moment to help create the Central and Eastern European Law Initiative, and recruited thousands of lawyers to volunteer to go into former Soviet republics and former Warsaw Pact countries. American lawyers helped those recently freed peoples develop independent courts, protections for the rights of their citizens, and the rule of law. If that was all that Talbot "Sandy" D'Alemberte ever did, he would deserve celebration for helping half a continent and millions of people have a chance to join the free world. But that is just one line on a lengthy list of achievements.

Sandy was deeply committed to the cause of justice, and to the capacity of the law and of lawyers to serve that cause, and to oppose injustice in whatever form it may be found. In addition to the Central and Eastern European Law Initiative, he also was involved in forming the Center for the Advancement of Human Rights, which has helped victims of human trafficking, torture, and war crimes in more than 90 countries, and was involved in other efforts to promote justice in Florida, in the United States, and throughout the world.

All that—and so much more—were extracurricular activities.⁸ Sandy had fairly demanding day jobs as well. In his day job as Dean, where many law students first came to know him, Sandy worked to make the College of Law better in every way. This included enriching the faculty and the curriculum. And he upgraded the very campus itself, from a boring and unattractive brick building into a boring and unattractive brick building with one quite lovely side. The side of the law school which Sandy brought into being features a spacious rotunda, fronting a central green, surrounded by historic homes that he thought, correctly, would enhance the campus practically and

bono service per year or to provide support to a legal aid office. *See In re Amendments to Rules Regulating The Florida Bar—1-3.1 and Rules of Judicial Administration—2.065 (Legal Aid)*, 630 So. 2d 501 (Fla. 1993); *In re Amendments to Rules Regulating the Florida Bar—13.1(a) and Rules of Judicial Administration—2.065 (Legal Aid)*. These requirements establish aspirational goals, and do not mandate that attorneys provide pro bono service. But small nudges can make big differences. From adoption of the reporting requirement in 1993 through attorney reports to the Bar in July of 2018, perhaps in some part thanks to having these aspirational goals set before them, Florida attorneys have provided over 33 million hours of pro bono service, valued at \$90 million. *See Pro Bono Publico History, THE FLORIDA BAR* (Feb. 4, 2020), <https://www.floridabar.org/public/probono/probono002/>.

8. It would take a book-length tribute to adequately review the meaningful projects Sandy worked on in his spare time. One additional side-project that must be mentioned is his work in helping to found and serving as chair of the Innocence Project of Florida, which has helped exonerate 15 innocent men while also advocating for systemic changes to prevent future wrongful convictions. This came after years of Sandy's own pro bono work for prisoners and criminal defendants, including those with claims of actual innocence. *See, e.g., Herrera v. Collins*, 506 U.S. 390 (1993).

aesthetically. The obvious homage to Jefferson's design for the University of Virginia underscores a legacy to another Renaissance man who also made history in his spare time.⁹

Our recollections of Sandy of course include awareness of his immense achievements. But for his students the memories are more personal and direct. We knew him as our Dean, who would also come into the classroom as a professor with a passion for his subject. And we remember incidents and aspects of his regular presence among us, as we went through the challenging transformation to become lawyers. Our memories are less about Sandy's achievements, and are more likely to involve how he treated us (and everyone) with kindness and respect. We remember his genuine friendliness and interest in us.

Sandy was always positive. He was passionate, yet never seemed angry. He was always smiling. He seemed happy to be teaching law, and committed to teaching that law was not just as a job, but a calling, with lawyers having a role in society that extends beyond the office, and beyond the courtroom.¹⁰

And he always took time to talk. If you tried to walk any distance with Sandy, you would find it took quite a while to get very far. That was not because of his injury, which he never mentioned, but which did cause him constant pain, and put a noticeable hitch in his get along. But that never slowed him down. What did slow his pace was that it seemed like just about everyone knew him and wanted to say hello, and Sandy never failed to stop and chat and take time to express how truly good it was to see the person. And every time, he made the person feel like he really was delighted to see them; even if he could not quite remember the name. Always smiling. Always positive. Always so glad to see you.

Sandy enjoyed being a law professor, but his happiness in teaching law was not limited to the classroom. Our Dean incorporated some of us into his extracurricular projects. One group of students had the immense privilege of helping the Dean and a couple of law professors (Joe Jacobs and Adam Hirsch) who teamed up to defend the constitutionality of the state tax on services.¹¹ Sandy agreed to defend the services tax as counsel for the Florida Senate and Florida House of Representatives. Our ragtag team was opposed

9. When Sandy was awarded the Tobias Simon Pro Bono Award, then Chief Justice Fred Lewis commented that Sandy's "contributions are so remarkable I can only describe him as a true Renaissance man of the legal profession."

10. As he stated in asking the Supreme Court of Florida to adopt a formal pro bono plan: "This Petition is built on the assumption that lawyers are public spirited, that law is a public profession and that the bar has a special mission to assure justice for all." See Talbot D'Alemberte, *The Role of the Court in Providing Legal Services: A Proposal to Provide Legal Access to the Poor*, 17 FLA. ST. U. L. REV. 107, 111 (1989).

11. Ch. 87-6, 1987 Fla. Laws 9, repealed by Ch. 87-548, 1988 Fla. Laws 19.

by most if not all of the best appellate attorneys from the best law firms in the State, and several from outside Florida. These opposing teams of lawyers filed dozens of briefs, raising a profusion of issues we had to keep track of and address. As the oral arguments progressed in the Supreme Court, and one legal luminary after another took their time at the podium, I recall thinking that most of our group were not long past the first year of law school, and even if we all went on to great legal careers we might never again work on a case of similar significance. Talk about peaking too soon.¹²

Another thing I recall about the services tax case was a note from Sandy to the Professors (which we students were not intended to see), suggesting some acknowledgment of the work the students had done. As a result, the brief closed with a statement that it had been prepared with the assistance of research assistants at the Florida State University College of Law. A small thing to be sure, but thoughtful, and it meant a lot to us to be named on the brief in this way.¹³

Sandy was proud of the College of Law, and he was proud of the students and their accomplishments. One example of this involves the moot court team. Upon their victorious return from a moot court competition in New York, Robin Suarez and Glenda Thornton heard that the Dean wanted to see them. They still recall how excited and proud Sandy was of their victory. He even confiscated their trophy for display in his office for the rest of the year. This he wanted to show off, but not his own Emmy or other awards.¹⁴

12. While the experience would have been golden whether or not we won the case, we did win the case. See *In re Advisory Opinion to the Governor*, 509 So. 2d 292 (Fla. 1987). But soon after, political pressures led to the Governor calling special sessions in which the services tax was ultimately repealed. See generally Vicki L. Weber, *Florida's Fleeting Sales Tax on Services*, 15 FLA. ST. U. L. REV. 613 (1987).

13. Under the title Acknowledgment on the bottom of page 72, Sandy wrote: "This brief was prepared with the assistance of Frank Brown, Todd G. Kocourek, Stevan Mitchell, George G. Rasky, Stephen Senn, Jon Sjostrom and Doug Starcher, research assistants at the Florida State University College of Law."

14. Awards recognizing Sandy's achievements include: the Florida Supreme Court Historical Society's Lifetime Achievement Award (2015); Rotary International's Global Service Award (2010-11); the Bernard F. Slinger Award (2008); the Tobias Simon Pro Bono Service Award (2007); the Robert F. Drinan, Jr., Award for Distinguished Service (2007); the American Bar Association Medal (2003); the Wickersham Award given by the Friends of the Law Library of Congress (2001); Distinguished Eagle Scout Award (2001); the ABA World Order Under Law Award (1998); the American Bar Association Section of Legal Education's Robert J. Kutak Award (1998); the American Judicature Society's Justice Award for efforts to improve the administration of justice in the United States (1996); the National Council of Jewish Women's Hannah G. Soloman Award (1996); the Academy of Florida Trial Lawyers "Perry Nichols" Award (1993); the Florida Academy of Criminal Defense Lawyers Criminal Justice Award (1993); the Jurisprudence Award from the Anti-Defamation League of South Florida (1990); the Florida Bar Foundation Medal of Honor (1987); the National Sigma Delta Chi First Amendment Award (1986); a National Academy of Television Arts and Sciences "Emmy" for his work in opening court proceedings to cameras (1985); and the Florida Civil Liberties Union "Nelson Poynter" Award (1984).

Glenda Thornton shared another story, this one reflecting Sandy's efforts, like a committed football coach, to improve the law school by recruiting the best prospects. Glenda had been accepted at several law schools, and one reputable school nearer to her home offered full tuition and expenses. She had decided to accept this offer and not even visit Tallahassee or Gainesville (where she also had offers). As Glenda continues the story:

But a friend who had attended FSU asked me to promise I would at least visit first. My mom and I drove over early one Saturday morning and Sandy was there to greet us at the law school entrance. He had arranged for three law students to take me on a tour and answer all my questions and he took my mom by the arm and gave her a personal tour of the law school. About two hours later, I remember walking back towards Sandy's office nervous about how I would break the news to my mom that I wanted to attend FSU (four hours from Mobile) instead. But before I could say a word, as soon as she saw me, she pointed and said, "THIS is where you're going to law school." Sandy then presented me with a full scholarship and the rest is history. To this day, I don't know what he said to my mom—she just said he was *so nice and such a gentleman*.

Glenda is one of many students whose decision to attend the College of Law came down to Sandy's influence. And hers is just one of many stories the members of the Class of '89, and all other students Sandy taught through the years, may continue to warmly remember.

Sandy considered our system of justice to be one of the highest achievements of human civilization. It was not perfect, but he did what he could he could to make it more so. He took delight in being a lawyer, and in doing all he could to serve the interests of justice. His efforts as Dean and law professor were very much a part of that agenda: training not just lawyers, but lawyers who would feel the special responsibilities he felt to improve our systems of justice where possible, to look for opportunities to expand equal justice, to at least take a pro bono case now and then, and to do what we could to advance the promise of liberty and justice for all. As he stated in one of his many crusades: "lawyers have a legal and ethical obligation to see that justice is done."¹⁵ He took that commitment as an energizing and enjoyable duty. To the end of his days he was looking for the next case to fulfill that obligation to the best of his immense talents and unflagging energies.

When we come into a direct relationship with someone like Sandy, particularly in the context of the crucible of law school, where our brains and perceptions are being so rearranged, we take things away

15. Talbot D'Alemberte, *Atticus Finch and the Movement to Provide Legal Services to the Poor*, 3 U. FLA. J.L. & PUB. POL'Y 19, 25 (1990).

from that experience. It gives us an example to admire, and perhaps to emulate. All who knew Sandy could not have helped but be affected by our time with him, by having the benefit of his example of what lawyers can do, and what lawyers should do.

We have finally arrived at the drinking part. Thanks for being patient. Please now lift your glass in tribute:

To our own giant of the law, our own smiling hero of justice. May we continue to remember what he taught by his words and by his example, and continue to let that help us be better lawyers, and better people.