The New Region: A Window of Opportunity

A Tribute to Dean Sciullo
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The New Region: A Window of Opportunity  
by John E. Murray, Jr.  
President, Duquesne University

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World, ready or not, here comes the class of 2000! I can’t explain how hard it is to think of the words to write knowing that this is the last editorial I will write for Juris. Faced with this dilemma, I have decided to recap a few memorable moments.

It was March 1996 when I fatefully opened my acceptance letter from the Law School. After making sure all of the information was correct and confirming that I had in fact been accepted, I called my parents and closest friends to share my good news. Almost immediately, I began to wonder what class would be like. I also wondered how I would make it through. Then it came—the first day of class. Being an undercover agent had never prepared me for what I was about to face—the Socratic method.

The first time Professor Streib called on me, I could have sworn he was ten feet tall, hairy with large teeth and claws, as he awaited my answer. Suddenly, I was transformed from a face in a sea of students to a babbling idiot trying to explain what a tort was. After all, just a few days earlier the only definition for tort I knew referred to a French pastry. To make matters worse no matter how I tried my words could not catch my racing brain. But, luckily things got better—Professor Streib turned out to be shorter.

The next trauma was called final exams. As you all probably remember, you study, study, study more, take the exam and then listen to your fellow classmates discuss their exam answers. All the while, you try to decide if you should even bother making plans to return the following year and you rehearse your response as to why you’re no longer in law school. Ironically, after the first year you realize that the post exam privilege of taking Estates and Trusts with Dean Sciullo. Sadly, on February 22, 2000, Dean Sciullo passed away. Dean Sciullo’s passing is a great loss to the law school and a greater loss to those students whom will never experience his passionate and compassionate teaching style. Dean Sciullo would often refer to me as “Mr. Justice” and would often call upon me in class to debate a losing issue, always reminding me to “speak like a lawyer” or “stop talking in platitudes.” Yet, Dean Sciullo would always approach me after these debates to reassure me and tell me that he agreed with or liked my argument. This in itself speaks legions about Dean Sciullo and his approach to teaching. I will miss him and remember him fondly.

One of the most rewarding experiences I can recall, is the annual toy drive benefiting Children’s Hospital and The Greater Pittsburgh Women’s Shelter, sponsored by Juris and Phi Delta Phi. The toy drive has allowed the student body to interact with those less fortunate and to positively influence public perception of the legal community. This year’s toy drive was a great success and special thanks go out to: Maureen Jordan, Juris, Phi Delta Phi, Duquesne University, all the students and faculty members that contributed, Heather and Emily Clark, Marnie, Kyli and Devon Rodriguez-Cayro, Dean Rago, Dean Cafardi,
My one concern as a student and future attorney is that too few students get involved with their school and community. I believe that my experience at Duquesne has been special because of my personal involvement in several organizations. I realize that obtaining a job after graduation is a major concern for most students, however, it has been my personal observation that those students whom were most involved are the same students that have already secured jobs after graduation. Therefore, get involved, the rewards may turn out to be more than you ever hoped this, my last editorial, I would like to thank the Law School Faculty for allowing me the opportunity to serve; it has been a great honor. I must also thank my wife, Marnie, and my daughters; Kyli and Devon, without your love, understanding and support none of this would have been possible.

After four years, it is with mixed emotions that I say goodbye. On one hand, I am elated to be graduating; yet on the other I will miss the many friends I have made during the past four years. I thank all the students, professors and members of the law school community I have had the pleasure of knowing—my life is richer because of the kindness, happiness and laughter we have shared. God bless you and good luck.

Finally, I wish the incoming editorial board good luck—keep the fire burning.

Sincerely,

Nick Rodriguez-Cayro
Editor-in-Chief

Nick Rodriguez-Cayro has been a member of Juris since 1996, and Editor-in-Chief since 1998. Nick is a retired Narcotics Agent and upon graduation, will start his legal career as an associate with the Philadelphia firm of Elliott Reinhart Siedzikowski & Egan.

The Law School
DUQUESNE UNIVERSITY

Special times...
Special friends...
Special memories...
We at Juris would like to thank all of the parents, spouses, children and siblings that have supported the student body in their endeavor to become attorneys. Without your support, understanding and most of all, love, it would have been impossible to achieve our goals. In tribute and with appreciation for what you have helped us to achieve, we have included some pictures of those people below. Because of practical limitations, we could only place a few pictures in this section. However, this does not diminish our gratitude, our thanks go out to all of you, pictured or not.

Thank You!
The Administration of Church Property

by LaJena D. Franks

On February 4th and 5th, 2000, the Duquesne University School of Law proudly hosted the Jubilee International and Ecumenical Canon Law Conference on the Administration of Church Property. This esteemed event was co-sponsored by The Angelicum University in Rome and the University of Wales in Cardiff. In attendance were local lawyers, religious scholars, theologians, faculty and students, as well as renowned Canonists and Legal Experts from around the world. The program was presided over by Dean Nicholas P. Cafardi, an accomplished authority in the field of canon law. The panel was comprised of the following specialists: The Most Reverend Donald W. Wuerl, STD (Pittsburgh, Pennsylvania), The Reverend Joseph Fox, O.P. (Rome, Italy), The Reverend Michael Carragher, O.P. (Rome, Italy), Sr. Melanie Dipietro, S.C., JD., J.C.L. (Pittsburgh, Pennsylvania), The Honorable Marureen Lally-Green (Pittsburgh, Pennsylvania), Nicole L. Lorenzatti (Pittsburgh, Pennsylvania), Professor Alison Sulentic (Pittsburgh, Pennsylvania), Brian Hanson (Church of England), Frank Helminski (Nashotah, Wisconsin), Kenneth E. North (Chesapeake, Virginia), Mark Hill (Cardiff, Wales) and Joy Flowers Conti (Pittsburgh, Pennsylvania).

Following the conclusion of the first session, Buchanan Ingersoll, PC graciously hosted a reception in honor of the attendees.

The purpose of the conference was to facilitate discussion on various issues related to Ecumenical Canon Law. After each panelist addressed the audience, the attendees were given an opportunity to ask questions, as well as share their respective knowledge and experiences.

There were numerous thought-provoking topics contemplated by the panelists. The following considerations were but a few of the discussed topics: Can a religious group require in its religious-affiliated college, hospital, and/or social service agency that the chief executive officer and/or president be a member in good standing of that religious group? Does an ecumenical corporation have the protections of the First Amendment or Charitable Trust Law for the dedication of property to its ecumenical purposes? Can a religiously affiliated corporation terminate the chief executive's and/or president's employment during the life of his or her employment contract for public non-compliance with the teaching of the related church? Does a religious affiliated organization or its founding religious group have any rights to the distribution of its property upon dissolution of the corporation?
In order to better understand the complexities facing religious organizations (i.e. a church or seminary) and religiously-affiliated organizations (i.e. a university or hospital), examine the following hypothetical to determine how the courts should rule on this issue. More importantly, consider whether a civil court has jurisdiction to hear such issues when they arise?

A minister participates in a health plan sponsored by the seminary where he teaches. He is called to be the pastor of a new church and notifies the seminary that he will no longer be participating in the health plan. Shortly thereafter, he climbs a tree and falls out of it, severely injuring himself. When he tries to assert the right to continue his health insurance coverage provided by the seminary under COBRA, he is surprised to learn that the seminary considers this to be a church plan, which need not necessarily comply with the mandates of the ERISA statute.

Can the injured minister force the seminary to continue coverage under the COBRA provisions of ERISA and the Internal Revenue Code? And if this is the determination of the United States Constitution demanding freedom from governmental intrusion in the free exercise of religion, prevail? There is no clear answer to this question, yet it is of the precise subject matter vexing the civil courts today.

As the new millennium is upon us, it is inevitable that our justice system will be confronted with the increasingly difficult but necessary task of determining how the intricacies between civil law and canon law will develop, specifically related to the growing number of issues concerning religious and religious-affiliated organizations.

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**Getting connected**

*by Gianni Floro*

As I conclude my final semester at Duquesne University I am in awe of the drastic developments our university has undergone in the past decade. As an undergraduate and graduate student I had the good fortune to study under some of the brightest and most talented professors in the world. One of my esteemed professors displayed a sign on the door to our laboratory that read: *All of us are better than one of us.*

It was an apt theme for a researcher to encourage; however, that sign conveyed more of a message than one might think at first glance. While team work is an essential part of any laboratory, it really meant to convey a much broader message. You see if you have the ability to tap into the collective experience and talents of all the researchers around the world, answers to difficult questions become simpler to explain and solutions abound.

In keeping with Dr. Adeyeye’s encouragement, I am proud to announce the creation of a new position within the Juris staff, Web Editor. The new Juris staff will have the opportunity to keep our humble publication in step with our truly international university. By publishing Juris on the web, our students and faculty will have the chance to present their views and research across the globe. Additionally, with the ability to provide bulletin boards and “chat” sessions, Juris can tap into the changing world of communications. By placing Juris before such a wide audience we also provide invaluable exposure for both the law school and the university, already one of the world’s most wired campuses.

Another reason, which I hold dear to my heart is that we will be saving trees too! The trend for a number of organizational publications has toward web based publishing, e.g., the Air & Waste Management Association now offers both of their journals on line and just a click away from of the world. The most important reason is that as an educational institution we should strive to educate the public regarding matters that we have particularized knowledge about. Juris can become more than our law school magazine, it
can become resource center which the public or legal community looks to regarding cutting edge topics our students and faculty present. Links contained within our articles can direct users to pertinent discourse upon subjects or provide direct links to references with these articles.

I have recently had the opportunity to be involved in the development of such a resource center in my home town of Sewickley. The mission of the Environmental Information Center of the Sewickley Public Library is to educate and empower citizens to become self-directed, continuous learners and environmentally aware citizens prepared to meet increasing challenges of a world impacted by science, technology and increasing sociological demands on our environment. Similarly, our students and faculty also have the opportunity to effectuate change in our society by presenting their views and research to the world.

Mr. Floro is a fourth year evening student and the Senior Editor of Juris. Mr. Floro will begin his legal career in September with the Tarasi Law Firm in Pittsburgh.

"Waters of the Commonwealth"

by Leah Lewandowski

The cinematic adaptation of Jonathan Harr's novel A Civil Action brings to audiences the inherent difficulties in prosecuting toxic tort claims. The story, based upon the events in Woburn, Massachusetts, depicted residents fighting a battle to bring to light the truth that local companies where polluting the towns water supply. This type of story is not an uncommon occurrence throughout the United States. Many companies are often required to account for off-site migration of pollutants which adversely affect neighboring communities. There is, however, a peculiar set of circumstances in which companies are forced to account for pollution on their own properties. These scenarios do not pit companies against hapless neighboring residents, they are clashes between the companies and their insurance carriers.

Currently there are a number of such battles being waged across the United States. These companies are attempting to compel their insurance carriers to pay for clean-up costs associated with state environmental protection efforts. In the Commonwealth of Pennsylvania, the Department of Environmental Protection commands, oversees and dictates the direction of such clean-ups. So how is it that these cases similar to the situation in A Civil Action? These cases demonstrate the point at which major pollution can be prevented from migrating to nearby community water supplies. If companies can clean-up their own land and prevent hazardous chemical from spreading to nearby community water supplies, then companies can avoid future civil litigation and criminal charges. More importantly, communities can be protected from exposure to hazardous chemicals.

The problem lies in the insurance policy itself. The insurance carriers are constructing their policies in such a manner as to bar coverage to first party property, they are not willing to pay for clean-up costs of pollution occurring only on their insured's (the companies) land, or what insurance carriers call first party property damage. Most insurance carriers issue
policies that extend coverage to third party property damage only. The insurance carriers claim that they do not have to pay for clean-up costs because coverage does not extend to the insured's own land, only third party property. The companies are claiming (to get around this first party property damage problem) that the pollution effects the groundwater which the public owns, therefore creating third party property damage. This is where the problem begins, the conflict between the two parties eventually leads to off-site pollution, if the company cannot afford to mitigate the situation. A solution to the problem may be for the courts, or more appropriately the legislature, to more aptly define groundwater.

Groundwater is loosely defined as the water in subsoil, or of a spring, or a shallow well. Under 35 P.S. § 691.1, the Pennsylvania legislature defines waters of the Commonwealth to include groundwater. In Philadelphia Chewing Gum Corporation v. Commonwealth of Pennsylvania, the Commonwealth Court defined the waters of the Commonwealth to include groundwater and certain surface waters. Also, in Rohm and Haas v. Continental Casualty Co., the Philadelphia County Court of Common Pleas restated that the landowner does not own the groundwater on the land, and that groundwater cannot be owned by the insured. From the Commonwealth Court's interpretation and the lower court's agreement, it should be clear that groundwater is encompassed within the meaning of "waters of the Commonwealth."

In neighboring states, such as New Jersey, the courts have reasoned that groundwater should not be considered property owned by the insured, rather, it is owned by the state in which the groundwater rests. In Crest-Foam Corporation v. Aetna Insurance Company, the issue arose before the New Jersey Superior Court, and although not the primary issue, the court stated that:

[W]e also recognize... groundwater should not be considered property owned by the insured, and that coverage is triggered by the damages or expense of an Environmental Cleanup Responsibility Act (ECRA) investigation.

Some jurisdictions even consider the mere risk of groundwater contamination to be enough to trigger third party property damage, requiring coverage under an insurance policy. For example, in Figgie International, Inc. v. Bailey, Upfield, Travelers Ins. Co., the Fifth Circuit Court of Appeals held that the mere risk of groundwater contamination would have been enough to trigger coverage under a comprehensive general liability policy. If Figgie could have shown that the cadmium located on their property was in a leachable state, coverage would have resulted. Figgie (plaintiff) was covered by a number of comprehensive general liability (CGL) policies issued by the insurers (defendants) from 1967 to 1969 when Figgie sold its property to Norris. In the mid-80's, the Louisiana Department of Environmental Quality determined that hazardous substances were discharged or disposed of on the Figgie property, further directing clean-up. Figgie filed suit against the insurers, Baily et al., for indemnification of the remediation costs incurred. The insurers argued that they were under no obligation to indemnify Figgie for its remediation costs because the remedial action was performed exclusively on property formerly owned by Figgie, and no third party had made a claim for damages. Figgie countered by arguing that its remediation costs are not excluded from coverage because the groundwater within the site suffered actual contamination; moreover, that the groundwater is
owned by the state. The thrust of Figgie's argument claimed that even a threat of contamination of third party property, including the state's groundwater, defeats the owned or alienated property exclusions. However, the court agreed with the insurers, and stated that "although the ownership of groundwater is not clearly established under Louisiana law, we need not resolve this issue because Figgie failed to submit any evidence that the cadmium on their property was in a leachable state and a threat to the groundwater or to off-site property." The court went on to explain that:

[A]s Figgie failed to produce competent summary judgment evidence that the cadmium on the Figgie property was in a leachable state, Figgie had failed to show that there is a genuine issue whether cadmium on the Figgie property was capable of leaching into the groundwater. Absent competent evidence that the cadmium was in a leachable state, there is no basis upon which a fact finder could infer that groundwater contamination occurred or was likely to occur absent the remedial action.11

Also, in Intel Corp. v. Hartford Accident & Indemnity Co.,12 and Savoy Medical Supply Co. v. F & H Manufacturing Corp.,13 federal courts held that the owned property exclusion (or first party property damage) did not bar coverage to the costs needed to prevent future harm to groundwater, or to adjacent property, whether such contamination had occurred on the insured's property or other's property. The Intel court also addressed the ownership of groundwater, concluding that the state has an ownership interest in damages to the groundwater, not the landowner. Similarly, the Savoy court stated that New York is the trustee of the groundwater, and therefore responsible for the up-keep, not the landowner.

The following is a brief list of how some of the different states have classified groundwater ownership as not belonging to the landowner:

1) **New Jersey:** Groundwater is not subject to the owned-property exclusion. New Jersey has more than just a public interest in its water.14

2) **New York:** New York is the trustee of groundwater and therefore responsible for its up-keep, not the landowner.15

3) **Delaware:** Using New York and New Jersey law, the Supreme Court of Delaware ruled that the state owns the groundwater. State uses "reasonable use rule" by which a landowner has a right to use the groundwater subject to government limitations. Delaware does not recognize the "absolute ownership" rule where the landowner would have ownership over the groundwater.16

4) **Ohio:** A landowner does not have any "absolute ownership" right in groundwater.17
5) Connecticut: Groundwater cannot be privately owned, but in order to be covered under an insurance policy the party must be able to show that they were in “care, custody, and control” of the groundwater. The nature of groundwater is inconsistent with the insured’s ownership, since groundwater is either transient or migratory. 18

6) Michigan: The court ruled that the people of the state own the groundwater not the landowner. Imminent damage to groundwater or to third-party property, without showing existing damage, is sufficient to avoid the owned-property exclusion. 19

7) Kansas: Landowners do not own groundwater as owner of the land, they just have a right to the usufruct of the water and not the water itself. 20

8) Missouri: Landowner has no vested right to groundwater, just a right to the use of the groundwater and not to the water itself. 21

9) Colorado: Landowner has no right of groundwater ownership. Groundwater is a public resource and Colorado owns all public resources. 22

10) Florida: State owns the groundwater and is responsible for its cleanup and making safe for drinking. A city is to work with water management districts to make the drinking water safe. City must also be compensated for the restoration of the groundwater. 23

11) North Dakota/South Dakota: Landowner has no right to groundwater ownership when not diverted and applied for a beneficial use. A landowner has no vested right in unused groundwater. 24

12) Utah: State is the owner of groundwater, but Utah code says waters belong to the public subject to rights and usage. Only right of the landowner is to the usufruct of the water and not to the water itself. 25

13) Arizona: Right of the groundwater to the landowner is to the usufruct of the water and not to the water itself. No right of ownership to the groundwater prior to its capture. 26

14) Nebraska: Nebraska Constitution Article 1 § 46-657 states that the groundwater is owned by the public and the only right that the landowner has to the groundwater is to the use of it. 27

15) California: State has ownership interest in damaged groundwater, not the landowner, all waters within the state are property of the people of the state. 28

The following are a list of some states that classify groundwater as owned by the landowner:

1) Maryland: State does not own the groundwater, but the court never says whether the landowner does. State’s interest is in power to preserve and regulate groundwater. Maryland has yet to establish whether landowner owns groundwater. 29

2) Indiana: Groundwater belongs to the landowner, but right to the land owns the groundwater. 30

Under the Pennsylvania statute and supporting case law, groundwater is considered to be owned by the Commonwealth. So why then are the insurance carriers claiming that onsite pollution is first party and not third party property damage? The problem with this groundwater analysis is that the Pennsylvania statutory definition is extremely broad. According to the definition, a pond located on your private property would be considered waters of the Commonwealth. Moreover, the definition of waters of the Commonwealth is not synonymous with land owner-
ship. How can one truly own the land on which they live if groundwater from a pond located on their land is considered waters of the Commonwealth? This is the issue that the courts are being faced with. Until a clear answer is drawn pollution will continue to spread off a company's own land and into the water supplies of nearby communities. While clean-up could prevent further pollution and put a stop to the dangers these communities face by having their water supplies threatened, the clean-up process never begins due to the insurance carrier's denial of coverage. This is why the courts need to establish a clear answer as to whom owns groundwater, and how groundwater should be classified. Once this is done, it will be clear as to who should pay for clean up, leading to clean-up beginning before the pollution spreads to nearby communities, furthering the very purpose of pollution prevention.

Ms. Lewandowski is a third year day student, President of the SBA and an assistant editor for Juris Magazine.

“Waters of the Commonwealth”
ENDNOTES
3 Philadelphia Chewing Gum was later overruled by National Wood Preserves, Inc. v. Commonwealth Department of Environmental Resources, 414 A.2d 37 (Pa. 1980). On the issue of strict liability, National Wood made landowners and occupiers strictly liable to remedy a pollution situation under the Clean Streams Law, 35 P.S. § 691.316. The Philadelphia case was overruled on their conclusion that § 316 is not a declaration of strict liability based upon the mere fact of ownership or occupancy. Id. at 148. They believed that this strict liability construction of § 316 would permit the Commonwealth to engage in regulation which would constitute the taking of property without compensation. Therefore, it would lead to an unconstitutional exercise of police power. Id. at 150.
6 Id. at *16, see also, Peter J. Kalis et al., Policyholder's Guide to the Law of Insurance Coverage § 10.03(A), at 10-25, 10-26 (1997).
7 25 F.3d 1267 (5th Cir. 1994).
8 Id. at 1268.
9 Id. at 1271.
10 Id. at 1271-72.
11 Id. at 172-73.
12 952 F.2d 1551 (9th Cir. 1991).
21 City of Blue Springs v. Central Development Assoc., 831 S.W.2d 655 (Mo. App. 1992).
28 Intel Corp. v. Hartford Accident & Indemnity Co., 952 F.2d 1551 (9th Cir. 1991), see also, Cal. Water Code § 102.
31 Sewall Maddocks v. Elbridge Giles, 728 A.2d 150 (Me. 1999).
33 Ricks Exploration Co. v. Oklahoma Water Resources Board, 695 P.2d 498 (Okla. 1984), see also, 60 O.S. 1981 § 60.
Professor Archibald Cox, a leading authority on constitutional law and labor law, has had a distinguished career in public service and was appointed the first Watergate Special Prosecutor by President Nixon in May of 1973. During the Truman Administration he served as Chairman of the Wage Stabilization Board and from 1961 to 1965 was Solicitor General of the United States. Presently he teaches at Boston University, and is Professor Emeritus at Harvard University from which he received his AB and LLB degrees.

Dr. Frank Anthony of the New England Writers Vermont Poets Association, interviewed Professor Cox in September 1996 in his Harvard Law School office. Dr. Anthony holds a Ph.D. in English Literature and is a well-respected and noted poet who selects two or three distinguished persons per year to interview. These interviews provide the public with a written record of history and much appreciated and synthesized insight into the intrinsic thoughts behind those events. This interview has been incorporated as part of the historical archives of the library several law libraries.

In this interview Professor Cox discusses constitutionalism as it relates to the federal judiciary, moral issues, affirmative obligations, and the function of the Supreme Court. Additionally, Professor Cox provides words of wisdom for the legal profession.

Anthony: In your book, The Role of the Supreme Court in American Government, you referred to the Watergate investigation as an illustration of “a major function of the federal judiciary” and also as “insight into the nature of our constitutionalism”. Do you still feel this way about special prosecution?

Cox: I think the litigation over the Watergate Tapes illustrates three features of our constitutionalism that are important. First, it shows the federal court as the ultimate arbiter of disputes concerning the respective powers and privileges of the different branches of the federal government which, frequently, are in conflict: the Legislative, Executive, and the Judicial. In that instance, the conflict was between the Judicial and the Executive.

Second, the Watergate litigation particularly, and the whole Watergate affair, illustrates one of the basic tenets of our constitutionalism: the rule of law. The rule that even the very highest officials, including
Civil disobedience, in the sense in which I am using the word, includes a willingness to accept the punishment that goes with the violation of law. I don’t think such a case could very well arise in the case of an important public official.

Anthony: As the first suit against a President that ever succeeded, what other reasoning gives the Nixon decision special significance? I am thinking of future Presidents.

Cox: There are two places where it is important. First, the decision of the Court of Appeals in the first Watergate Tapes Case, and implicitly the decision of the Supreme Court in the second, say that the President is not immune from judicial process. That had never been decided before. The practice has never been to sue the President, even when there is a presidential order. The practice has always been to sue the officials carrying out the presidential order: maybe the Secretary of Commerce in the famous Steel Seizure Case or the Secretary of State in the early Marbury v. Madison case.

But, in the Watergate Case, since President Nixon had decided he had personal control over the tapes, it was necessary to subpoena him. The Court said, “Yes, the President doesn’t have a complete immunity.” Second, and of much more practical importance to a President, the opinions, both of the Court of Appeals and of the Supreme Court, give some guidance on the extent to which the President has a privilege to withhold information, to withhold papers from the court and perhaps from the Congress. There are a lot of questions still open, but those cases give guidance. That is the kind of question that may arise fairly often in the future.

Anthony: Why did Nixon have personal control of the Watergate tapes and what finally forced him to give up the tapes?

Cox: It is hard for me to think of a case where moral obligation conflicts with constitutional obligation. The nearest thing involving a government official, I can think of, arose back at the beginning of the Civil War when Chief Justice Taney ordered the release of some Marylanders who wanted to secede. They had been arrested by the Federal armed forces, and Taney, with habeas corpus, ordered that they be released. President Lincoln disobeyed that order. There was a national exigency that, arguably, required him to do what he did. Whether you would characterize it as a moral duty, I am not sure.

To think of instances involving anyone else, it does occur to me when the Supreme Court decided that starting the day in the public schools with prayer violated the First Amendment, a person might conscientiously have felt they had a religious duty to begin with prayer. That would have conflicted with any court order telling them they mustn’t. I think in the rare case like that, it may be that civil disobedience is justified.

the President, are subject to the law as declared by the courts.

Then, third, and most fascinating to me, is the initial refusal of President Nixon to comply with the subpoena to produce the tapes. This illustrates the extent to which our Constitution and the rule of law ultimately depend on the people’s realization that all their liberties depend on the rule of law and their readiness when the rule of law is challenged.

Anthony: On the matter of moral and constitutional duty, do you feel that one or the other should prevail in questions of highest national significance, such as Watergate?

Cox: It is important to recover the sense of professionalism, of independence, that lawyers had in the past but which, sad to say they have begun to lose. They have begun to be so loyal to their clients that they forget their public responsibilities.”

—Archibald Cox

"I think it is important to recover the sense of professionalism, of independence, that lawyers had in the past but which, sad to say they have begun to lose. They have begun to be so loyal to their clients that they forget their public responsibilities.”

—Archibald Cox
with the court order. I think part of that was based on disapproval of the way President Nixon was acting. Part of it, I think, genuinely was an appreciation of the importance of the rule of law and the importance of insisting that even the highest officials comply with the rule of law.

Anthony: Why does freedom, as a last resort, depend “upon observance of the rule of law”?

Cox: I would say that ultimately the law and the people's appreciation of its importance, is the only check on physical power. Think about it as something that the President was doing, something that was more harmful to people's liberties than disobeying the subpoena. How do you enforce the order against the President? What do you do? And whichever way you could think of various legal proceedings, they were all sort of empty in the end if the President continued to disobey them. But he had the power, and the support for law is the only thing that can check power.

Anthony: Let's go to the abortion question. You ask the question in The Role of the Supreme Court in American Government: “Has the Court swung back to the method which led to equating Due Process with the economics of the laissez-faire?” How do you see the future resolution of this question?

Cox: The Court did do several things that raise very serious questions about the judicial method. What is the function of a judge as distinguished from a Platonic Guardian, who was simply charged with being a wise man and making rules that are good for society?

First, it decided that the abortion laws deprived a woman of liberty without due process of law. To do that, it had to read into the word “liberty” the notion that freedom to have an abortion is a specially protected fundamental right. Just as the old Court, in the years when minimum wage and maximum hour laws were unconstitutional, held that freedom of contract was a fundamental right. Beginning in 1937 the law shifted on those points and just about everyone said the Court has no business elevating freedom of contract to this special status. Shouldn't one ask the same question about elevating freedom to have an abortion to that special status? What business is it of the judges to do that? Instead of being a regulation of business, an economic regulation, it is a moral regulation, but the same kind of question can be asked.

Then I ask: Were there any places in the materials to which a judge may properly look for law, that would support doing this in the case of abortion as distinct from freedom of contract? My answer had to be “no.” What evidence was there that freedom to have an abortion was cherished by the American people as a fundamental right? There were certainly no cases, no precedents, to support it. The prevailing morality for at least a century had been quite the contrary. Prevailing legislative practice had been quite contrary. Where did the Court get this idea, except that it thought it was a good idea? Is that the business of the Court? Those were the questions I was trying to raise when I said, “Have the courts swung the circle back?”

It is now pretty clear that the Court will preserve Roe v. Wade and that freedom of choice will continue to be protected by the Fourteenth Amendment: the guarantee against deprivation of liberty without due process of law. When the question was before the Court again in a case known as Planned Parenthood v. Casey, the argument that prevailed with the Justices then was: “Now there is law in the books, Roe v. Wade. It has been law for twenty years.”

Although I would have voted with the dissent in Roe v. Wade, I would have voted with the majority in Planned Parenthood v. Casey, because it was law. Incidentally, but not very relevantly, if I were a Platonic Guardian, I would allow freedom of choice.

Anthony: How will constitutional America cope with the challenge of affirmative obligations as it relates to food, shelter, jobs, education, medical care, and so forth? You dealt with that in your book.

Cox: I wrote that the next great challenge the courts would face was to develop a body of constitutional law securing at least minimal performance of those affirmative obligations of government. I wouldn't write that today. I don't think that constitutional law can or will develop in a way that it enforces affirmative obligations of government. It isn't that I have abandoned the belief, labeled “liberal” by many people, that government has many affirmative obligations, but I don't think the courts can or will develop a body of law for enforcing at least minimal performance of those obligations. The courts can make sure that in performing those obligations the Legislative and Executive Branch don't violate the Equal Pro-
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tection Clause, or don't violate the guarantees of freedom of speech, or make other intrusions upon personal liberty. But I don't think they can enforce the affirmative part of it. Certainly the present Court wouldn't even dream of such a thing.

Anthony: So the provisions of food, shelter, jobs, education, medical care, and so forth will be...

Cox: They will remain executive and legislative judgments, legislative primarily, with legislative judgments the President, the Chief Executive, should take leadership.

Anthony: Has your opinion of the primary function of the Supreme Court in the United States changed, and if so, how has your opinion changed, of its function?

Cox: No, I think the primary functions remain the same in performing the function of interpreter of the Constitution, protector of individual liberty, judge of conflicts between different branches of government, the three branches of the federal government, and also conflicts between states and nation. I think it is important, for the Court to remember that it is a court. There is a difference between the job of a judge, or a Supreme Court, and what would be the job of a Platonic Guardian who had complete discretion and responsibility for governing a society.

In the book, I had suggested, and I believed, that if you looked at the Warren Court decisions, and if you looked at Roe v. Wade, the abortion decision, as the work of Platonic Guardians, they were, all of them, wiser, fairer than the rules they replaced.

I think that the task of a judge of a court is not that of a Platonic Guardian. The task is to decide, to some extent, according to law. I think of this in terms of an incident when I was just out of law school and was law clerk to the great Federal Judge, Learned Hand. He used to have his law clerk work in the office with him. You sat and you spoke when you were spoken to. On one occasion the silence was broken when the Judge said, "Sonny, to whom am I responsible? Nobody can fire me, nobody can dock my pay, nobody can make me decide what I don't want to decide, not even those"—referring to the Supreme Court—"nine bozos down in Washington who sometimes reverse me. To whom am I responsible?" And then he pointed to the shelves of books all around the room. "That's to whom I am responsible, to those books about us." In other words, he was responsible to the law. He took a point of view that law was something growing, malleable. That while the judge must, as he put it, speak in the voice of generations of judges, wrapping himself in the mantle of a glorious past, he must also find some composition with the dominant needs of his times. So he was not adverse, within limits, to shaping the law.

But this goes back to what I was saying about the abortion cases. Where in anything that can be thought of as the sources of law could you find the basis for the majority opinion in the abortion cases? My answer is nowhere. Was it good? Was it something I would approve if it were the work of a Platonic Guardian? Yes. But I think the judge's responsibility is narrower, because the people must believe. And for them to believe in it, it must have some truth. That the judges themselves are bound by law, that when they order the President to produce tapes, they aren't just making this up, but it is the law, it is our duty to hand down that decision because it is the law. Now this allows, may even demand, some malleability, some choice, but too much freewheeling, too much of a Platonic Guardian too often, would, I think, undermine, for the lack of a better word, what I call the courts' legitimacy. The willingness of the people to recognize that, when it is needed, as in the Watergate Tapes Cases, enforces the rule of law.

Anthony: As future law students look back on your record, not just with Watergate, but your record in general, they are going to be quite amazed at some of the things that you have done. I wonder if you have some final words for them.

Cox: As students, it is an important time to think about their role in the profession, the ideals with which they would pursue their profession. I think it is important to recover the sense of professionalism, of independence, that lawyers had in the past but which, sad to say they have begun to lose. They have begun to be so loyal to their clients that they forget their public responsibilities. I hope my students will be part of a move to revive the old ideal of Elhu Root, a great public servant the first part of this century, a great lawyer in New York City representing large corporate clients. He once said he spent most of his time as a practicing lawyer representing those clients, telling them, "Yes, the law would probably let you do that, but don't do it, it's a rotten thing to do." I wish there were more advice given of that kind.

Ms. Aytch is a third year evening student.

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“Archibald Cox Speaks”

ENDNOTES

1 This interview has been edited and reproduced with the permission of Dr. Anthony. Commentary by Annary Aytch.

PREVENTING

Juvenile Delinquency: A Legislative Proposal

by Michele A. Smith

Michael is the eldest of three boys in the Clark family. He is 15, and has two younger brothers, Marc and Brad, ages 12 and 10 respectively. Michael entered the Juvenile Justice system in Allegheny County at the age of 14 after being adjudicated delinquent for receiving stolen property. The incident occurred as he was leaving school one fall afternoon; two older students approached him in a car and asked if he wanted a ride home. Michael, a freshman in his new high school, knew the two older students and had always wanted to “hang out” with them. Michael eagerly accepted the ride home, thankful for not having to take the bus, and excited that he was finally included by the upperclassmen. On the way home however, things quickly soured. Michael found himself involved in a high-speed car chase with the Pittsburgh police, who had reason to believe that the car in which he was riding had been stolen earlier that day.

Michael was subsequently arrested and adjudicated delinquent by a Juvenile Court judge at his delinquency hearing. Consequently, Michael was ordered to pay a portion of the restitution for damages done to the vehicle and participate in an after school program. Also, he was put on informal probation. His parents had received notice of his hearing and were present to support him regardless of their disappointment in him and their absence from work.

Afterward, Michael’s parents devoted much of their time to supervising him and ensuring his compliance with the requirements of his informal probation. Unfortunately, as working parents with three boys, the Clarks realized that they simply could not be with each of their boys twenty-four hours a day.

Consequently, Michael became resentful of the constant supervision and he became angry toward his parents for no longer trusting him. This resentment and anger only served to
exacerbate the existing tensions at Michael's home and led to many additional family quarrels. Among those affected by the family's discord were Michael’s younger brothers, Marc and Brad. They were left virtually undisciplined by their parents, who were simply overwhelmed due to the new responsibilities they faced with regard to Michael. Such responsibilities included taking off of work to attend Michael's hearing (which was continued at least once), attending scheduled conferences with Michael’s probation officer, and ensuring Michael's compliance with a curfew and informal probation.

Michael’s younger brothers, on the other hand, practically idolized him because of his exciting ordeal with the police, his newfound “friends,” and his “cool” attitude toward authority. In fact, Marc and Brad began immediately to embellish Michael’s story for all of their friends in the Junior High School. Sensing no real threat of imminent punishment (since Marc and Brad were not present at the Juvenile Court proceeding), they adopted Michael’s cool exterior and eventually became insubordinate to both their parents and schoolteachers. Marc and Brad simply did not comprehend the magnitude of their brother’s delinquency adjudication which warranted the court order placing Michael on informal probation, ordering him to pay restitution, and to participate in the after-school program. This after-school program was designed to fit the legislative requirements of providing counseling, treatment, education, and rehabilitation services to juvenile delinquents and their parents.1

Such programs, however, do not provide for the counseling and education of children like Michael’s younger brothers. Since Marc and Brad are both below the age of ten and they cannot be adjudicated delinquent, they could be considered dependent children.

In order to provide treatment, counseling, education, and rehabilitation for children in the same homes of a delinquent sibling, must such children be adjudicated dependent by the Juvenile Court? Or, should the state mandate the implementation of a comprehensive program to provide for their needs without adjudicating them dependent? Is not the introduction of one child in a family into the Juvenile Justice System a “red flag” warning to the state that this entire family requires or needs services? Could implementing a state program to meet the needs of children before they engage in delinquent acts reduce the occurrence of juvenile delinquency?

A comprehensive program of social services, including treatment, counseling, education, and rehabilitation should be provided for all members of a family within which a child has been adjudicated delinquent, upon the court’s determination that such services are needed or upon the request of the family. Traditionally, as existing statutory language reflects, courts have recognized the importance of including the parents of a delinquent child in both the delinquency proceedings and subsequent treatment, counseling, education, and/or rehabilitation. However, no such legislative provision currently exists to ensure that the remainder of the family, the delinquent child’s siblings, will be recognized by the state and provided with supportive services when needed.

According to the Pennsylvania’s Juvenile Act, “a court may, when [it] determines that it is in the best interests of the child, order a parent, guardian or custodian of a child to be present at and to bring the child to any proceeding.”2 In addition to being present at proceedings, parents are encouraged, and sometimes ordered, to participate in ensuring that the order of court is effectuated.3 For example, in Michael’s case, his parents were required to ensure that Michael was home before the city’s curfew, and in time to receive the “check-in” call from his probation officer.

If necessary, a court “may order a parent, guardian or custodian to participate in the treatment, supervision or rehabilitation of a child, including, but not limited to, community service, restitution, counseling, treatment, and education programs.”4 However, there is currently no specific provision within Pennsylvania law which specifically provides for the participation of and sup-
port for a delinquent’s siblings in treatment, counseling, education, and rehabilitation.

Perhaps the Juvenile Act’s most glaring inadequacy of all is the fact that each of its four stated purposes purports to protect familial and community relationships, yet the Act blatantly excludes the incorporation of any type of legislative and/or judicially protective or preventive measure directed at siblings living in the same home as the delinquent child.6

Furthermore, even the proposed amendments to 42 Pa.C.S.A. § 6301, as stated in House Bill 1897 of the 182nd Pennsylvania General Assembly, fail to address such issues. The absence of any protective or preventive legislation targeting the siblings of the delinquent child greatly impacts the stability of families within which a child is adjudicated delinquent. Though the delinquent child and his parents may be ordered to fully participate in the aforementioned services, siblings of the delinquent child are left to fend for themselves, as no specific legislation exists to provide for their treatment, counseling, education or rehabilitation.

In addition to preserving the health and providing for the needs of the family, there are many other reasons that a comprehensive program providing services for the siblings of a delinquent child should be effectuated. A comprehensive program would create stability not only within the family unit but also within the community, as stronger families would naturally lend to a stronger community. Additionally, preservation of the entire family vis-a-vis this program will provide the preventive element that is necessary to deter siblings in the family from engaging in delinquent acts themselves.

Therefore, a comprehensive program providing treatment, counseling, education, and rehabilitation for every member of a family within which a child has been adjudicated delinquent, traditionally non-existent in Pennsylvania law, should be implemented to promote stability within families, preserve communities, and provide a preventive element for deterring delinquent acts among the siblings of a delinquent child.

The underlying factors, roots and causes that have been analyzed in answering why children commit delinquent acts are numerous. Judges, lawyers, sociologists, doctors, probation officers, case-workers and parents have grappled with the question for years. One common thread is entwined throughout every answer: most juvenile delinquency originates in the home.7

According to Attorney General Janet Reno, “it is clear that much of the violent behavior we see in juveniles has its roots in their violent homes.”8

Various studies, aimed at uncovering the roots of juvenile delinquency, have targeted key risk factors such as: being a victim of abuse and neglect, failing in school, associating with delinquent peers, and living in communities where there is easy access to guns and drugs.9

Though clearly a complex issue with many variables, the origination of juvenile delinquency is one worth exploring to effectively
tackle the arduous task of deterring it’s conception in Pennsylvania’s youth.

Many experts suggest that it is possible to differentiate between healthy and unhealthy families, hence predicting which children will become delinquent.10 Further, according to many experts, what is required is a “shift from a reactive mode...to more proactive strategies that intervene in the developmental processes of criminal offending.”11 This end could be effectively accomplished simply by directing preventive programs at young children in troubled homes before they have committed a delinquent act and are introduced into the juvenile justice system. Furthermore, families that have already been exposed to the juvenile justice system by the adjudication of one child would most benefit from the implementation of services, if the determination is made that a need exists.

More specifically, such multiple child homes from which one child has already been adjudicated delinquent should receive attention first. As the vignette above illustrates, if Michael’s younger brothers, Marc and Brad, had been educated, counseled or otherwise treated after Michael’s adjudication, they may have understood the delinquency process and the ramifications for delinquent behavior. Additionally, they would have been better equipped to handle the stress present in their home at the time. Further, their parents would have had less to worry about and could have dedicated their energy to resolving Michael’s situation.

Unfortunately, Pennsylvania law currently only addresses delinquency cases as they surface, and clearly lacks this preventive measure by which juvenile delinquency levels could be drastically minimized. Researchers have concluded that “if those at greatest risk of offending can be identified early in their life course, subsequent criminal behavior may be prevented.”12 Additionally, it has been argued that indicators of delinquency may even be identified in children who are as young as six years of age.13

Assuming *arguendo* that delinquent “propensities” can be identified in children as young as six years of age, in accordance with the goal of preventing juvenile delinquency, such children could be recognized by the state before they engage in a delinquent act. It has been well stated that “waiting until the first official arrest to identify juveniles at risk may be too late.”14 It is the responsibility of the state to ensure that purported goals are met. The state, via the enactment of explicit legislation, should provide that “in identifying high risk youth, probation officers [or Juvenile Courts and case workers]...coordinate activities with families, schools, and other community groups especially regarding the sharing of information on both risk and protective factors.”15

Attorney General Janet Reno recently emphasized her support for the prevention of juvenile delinquency when recalling her years as a prosecutor:

I would often pick up a pre-sentencing report on a young person I had prosecuted. In virtually every report, I could identify four or five points along the way where, if we had been able to intervene in the person’s life, we probably could have kept that young person out of trouble.16

Attorney General Reno, like many others who have worked in and studied the field, observes that delinquency can be prevented at various points in a child’s life. It logically follows then, that the state, in compliance with the goal of preventing juvenile delinquency, should intervene at the first and earliest point such delinquent tendencies are recognized to ensure that the delinquent conduct does not occur.

Professors Holland and Mlyniec of Temple Law School, urge that “family life management planning” is necessary. Family life management planning “takes an all-encompassing view of providing support, services, and resources that address the needs of the high-risk youth, their family, household members, and significant peers, in their homes, schools, and communities.”17 Intervention in families by state and community programs, with the goal of prevention of delinquency, can be brought about in a myriad of ways.

One way can be viewed in the light of the Pennsylvania Child Protective Services Law which determines who has an absolute duty to bring a child to the attention of the state and under what circumstances this duty arises.18 It is excerpted in pertinent part below.

[Any] persons who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made...when they have reasonable cause to suspect, on the basis of their medical, professional or other training and experience, that a child coming before them in their professional or official capacity is an abused child.19

In fact, neighbors who are made aware of specific problems in a household which would affect a child’s life or well-being may help by bringing the problem to the attention of the state or state agency that can properly address it. However, this method receives a great deal of public scrutiny, is not fool-proof, and may even be faulty at times.

Therefore, the most effective means by which the state may ensure the protection of its children in preventing juvenile delinquency is by conclusive, mandatory legislative provisions aimed at mobilizing state agencies and providers to work together in identifying and then pro-
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viding for children at risk of delinquent behavior. However, such mandatory legislative enforcement must be considered carefully and in light of several factors: (1) the parents’ constitutionally recognized fundamental rights to procreate, raise and rear their children, (2) a child’s liberty interest in refusing to become involved in state services simply because a brother or sister has committed a delinquent act, and (3) the interests of the state in properly allocating resources and costs to such endeavors.

Though the first hint of delinquent conduct in a child may seem like the logical point at which the state should intervene to prevent the eruption of delinquent behavior by that child, such point is difficult to determine. Some may argue that the state has no right to “raise and rear” children while still in the arms of their parents. Others argue that if parents are not raising their children with proper care, the state is obligated to intervene. Children, as well, who have not been adjudicated dependent or delinquent may argue that the state may not intrude upon their lives simply because their brother or sister has been adjudicated delinquent. Obviously, many tensions exist between the rights of parents and family privacy on the one hand and a child’s protection from state intervention on the other hand. 20

It has been well decided by the Pennsylvania Supreme Court as early as 1905 in Commonwealth v. Fisher, 213 Pa. 48, 62 A. 198 that under the doctrine of parens patriae, in order to prevent juvenile delinquency, state intervention may be necessary and is required under certain circumstances.

To save a child from becoming a criminal, or from continuing in a career of crime, the Legislature surely may provide for the salvation of such a child, if its parents or guardian be unable or unwilling to do so, by bringing it into one of the courts of the state . . . for the purpose of subjecting it to the state’s guardianship and protection. The natural parent needs no process to temporarily deprive his child of its liberty . . . to save it . . . from the consequences of persistence in a career of waywardness. 21

A more recent case, Santosky v. Kramer 22 was decided by the United States Supreme Court in 1982. In Santosky, the state of New York sought to irrevocably and permanently sever the rights of the Santosky’s to their natural born child. The language of Santosky is applicable when exploring the conflicts raised by the instant proposal, and will certainly shed light upon the standards with which the state must comply in enacting such proposal.

In Santosky, the Court reiterated that “the fundamental liberty interest of natural parents in the care, custody and management of their child is protected by the Fourteenth Amendment, and does not evaporate simply because they have not been model parents…” 23 It is argued that state intervention may infringe upon that fundamental liberty interest. Therefore, to protect the liberty interests of parents’ from unwarranted intrusion by the state, the Court in Santosky adopted a three-part balancing test. Such test is meticulously applied to determine the nature of the process due the parents. 24 According to the Court, “private interests affected by the proceeding, the risk of error created by the state’s chosen procedure, and the countervailing governmental interest supporting use of the challenged procedure…” must each be balanced against one another to determine the process due the parents. Thus, the United States Supreme Court concluded in Santosky that a “clear and convincing evidence standard of proof strikes a fair balance between the rights of the natural parents and the State’s legitimate concerns.” 25

Therefore, the state, in following the burden of proof requirement of clear and convincing evidence set forth by Santosky, must ensure that it does not infringe upon the fundamental liberty interests of natural parents in the care of their children. The state, in its struggle to prevent the delinquency of children in families with a delinquent sibling, must determine whether the parents’ privacy right outweighs the state’s duty to protect the children and prevent further delinquency within the same family. 26

Likewise, in determining the rights of children within the family with regard to the state’s parens patriae role, the United States Supreme Court in Schall v. Martin 27 carefully balanced the interests of the child against those of the state in performing under the duties of its parens patriae role.

The juvenile’s ... interest in freedom from institutional restraints ... is undoubtedly substantial ... But that interest must be qualified by the recognition that juvenile’s, unlike adults, are always in some form of custody. Children, by definition, are not assumed to have the capacity to take care of themselves. They are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as parens patriae. In this respect, the juvenile’s liberty interest may, in appropriate circumstances, be subordinated to the State’s parens patriae interest in preserving and promoting the welfare of the child. 28

Under the doctrine of parens patriae, Pennsylvania, through its juvenile court system, administers rehabilitative rather than punitive measures to children adjudicated delinquent. Parens patriae can be translated “parent of the country” and originates in English common law, where the King had a royal prerogative to act as guardian to persons with
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legal disabilities such as infants. In the United States, the doctrine of parens patriae ensures the state's responsibility for its children, and the state is given 'quasi-parental' authority to dictate what is appropriate for a child. Unfortunately, despite the overwhelming evidence indicating that delinquency arises from within the home, Pennsylvania Law does not adequately address the needs of the other children who live in these homes.

Effective prevention of juvenile delinquency should begin in the home with the siblings of a child who has been adjudicated delinquent. In doing so, the state must begin to fully employ the doctrine of parens patriae as a means by which to reach such children in preventing further instances of juvenile delinquency.

In a collaborative effort to prevent juvenile delinquency, 150 Pennsylvania county leaders, child welfare experts and juvenile justice officials met on January 28, 1999 for a three-day symposium entitled "A National County Strategy to Prevent Violent Crime Through Early Childhood." At this symposium, keynote speaker, Shay Bilchik, administrator of the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention, enunciated that "early childhood development plays a critical role in crime prevention, but too often is overlooked." As a result of the symposium, attending experts agreed with Bilchik in her conclusion that, "the objective of future crime prevention must be identifying at-risk families and young children and then directing services to stabilize those families and treat those children." In effectuating such objective, the state must act in accordance with its role as parens patriae.

One of the first of its kind in Pennsylvania, Bilchik's symposium was predated by House Bill 2626, The Youth Development Safe Communities Act, which was first presented on May 13, 1998, thrice amended, and most recently re-presented on November 9, 1998. It is excerpted in relevant pertinent part below, revealing its stated objective.

The purpose of this act is to recognize the shared responsibility of the public and private sectors to support regular, constructive programs for children and youth in the non-school hours in order to foster the development of children and youth into constructive, productive citizens of this Commonwealth and to create new resources in support of such programs.

Though each of the nine provisions of House Bill 2626 are indirectly aimed at preventing juvenile delinquency and strengthening families and communities, the proposal does not specifically target children in families which have already been identified as "at-risk", "troubled" or "unhealthy". Though the proposed statutory language may be integral in indirectly providing the much needed support for siblings from a home in which a delinquent child has been identified, a direct legislative approach must be taken to ensure that juvenile courts, state agencies, community based programs and services are in uniform compliance across the board.

As illustrated earlier, the statutory provisions contained within the Juvenile Act are simply inadequate to effectuate such a purpose. Further, even its proposed amendments miss the mark, as they add only the additional consideration of a child's 'safety.' The view of two Northeastern University professors of criminology is shared across the board by virtually every person involved in the juvenile justice system. They believe that "what is required is a shift from a reactive mode wherein resources are directed towards the 'worst' and 'toughest' cases to more proactive strategies that intervene earlier in the developmental processes of criminal offending."

It may be contended that in order to prevent juvenile delinquency and to ensure the stability of our homes and communities, state intervention into the lives of children who
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are the siblings of delinquent brothers and sisters is required. Such intervention may be justified under the doctrine of parens patriae, only after the state’s interests are balanced against those of the parents and the burden of proof requiring “clear and convincing evidence” as set forth in Santosky is met.

Various legislative proposals and statutory amendments made in an attempt to address the growing problem of juvenile delinquency in Pennsylvania have been clearly inadequate. However, they illustrate an attempt by legislators to address the issue of juvenile delinquency in Pennsylvania. Such efforts include House Bill 2626 and recent amendments to 42 Pa. C.S.A. § 6301. Additionally, substantial efforts have been made as a result of small, governmentally subsidized pilot programs across the state. According to Governor Tom Ridge’s office, a two million dollar “Blueprints for Violence Prevention” program was launched in thirteen Pennsylvania counties this past year in an effort to help combat juvenile delinquency.

The simple truth is that such legislative attempts will simply never suffice until the legislature begins to mandate that the courts address juvenile delinquency as a family problem. The first step toward such goal must be acceptance and recognition of the statistical studies and comprehensive facts which conclusively indicate that most, if not all, juvenile delinquency finds its roots in the home. To effectuate compliance with the stated objective (reducing the occurrence of juvenile delinquency), existing legislation must be amended to provide services, when needed, to the family as a whole. It is therefore generally recommended that Pennsylvania’s legislation, specifically 42 Pa C.S.A. §§ 6301(b) and 6310(a) be amended to reflect recognition of the family as one single solitary unit with varying needs.

The language of 42 Pa C.S.A. § 6301(b), was recently amended by the legislature for two reasons. First, the language was augmented to include statutory protection for the “health and safety” of children coming “within the provisions of the chapter.” Second, the language, as amended, now provides either for the preservation of the family unit or an alternative family when one cannot be preserved. While both amendments are of equal importance, neither address the remainder of the family within which a child has been adjudicated delinquent nor the prevention of juvenile delinquency in general.

Accepting the foregoing conclusion that delinquency originates in the home, this section must revised “...(1) To provide for the care, protection, safety and wholesome mental and physical development of children coming within the provisions of this chapter and their immediate family members as becomes necessary. (2) ...to provide for children committing delinquent acts and their siblings as is requested or becomes necessary through programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.”

Section 6310(a) is entitled “Parental Participation” and relates generally to the participation of parents and/or guardians and/or custodians in the disposition of their child. It states in pertinent part that “...a court may order a parent, guardian or custodian to participate in the treatment, supervision or rehabilitation of a child, including, but not limited to, community service, restitution, counseling, treatment and education programs.”

Once again, it is clear from the face of this statute, that its drafters may not have recognized the importance of addressing juvenile delinquency with deference to its contributing factors. Drafted with prevention of juvenile delinquency as its goal, this section should be entitled, “Familial Participation” and should provide for participation of the entire family, if deemed necessary or upon request by any family member. Therefore, upon revision, the statute would provide that “(a) ...a court may order, a parent, guardian, custodian, or sibling of the child adjudicated delinquent to participate in the treatment, supervision or rehabilitation of such child, including, but not limited to, community service, restitution, counseling, treatment and education programs. (b) Such order of court may be made pursuant to a referral by any social services agency recognized by the court or upon the request of any family member to such agency or by direct communication to the court.”

In enacting the foregoing statutory proposals, the psychological, educational and rehabilitative needs of all children within a family, be they delinquent or not, will be ensured by the state in fulfillment of the state’s parens patriae role. Upon determining that the privacy rights of parents outweighs the state’s interest in protecting its children, the state will follow the burden of proof requirement announced by the court in Santosky.

Therefore, only by the establishment of clear and convincing evidence will the state intervene by acting, in effect, as a “safety net” providing children with the skills needed for a productive adulthood. The result of such legislative change mandating that services and pro-
grams be provided to entire families before it erupts in a family but also will provide greater protection and understanding for those children who have already entered the Juvenile Justice system.

Michele A. Smith is a third year student at Duquesne University School of Law and has been an Assistant Production Editor for Juris since 1998.
Plain Feel, Probable Cause
& The Fourth Amendment

by Jarrod A. Caruso

Under the Fourth Amendment and Article I § 8 of the Pennsylvania Constitution, the plain feel doctrine has developed as an exception to the warrant requirement and as a means of converting reasonable suspicion into probable cause. It was not until last year that the Pennsylvania Supreme Court finally ruled on the issue of plain feel. It is now an accepted doctrine in the Commonwealth, but it will continue to be held under close reigns.

Plain feel is more closely related to the concepts contained in the Terry stop and frisk, but was correlated with plain view for several years. Plain view and stop-and-frisks raises the issue whether it makes a difference where the probable cause "stems from a person's sense of sight or sense of touch, and whether the Constitution requires tactiliy-developed probable cause to be treated differently from probable cause garnered from the sense of sight." The foundation for plain feel is that "...probable cause is probable cause, and it matters not whether its development flows from an officer's sense of sight [or] touch..."

In Minnesota v. Dickerson, the United States Supreme Court addressed the question of whether or not the Fourth Amendment permits police seizure of contraband detected by an officer's touch during a protective patdown search. The facts are rather direct. On November 9, 1989, two Minneapolis police officers patrolling the North side of the city in a marked car saw Dickerson leaving what the officers knew to be a "crack house." Initially, Dickerson was walking toward the police, but abruptly changed direction and entered into an alley after seeing the officers and making eye contact with one of them. Due to the officer's knowledge of the building's reputation for drug trafficking, and Dickerson's behavior, the officers decided to investigate further. The officers stopped Dickerson and ordered him to submit to a pat-search. Although Dickerson did not have any weapons on him, the officer noticed a small lump in his front pocket. The officer manipulated it with his fingers and from the officer's experiences; it felt like a rock of crack cocaine in cell-

Plain view and stop-and-frisks raises the issue whether it makes a difference where the probable cause "stems from a person's sense of sight or sense of touch..."

...probable cause is probable cause, and it matters not whether its development flows from an officer's sense of sight [or] touch..."

Justice White drew the logical progression from plain view into plain touch as he delivered the opinion of the Court in Dickerson:

The rational of the plain-view doctrine is that if contraband is left in open view and is observed by a police officer from a lawful vantage point, there has been no invasion of a legitimate expectation of privacy and thus no "search" within the meaning of the Fourth Amendment—or at least no search independent of the initial intrusion that gave the officers their vantage point. (Citations omitted) . . . If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context.
Plain feel or plain touch, is simply an extrapolation of plain view. The Court stuck to the contention that Terry searches are “strictly circumscribed” and officers cannot probe an object that does not feel like a weapon. Plain feel seizure of an item under Dickerson, is permitted only if “the nature of the object was immediately apparent to the officer during the pat down.”

Plain feel is a mirror of plain view. The requirements for both are identical in that initially, the officer must lawfully be where he or she is to perceive the evidence. Finally, the evidence must be “immediately apparent: to the officer as contraband. Probable cause is the standard to determine “immediately apparent.” The officer only needs reasonable belief, based on objective facts that the evidence is contraband.

Pennsylvania courts were hesitant before and somewhat after Dickerson to accept the plain feel exception. In 1991, the Pennsylvania Superior Court faced the issue in Commonwealth v. Marconi. The panel addressed the issue of whether probable cause to seize an object can arise during a frisk when a police officer knows from his experience, the object in question to be narcotics. The Superior Court refused to “create a plain touch addition to the plain view exception,” thereby extending Terry in Pennsylvania. In the case, the officer frisked the suspect for weapons. He felt two plastic bags, which he believed to contain drugs in Marconi’s pocket. The officer seized the bags. “The court reiterated existing law which indicates that in order to reach into suspect’s pocket during a Terry search, officers would have to feel something resembling a weapon.”

By 1993, the Pennsylvania Superior Court was grappling more with the issues surrounding plain feel. In In the Interest of S.D, the police received a tip that a particular group of juveniles were armed and dealing drugs. From that tip, the police had reason to believe the youths were armed and the frisk for weapons was warranted. The intrusion into the suspect’s back pocket for vials of cocaine was not constitutional under plain feel, as established by Dickerson, because the officer did not testify that he believed the bulge was a weapon or contraband. Therefore, the officer did not claim the bulge was immediately apparent to him to be contraband. The evidence was to be suppressed for exceeding a Terry stop.

Pennsylvania was skirting the plain feel doctrine. The Superior Court recognized its existence, but did not actually recognize it as being consistent with Article I § 8. In Commonwealth v. Dorsey, the panel would not conduct an in-depth analysis of plain feel under the Pennsylvania Constitution because the appellant did not brief the issue. The court gave a cursory review and stated that “no greater privacy interests would be advanced for the citizens of this Commonwealth” if plain feel was not supported by Article I § 8. The Court continued to say that plain feel “merely permits the officer to invoke probable cause to search during this frisk as a result of his sense of touch coupled with surrounding circumstances . . .” The court basically said this is the touching that occurs in a pat for weapons and the Commonwealth already provides the protections that an outright rejection of the doctrine would provide.

In Commonwealth v. Mesa, a police officer pulled a roll of money, contained marijuana, out of the suspect’s pocket. The officer did not provide specific testimony as to why the roll of money warranted the plain feel search. There was no proof the officer sensed through plain feel, any contraband or weapon. The Superior Court stated that, under the circumstances, the seizure was not justifiable within the principles of plain feel. Money is not contraband, nor could the court understand how a roll of money could be perceived as contraband.

Finally, the Superior Court recognized plain feel as consistent with Article I § 8 of the Pennsylvania Constitution in In the Interest of B.C., citing to Dickerson with three requirements. First, the “officer is lawfully in a position from which to detect the presence of contraband.” Second, the requirement of “immediately apparent” is necessary, and finally, “the officer has a lawful right to access the object.” The court was persuaded to accept the doctrine of plain feel because it only can be applied during a valid Terry frisk. By this, an of-
The officer in Pennsylvania must only initiate that frisk with suspicion that that individual is armed and dangerous. The court went on to reaffirm the “immediately apparent” requirement, but rejected plain feel as an exception to the warrant requirement. Plain feel can convert reasonable suspicion into probable cause, which is an independent exception to warrant requirement. The Commonwealth is particularly concerned with the “immediately apparent” requirement and enforces it literally.

Commonwealth v. Fink, suggests a limit to plain feel. The suspect permitted the police officer to perform a pat down search. Therefore, the officer had a legal right to perform the search. He felt what he believed to be a marijuana pipe, rolling papers and marijuana. The court did not believe the seizure of the contraband was supported by probable cause because the illegal nature of the pipe was not immediately apparent to the officer. The officer stated that the pipe felt “like a pipe, a regular smoking pipe without a stem.” The court found it questionable whether the officer had an immediate apparent belief that it was a regular pipe let alone a marijuana pipe thus ruling the evidence inadmissible. Therefore, non-threatening contraband can only be seized if its incriminating nature is immediately apparent.

Non-threatening contraband—a marijuana pipe—was deemed seizureable in Commonwealth v. Stoner. The officer was told that an individual was seen on the stairs of a local house holding a gun to the back of another man. When the officer approached the house, he observed a strong smell of “burnt marijuana emanating from an open window.” When the man came to the door and identified himself as Michael Stone, the officer explained his reasons for being there and performed a pat down search. The officer detected, immediately recognized and removed a marijuana pipe and a handgun. The court found this seizure constitutional because the officer knew from his experience that the smell coming from the house was marijuana and it was immediately apparent to him that the pipe in the suspect’s pocket was contraband.

Less than a year ago, in a decision issued on July 21, 1999, the Pennsylvania Supreme Court addressed the plain feel doctrine for the first time in Commonwealth v. E.M.,. In the E.M. case, the defendant was attending a high school football game when a security guard saw E.M. and O.T., under the bleachers and asked them what they were doing. They responded, “just smoking.” He told them to get out from under the bleachers. As they were leaving, two corporals form the Newton Township Police Department arrived and inquired as to what was happening. They told the corporals that they were smoking. Corporal McNickle noticed plastic bags “of what appeared to be marijuana.” He reached into O.T.’s pocket and pulled out the two bags. Corporal Meyers saw that there was a bulge in E.M.’s pants pocket, which according to the corporal was “characteristic of a small semi-automatic.” Meyers patted E.M. down and noticed that the bulge was soft. He testified that at this point, he knew that it was not a weapon and could be contraband. It was a large bundle of money. With that, Meyers found what he believed to be drugs in E.M.’s other pockets. They were both arrested. E.M. was charged with possession with intent.

The facts from Hall’s case have Philadelphia Police Officer Kopecki on routine patrol in Philadelphia. He and his partner saw three men about eighty feet away. Officer Kopecki testified that Hall was “holding a sandwich baggie in his hand which appeared to be full” even though he was unable to tell what was in the bag. The other two men performed some exchanges with Hall. The officer did not actually witness the transactions. As the officers pulled up, Hall placed the baggie in his left coat pocket and walked away. The officers called to him to stop and Hall quickened his pace. The officers pursued and finally stopped Hall. Officer Kopecki knew the baggie was in Hall’s left coat pocket and did not contain a weapon. The officer “grabbed and squeezed” the pocket and felt something “bulky and crunchy.” Kopecki testified that he immediately realized the bag contained drugs. Hall was arrested and charged with possession with intent to deliver.

The Court, in an opinion penned by Justice Nigro, first analyzed Hall’s case. The decision initially addressed Terry stating that the officer’s search of Hall was beyond the scope set therein. The Court then discussed Dickerson and the plain feel doctrine, concluding that “the plain feel doctrine cannot be triggered to salvage a search, such as the one here, which was ‘not within the bounds of Terry’.” Accordingly, the Supreme Court found that the drugs must be suppressed.

The opinion then turns to the case of E.M. It is clear from the established facts that Corporal Meyers subjected E.M. to a frisk because he feared the bulge was a semi-automatic weapon. Therefore, the Court rea-
sons, Meyers had reasonable suspicion to warrant the protective search.\textsuperscript{30} Again, Justice Nigro delves into Dickerson and the plain feel doctrine. Corporal Meyers did not "plainly feel" the contraband. Meyers testified that the bulge was soft and it "may have been more contraband." Meyers did not testify that it was "immediately apparent" to him that this bulge was contraband. He said that he believed the bulge "might" be contraband.\textsuperscript{31} The Court discusses Mesa, and concludes that without Meyers' testimony that he "plainly feel" the contraband, there was no probable cause to justify the search into defendant's "might" said that he believed the bulge was and concluded that he was "immediately apparent" to him that this bulge was contraband. The Court could not find that the bulge was "immediately apparent" to Meyers to be contraband and again ultimately found that the evidence should have been suppressed.\textsuperscript{32}

The Pennsylvania Supreme Court has recognized the plain feel doctrine as applicable to Pennsylvania law. From these two decisions, it is clear the court will continue to afford the citizens of this Commonwealth greater protection than those found in the Fourth Amendment to the Constitution of the United States.

The consolidated appeal of Commonwealth v. Stevenson and Appeal of R.A.\textsuperscript{33} was decided this year on January 20. Once again, Justice Nigro in penning his decision for the Pennsylvania Supreme Court relied very heavily on Dickerson and stressed the "immediately apparent" requirement. As more cases are granted allocatur and awaiting Supreme Court rulings regarding the sole issue of plain feel, such as Commonwealth v. Zhahir\textsuperscript{34} this requirement will continue to be literally defined.

Conclusion

Under Federal search and seizure jurisprudence, the government has been afforded more exceptions to the warrant requirement. On the other hand, the Commonwealth of Pennsylvania has continued to grant the citizens of the Commonwealth greater protection.

The plain feel doctrine in Pennsylvania should consistently be decided as E.M.. That is to say, the requirements set forth in Dickerson, will be interpreted very literally. The "immediately apparent" requirement would be the most protected of these, as is apparent from the most recent decision in Stevenson.

If an officer is conducting a Terry stop and therefore has reasonable suspicion to believe the suspect is armed and dangerous, he may conduct a valid pat down search. The officer's search must stay within the bounds of Terry. The fact that the object in plain feel is immediately apparent to the officer as contraband is absolutely crucial. Finally, the officer has a lawful right to access the object. So long as these requirements are followed, the police can retrieve those soft chunky items felt during pat down searches.

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\textbf{PLAIN FEEL, PROBABLE CAUSE AND THE FOURTH AMENDMENT}

\textbf{ENDNOTES}

1. 95 Dick. L. Rev. 521, 528-29.
3. 508 U.S. at 368-69.
6. 508 U.S. at 375-76.
7. 42 Vill. L. Rev. 741, 744.
13. 654 A.2d at 1089.
15. 683 A.2d at 648.
17. 683 A.2d at 925.
18. 683 A.2d at 927.
19. 683 A.2d at 928.
21. 700 A.2d at 450.
22. 700 A.2d at 451.
24. 710 A.2d at 56-7.
25. 710 A.2d at 59.
27. 736 A.2d at 657.
28. 736 A.2d at 658.
29. 736 A.2d at 661.
30. 736 A.2d at 661.
31. 736 A.2d at 663.
32. 736 A.2d at 664-65.
33. 951 971-72 ; quoting State v. Dickerson, 481 N.W.2d 840, 845 (Minn.1992).
The New Region:
A Window of Opportunity

by John E. Murray, Jr.
President, Duquesne University

In January, 2000, a new structure of County government began in Allegheny County, replacing the structure that had existed for two centuries. Within the Commonwealth of Pennsylvania, Allegheny County uniquely operated under the Second Class County Code that required even ordinary decisions to be made by the State legislature rather than the people of the County. Three commissioners were elected every four years and one of the three was required to represent the minority party, thereby inviting dissension and lack of direction every four years. The Commissioners were the governing unit combining legislative and executive functions with no checks and balances. There are 130 municipalities in the County, but the three Commissioners theoretically could be residents of one municipality, e.g., the City of Pittsburgh. While the City had once been the center of business activity and represented most of the population, by the nineties, most of the business activity and most of the population by far was found elsewhere in the County.

Since all decisions were made by three commissioners, any decision required the agreement of at least two of the commissioners. Gridlock was not uncommon, though the public awareness of consistent gridlock and disagreement among the commissioners was sporadic until 1996. For the first time in six decades, the two majority commissioners were Republicans, one of whom was, as usual, elected Chairman of the commissioners though the minority Democratic commissioner had received more votes than either majority commissioner — another manifestation of a flawed structure. Major disagreements among the three commissioners eventually resulted in a split between the two majority commissioners and the appointment of the Democrat as Chairman. The incessant public disagreements among the commissioners provided the citizens of the County with abundant evidence of a flawed governmental structure. Among the many deficiencies was the fact that it became prohibitively difficult to measure the four-year performance of a single commissioner since any one could blame the others for failures in the performance of County government.

There had been criticisms of the County government structure in the past, resulting in efforts to change it through a process under State law that required the election of a commission to propose a new structure. Two earlier attempts to pursue this process failed, essentially because there was little agreement on the form of a new government and the sitting County commissioners opposed such change. The process, itself, was cumbersome and did not augur success. By the nineties, the desirability of home rule for the County gained some momentum. Then County Controller Frank Lucchino suggested the possibility of simply converting the existing County Code to a home rule charter with no other changes. Simulta-
neously, the Allegheny Conference on Community Development asked me to inquire into home rule. I supported the Lucchino concept which would have avoided the highly controversial issue of changing the structure of government immediately, but, if successful, would have allowed the citizens of the County to change the structure without pursuing the cumbersome and problematic process that had failed twice before. Discussions with governmental and other leaders made it clear that this change would not be supported. For some, any movement toward changing the structure was anathema. Others who were willing to consider change insisted on seeing a plan for a new structure before they would support any new legislation.

In February, 1995, then Chairman of the County Commissioners, Tom Foerster and Commissioner Pete Flaherty, asked me to pursue a study of the structure of County government and to make whatever recommendations for change such a study might produce. Though not expressed, it later became clear to me that both Commissioners recognized the necessity for some change and both intended to seek re-election in 1996 with the intention of completing their long terms as government leaders and, perhaps, supporting changes in County government that they recognized as essential. I agreed to chair such a study, but only on certain conditions. The effort would have to be nonpartisan. I alone would choose the members of the committee with neither interference nor suggestions from the Commissioners or others. The committee would operate with no outside interference. Upon completion of the study, the report would be delivered to all three commissioners.

The committee would become known as ComPAC 21, the Committee to Prepare Allegheny County for the Twenty-First Century. I chose citizens from every part of the County. They represented business, education, and the neighborhoods of the County. They were men and women from diverse backgrounds. They represented various organizations including, for example, the League of Women Voters, an organization that was particularly interested in changing County government. Four universities and secondary education were represented. All members were volunteers, serving with no compensation. The Committee did, however, receive staff support from the Pennsylvania Economy League (PEL). Jim Turner who proved invaluable in this process led that support. Expenses for PEL support and other necessary expenditures in research and visitation to other regions of the country was supported by a County grant and supplemented by private foundation grants.

At the first ComPAC 21 meeting, I assumed that each member of the Committee had individual ideas as to how County government could be improved. I asked each member to repress any individual views as I would repress my own. We would pursue our process by going to school, benchmarking counties and regions throughout the country and intensely studying those that appeared to provide the maximum opportunity for the goals every citizen of Allegheny County desired—economic development and quality of life. Allegheny County was faltering in terms of economic development having sustained an historic loss of...
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manufacturing jobs and a major decline in population, particularly in the City of Pittsburgh. County leadership as a major corporate center was declining. The County recorded the second oldest population in the nation. As one leader remarked, this was not the result of older people moving to Allegheny County. We were losing our young people who found better economic opportunities in other parts of the country.

Allegheny County was not competing effectively with other counties or regions. Yet, we continued to manifest educational and natural resources as well as a work ethic that should have allowed us to be one of the more effective regions in the nation. Though our leadership as a corporate center had declined, we continued to be a major corporate center and the concentration of foundations in this region that were willing and able to assist economic development and the quality of life were the envy of most of the other regions in the country. There were many individual efforts to enhance our situation from numerous non-profit agencies. It was important to galvanize all of these efforts to focus upon the goals shared by all. A necessary but insufficient condition to this critically important effort, however, was a cost-effective, streamlined, service-oriented County government that could provide the governmental leadership in cooperation with surrounding counties and in partnership with business, education and labor, to assure success.

ComPAC 21 explored up to one hundred counties and regions throughout the country, searching for best governmental practices, cost-effective structures and success in economic development and quality of life. After analyzing all of the data concerning these regions, we chose six counties and regions for intensive study including visitations: Charlotte/Mecklenburg, Milwaukee County, Minneapolis/Hennepin, Nashville/Davidson, Montgomery County (Md.), and Seattle/King County. Our choice combined best practices, economic development and diverse areas, some very similar to Allegheny County in terms of manufacturing job loss (Milwaukee) and other differences including climate, location and labor environment. After these general and intensive analyses were complete, we formed subcommittees to consider various aspects of county government structure. True to our original agreement, throughout the entire dialogue, no member of the Committee urged a personal recommendation concerning a new structure. Every discussion was based on the factual analysis we had pursued. Moreover, there was never any suggestion based on partisan views. We saw ourselves as committed to recommending a structure that would be an effective and critical dimension in the future to which we and all other citizens of the County aspired.

As the Committee pursued its efforts, the commissioners who had initiated the study were defeated in the primary elections. This did not augur a careful consideration of our efforts. The election produced a Republican majority and comments made during the political campaigns indicated an anticipatory rejection of any ComPAC 21 report.

The report was completed in January, 1996 and submitted to the three commissioners. It recommended historic change: a single County Executive to replace the three commissioners, an unsalaried County Council representing every part of the County, a professional County Manager to preside over the daily operations of the County, a code of ethics, merit standards for promotions and salary increases, a concentration on economic development through the appointment of a new official who would work in partnership with the private sector and labor and other recommendations concerning economic development and the quality of life.

Having achieved a majority for the first time in sixty years, it was hardly surprising that the Republican commissioners did not express enthusiasm for the report. The minority Democratic commissioner, Mike Dawida, indicated his general approval, but without the approval of all three commissioners, the likelihood of these recommendations becoming law was dim, indeed. Two months after delivery of the report, I was visited by Commissioner Cranmer who indicated his desire to pursue certain recommendations in the report that would not require legislative change. Several months later, after Commissioner Cranmer had publicly stated his approval of the
entire report, Commissioner Dunn announced his approval. With the approval of all three sitting commissioners, the possibility of change became realistic. A grass roots movement involving ACitizens 2000" and other organizations began to promote the concepts in the report. All former living Commissioners announced their support. The next difficult hurdle would be the creation and enactment of legislation allowing a referendum on the question of whether a new County Charter should be created.

At this point, political controversy surrounded the concept. Bills were introduced by two state senators to allow the referendum. To assure success, it was essential to secure bipartisan support. Republican Senators Melissa Hart and Tim Murphy and Democratic Senators Jack Wagner and Jay Costa supported the concept. The final bill was enacted and signed into law by the Governor of Pennsylvania. I was called upon to visit Harrisburg and to make numerous speeches to various groups. Others did the same in support of the measure. The fear of change, however, was rampant and there were some typically partisan suggestions made by the opponents of change. The referendum passed by only a few hundred votes.

A charter drafting committee was appointed. Led by William Pratt, the drafting committee engaged in extensive public hearings throughout the County. The final draft replicated the recommendations of the ComPAC 21 report and a new County Home Rule Charter was created. In November, 1999, the first County Executive and County Council was elected. This historic change was in place.

While the ComPAC 21 report’s recommendations may be viewed narrowly as relegated to a more efficient, cost-effective and service-oriented government structure, it suggests much more. The underlying rationales for such a new government structure are the goals of economic development and the enhancement of quality of life. The report begins and ends with these goals and emphasizes the fact that good government, alone, will not insure such goals, but bad or ineffective government may preclude them. A modern and effective government structure is only one dimension, though a critical dimension, of a total effort to meet the challenges of the 21st century. Only true and pervasive partnerships between and among government at all levels - including governments of contiguous counties - business, education and labor throughout the entire region will assure success.

Two critically important by-products of the ComPAC 21 effort are as important as the change in government structure, itself. First, it produced the broadest awakening of the citizens of Allegheny County and the region concerning our present status. Extensive media reports, particularly efforts in the Pittsburgh Post-Gazette, provided benchmarks to allow careful comparisons of our County and region with other parts of the country. For the first time in living memory, the citizens of this region were presented with realistic challenges and goals. The second critically-important effect of this effort was to convince a continuously increasing number of our citizens that the sole and exclusive route to our aspired goals is working together for the common good.

This simple statement belies the difficulty of implementation. There should be no illusions about the complexity and difficulty in accomplishing a genuine collective effort to make this region one of the more successful regions in the country. There are many dimensions that must be included in a focused effort to achieve our goals. While higher education is often considered a leading benchmark in this region, excellence in primary and secondary education for all citizens, especially the disadvantaged, is another critical ingredient of future success. If our primary and secondary students achieved scores substantially higher than the national average, this alone would be a powerful incentive for corporations and their employees to live and work in this region. The environmental dimension is equally important. The development of our river fronts and other wonderful natural resources, converting brownfields into greenfields and ascertaining the purity of our water and air are vitally important factors to insure success.

Still another major factor is the accelerating changes in research, commerce and industry through advance in technology that are now occurring at such an accelerating pace that it is difficult to assimilate them. Fortunately, the region is well positioned to take advantage of these developments as evidenced by the creation of new opportunities in informational technology which is such a major part of the future of any part of the country or the world. The region can be a major force in the explosion of E-commerce. The Tissue Engineering Initiative is another cogent example of the possibilities of leadership in one of the most amazing scientific developments in history.

Our state and federal legislators and other government leaders must pursue the same agenda with a fo-
Focused effort on the entire region. This effort alone would immediately place this region in a most important and powerful position in the hallways of the State Capitol and the Congress of the United States. The region can also be a major center for international trade. We possess one of the great airports in the world and our location provides a pristine site for such trade.

Again, however, whatever the complexity and whatever the particular challenge, the quintessential key to success is working together for the common good which requires the highest level of mutual trust and respect among all citizens, governments and organizations of the region. If we galvanize our efforts and focus on a common agenda that will benefit every citizen of this region, Southwestern Pennsylvania can be one of the leading regions in the United States in economic development and quality of life. We have taken a major step toward that goal with our new County government. We must take advantage of this window of opportunity with the recognition that there are miles to go before we sleep.

Securing the Worker’s Stake in Regional Economic Development

by Margaret K. Krasik

Old Problems. Global Solutions? Home rule for Allegheny County promises a new era of increased governmental flexibility, efficiency, and effectiveness. With the creation of a single county executive and a county council and wielding the power of self-determination, county government can now engage in a focused attack on today’s most pressing concern — stimulating the economic development of the region by attracting new businesses that will create new jobs.1 Significantly, according to Jim Roddey, County Chief Executive, the region effectively addressed by county government policy initiatives should encompass not only the city of Pittsburgh and Allegheny County, but should extend in spirit to surrounding counties in Southwestern Pennsylvania.2 This broadened perspective is new. Presumably, prior to home rule, county government, although erected on the identical geographic base, could not adopt a truly “regional” perspective as long as parochial concerns and fragmented power relations abounded.

Despite a first blush of optimism, a regionalist outlook alone may not be a panacea. Regionalism attracts because we perceive that the admittedly global economy mocks any preoccupation with localism and local loyalties and causes. Broadening the vistas of formerly “local” governments, knocking down barriers inherent in our functional governmental units, promises somehow to open up a new world of solutions to problems — like job losses — that have seemed intractable. Skeptics nonetheless might find the benefits of a change of perspective to be illusory, and might echo Jane Jacobs’ observation: “A Region... is an area safely larger than the last one to whose problems we found no solution.”3

The region’s most urgent problem, according to a burgeoning grassroots political coalition, is rising economic inequality and the inability of Allegheny County wage earners to bring in enough income to sustain a family. The Western Pennsylvania Living Wage Campaign (WPLWC), a project of the Pittsburgh-based Alliance for Progressive Action (APA), has proposed that the new county government begin addressing this concern by enacting a Living Wage Ordinance — one that would mandate a family-sustaining minimum wage of at least $8.82 per hour for employees of the county, its contractors, and those businesses that obtain county taxpayer incentives and subsidies. Economic development initiatives should not be pursued unless the worker’s stake in the region is given priority.

The WPLWC, shepherded by the APA, has enlisted a diverse range of close to 60 community, labor, and faith-based organizations to its cause.4 Several years ago, the coalition launched a city- and county-wide campaign to educate the public and mobilize it around the need for progressive wage legislation. As portrayed by the WPLWC in grassroots economic workshops, rising inequality is marked by a growing disparity between the income levels of the poorest segment of American society.
(those in poverty and those labeled “the working poor”) and the segment made up of the middle and upper classes. Federal and state legislatures have failed to revise general minimum wage levels to keep pace with the cost of covering basic needs. Stagnating real wage incomes have interacted with the “skill bias” in the economy and the persistent ineffectiveness of “equalizing institutions” like schools to exacerbate such inequality.5

Rising income inequality is a national phenomenon, but area Living Wage advocates have marshaled research results that disclose the extent of the problem in Pittsburgh and in the county. In its advocacy efforts, the Living Wage campaign highlights statistics like the following: 58% of children in the City of Pittsburgh lived in families with income insufficient to meet basic needs; in the County of Allegheny, 39% of children lived in such families; among African-American children, the corresponding statistics were 79% in the city and 73% in the county.

These numbers are derived from a 1997 study of employed and unemployed low income working age adults in the city and county. Under the auspices of the University of Pittsburgh Center for Social and Urban Research, researchers first estimated after-tax basic living costs for major family types with working adults. Considering the local cost (in 1996) of items such as food, housing, child care, medical care, clothing, and transportation, the researchers found that a married couple with 1-2 children had basic annual living costs of $24,000-$31,000. (These income-needs figures used in the study were 2-2.5 times the established federal family would have to work full-time at a wage of $8.00-$10.00 per hour to earn sufficient income. That is, that family’s “Living Wage” was $8-$10 per hour.9 Finally, the study found that, based on an estimate of the number of area jobs that already paid a Living Wage, there was a shortfall of approximately 140,000 Living Wage jobs county-wide. That is, about 140,000 additional jobs providing hourly compensation at “Living Wage” levels were needed if low income working adults were to be able to earn a family-sustaining income with their work.

Living Wage Ordinance v. Regional Development

Given the arguably compelling nature of these statistics, it is difficult to dispute the necessity of creating within Allegheny County a large number of jobs that pay better wages. The new county leadership expresses a vision for economic development that sees job creation as the natural outgrowth of business development. Public statements emphasize attracting overseas and out-of-state companies to the region, strengthening and “globalizing” local companies through technology, “lowering the artificial barriers” of surrounding counties, lowering taxes to create a “business friendly climate”, and prudently using devices such as tax increment financing (TIFs) to attract employers.10 According to this vision, employment will grow when new businesses bring jobs and when the flight of young people, particularly young professionals, is halted.11
The agenda does not appear to encompass measures or policies that directly target the terms and conditions of employment for wage earners who work in the county. On the contrary, improvement of workers’ condition would occur as a kind of trickle-down effect. Finally, and significantly, leaders exhibit sensitivity to whether county policies will play well beyond the geographic boundaries of the county, or whether the policies will contribute to “lowering barriers” to economic development within its boundaries.

Although County Chief Executive Roddey and a majority of the County Council members have endorsed the idea of a Living Wage ordinance in principle, enactment may prove difficult. A Living Wage measure was introduced to Pittsburgh City Council in 1997 by Council member Gene Ricciardi. The proposal proved controversial enough to prompt Ricciardi to withdraw it a few months later. The policy leaders and interest groups of all stripes who supported home rule and the new form of county government have weighed in on the promise that seems implicit in an approach that avows abhorrence of boundaries to economic revitalization. Voters in the “wealthy suburbs” were mainstays in the campaign for home rule and its attendant characteristics, but Democratic notables promoted home rule as a path to “focused leadership” and creation of a more friendly environment for doing business. Organized labor similarly envisioned home rule as a route to growth in job opportunities generally. A minimum wage law, even one with limited coverage such as the Living Wage ordinance, that is set at a level significantly higher than existing federal and state minimum wage levels, could be fundamentally at odds with this notion of regionalism, globalization and the lowering of barriers.

The draft Living Wage bill that may find its way to County Council is broadly similar to those adopted in more than 40 other localities, including Baltimore, Los Angeles County, Milwaukee, Minneapolis, Tucson, and Cambridge, Massachusetts. The Allegheny County ordinance would set the Living Wage (based on 1999 figures) around $9.12/hour. (Figures could be adjusted depending on whether the employers provide benefits such as health insurance.) Workers covered by the mandate would include those employees who are paid with public, or tax-generated dollars, including: employees of Allegheny County who are not already employed at the Living Wage rate; employees of companies who hold service or commodity purchase contracts above a given threshold with the county; employees who work for companies receiving tax subsidies (TIFs) or who work at workplaces occupying space built with tax subsidies; and employees of authorities that receive public support. Certain coverage thresholds and exceptions would apply. For instance, only service contracts exceeding $10,000 that employed at least 10 for profit workers or 25 not for profit include workers would be subject to the Living Wage rates. Some youth, training, and “hardship” employment would be exempt. The legislation would apply prospectively to future TIFs and to service contracts when originated or renewed. Employers would have to comply with reporting requirements, and enforcement of the ordinance would occur through the Controller’s office. Sanctions against offenders would include fines, wage restitution, contract suspensions and debarment.
Living Wage laws take ethical and political stands. Living Wage laws express the imperative that taxpayer-generated funds be used to support family-sustaining jobs, not “poverty” jobs,\(^\text{17}\) (in a day when jobs that pay the federally mandated $5.15 per hour are “poverty jobs.”\(^\text{17}\)) Additionally, Living Wage laws affirm at least indirectly that the public properly has a role as provider of services to its citizens. Living Wage laws are strings attached when the government concedes in a given instance that a publicly funded service may be provided through a private entity. Thus the ordinances may blunt the impact of the growing trend to contracting-out, privatization and devolution of public functions to a private sector where wage and benefit levels are often lower than in the public sector.\(^\text{18}\) Taking an even broader view, Living Wage advocates can count themselves among those who are not intimidated by the public discourse’s preoccupation with the “globalization” juggernaut. As one commentator has said: “The fact that the public is so scared of globalization may mean that wage demands have been moderated as a result.”\(^\text{19}\)

A Living Wage ordinance despite and because of its limited scope responds to the mantra about the needs of the global economy by assigning priority to the local need for family-sustaining jobs.

Living Wage ordinances are always controversial and have been opposed and then lamented on a number of different grounds. Opponents argue that federal (and state legislatures) are the appropriate bodies to make minimum wage policies for the working population generally. They also argue that such local ordinances: hurt rather than help low wage workers by discouraging, hiring, and causing job loss; fail to address the more important problem of lack of worker education and training; cause businesses to leave the city or area where Living Wage prevails; increase the cost of government and the necessity for tax revenues; increase the regulatory burden on business; and generally create barriers to economic development in the same way that high tax rates do. Employers in particular complain not just of increased labor costs, but of the costs of reporting and record-keeping that comes with the ordinances.\(^\text{20}\)

Data on the actual impact of Living Wage ordinance is scant. The most notable study of the impact of a Living Wage law—in Baltimore, Maryland—concluded that the Living Wage law did not fulfill opponents’ direct predictions. Neither did it appear to produce many of the anticipated benefits. Studying a Baltimore city ordinance that required private contractors working for the city to pay workers, such as bus aides and janitors, a minimum hourly wage of $7.70 in 1997 (after rising in increments), researchers from Johns Hopkins University found that the law had a minimal impact on the finances of the city. At the same time, the law had positive effects on only a small number of Baltimore workers.\(^\text{21}\)

The Baltimore study compared pre-living wage contracts with post-living wage contracts and found that the city’s total cost for services contracted out increased by only 1.2% under the Living Wage. Despite lacking a firm basis for explaining these results, the authors suggested (or speculated) that bidding competitiveness among contractors, contractor efficiency gains, and increased productivity by workers who earned the new Living Wage, held the city’s costs down. Perhaps contractors accepted lower profits, workers worked harder, and more efficient contractors displaced less efficient ones.\(^\text{22}\) The limited nature of the survey produced no information on patterns of employer response to the Living Wage, although compliance by service contractors was problematic and a worrisome potential source for future undetermined costs to the city.\(^\text{24}\)

Baltimore workers interviewed individually by the study authors expressed a positive attitude toward the Living Wage jobs. Some commented that they worked harder and were expected to work harder under the higher wage rate, and some reported that they valued their work more.\(^\text{25}\) Nevertheless, the survey results showed that only a small num-
number of people — around 1500 workers — were directly affected by the Living Wage law. Many of those were part-time or seasonal workers, and while the ordinance increased their hourly wage rate, without full-time jobs they were not able to earn an annual “living income.” The study drew no bold conclusions based on these results.

The study of course left numerous questions unresolved: what “wage spillover” costs would occur as the higher minimum wage level puts pressure to raise the pay of those who are currently earning at a rate equal to or greater than the Living Wage? Will the results play out differently in the non-profit and private sectors? What might be the impact on public finances in an arena, unlike Baltimore, where most of the Living Wage jobs are full-time and year-round, not part-time and seasonal? To some, one of the most worrisome factors preventing wholehearted endorsement of the Living Wage in the county is the potential budget impact of a rise in wage rates for the large number of low-paid employees of private non-profit contractors in the social services sector. Without increases in state funding for public welfare expenditures, the potential burden on the county is daunting.

Favorable reports on the impact of Living Wage laws have been excoriated by critics—the Employment Policies Institute issued a report entitled “The Baltimore Living Wage Study: Omissions, Fabrications and Flaws...” and it may be safe to say only that the best statistical information available on the effects of Living Wage legislation is only “partial and indicative” rather than definitive.

New “Barriers” — Or Local Solutions?

Scores of local Living Wage ordinances enacted by municipalities across the country, each ordinance a little different from the next, each of still undetermined impact, each applying only within limited geographic borders. Are these regressive phenomena — fragmented legal initiatives that will ultimately harm the workers they seek to help? Or are Living Wage campaigns and laws a creative political and legal strategy that will yield widespread benefits? The dollars-and-cents impact of Living Wage laws will eventually be assessed more accurately. But they have an independent significance as an example of a new approach to political action.

Bucking a trend, Living Wage proponents across the country have pursued their agenda at the scale of the locality — city or county. The Living Wage movement’s implicit strategy seems to be a refusal to allow others to frame the issue of economic justice and development at an ever broadening and ultimately global geographic scale. The campaigns zoom in on the needs of workers in the voters’ veritable backyards, and on the responsibility of local government for its employees’ economic condition. Perhaps more important, the campaigns, including that of the Western Pennsylvania coalition, have sought to break down social, cultural and interest group barriers within a delimited geographic area.

Living Wage campaigns have been described as “multiracial grass roots community organizations whose institutions, actions, and belief systems exemplify the very conditions of perceived interdependence” that engender cooperative political and social action. By restricting the focus to a “local” goal and bridging racial, gender and other social divides, communities can change the public dialogue about the problems they face. Critiques of particulars such as coverage and budgetary consequences of Living Wage laws describe only part of their legal and political significance. The coalitions that mobilize to persuade county and city governments to legislate Living Wages, or at least to put them on the agenda, want to force discussion that goes beyond generalities and bromides about globalization as a route to economic development. In this way the quality of the public discourse about “regional” problems is enhanced.

Turning Jane Jacobs’ sarcastic definition on its head, we might earnestly conclude that when considering issues such as minimum wage and the worker’s stake in economic development, the “Region” that warrants our concern is an area safely smaller than the global one to whose problems we have yet found no solution.

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Securing the Worker's Stake in Regional Economic Development

ENDNOTES

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4 The coalition includes such groups as the NAACP, Pittsburgh Chapter; Just Harvest; Community of Reconciliation; Mon-Valley Unemployed Committee; Americans for Democratic Action; Association of Pittsburgh Priests; and Hotel Employees Union Local 57.
5 See Wilson, William Julius, The Bridge Over the Racial Divide: Rising Inequality and Coalition Politics, 1-3 (1999) and sources cited therein. See also Jane Blotzer’s four-part series on income inequality published in the Pittsburgh Post-Gazette, February 1, March 1, April 5, and May 3, 1998.
6 Bangs, R. et al., University of Pittsburgh, University Center for Social and Urban Research, Basic Living Cost and Living Wage Estimates for Pittsburgh and Allegheny County; Executive Summary (October 1997).
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8 Id.
9 Findings were made for other types of family groups. For example, basic living costs were pegged at $13,000 for a single adult and $33,000-$38,000 for a married couple with 3-4 children. Corresponding "Living Wage" rates were $8-$10/hour and $10-$12/hour.
10 Roddey Steps Forward, supra note 1.
11 Id. at 4-6.
15 Perhaps 200-400 people at present, according to Linda Wambaugh, Executive Director of the Alliance for Progressive Action, coordinator of the local Living Wage coalition.
17 Living Wage Campaign Newsletter, 1 (December 1999)
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20 Litler Mendelson, Living Wage Ordinances--A Kinder, Gentler Law with Bite, California Employment Law Monitor, Vol. 8, No. 22 (Feb. 1, 1999); 8No.22SMCAEMPLM4.
22 Id. at 10.
23 Id. at 6.
24 Id. at 10.
25 Id. at 25-28.
26 Id. at 2.
29 Niedt, supra note 19, at 4.
30 See e.g., George Towers, Applying the Political Geography of Scale: Grassroots Strategies and Environmental Justice, the Professional Geographer, V. 52, No. 1 (Feb. 2000), at 23, 27.
31 Wilson, supra note 5, at 83, 80-81.
32 Id. at 83.
33 Id. at 40.
34 See text supra at note 3.
Any experienced magician will tell you that children are the toughest audience to fool with a sleight of hand trick. Adults try to unravel the trick by starting their analysis several steps from the beginning. Children, instead, always focus on the basic moves—the foundation of the trick—and pay attention to every step until the end. It is the same with economic development—the most basic moves lay the foundation for unraveling the mysteries of economic growth. The new form of government in Allegheny County may provide our first modern opportunity to start at the very beginning.

The Western Pennsylvania region, including the 130 communities of Allegheny County, has experienced significant economic stagnation in recent years, while the business environment in many similar areas has been robust. According to U.S. Census reports, Pittsburgh’s population growth is drastically below the national average\(^1\) and job growth for the same years had only risen 1.1%—significantly lower than most other cities.\(^2\)

In response to this economic decline, local governments in Western Pennsylvania have engaged in frenzied competition in order to sustain their land-based revenue streams and continue to balance their increasingly precarious budgets. Worse, these desperate efforts to survive have occurred against a backdrop of land use regulations that would make the Italian bureaucracy proud.

As prospective businesses consider calling Western Pennsylvania home, they are met with a jungle of inconsistent municipal development codes, in an atmosphere thick with competitive spirit. It is a region known for fierce loyalty to hundreds of local sports teams, and local rivalry is considered a virtue. In order for the economy to grow, however, fragmented team spirit is the enemy and regional pride is essential.

The current picture is not attractive. Frequently, small and large towns alike try to lure businesses into their boundaries by micro-selling their respective parochial charms, instead of promoting the strengths of the region. In addition to convincing local leaders of the value of a unified front, we must also make those statutory changes that have pre-ordained substantial hurdles for new industry and business. Coordinated efforts and cooperative strategies are required in order to achieve the fiscal and regulatory reforms necessary to promote the economic development of the region and regain the lost momentum of growth.

Over the years, we have heard all the standard explanations for the region’s decline: the collapse of big steel, tough labor unions, the enduring “smoky city” image, an aging population and a disjointed transportation system. Each of these excuses, however, is borne of an analysis that ignores the most basic tenet of economic development. When the national economy is vibrant, local government must simply get out of the way and allow good things to happen. A regional planning and revenue system that allows us to speak to the outside world with one united voice is the first and most basic step towards prosperity.
In Pennsylvania, land use regulatory authority is embodied in the Municipalities Planning Code and the various municipal enabling statutes. Allegheny County alone speaks to current and prospective landowners and occupants with no fewer than 130 voices. Each of the 130 municipalities in the county has its own zoning code, body of zoning and planning decisions, zoning hearing board, planning commission, zoning officer, local rules of procedure, sub-division and land development ordinances, governing body and other independent discretionary regulatory schemes that affect economic and community development. These are the basic building blocks of economic and community development and should be accessible, straightforward and uniform throughout a region. It makes no sense to acknowledge that we are one community economically, but 130 separate communities from a regulatory perspective. Although this structure was adequate in the “big steel” economy of the past, it now places local municipal preferences over the needs of the county, region and state.

While we may feel that there are real distinctions between the South Hills and the North Hills, or Allegheny County and Washington County, or the City and the Suburbs, it’s all just “Pittsburgh” to potential companies looking at us from the outside. Companies relocating deserve a straight-up comparison between prospective choices such as Pittsburgh, Boston or Dallas. It’s better for them and better for us.

Generally, society has come to accept regional solutions for problems that transcend municipal boundaries. A state crimes code has eclipsed what was once an array of local criminal ordinances that proved ineffective battling the travails of a rapidly growing society. Clean streams acts became standard fare across the nation as industry began to encroach and outgrow its immediate environs. And, when we realized that invisible airborne pollutants did not respect city or state limits, our government enacted clean air regulations that changed the character of our communities forever.

Economic lethargy requires no less drastic an antidote than these other regional ailments. Regional planning and development has been used effectively as early as 1967 in California, Florida, Massachusetts, Minnesota, New York and Oregon. The needs and values of each specific area can shape its form, but the goal of regional planning will always be to simplify and streamline in the interest of ordered growth.

Our land use regulations, the basic building blocks of economic and community development, must conform to the needs of our struggling region.

It is the same with economic development—the most basic moves lay the foundation for unraveling the mysteries of economic growth.

The dizzying array of land use regulations is compounded by current Pennsylvania fiscal policy, which assures that each of our 130 communities will benefit appreciably from economic development only when a physical facility is located within its municipal boundaries. Because of inherent inequities, land-based revenue streams are being questioned as effective funding mechanisms for education, and were recently severely limited in Michigan. In Pennsylvania, a bill that would have a similar effect has been introduced by State Representative Frank Dermody of Allegheny County.

As we are beginning to sense with education funding mechanisms, infra-county competition for new facilities weakens the entire region and benefits a few fortunate communities in the short term.

In 1971, Minnesota created a regional tax base system in the seven county Twin Cities area. Each city contributes a percentage of its commercial and industrial tax base acquired after 1971 into a regional pool.
the new region

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Funds from this area-wide pool are distributed according to an allocation formula based on the population and fiscal capacity of each local government. According to Minnesota State Representative Myron Orfield, Jr., the tax disparities that had previously existed on a regional level have been dramatically reduced, and the plan has survived constitutional challenges. 4

Florida has established regional councils throughout the state and requires each to develop “strategic regional policy plan” to be reviewed by the governor. Each council covers a multi-county district and is comprised of representatives from local government, various gubernatorial appointees and ex officio members. 5 In Oregon, “metropolitan service districts” were created in 1971 by referendum, allowing voters to frame a charter and adopt a regional plan. 6

Under the “commissioners” form of Allegheny County government, any talk of similar measures has been repeatedly countered with charges of “metropolitanism.” Until recently, three county commissioners ran at large and exercised both executive and legislative authority over all the citizens of the county. The notion of representative government was remote and there was no precise voice or specific representation for any smaller area of the metropolitan county.

The new form of county government is truly representative, with a fifteen member legislative body, elected mostly by district, and providing the traditional checks and balances against the power of the executive and county manager. With smaller legislative units throughout the county being assured of responsive and customized representation, the time may be right to create a regional force that can effectively compete in the global marketplace. Here are four steps that will provide the basic building blocks for a prosperous future:

1) Start small. Invite one representative from each of the region’s counties to serve on the Pittsburgh International Airport Authority. Air service is the one municipal service that is indisputably regional and this can serve as a good starting point.

2) Introduce and work to enact legislation in Harrisburg requiring development of a county-wide comprehensive plan and zoning map, and creating a county planning commission that would have the authority now exercised by 130 different municipalities. Local zoning hearing boards could continue to hear cases involving local and neighborhood issues, but the “big picture” would be administered by the county.

3) Introduce and work to enact legislation in Harrisburg that would create revenue-base sharing by distributing some new revenue to all municipalities throughout the county regardless of the location of the physical plant of a new development. Weight the formula to account for any additional municipal services burden borne by the host community.

4) Establish a county-wide, then region-wide, economic development authority that can aggressively identify, promote and finance development sites that will be consistent with our regional plan. This authority will be able to pool the development resources that are now fragmented among our municipalities and used by them to defeat each other.

Like the children who solve a magic trick by focussing on the very basics, we must do the same to unravel the mysteries of economic growth. It’s practical magic.

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Practical Magic

ENDNOTES

1 Pittsburgh’s growth was down -0.5 while cities such as Phoenix were up by 4%. See generally http://www.census.gov/prod/www/abs/popest.html#popest (last revised 12-22-99).

2 See www.census.gov (last visited 2-15-00); see also http://www.post-gazette.com/businessnews/20000130regiongraphic9asp (last visited 2/15/00).

3 See PA HR 2191, 1998.


6 See Id.
The Role of the Non-Profit Sector in the Revitalization of Southwestern Pennsylvania

by Dean Nicholas P. Cafardi

The Non-Profit Sector has been important historically, as well as presently, in the growth and re-development of southwestern Pennsylvania. Highly successful, highly visible non-profits such as WQED, the first community-owned, educational television station in the United States, and the Bidwell Training Center, nationally famous for its artisan training programs, bring great positive attention to our area and the accomplishments of our neighbors.

The large arts sector in our community does the same. The accomplishments of the symphony, the ballet and the varied local theater groups, together with the other non-profits, creates a positive national image for southwestern Pennsylvania that helps in recruiting both businesses and individuals to our region.

Pittsburgh itself has become a major hub of the non-profit sector in both healthcare and education, with hospitals and universities ranking among the areas largest employers. On any given day alone, the student population of Duquesne, Pitt and CMU combined brings over 40,000 students into the city of Pittsburgh.

In addition to these, there are countless community development corporations, such as the Mon Valley Initiative, working in southwestern Pennsylvania at the grass roots level to make their communities a better place to live and work.

I spent the eighteen years that I practiced law in Allegheny County working entirely in the non-profit, tax exempt sector. I personally saw the vast benefit that these non-profits conferred on the community, usually working on a shoe-string, dependent on grants and government aid, squeezing a nickel to get a dime’s worth of services out of it for their clientele. It was this background that led me to begin a Community and Economic Development Clinic at the Law School in 1996, whose sole purpose was to provide free legal services to community based nonprofit agencies in southwestern Pennsylvania. The huge success that this clinic has enjoyed is itself proof of the dynamism of the nonprofit sector in our area.

Recently, Dewey and Kaye Consultants made a presentation about the future of our area that touched on the role that non-profits have to play. They said:

- The changes in county government are going to put pressure on local non-profits to reconsider the way they deliver services and continue to be innovators of social change.
- Advances in the region will mean that the public will require increased accountability from non-profits, and they will need to better articulate their value to the community.
- Competition between sectors (public and private) will increase, resulting in an increase in the regulation of charities and some challenges to the tax exemptions that some non-profits enjoy.
- Non-profits will need to expand into more global markets as the business community becomes more diverse. The support of locally-based corporations and their related foundations can no longer be automatically counted on as a base of local nonprofit support.

These are serious challenges for the nonprofit sector, but none of them is unexpected or insurmountable. They will simply require what the nonprofit sector has always been able to provide: vision, hard work and dedication to our region.

Whatever the future of southwestern Pennsylvania is to be, that future will be influenced and to a large degree determined by the vibrancy of our nonprofit sector. If the past is prelude to the future, then we have reason to be very optimistic because Pittsburgh and southwestern Pennsylvania have been blessed with both a selfless and strong nonprofit sector.

Dean Cafardi is the Dean of the Duquesne University School of Law.
An Interview with Judge Timothy K. Lewis

by Christina Chandler

The best advice former federal appeals court Judge Timothy K. Lewis can offer law students is twofold: first, get a sense of where you want to go in this profession; second, remain flexible, because you never know what might change. These are words Lewis has lived his life by, and considering his career to date there is little doubt that they are well worth considering.

Timothy K. Lewis was raised in Pittsburgh, by his father, a dentist, and his mother, a homemaker. His family was the first black family to integrate a predominantly Jewish, white neighborhood in the East End of Pittsburgh. After attending Linden School in Point Breeze, he was sent to Kiski Preparatory School in Saltsburg, Pennsylvania. At both schools, Lewis recalled being the only black student in his class. In recounting some of his own experience in dealing with discrimination and prejudice, Lewis made clear that he knows all too well the sting brought on by superficial perceptions of race, ethnicity and religion. Early on his father counseled him that the only avenues of success at that time for a black man were as a physician, a dentist or a lawyer. Subsequently, at a young age Lewis decided to dedicate his life to being a lawyer.

Lewis credits two men for his decision to choose law: Wendell Freeland, his friend and mentor, and Jack Pidgeon, Headmaster at Kiski Prep School. Wendell Freeland is a highly respected and successful lawyer in Pittsburgh. Furthermore, Freeland was a civil rights leader and a Senior Vice-President of the National Urban League and played a vital role as Lewis' friend and mentor while growing up. While Freeland was a primary influence at home, Jack Pidgeon was the driving force at school. Jack Pidgeon has been the Headmaster at Kiski Prep since 1957, the longest tenured headmaster of any preparatory school in the United States. Lewis had the benefit of Pidgeon’s experience and leadership, not only academically, but athletically as well. Pidgeon served as Lewis' head coach from his freshman year through his senior year in cross-country, swimming and track. Under Pidgeon’s training, Lewis earned nine varsity letters. “There is no question in my mind—none,” Lewis stated, “that Kiski Prep is the best school in the United States, and Jack Pidgeon is the reason.”

Lewis fondly remembers a classroom experience during his senior year, which would have caused fear in many teenagers, but served to solidify his ambition. “One day, in English class, Mr. Pidgeon announced that we were going to have debates. He told us that he was going to write the topic on a piece of paper, and we would each have two minutes to prepare and five minutes to defend our position. When you are a kid it can be kind of difficult for you to put it together under these circumstances, but for me it flowed so easily. And it was fun!” He recalls Pidgeon walking up to him afterward and saying “Lewis, you are going to be on the floor on the United States Congress someday.” The experience gave Lewis a strong sense of his abilities in discussion and debate. Remarkably, Pidgeon wasn’t far off in his prediction. Lewis made it to Congress twice: first, as a district court judge and later for the court of appeals.
Lewis majored in political science at Tufts University, but he knew he would return to Pittsburgh to study and practice law. He chose Duquesne University School of Law because Ron Davenport was the Dean at that time. Davenport was the youngest dean of any law school in the country and he was the only black dean of a predominantly white law school. “He was dynamic, brilliant and he was beginning the process of bringing Duquesne to where I think it now stands, as a nationally prominent law school.”

“Duquesne had an excellent faculty when I was there.” Lewis recalled Ray Sekula making sense out of the rules of evidence; Ken Hirsch teaching property and constitutional law like a Shakespearean actor; Ken Gray sweeping in from Chicago to teach administrative law; Carol Mansmann’s incredible knowledge of criminal law and agency; and John Scuillos’ excitement for estates and trusts. Then, as now, many of Duquesne’s law professors were local practitioners. “I don’t think you can do better than that. I would stave my law school experience against any other in the country, and I have, particularly when I was on the court of appeals. I did not come up short.”

While Lewis is proud of his law school experience, he is also quick to acknowledge the advances Duquesne has made since his graduation in 1980. “Today, Duquesne is ten times better, and it was good then. There are people there now, like John Murray, Ken Gormley, Rob Byer, Jack Doherty and other local practitioners and judges, who are extraordinary teachers. Nick Cafardi and Ken Gormley have attracted nationally prominent speakers to Duquesne for seminars and symposia. It has even established a program of study abroad. These are the types of things that are going to elevate the school from a serious regional player to a national player during the next century.”

While Lewis admits having trouble staying focused in courses he felt were unrelated to his first love, litigation, he was able to cultivate his debate skills. He won the Trial Moot Court competition at Duquesne, he represented Duquesne in the Gourly Cup competition, and he went on to compete in the Nationals. Lewis knew he had found his element in the courtroom and decided to apply for a position as an Assistant District Attorney for Allegheny County. After three years with the District Attorney’s office, Lewis was offered a position at the United States Attorney’s office and became a federal prosecutor.

Then, in October 1990, only ten years after graduating from law school and only 35 years old, Lewis received a phone call that caused him to reconsider. He again declined, indicating his love for what he was doing at the district court level. He was later talked into interviewing for the seat. After meeting with the Solicitor General of the United States, Attorney General William Barr and four or five others, Lewis felt a strong conviction to remain on the district court. He called his long-time mentor Wendell Freeland from the airport and told him about his decision. Freeland asked to meet with him that night to talk over his decision. Two hours later, Lewis agreed to accept an appointment to the United States Court of Appeals for the Third Circuit.

Lewis was 37 years old at the time of his appointment to the Third Circuit, still the youngest federal judge in the country. At first, he felt overwhelmed, never having argued before the court of appeals. With the exception of Carol Mansmann and Joseph Weis, he knew very little about his colleagues on the Third Circuit bench. But Lewis refused to let his youth or relative inexperience deter him. He devoted seven years to that bench and gained the
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respect and friendship of his colleagues on the Third Circuit and throughout the country.

Despite his accomplishments, Lewis began to feel as if he wasn’t being fulfilled in some very important ways. While quick to emphasize the extraordinary honor of serving as a federal appellate judge, he describes the position as “quiet and somewhat cloistered.” “You have to understand how young I was when I became an appellate judge. It would have been different had I stayed on the district court.” Lewis felt he was too young to have reached the so-called pinnacle of his career, with no place else to go. “Really, there was nothing more to seek, except the Supreme Court, and I don’t think one ought to spend much time seeking a Supreme Court appointment. So I had twenty more years to go doing pretty much the same thing, and no new heights to shoot for, and it just looked like an awfully long road.” These thoughts shocked him, which led him to seek the counsel of close friends. After two years of deliberation, he decided to leave an Article III judgeship with its tremendous stature and responsibilities, not to mention life tenure.

Tim Lewis is now practicing commercial litigation as a shareholder at Buchanan Ingersoll in both its Pittsburgh and Philadelphia offices. He is helping to develop an appellate practice and corporate investigations section, and is applying his judicial experience to the practice of arbitration and mediation. He hopes to do legal commentary on television, and harbors an until-now-secret desire to become a radio talk-show host some day.

How does Lewis keep things in perspective? He said he tries to take life one day at a time, understand his limitations, and recognize that tomorrow will be here tomorrow and there is no use worrying about it today. “There is always going to be pressure, but we don’t have to be our own worst enemy by adding undue pressure to our lives. I know what it’s like to fall into that trap.”

Lewis did have one complaint to register about his profession: he believes we need to bring back civility. Lewis attributes much of his success in being appointed to the federal bench to letters of recommendation written by his legal opponents, whom he always treated with civility, respect and dignity. “We need to treat one another – our colleagues, our opponents, witnesses, jurors - with respect and dignity, not only in the courtroom, but in all aspects of the profession. U.S. Supreme Court Justice David Souter, whom I’ve had the honor of meeting a number of times, is the epitome of how we ought to conduct ourselves as lawyers and judges. He is bright, humble, self-effacing, hard working, and treats everyone the same, from the lowest among us the highest: with the utmost dignity. He is, at all times, under all circumstances, a gentleman. He is respected for how he is, not just who he is. And that’s how it should be. It’s not hard to be civil.”

“We needn’t compromise good manners for the sake of intense advocacy. We can maintain both. That’s the sort of thing that Jack Pidgeon taught me, and you know what? He’ll always be right.”

Christina Chandler is a third year day student and has been a Juris Editor for the past two years.
A State’s sovereign immunity in its own courts under a federal cause of action

by Maureen McQuillian

The Facts

After collective bargaining, probation officer employed by the State of Maine were paid a sixteen percent overtime premium instead of the minimum required under the federal Fair Labor Standards Act, (FLSA). The FLSA allows employee suits in state and federal courts to recover “unpaid overtime.” John Alden, joined by sixty-six other probation officers, brought suit against the State of Maine in federal district court for recovery. The federal lawsuit was dismissed for lack of subject matter jurisdiction pursuant to the district court’s reliance on Seminole Tribe v. Florida. The Supreme Court in Seminole decided, while the probation officers’ case was pending, that the Eleventh Amendment’s construction prevented citizens of a State from suing a State in federal court in the absence of either the State’s consent or abrogation of immunity by Congress pursuant to a special power to enforce civil rights under the Fourteenth Amendment.

Alden and the officers then sued in state court. Alden asserted that even if sovereign immunity would generally prevent the federal government from authorizing a state to be sued in its own courts by a private claimant, that immunity cannot be asserted in their case since Maine courts hear analogous causes of action against their State should be enforceable, particularly when specifically authorized by federal law, appealed to the Maine Supreme Court. The Supreme Court of Maine affirmed the State’s immunity, with two justices dissenting, holding that Congress simply lacks the necessary power, pursuant to the Constitution, to subject the states to the overtime provisions of the FLSA. In addition, the court held that Seminole Tribe’s limitation on congressional power with respect to federal causes of action brought in federal courts may not be circumvented simply by moving to a state court.

We have found that the Eleventh Amendment and state sovereign immunity are analogous, to the extent that both protect the State from being forced by an act of Congress to defend against a federal cause of action brought by a private individual. To hold otherwise... would effectively vitiate the Eleventh Amendment.

After granting a writ of certiorari, The United States Supreme Court affirmed, with four justices dissenting.

The Decision

“Sovereignty: The supreme, absolute, and uncontrollable power by which any independent state is governed.”

The Alden majority addresses, with a focus on state sovereignty and long-standing background principles, that no state can be sued in its own courts without its consent. This was a question of first impression: Whether Congress has the authority under Article I to abrogate a State’s immunity in its own courts. According to the Court, the structure and history of the Constitution make clear that sovereign immunity exists today by constitutional design, and such immunity is beyond the power of Congress to abrogate by Article I legislation. The opinion relies on a several precedential cases and artfully crafts its decision from “history, practice, precedent, and the structure of the Constitution.”

The Court makes a pilgrimage into the past to find evidence of the original understanding of the Constitution and discovers that the States retain “a residuary and inviolable sovereignty.” The Court relies on historical evidence that the generation that designed and adopted the federal system considered immunity from private suits central to sovereign dignity. “The doctrine that a sovereign could not be sued without its consent was universal in the States when the Constitution was drafted and ratified.” The Court concludes that the concept of non-suability of a state was so well established at that time that no one conceived the new Constitution would alter it, and the Federalist Papers, the ratifying Convention in Virginia, and Elliot’s Debates on the Federal
Constitution provided for leading advocates of the Constitution “to assure the people in no uncertain terms that the Constitution would not strip the States of sovereign immunity.”

In addition the Court examined the purpose of the Eleventh Amendment. Within two months of being introduced in the U.S. House of Representatives it was endorsed by both Houses, and ratified with, what was for that day, “vehement speed.”

The Eleventh Amendment provides:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or subjects of any Foreign State.

The Alden Court determined the Eleventh Amendment was curative and enacted not to change but to restore the original constitutional design. The Eleventh Amendment, in the view of the Alden majority, recognizes that the doctrine of sovereign immunity embraces the concept that a state is not subject to suit without its consent.

The Eleventh Amendment by its literal terms raises assertions by the petitioners and by the dissent that State immunity from suit in its own courts applies only to suits brought by citizens of other States. The words, after all, do not literally extend immunity to suits brought against States in their own courts by their own citizens, and it did not, as other possible versions of the Amendment would have done, bar suits against States in the federal courts. The Court looks to Hans v. Louisiana, in which that majority was unconvinced by such argument: “It is an attempt to strain the Constitution and the law to a construction never imagined or dreamed of.” The Supreme Court in Hans unanimously held that States could not be sued by their own citizens on grounds arising under the Constitution and laws of the United States.

The Alden Court agrees that the consistent view is that sovereign immunity derives not from the Eleventh Amendment but from the structure of the original Constitution itself. “We have understood the Eleventh Amendment to stand not so much for what it says, but for the presupposition... which it confirms.”

The Court examined the logic of prior decisions supporting its view, and stated that since none of the decisions turned on the forum, “Neither the Supremacy Clause nor the enumerated powers of Congress... confer authority to abrogate the States’ immunity from suit in federal court.”

The Supreme Court reaffirmed state sovereignty in Seminole Tribe. In Seminole Tribe, the petitioner sued
Florida without Florida's consent. Notwithstanding Congress' clear intent to abrogate the States' sovereign immunity through the Indian Gaming Regulatory Act, passed under the Indian Commerce Clause. The Court held that the Indian Gaming Regulatory Act cannot grant jurisdiction over a State that does not consent to be sued. The Seminole Tribe Court held that Eleventh Amendment immunity cannot be abrogated by Congress pursuant to its Article I powers, but can be abrogated pursuant to its power to enforce the Fourteenth Amendment.

Even when the Constitution vests in Congress complete law-making authority over a particular area, the Eleventh Amendment prevents congressional authorization of suits by private parties against unconsenting states. The Eleventh Amendment restricts the judicial power under Article III, and Article I cannot be used to circumvent the constitutional limitations placed upon federal jurisdiction.

Following Seminole Tribe, lower court holdings conflicted widely as to whether Congress properly exercised its enforcement power, thereby validly abrogating Eleventh Amendment immunity, in a variety of cases. Alden was far from the only case presenting a conflict between state sovereign immunity and Congress's desire to regulate wages and work hours pursuant to its powers under the Commerce Clause.

The U.S. Supreme Court has now settled that Congress is without power to issue even an explicit statement of authorization allowing suit to abrogate a State's immunity in its own court. In Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank, decided concurrently with Alden, the Supreme Court held that neither the Commerce Clause, the Patent Clause, nor the Fourteenth Amendment provided Congress with the authority to abrogate state sovereign immunity where the State did not consent to suit. The Supreme Court held this despite the fact that Congress' intent to abrogate state sovereign immunity under the Patent Act "could not have been any clearer.

The Alden Court, relying on custom and practice, found that in the setting of a suit prosecuted against a sovereign in its own courts, sovereign immunity was long established and unquestioned. The Court found it "difficult to conceive that the Constitution would have been adopted if it had been understood to strip the States of immunity from suit in their own courts and cede to the Federal Government a power to subject nonconsenting States to private suits in these fora."

The Court lastly looks to principles of federalism and the role of the state courts in the constitutional design. "We do not contend the founders could not have stripped the States of sovereign immunity and granted Congress power to subject them to private suit but only that they did not do so."

Principles of federalism require that Congress accord States the respect and dignity due them as residual sovereigns and joint participants in the Nation's government. Federalism's basic premises: avoid indignity and offense and threats against financial integrity and autonomy of nonconsenting States, and grant the reciprocal privilege enjoyed by the federal government which retains its own immunity in state and federal court.

Safeguards exist to help balance the supremacy of federal law and the separate sovereignty of the States. The first safeguard is that sovereign immunity bars suits only in the absence of consent. The second is that while suits against States are barred, suits against lesser entities, such as municipal corporations or state officers acting within their individual capacities, may be brought.

The Federal Government retains its own immunity from suit not only in state tribunals but also in its own courts, and "we are reluctant to conclude that the States are not entitled to a reciprocal privilege." Equally important is the possibility that a disregard of States' immunity would
carry substantial costs to the autonomy, the decision-making ability, and the sovereign capacity of the States, and strain the States' ability to govern in accordance with the will of their citizens. 42

Congress must accord States the esteem due to them as joint participants in a federal system, beginning with the premise of sovereignty in both the central Government and the separate States. 42

**Conclusion: Beyond *Alden v. Maine***

The Supreme Court has ruled: Congress lacks power to abrogate a State's immunity in a State's own courts under its commerce and other Article I powers. Congress is barred by the Eleventh Amendment from providing authority for suits in state courts to implement federal statutory rights. 43

Will the *Alden* decision stand or is it a fleeting and indefensible decision? It was noted, even before the *Alden* decision, that the Court has elaborated a "complex jurisprudence of state sovereign immunity under the rubric of the Eleventh Amendment, but one that bears little relation to the Amendment's text." 44 Post-decision tension will likely arise between the present Supreme Court's sensitivity to the historical significance of federalism, the enormity of federal interests, the meaning of the two hundred year old Supremacy Clause, and the contradiction to the tenet that for every federal right there must be an enforceable remedy. 45

It has been said that "[n]o matter how pervasive federal power may have become, it has no warrant to displace a core aspect of state sovereignty." 46 The *Alden* Court, in adhering to the proverbial system of checks and balances, has slashed a strong stroke in favor of history, federalism and a view of the Eleventh Amendment as embodying a state sovereignty principle limiting the power of the federal government.

Maureen McQuillian is a fourth year evening student and the production editor of Juris.

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**Case Law ENDNOTE**

4. *An action to recover the liability... may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated.* 29 U.S.C. § 216(b).
10. Id. at 2260.
13. Id. at 2248. See Chisolm v. Georgia, 2 Dall. 419, 434-435, 1 L.Ed. 440 (1793) (Tredwell, J., dissenting).
15. *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 708 (1949) (Frankfurter, J., dissenting). The amendment was proposed on March 4, 1974, when it was passed the House; ratification occurred on February 7, 1975, when the twelfth State acted, there being fifteen States in the Union. 16. U.S. Const. amend. XIX (1798).
22. *Alden*, 119 S.Ct. at 2253.
23. *U.S. Cons., An. VI, cl. 2.*
28. Id. at 59.
29. Id.
31. Into this "quagmire of conflicting interests" also fell Bunch v. Robinson, 712 A.2d 585, 586 (Md. App. 1998), which stated "It would be anomalous if the "States' rights" justices who authored *Seminole Tribe... acted to uphold [the] States' Eleventh Amendment immunity from suit but, at the same time, affirmed congressional authority to overcome a State's own sovereign immunity under its State constitution." Id. at 586.
32. *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank, 119 S.Ct. 2199 (1999).*
33. The Court has often held that the State is free to consent to suit in its own courts while retaining its immunity from federal jurisdiction, subject to the condition that the state-court judgment is reviewable in the Supreme Court if it involves a federal question. Smith v. Reeves, 178 U.S. 436, 445 (1900). More recently, the Court held that the Eleventh Amendment does not bar Supreme Court review of a state court judgment refusing to provide a remedy. This suggests that Eleventh Amendment immunity does not apply to the Supreme Court's appellate jurisdiction. McKesson Corp. v. Dept. of Alcoholic Beverages & Tobacco, 496 U.S. 18 (1990).
34. *Florida Prepaid Postsecondary Education Expense Board, 119 S.Ct. at 2204.*
35. *Alden*, 119 S.Ct. at 2260.
36. Id. at 2261.
37. Id. at 2257.
38. Id. at 2245.
40. Id. at 2264.
41. Id. at 2264.
42. Id. at 2268.
43. Appropriate legislation pursuant to the Enforcement Clause of the Fourteenth Amendment could still abrogate state sovereignty, when Congress properly seeks to correct a "Fourteenth Amendment evil." *Florida Prepaid Postsecondary Education Expense Board, 119 S.Ct. at 2206.*
44. *Carlos Manuel Vazquez, What is Eleventh Amendment Immunity? 106 Yale L.J. 1633, 1639 (April 1997).*
45. A right without a remedy was the concern in the discredited decision of *Parden v. Terminal Railway*, 371 U.S. 184 (1964), an action by Alabama citizens against their State for personal injuries under FELA. The State had raised the immunity defense, no relevant state statute spoke of capacity to be sued, much less in federal court; and the State's highest court had consistently held the state constitution forbade both the legislature and other state officers to consent to suit against the State. Yet the Supreme Court held that Alabama had conceded. The statute made "every" interstate railroad liable in damages to injured employees, reasoned the court, and to read a sovereign immunity exception into the Act would result... in a right without a remedy... "We are unwilling to conclude that Congress intended so pointless and frustrating a result." This view was recited in *Employees of Dep't of Public Health and Welfare*, 411 U.S. at 279, where Justice Douglas wrote, "It is not easy to infer that Congress in legislating pursuant to the Commerce Clause... desired silently to deprive the States of an immunity they have long enjoyed under another part of the Constitution." *Douglas W. Kmiec, State Sovereignty Versus the Supremacy Clause: State Courts and the Federal Cause of Action, 55 Geo. Wash. L. Rev. 105 (1987).*
A Tribute to Dean Sciullo

by Julie Gentry

On February 22, 2000 John Sciullo, Dean Emeritus, scholar, colleague, friend and teacher passed away at age 68. Although it is impossible to even scrape the surface of the gifts this outstanding man bestowed upon us all, the staff of Juris would like to take a moment to highlight a few. Sciullo was a native of Pittsburgh, and he lived here contributing to the community throughout his entire life. He was the only child of Italian immigrants, who dreamed from a young age of becoming a lawyer. Sciullo attended the University of Pittsburgh, where he earned a Bachelor of Arts Degree in 1953 and his Juris Doctorate in 1956. He then served two years in the United States Army Far East Command in Korea before returning to Pittsburgh to work as a Research Associate for the University of Pittsburgh Law School, where he assisted in the preparation of the new Pennsylvania Eminent Domain Code. In 1960, Sciullo went to work with Judges Frederick G. Weir and Samuel A. Weiss of the Court of Common Pleas of Allegheny County. In 1962 while involved in the general practice of law, Sciullo also served as a Senior Planner with the Pittsburgh Planning Commission until 1964. During this same time, he was welcomed by Duquesne University School of Law as an Assistant Professor.

John Sciullo touched the hearts and helped to shape the minds of Duquesne’s faculty and students alike since the beginning of his thirty-three year career at the law school in 1964. Throughout the decades he served on the faculty as a professor, Sciullo taught a variety of courses including Property, Land Use Planning and Legal Research and Writing, but his principle course was always Estates and Trusts. Sciullo became an associate dean in the 1970’s and was appointed Dean of the law school in 1982, a position he fulfilled well, while continuing to teach both day and evening classes. In addition to serving the law school as an inspirational professor and dean, Sciullo was an exceptional attorney admitted to practice before the Supreme Court of the United States, the Supreme Court of Pennsylvania, the Superior Court of Pennsylvania and various local courts in Allegheny County. Sciullo was a member of the Lawyers Employment Sub-Committee and Nominating Committee and served as a trustee of the Louis Little Scholarship fund for the Allegheny County Bar Association; and a member of the American Bar Association Advisory Committee on the Uniform Probate Code. Among all of his commitments, Sciullo found time to write and publish and was an advisor for the Duquesne Law Review in 1966 and 1967, and for Juris from 1967 to 1982. He also actively served the public as a member of the Dreyfus/Laurel Funds’ board of directors since 1985; served on the advisory committee to the Decedents’ Estates Laws since 1980; was a member of Pittsburgh’s Urban Redevelopment Authority from 1990 to 1993; and served on the Pittsburgh Planning Commission from 1985 to 1990. Sciullo was also actively involved in the Italian Sons and Daughters of America; the Sierra Club of Pittsburgh; the Committee for the Immaculate Conception Church; the School Board for the Diocese of Pittsburgh; the Chief Justice’s Committee on Comprehensive Education for the Supreme Court of Pennsylvania; a member of the Advisory Committee on Decedents’ Estates Laws of the Joint State Governments Commission as well as the Retail Theft Diversion Program Advisory Board. Sciullo proudly served twelve years as Dean, and in 1983 declined a fourth term in favor of giving his undivided attention to the classroom, at which time he was the first person to be given the title “Dean Emeritus.” Sciullo was honored again in 1998 as the recipient of Duquesne’s President’s Award for Excellence in Teaching. He continued to teach and inspire students to “think like a lawyer” in the classroom until he retired from the faculty at the end of 1999. Two months later he passed away on February 22, 2000.

In all that he did, Sciullo was an exceptional person, not merely as a professor, dean, and colleague, but as an inspiration to all of those around him. It is certain that he will be sorely missed, and never forgotten. Just as a thundering round of applause and standing ovation greeted Professor John Sciullo by the class of ’82 when it was announced he had been chosen to be Dean of the Law School, in our hearts we offer the same recognition and appreciation the great man who offered us so much and taught us as no one else could.

Julie Gentry is a third year day student and has been an assistant editor-in-chief of Juris for the past year.
In 1972, when John Sciullo was Associate Dean of the Law School and I was Assistant Dean, a part-time faculty secretary, who was also a Duquesne undergraduate, asked us something that she herself had been asked in one of her classes: “What is the most important question in the world?” John responded immediately, “It is: Why are we here?” It was characteristic of John, as a fine lawyer and outstanding teacher, that he asked the right question, clearly, precisely, and without hesitation. It was characteristic of John as a great human being that he understood and lived the answer to that question.

Professor Robert S. Barker

Dean Sciullo loved teaching, loved interacting with his students and loved Duquesne Law School. He often said one of the most important objectives of the Law School is to teach the students to “think like a lawyer.” In casual conversations and in the classroom, Dean Sciullo was very animated, usually waving his arms and/or nodding his head. In his Estates and Trusts class, he was known to interrupt a student’s response or question with his familiar refrain “Talk like a lawyer,” or “No, that’s not the question you want to ask. If you want the right answer, you have to ask the right question. Someone tell him the question he wants to ask.” We were always amused. If you ever had the privilege of having Dean Sciullo as a professor, you just knew that he truly loved teaching law, and he really cared about his students.

Professor Browne-Barbour

I first came to know John Sciullo because I taught his daughter, Joanne, at the University of Pittsburgh. After entering the practice of law, I would periodically visit John and mention that I wanted to go back to teaching, eventually. He would raise his eyebrows in exaggerated wonderment, rub at his chin, then throw up his hands and ask in a half-whisper: “So what are you going to do about it?”

When I joined the Duquesne Law Faculty in 1994, I had the pleasure of occupying an office across the hall from Dean Emeritus John Sciullo. His door was always open as he sat in the orderly room stocked with Italian candies. I discovered that Dean Sciullo liked to talk politics as much as he liked Torrones — luke-warm opinions were not in his repertoire. He delivered impassioned soliloquies on Harry Truman, the Nuremberg Trials, Justice Michael A. Musmanno, Justice Louis L. Manderino, William Jefferson Clinton, and the impact of cable television on the average (uninformed) American voter.

When I told Dean Sciullo last year that I was organizing a program at which former President Gerald Ford might receive an honorary degree, he became red in the face, waving his hands and reminding me: “But he pardoned Richard Nixon!” I took special pleasure in showing him a thank-you note from President Ford after the program, with the gold Presidential seal in the corner, and whispering: “Subversive mail — but the post office delivered it anyway!”

John Sciullo loved dishing it out. But if it was in the interest of a vigorous debate, he loved taking it too.

The morning Dean Sciullo died was the first day since I began teaching at Duquesne University School of Law that all meaningful work ceased. It was as if God had knocked the collective wind out of the faculty, and students, and every judge or friend who called on the telephone to see if the news was somehow mistaken. The building itself seemed lifeless. It wasn’t until the black cloth was draped over his portrait in the library, and a spray of white flowers placed beneath it, that the unthinkable sunk in.

I knew John Sciullo only ten or twelve years. But like so many others whom he guided and touched, he had become (for me) a life-long friend and mentor. His passion for teaching, and life, and people, and ideas, were unsurpassed. His commitment to Duquesne University, and its Law School, and its students, and the very essence of higher education were so powerful — like the man himself — that he left an imprint bigger than his own physical being.

Dean John Sciullo will be missed. But he will never be replaced. Nor will he be replicated because God placed only one of these models down in Bloomfield, Pennsylvania, and was so pleased with his work, that He broke the mold.

Professor Ken Gormley
I can’t think of Dean Sciullo without seeing him in the midst of an interesting discussion, gesturing, often wildly, his enthusiasm for the conversation, the law and life overwhelming him. He always spurred me to match his exuberance. If he didn’t become animated, I had failed to carry my half of the conversational burden. Fortunately, the Dean always gave me plenty of help. He loved to disagree with whatever I said and, then, give his all to making me agree with him. When he had failed to make me change my mind, I could always tell he had been disagreeing with me for the sheer pleasure of the argument because he would say, “Jordan, you’re alright.” Dean, you were alright too and I will always miss you.

Professor Martha Jordan

My finest was my last memory of Dean Sciullo. A few weeks ago, he was standing at his barrister desk, packing a few things to take home. I stopped to say hello and observed that resting on his desk was a copy of *In Search of Excellence*. Such irony, that a man who was embarking would have such a concern. I am sure that it is now his reward.

Joseph V. Luvara

As a tribute to Dean Sciullo, I ask that we think of people to whom we owe a special debt; people who have played a part in the defining moments of our lives; people who have had a positive effect upon us. Dean Sciullo was one of the persons in my life to whom I am indebted. He played a part in at three very important defining moments of my life; he had a positive effect on my life in those three instances. The first of these occurred when I was stationed in Saigon: I received a letter from then Associate Dean Sciullo stating that my application for admission to Duquesne School of Law had been accepted. The second occurred about ten years after I had graduated from Duquesne: Dean Sciullo hired me as an Adjunct Professor. The third occurred during the past eleven years: Dean Sciullo became my friend. Of these three defining moments, his having become my friend is the most valuable to me.

Professor Kellen McClendon

I knew John Sciullo since 1964 when we both served as Professors of Law at the Duquesne University School of Law. John made friends easily because of his genuine love and concern for others. He was a splendid teacher who was highly accessible to his students. Though our paths parted, John and I always maintained a close friendship including the years after John assumed the deanship at the Duquesne Law School and I became Dean of the University Pittsburgh School of Law. One of the very pleasant experiences upon my return to Duquesne as President was my reunion with John. He personified the Spirit of Duquesne University and the School of Law which he loved and to which he devoted his entire life. Only his wife and daughters were more important. His sudden death leaves a void, not only at the University, but in the lives of thousands he touched during his illustrious career. We shall always remember John as one of the historic members of the Duquesne University family. We know that such a life of service and devotion will insure his place at the ineffable banquet. We shall pray for John and his family with the assurance that we will, one day, meet again.

John E. Murray, Jr.
President Duquesne University

The most representative memory I have of Dean Sciullo is of a day many years ago, before the law school moved from Rockwell Hall. John gave me a ride home that day—I lived only two blocks from his house. We were discussing tenure, which I did not have. I told him that I didn’t think tenure was a good idea—that if I weren’t wanted on a faculty, I would prefer to leave. I have had to reconstruct what he said, but I have the gist of it. “Ledewitz”, he replied, “people like you think you’re hotshots who don’t need protection. But you won’t always be such a hotshot and there are plenty of people who need tenure now. Laws aren’t there to protect people like you. When you’re 55, with kids in college, you’ll feel differently about getting fired. You have to remember who laws are for.”

Professor Bruce Ledewitz
I was a legal writing instructor at Nova Southeastern Law School when I was asked to interview for a visiting professor’s position at Duquesne Law School. A Nova colleague of mine, who was a Duquesne Law School graduate, was thrilled with my news. She told me I was certain to like Dean Sciullo, whom she fondly remembered as a wonderful teacher. As it turned out, I was the last faculty member hired by Dean Sciullo, and I, like my Nova colleague and so many others, developed a fondness for him over the few years that I knew him. He was as likely to ask about my family as he was to inquire about my teaching load; he would respond with equal energy to my questions about Property texts as he would to my inquiries about summer vegetable gardening. He may not have been my teacher in the formal sense, but by his example he taught me the value of a balanced life. It is a lesson I will not forget.

Professor Nancy P. Spyke

When I think of Dean Sciullo, two images come to mind. The first image is of a man who wasted no opportunity to tell people how grateful he was to be a professor of law and how much he loved teaching. As someone who is still relatively new to law teaching, I found his continued enthusiasm after such a long and distinguished career inspirational.

The second image is of a man who understood and cherished the importance of family life. Dean Sciullo always remembered to ask about my children and he always took the occasion to remind me that the early years of a child’s life are important and rewarding to their parents. This message was all the more meaningful to me because it came from someone whose love for his job was outweighed only by his devotion to his family.

Professor Allison Sulentic

John Sciullo joined the Duquesne Law faculty as a very young man. He made Duquesne Law School his life from that time on, becoming first one of our most effective teachers and then a highly successful and beloved Dean and finally, as Dean Emeritus, an ever-helpful colleague and friend. When John was called home, he was still a member of the Faculty.

I first met John in the mid-1970’s a brand new lawyer working for the Catholic Diocese of Pittsburgh Legal Office and attended a meeting of the Serra Club at the Allegheny Club in what was then the brand new Three Rivers Stadium. John was very active in Serra, which was a group who worked to recruit young men for the priesthood, and who helped them with jobs and other kinds of support throughout their seminary training.

But Serra wasn’t the only charitable activity in which John was involved. He was very active in his parish, Immaculate Conception in Bloomfield, serving on the parish council for many years as a close confidante of Father Dom Olivieri, longtime pastor of IC. Dom was really the unofficial mayor of Bloomfield and John Sciullo was one of his closest advisors and helpers.

In his professional life, by dint of his hard work and intellectual brilliance, John built a sterling reputation as a lawyer. For years, he was a member of the City of Pittsburgh Planning commission and the Urban Redevelopment Authority Board, compiling a body of work and precedent that helped to remake Pittsburgh into the beautiful urban expanse that it now is.

At the University, throughout some difficult years in our history, John rallied his fellow deans. He reassured them, he provided a rock around which to rally, and in general helped the University to weather the storms - financial, leadership and so forth - that beset us in the 1970’s and 1980’s. But for all that, he managed to keep the Law School on even keel, so that when I succeeded him as dean, there was a firm deck on which to build the future.

I could not begin to explain how deeply we, at Duquesne Law School, are in John Sciullo’s debt. He did more for us than we can ever realize and more than we could ever thank him for. His legacy will last here for years, not the least for the members of the faculty whom he trained as law students, and for whom he was a role model as a law professor and as a person. John, we will miss you terribly.

May the angels protect you May heaven accept you
And may the smile of God light your way to glory.

Dean Nicholas P. Cafardi
A Letter & A Life

by Professor Robert D. Taylor

I intended at this time to write on other matters, but two events—a letter and a life—have conjoined to bring about the subject matter of this issue’s “Ethics Corner.” The first event is a letter from Dr. John E. Murray, Jr., President of Duquesne University. The second event contributing to the focus of this column was the untimely death of the Law School’s Dean Emeritus, John J. Sciullo, on February 22, 2000.

As to the first event, the letter from the President of the University seeks from its deans and department heads a statement of vision for their respective schools and departments. In particular, it asks that such a vision be one that is sensitive to the matters set forth by the Holy Father, John Paul II, in his encyclical Ex Corde Ecclesiae, an encyclical whose application to the United States was recently approved by the National Conference of Catholic Bishops and sent on to Rome, to the Vatican Congregation for Catholic Education, for its approval. This encyclical challenges and calls Catholic Universities to articulate and express their Catholic identity and mission. Now as to the second event, the death of John Sciullo: the most frequently heard comment about John is that his life was the quintessential incarnation of the Catholic spirit of Duquesne University in general and of the Law School in particular. So both the letter and the remembered life of John suggested to this writer the timeliness of providing Catholic law students, legal educators, lawyers and judges with some basic resources for the Catholic legal professional (incidentally these are materials that were used or are currently used in lectures and readings in such courses as Law and Religion, the Philosophy of Law, and Constitutional Jurisprudence here at the Law School). Certainly, the matter of Catholic identity and mission here at the Law School is a most fitting topic for an “Ethics Corner” such as this one which is dedicated to legal ethics and professionalism.

Let’s start with the papal encyclical Ex Corde Ecclesiae. Encyclicals are named by the Latin (the official language of the Roman Catholic Church) words which make up the beginning of the papal letter. Thus this encyclical’s title translates as follows: “From the Heart of the Church.” This letter commences by reminding Catholics that the heart of the Church is the maternal matrix from which a Catholic University is born. As such an offspring, the Catholic University participates in two realities: a reality which consists in the quest for truth (and here we are in accord with secular universities) and a reality that is founded on truth already known on the basis of revelation flowing from the very Source of all Truth itself. As one who affirms this twofold reality, this University states as its mission: Duquesne University of the Holy Ghost is a Catholic university, founded by members of the Congregation of the Holy Ghost, the Spiritans, and sustained through a partnership of laity and religious. Duquesne serves God by serving students—through commitment to excellence in liberal and professional education, through profound concern for moral and spiritual values, through maintenance of an ecumenical atmosphere open to diversity, and through service to the Church, the community, the nation and the world.

The Law School, like this University, lives out of and on the basis of this Catholic identity by undertaking to also educate the “mind, the heart and the soul.” Such an undertaking that aims to educate the total person is also by that very fact one that safeguards and honors human dignity as well.

But there is another implication to be drawn from Ex Corde’s twofold reality. It serves to remind us all that there are two sources of law: divine law and human law. Now while there are many nuances able to be drawn within this twofold reality, a Catholic law school is both the process and product of their interaction and unfolding. Accordingly, natural law has become a bridge concept which is examined in this Law School in a variety of ways in its curriculum. This writer even presents the development of Erie Railroad v. Tompkins and its legal progeny within the framework of natural law thinking. For those among our readers desirous of the locus classicus of such thinking, I highly recommend the Treatise on Law published by Regenery Gateway of Chicago. This book (about 100 pages) culls out questions 90-97 from St. Thomas Aquinas’ treatment of law in his massive archetectonic work the Summa Theologica. This Thomistic treatment of law which is tantamount to a philosophical-theological reflection on the nature, purpose, and structure of law is the intellectual starting point for a serious Catholic legal professional. By struggling with this philosophy of law set forth by this Doctor of the Church one will encounter a range of experiences and questions largely ignored in secular law schools: issues and questions touching upon law and conscience; upon the limits of law; upon moral obligation and law; upon the interface of human and eternal law, to name but a few examples.

The above treatise, with its
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many carefully crafted distinctions, requires a considerable expenditure of time which the busy Catholic legal professional might find to be in short supply.

There is, however, reading matter available for those Catholic professionals "on the run" so to speak. There is the quarterly publication of the St. Thomas Moore Institute for Legal Research of St. John's University School of Law called "The Catholic Lawyer." Here the harried practitioner will find timely legal issues analyzed in terms of their ethical, theological, and even canonical implications for Catholic attorneys. Two other journals of immediate import to the Catholic lawyer who is religiously serious are the "Notre Dame Law Review" (formerly called the "Notre Dame Lawyer") and the "Journal of Law and Religion." This latter publication is ecumenical in scope and contains articles on the biblical, theological, and ethical roots of the legal system itself. It emerged from a fruitful collaboration between the Council on Religion and Law and the Hamline University School of Law. An additional publication for those on the run is published under the title "First Things." This publication, whose editor is Richard John Neuhaus, a Lutheran convert to Catholicism and now a Roman Catholic priest, is a monthly journal on religion and the public forum that examines very contemporary public issues from a traditional religious perspective. This journal is designed to help Catholics and adherents of other religious persuasions to rethink public matters all too often hermetically sealed off from a theological-ethical context by secularism. The above mentioned works would give to the Catholic legal professional a firm intellectual ground for building a relevant Catholic identity and mission for the Catholic legal professional. Two important web sites for the busy professional are as follows: www.vatican.va www.nccbuscc.orgchronological.htm.

Be this as it may, since contemporary legal discourse mostly employs concepts drawn from within a theory of rights, a most helpful work for the serious Catholic lawyer is a book entitled Claims in Conflict: Retrieving and Renewing the Catholic Human Rights Tradition (New York: Paulist Press, 1979). The author of this work, David Hollenbach, S. J., uses the seminal thinking on freedom as set forth by John Courtney Murray. The book begins with a careful portrayal of the human rights debate, goes on to examine the development of Christian rights theory in general and Roman Catholic rights theory in particular. It concludes with a chapter on policy considerations from within the retrieved and renewed rights tradition. Two other works in the same series are the Faith That Does Justice and Personal Values in Public Policy, both of which are under the editorship of John C. Haughey. From these works, the serious Catholic legal professional can learn and see at play a methodology which draws out the implications of Catholic Social Teachings for the legal-political realms. But you might be asking, "What are Catholic Social Teachings?" (Hereafter to be called CST). A pamphlet on the CST by Michael J. Schulteis, Ed. P. DeBerri, and Peter Henriot, calls them "Our Best Kept Secret."

CST are those teachings concerning social issues which are set forth in papal encyclicals and they cover a wide range of topics like the labor movement, capitalism, the natural and social sciences, etc. These social teachings themselves emerge from deep prayer and reflection upon revelation, history, experience, and prior papal encyclicals. Two very helpful compilations of CST are the following: The Gospel of Peace and Justice: Catholic Social Teaching Since Pope John XXIII ( New York: Orbis Press, 1976). This should be supplemented by the book John Paul II: Encyclicals in Everyday Language also an Orbis Press publication. Many of these teachings are a gold mine of insights of immediate application for the seriously religious Catholic legal professional. (Perhaps in an "Ethics Corner" in the future I will treat of the CST called "the principle of subsidiarity" and its application to municipal law). But a maternal concern for the modern and post-modern social condition often lies at the base of CST. For example in the famous encyclical by Pope John XXIII called Mater et Magistra he states:

And our predecessor of happy memory, Pius XII, rightly asserted that our age is distinguished from others by the fact that science and technology have made incalculable progress, while men themselves have departed correspondingly from a sense of dignity. It is a 'monstrous masterpiece' of this age 'to have transformed man, as it were, into a giant as regards the order of nature, yet in the order of the supernatural and the eternal, to have changed him into a pygmy (pumilionem).'

It would do us well to ponder these words as we sit daily banging away at our computers, talking on our cell phones, and whizzing our faxes to the four corners of earth. This law school and this University struggle mightily to not let the humanum shrivel up and eventually blow away in the wind of a planet overheated from toxic byproducts, literally and metaphorically speaking. To paraphrase something said by Albert Einstein concerning technology, but also germane to the legal system itself: Shriveled souls marring the legal system would be tantamount to placing a lethal weapon into the hands of a pathological criminal. A Catholic law school will always work against the downward pull of secular gravity by training the whole person who is ready and able to give voice to the voiceless victims of a social order's unmoored and random drift. All legal professionals would do well to ponder a letter and a life.

Robert D. Taylor is a Professor of Law at the Duquesne University School of Law.
Spring classes resumed on January 10, 2000, and a number of events are already planned for the second half of the school year. In January, the CSO conducted a seminar on Judicial Clerkships, and ground breaking is scheduled to begin on the new addition to the law school. An International Canon Law conference was conducted at the Law School on February 4th and 5th. Spring on-campus interviewing began on February 14th, and the CSO plans to hold a program on Managing Student Loans/Law School Debt. February was also Black History Month, and BLSA conducted various programs including their annual Soul Food Sampler. March will feature the Annual Law Alumni Reunion dinner and the CSO’s Interview Skills Workshop and Mock Interview Program. Plans are also underway for a law firm management program for current students and recent graduates. In April we will have the Duquesne University Downtown Alumni Luncheon, the Law Alumni Mentoring Program reception, and the Women’s Law Association’s annual Woman of the Year Award Reception. The CSO is planning to hold a seminar on Alternative Careers. Also in April, the Student Organizations Office will be coordinating Diversity Day events. While students are taking exams, the Law Alumni will be enjoying their annual golf outing at the Fox Chapel Golf Club on May 15th. In addition to all of these activities at Duquesne Law School, the law school also regularly conducts CLE programs. For more information about upcoming CLEs, contact Kathy Koehler, faculty secretary, at (412) 396-6282.

If you would like additional information on any of the Career Services Office or Student Organizations Office events, or if you are interested in participating in a program, please contact Ella Kwisnek, Assistant Dean for Students, at (412) 396-6279 or at kwisnek@duq.edu. For more information on Alumni events, please contact Amy Eozzo Black, Director of Alumni Relations and Development, at (412) 396-5216.

Duquesne University School of Law Career Services events scheduled for Fall 2000.

August: Interview Skills Workshop  
Resume Writing Workshop

September: Fall On-Campus Interviews begin September 5, 2000  
Off-Campus Interview trip to Philadelphia on September 11, 2000  
Beyond Fall OCI-Alternatives to large firm practice  
Debt Management Program

October: Off-Campus Interview trip to Erie on October 2, 2000  
First Monday in October Program  
Beyond Fall OCI-Alternatives to large firm practice  
Legal Marketing Program

November: Fall On-Campus Interviews end on November 17, 2000
Law Stuff USA is now part of law.com.

We still have everything that law students rely on us for—but now you can expect even more. Log onto law.com for everything you need—books and study guides, career assistance and jobs, resources and news, free e-mail and more. Count on law.com.
Do not go gentle into that good night,
Old age should burn and rave at close of day;
Rage, rage against the dying of the light.

Though wise men at their end know dark is right,
Because their words had forked no lightning they
Do not go gentle into that good night.

Good men, the last wave by, crying how bright
Their frail deeds might have danced in a green bay,
Rage, rage against the dying of the light.

Wild men who caught and sang the sun in flight,
And learn, too late, they grieved it on its way,
Do not go gentle into that good night.

Grave men, near death, who see with blinding sight
Blind eyes could blaze like meteors and be gay,
Rage, rage against the dying of the light.

And you, my father, there on the sad height,
Curse, bless, me now with your fierce tears, I pray.
Do not go gentle into that good night.
Rage, rage against the dying of the light.

Dylan Thomas