The Record

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Message from the Chair

by Anthony C. Musto, Chair
Appellate Practice and Advocacy Section

How do I thank thee? Let me count the ways. Actually, the Section's success, and, consequently, my success this year, was the result of the efforts of far too many people for me to mention them all in this message. For example:

• Bonnie Kneeland, who put together two of the best CLE programs I've ever seen—our certification review course and our 11th Circuit practice seminar.

• Hala Sandridge, who made sure that *The Record* was published regularly.

• Chris Ng, who made sure that the substance of *The Record* was consistently first rate.

• Angela Flowers, who took charge of raising funds for and arranging the Section's activities at the upcoming Bar convention. (More on the Bar convention later in this message.)

• Tammy Scrudders, who was the primary editor of our appellate practice guide.

• Chris Kurzner, who played an important role in many activities, including our CLE efforts and our publications.

• Roy Wasson and Judge Margarite Davis, who together kept us informed as to the actions of the Appellate Court Rules Committee, thus putting us in a position to respond to that committee's four-year cycle proposals without the need for a special meeting.

• Ben Kuehne, whose assistance, particularly on certification matters, was invaluable.

• Cindy Hofmann, who headed our membership drive and who efficiently took and prepared the minutes of our executive council meetings.

• Steve Stark, my predecessor as chair, who established a strong foundation for me to build on.

• Tom Elligett, our chair-elect, who provided me with sage advice and laid the groundwork for a smooth transition into his year as chair.

• Jackie Werndli, our Section Administrator, who does such a good job that her work is often not noticed by

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INSIDE:

Section Plans Bar Convention Activities

by Angela C. Flowers

The Appellate Practice & Advocacy Section plans an active agenda for The Florida Bar Annual Convention. In addition to its business meetings, numerous programs are being sponsored by the Section. Beginning on Thursday afternoon, June 20, the Supreme Court of Florida will appear from 4:00 to 5:00 p.m. for an open question and answer session. During the Supreme Court discussion, the justices will make themselves available to field questions from the audience related to matters such as the Supreme Court's rule-making function, internal procedures, policymaking, supervision of attorneys, and administration of the court system. The only restriction is that the court will not entertain questions relating to the disposition of a particular case or other confidential matter. The open question and answer session offers an opportunity to strengthen lines of communication between the court and members of The Florida Bar. The afternoon program is conveniently scheduled to occur immediately prior to the many receptions scheduled that evening,

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CHAIR'S MESSAGE
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those not directly involved with projects, but whose efforts have been the glue that holds the Section together.

• Harvey Sepler, who ordered kangaroo meat when a group of executive council members met for dinner during the January Bar meeting (I'm not making this up. Trust me, it really happened), thus giving me an opportunity to taste something I had never tried before. (It tasted like chicken.)

I could go on and on—all the committee chairs, vice-chairs and members; the other section officers, the members of the executive council; the speakers at our CLE programs; the contributors to *The Record*; the authors of articles submitted on behalf of the section to The Florida Bar *Journal*—and so many more.

To all of you, and to many others I haven't specifically mentioned, goes my deepest appreciation for making my job so much easier. Chairs can only be as successful as the people who make up their organizations allow them to be. In our case, you deserve the credit for my making my term such a successful one.

Although my days as chair are dwindling down to the proverbial "precious few," one of them, June 20, is one that I know will be memorable. On that day, at the Bar convention at the Buena Vista Palace in Disney World Village, our executive council will meet at 2:30 p.m. Our question and answer session with the Florida Supreme Court will be held at 4:00 p.m. Our signature event, our dessert reception, will occur at 10 p.m., and will again feature the presentation of the Section's highest honor, the James C. Adkins Award. Please try to join us for any, or all, of these events. (If you have to pick one, go with the dessert reception—it's been the hit of the Bar convention the past two years.)

I've often said that the best position to hold in any organization is that of past-chair. Being past-chair gives you license to pontificate at will without having to deal with the responsibilities of a leadership position. You get to be sort of a curmudgeon-at-large. So, I'll be around in the years to come, happily settling into my new role. I'll be the one in the back, swapping tales of the old days with Steve and suggesting all kinds of new projects for other people to organize. And, you know what? With the people we have in this Section, those projects, and any others, will get organized. They will get done. And the appellate practitioners of this state will benefit from them. Tom and his successors will get the same kind of support that I got and their terms will be as successful as mine has been.

For that support, for that success, thank you all. It has been a privilege and an honor to serve as your chair. And a unique experience to try kangaroo meat.

Chair-Elect's Message:
Credit Where It's Due

by Raymond T. (Tom) Elligett, Jr., Chair-Elect
Schropp, Buell & Elligett, P.A.

As I suggested in the last issue, our first two Section chairs, Steve Stark and Tony Musto have been exemplary. It really is mind-boggling to think how much the Section has accomplished in its first two full years under their leadership.

But Steve and Tony would be the first to note there is plenty of credit to go around. Chris Kurzner and Christine Ng have worked tirelessly on publications. Hala Sandridge has continued the outstanding work on *The Record* and has agreed to serve another year as editor.

Angela Flowers and the Program Committee have arranged a second Florida Supreme Court program for the 1996 Bar Convention and a third annual judicial dessert reception.

Bonnie Kneeland, the CLE Committee and the numerous program speakers have answered the frequently heard request for more specialized appellate practice seminars and an Appellate Certification Review Course.

I don't have enough room to note the contributions of our other committees, which have worked on a variety of projects, inquiries and proposals.

Now what about the year ahead? With nearly 900 members, we don't expect every Appellate Practice & Advocacy Section member to spearhead a major project.

Many just look forward to receiving *The Record* and participating in the Bar Convention activities and seminars. We welcome hearing from you if you have comments, suggestions or questions.

But we are looking for a few energetic appellate lawyers who want to serve on committees. If you did not fill out the committee preference form in the previous issue of *The Record* and want to serve on a committee, send it in immediately. Ditto if you are a new Section member.

We also welcome interesting, concise appellate articles for *The Record*, and longer articles for possible publication in the Section column in The Florida Bar *Journal*. Send them to Jackie Werndli at The Florida Bar.

That brings us back to giving credit where it is due. As you can imagine, with this active a Section, the contribution of our Bar Program Administrator, Jackie Werndli, is crucial. We are truly fortunate to have Jackie's experience and dedication available for our Section projects.

I look forward to working with Jackie and all our committee members this year. I invite you to join us.

The Supreme Court Series, Part I

In past issues of *The Record*, we presented the District Court of Appeal series. The series provided valuable insight on the inner workings of the district courts, as well as biographies on the judges of those courts.

In this issue of *The Record*, we begin the Supreme Court series. Part I will provide members with the biographies on each justice. These biographies may be useful in helping you to prepare questions for the justices at the Question & Answer session to be held at the annual Florida Bar convention in June.

The next two parts will be excerpts from a law review article authored by Justice Kogan and Robert Craig Waters. Part II will address the inner workings of the Court. Part III will complete the series with a discussion of the Court's jurisdiction. Parts II and III will appear in subsequent issues of *The Record*.

We hope you will find this information both interesting and useful in your practice.

Justice Ben F. Overton

Justice Ben F. Overton was the first Florida Supreme Court Justice to be selected under the merit selection process (effective January 1, 1973), which was designed to remove politics from Florida's Judicial system and to improve the quality of the state's courts. He was appointed by Governor Reubin Askew on March 27, 1974, and is presently the senior member of the Supreme Court.

He has been a judicial officer of this State for over thirty years and a Justice of the Supreme Court for over twenty years. He served as Chief Justice from 1976 to 1978 and, while Chief Justice, was a member of the Executive Council of the Conference of Chief Justices and was chair of the Conference's Special Committees on Cameras in the Courtroom and Judicial Education. The standards adopted by those two committees have now been implemented in most states.

Before his selection as a Justice, he served for nearly ten years as a circuit judge in both the civil and criminal divisions of the Sixth Judicial Circuit of the State of Florida, and was the chief judge of that circuit for three and one-half years. In 1973, he was chair of the Florida Conference of Circuit Judges.

Justice Overton has also been involved in a number of governmental, legal educational, bar, historical, and professional activities:

Governmental activities

Chair, Florida Appellate Structure Commission, 1978-79. The majority of the Commission's eight recommendations to improve appellate courts became effective in 1980 by incorporation into the Florida Constitution, Florida Statutes, and Florida Supreme Court Rules.

Member, 1978 Florida Constitution Revision Commission; Chair of the Commission's Judiciary Committee.

Chair, Supreme Court Matrimonial Law Commission, 1981-86. The Commission's recommendations on mediation, arbitration and equitable distribution have been substantially adopted by the Florida Legislature and the Supreme Court.

Chair, Florida Family Courts Commission, 1990-91. The Commission's recommendations for the establishment of family court divisions are now being implemented.

Chair, the Supreme Court Article V Review Commission, 1984. Chair, the Judicial Council of Florida, 1985-89.

United States Delegate to Romania to assist the Constitutional Drafting Committee of the Romanian Parliament in drafting a proposed constitution, spending one week in Romania in November, 1990.

Legal Education Activities

Adjunct professor, 1971-74, Stetson University College of Law; subjects taught: advanced civil procedure and trial practice.

Adjunct professor, 1989, 1991, 1993, 1994, 1995, Florida State University College of Law; subjects taught: appellate procedure and practice and Florida constitutional law.

Chair, Florida Bar Continuing Legal Education Committee, 1971-74.

Chair, Florida Court Education Council, 1977 to present. This Council is responsible for all judicial educational activities for the judiciary. While a circuit judge, Justice Overton served as chair of this Council's predecessor, the Florida Institute for the Judiciary, and was chair from 1971-74 of the Florida Bar CLE Program.

Faculty, National Judicial College, 1968-77; subjects taught—judicial discretion and new developments in criminal law. Member of the board of directors of the National Judicial College, 1976-87; chair of the academic committee, 1978-87.

Chair, United States Constitution Bicentennial Commission of Florida, 1986-92. The Commission helped institute programs about our Constitution that are still ongoing in middle and high schools throughout the state. The Commission also established an endowed graduate scholarship at the University of South Florida for teachers focusing on political science and constitutional issues in their graduate studies.

Professional Activities

Member, American Bar Association. As a member of the American Bar Association, Justice Overton has been involved in drafting standards for various areas of law, all of which have been approved by the House of Delegates of the American Bar Association. They include:

Chair, Subcommittee on Judicial Discipline (Drafted Standards for Judicial Discipline, which were approved by the House of Delegates in 1979).

Chair, Task Force on Mental Health Standards for Competency to Stand Trial (Standards approved by the House of Delegates in 1985).

Chair, Appellate Judges Conference Special Committee on Time Standards for Appellate Courts (Standards approved by the House of Delegates in 1987).

Chair, Task Force to Review Criminal Justice Standards on Trial

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and Discovery.

(Trial standards were approved by the House of Delegates in August, 1993, and the discovery standards were approved in August 1994).

Member, ABA Joint Committee on Professional Sanctions (Developed standards for imposing sanctions in lawyer discipline proceedings, which were approved by the House of Delegates in 1986).

Member, Executive Committee, Appellate Judges Conference, 1976-84. Member, Standing Committee on Standards for Criminal Justice, 1977-85. Member, Council of Section on Legal Education and Admissions to the Bar, 1986-89.

Member, Council on Alternative Dispute Resolution Section 1993 to present. Fellow, American Bar Foundation.

Member, American Judicature Society, Board of Directors 1980-86, and Executive Committee 1980-83; secretary of the Society, 1981-83.

Honors and Awards

On June 23, 1995, Justice Overton was awarded the Tradition of Excellence Award by the General Practice Section of The Florida Bar. He also was honored in the Fall 1995 edition of *Florida Lawyer* magazine in an article entitled "Justice Overton: A Supreme Influence on Florida Law & History."

He received the Florida Bar Medal of Honor Award in 1984 for improvements in the administration of Justice in this State and the Guardian of the Constitution Award in 1992 for programs that were developed while he was Chair of the United States Constitution Bicentennial Commission of Florida. He also has been honored by being placed in the National Hall of Fame of Pi Kappa Phi Fraternity in 1994, by having the University of Florida Law Review dedicate its September 1993 edition to him, and by receiving the St. Thomas More Award in 1978 from the Catholic Lawyers Guild, Archdiocese of Miami. He has received honorary doctor of law degrees from Stetson and Nova Universities.

Personal

Justice Overton was born on December 15, 1926, in Green Bay, Wisconsin. He received a bachelor's degree in business administration in 1951 and a juris doctor degree in 1952 from the University of Florida. He received an LL.M. in Jurisprudence from the University of Virginia in 1984.

Member, Episcopal Church (served as lay reader, member of vestry, and senior warden); Member, Rotary Club; Retired Reserve Officer, Judge Advocate General Corps, U.S. Army.

Justice Overton and his wife Marilyn have been married since June 9, 1951, and have three children, William H. Overton, Robert M. Overton, and Catherine Overton Mead.

Justice Leander J. Shaw, Jr.

Justice Leander J. Shaw, Jr. was born in Salem, Virginia, on September 6, 1930. His parents were Leander J. Shaw, retired dean of the Florida A & M University Graduate School in Tallahassee, and Margaret Shaw, retired teacher, Lylburn Downing High School in Lexington, Virginia.

He attended public schools in Virginia and received his bachelor's degree in 1952 from West Virginia State College in Institute, West Virginia. After serving in the Korean conflict as an artillery officer, he entered law school and earned his juris doctor degree in 1957 from Howard University in Washington, D.C.

He holds honorary doctor of laws degrees from West Virginia State College (1986), Nova University (1991), and Washington and Lee University (1991). In 1990, he was awarded an honorary doctor of public affairs degree from Florida International University.

Justice Shaw came to Tallahassee in 1957 as an assistant professor of law at Florida A&M University. In 1960 he was admitted to The Florida Bar and went into private practice in Jacksonville, where he also served as assistant public defender. In 1969, he joined the State Attorney's staff, where he served as head of the Capital Crimes Division and adviser to the grand jury. In 1972, he returned to private practice with the law firm of Harrison, Finegold and Shaw.

In 1974, Governor Reubin Askew appointed him to the Florida Industrial Relations Commission, where he served until October 1979 when Governor Bob Graham appointed him to the First District Court of Appeal. He served there until January 1983 when Governor Graham appointed him to the Supreme Court. Justice Shaw served as Chief Justice from 1990 to 1992.

He is a member of the American Bar, the National Bar, The Florida Bar, the Florida Government Bar, and the Tallahassee Bar associations. He is admitted to practice in all Florida courts, the United States Southern District Court of Florida, the United States Circuit Court of Appeals for the Eleventh Circuit and the United States Supreme Court.

Justice Shaw served as second vice president of the Conference of Chief Justices, as a member of the Board of Directors of the National Center for State Courts, as Chair of Governor Lawton Chiles' Criminal Justice Task Force, and Vice-Chair of the Florida Supreme Court Racial and Ethnic Bias Study Commission.

He serves on the Judicial Fellows Program, having been appointed by the Chief Justice of the United States, and the Board of Directors of the American Judicature Society. He chairs Florida's Sentencing Guidelines Commission. Justice Shaw is the father of five children and lives on Lake Iamonia in Leon County.

Chief Justice Stephen H. Grimes

Chief Justice Stephen H. Grimes was born November 17, 1927, in Peoria, Illinois, the son of Henry H. and June K. Grimes. He was educated at the University of Florida where he took his B.S./B.A. (1950) and LL.B. (1954) degrees with honors. At the University of Florida, he was a member of Florida Blue Key, Phi Delta Phi Legal Fraternity, and Order of the Coif. He also served as editor-in-chief of the University of Florida Law Review. He was also the president of Alpha Tau Omega Social Fraternity.

In 1980, Justice Grimes received an honorary doctor of laws degree from Stetson University. After serving in the United States Navy from

1951-53, Justice Grimes settled in Bartow, Florida, and joined the law firm of Holland & Knight, where he became the head of its litigation department. He served as president of the Tenth Judicial Circuit Bar Association in 1966 and became a fellow of the American College of Trial Lawyers in 1971. He has taught as an adjunct instructor of criminal justice at Florida Southern College.

Justice Grimes was appointed to the Second District Court of Appeal of Florida in October 1973. He served as chief judge from 1978-80. He was Chair of the Florida Conference of District Court of Appeal Judges from 1978-80 and a member of the Florida Supreme Court Appellate Structure Commission, the Florida Supreme Court Article V Review Commission, the Florida Council on Criminal Justice, and The Florida Bar Tort Litigation Review Commission.

He has been Vice-Chair of the Florida Appellate Rules Committee. He was on the Florida Supreme Court Committee on Standard Jury Instructions in Criminal Cases and served as Chair for two years. He was a member of the Florida Judicial Qualifications Commission from 1983-86 and was its Vice-Chair for two years. He chaired the Judicial Council of Florida from 1989-94.

Justice Grimes was appointed to the Supreme Court in January 1987. He was selected by the Court as Chief Justice on April 21, 1994. He became Chair of the Article V Task Force in 1994, and serves as a faculty member of the Florida Judicial College.

Justice Grimes has also been active in civic affairs. He was president of the Greater Bartow Chamber of Commerce in 1964, and has served on the boards of the Polk Public Museum, the Bartow Memorial Hospital, the Bartow Public Library, and the Polk County Law Library. He was president of the Bartow Rotary Club, and he was the district governor of Rotary International from 1960-61. He served on the Board of Trustees for Polk Community College for three years, presiding as Chair in 1970.

He was an active member of the Holy Trinity Episcopal Church in Bartow for more than 30 years, and he was vice counsel of the Episcopal Diocese of Central Florida from 1971-73. He is a member of the Rotary Club of Tallahassee.

Justice Grimes married Fay Fulghum of Lakeland in 1951. They have four daughters, Gay, Mary June, Sue, and Sheri, and six grandchildren.

Justice Gerald Kogan

Justice Gerald Kogan was born in New York City on May 23, 1933. He moved with his parents and brother to Miami Beach in 1947. He graduated from Miami Beach Senior High School and attended the University of Miami where he received the bachelor's degree in business administration and the juris doctor degree. While at the University of Miami, he served as president of the Student Senate and was listed in Who's Who in American Colleges and Universities.

He served as chief of Iron Arrow Honor Society (the highest honor society at the University of Miami) and in 1955 received an Ibis citation, which is given annually to the outstanding student at the university. He also won the National Intercollegiate Debate Championship and is a Charter Member of the Southern Debate Hall of Fame.

In law school, he won the Southern Law School Moot Court Championship and became a National Moot Court Finalist. Upon graduation from law school, Justice Kogan entered the United States Army, graduated from the Army Intelligence School, and served on active duty as a special agent in the Counterintelligence Corps. Upon his discharge, he entered the private practice of law in Miami. In 1960, he was appointed an assistant state attorney in the Dade County State Attorney's Office and rose to the rank of chief prosecutor of the Homicide and Capital Crimes Division. In 1967, he left the State Attorney's Office to resume the private practice of law, specializing in criminal trial and appellate law. He served on the Criminal Courts Committee of the Dade County Bar Association, grievance committees, and The Florida Bar Committee on the Unauthorized Practice of Law.

He was a prosecutor and referee on behalf of The Florida Bar in disciplinary procedures. Justice Kogan was special counsel to the Florida Legislature's Select Committee on Organized Crime and Law Enforcement.

In 1980, he was appointed a circuit judge in Florida's Eleventh Judicial Circuit. In 1984, he was appointed administrative judge of the Criminal Division, and he served in that capacity until his appointment to the Florida Supreme Court in January 1987. Justice Kogan was recenly selected by the Court as its next Chief Justice.

Justice Kogan is a member of the faculty of the American Academy of Judicial Education, teaching Constitutional Criminal Procedure and Trial Procedure. He was a member of the adjunct faculties of the University of Miami School of Law and the Shepard Broad Law Center at Nova University, where he taught Criminal Evidence, Trial Advocacy, and Professional Responsibility.

He is currently on the faculty at the Florida State University College of Law, where he teaches Trial Advocacy. He teaches Trial Advocacy Workshops for prosecutors and public defenders at the University of Florida College of Law, the University of Miami School of Law and the Shepard Broad Law Center at Nova University.

He has been a member of the faculty at the Trial Judges Academy at the University of Virginia and the National Judicial College and was a faculty member for the appellate judges seminar at New York University law school. He was Chair of the Supreme Court's Gender Bias Study Commission and vice chair of the Bench/Bar Commission and Chair of its implementation commission. He currently chairs the Judicial Council. He received the Selig I. Golden Award from The Florida Bar. He and his wife Irene were married in 1955, and they have three children (Robert, Debra, and Karen) and four grandchildren (Jeremy, Nolan, Adam, and Jacob).

Justice Major B. Harding

Justice Major B. Harding was appointed by Governor Lawton Chiles on January 22, 1991, and was retained by merit retention vote to a six-year term beginning January 6,

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1993. Justice Harding is a native of Charlotte, North Carolina. He began his tenure on the bench in Florida with his 1968 appointment as a Duval County juvenile court judge.

In December 1970 he was appointed to the circuit bench in the Fourth Judicial Circuit. As a circuit judge, he was elected chief judge in 1974 and again in 1975. At the time of his appointment to the Supreme Court, he was the dean of the Florida Judicial College and Chair-elect of the Florida Conference of Circuit Judges. In 1996, Justice Harding was appointed Chair of the Florida Court Education Council. Justice Harding received his bachelor of science and bachelor of laws degrees from Wake Forest University, Winston-Salem, North Carolina, in 1957 and 1959, respectively, and he attended the United States Army Infantry School and the United States Army Judge Advocate General School. He received an honorary doctor of laws degree from Stetson University in 1991. Justice Harding received his masters of laws degree from the University of Virginia School of Law in 1995.

While at Wake Forest, he was a member of Phi Delta Phi Legal Fraternity, Sigma Chi Fraternity, and Scabbard & Blade Honorary Military Fraternity. He was admitted to the North Carolina Bar in 1959, to The Florida Bar in 1960, and is a member of the American Bar Association. From 1960-62, he served as assistant staff judge advocate at Fort Gordon, Georgia, where he received trial experience in general courts martial, legal assistance, and government contracts. From 1962-63 he was the assistant county solicitor prosecuting in Duval County Criminal Court of Record, and in 1964 he entered private practice.

Justice Harding has served on the Supreme Court's Matrimonial Law Commission, the Gender Bias Study Commission, the Bench Bar Commission, the Florida Court Education Council, the Judicial Council, and was a founding member of the Chester Bedell Inn of Court in Jacksonville.

In 1986, he received the American Academy of Matrimonial Lawyers Award for outstanding contribution to the field of matrimonial law, and in 1980, the Young Lawyers Section of the Jacksonville Bar nominated him for the Outstanding Circuit Judge award. While a circuit judge, he was consistently rated at the top of the annual judicial polls of the Jacksonville Bar Association.

Justice Harding was active in civic affairs in Jacksonville. He has served as a board member for Daniel Memorial in Jacksonville (a psychiatric treatment center for disturbed youth), as president of the Rotary Club of Riverside, Jacksonville, and as chair of the United States Constitution Bicentennial Commission of Jacksonville. Justice Harding is currently president of the Rotary Club of Tallahassee. He is a member of the Tallahassee American Inn of Court and is chair of the Florida Court Education Council.

As a member of a Presbyterian church in Jacksonville, he has served as deacon and elder, and he has been active in church education, teaching adults, youth, and primary age children. He is now a member of Christ Presbyterian Church in Tallahassee. Justice Harding and his wife, Jane, have three children—Major, David, and Alice—and six grandchildren.

Justice Charles Talley Wells

Justice Charles Talley Wells assumed his duties as Justice of the Supreme Court on June 16, 1994, after being appointed by Governor Lawton Chiles. He is a native Floridian who was born in Orlando on March 4, 1939, the son of Julia Talley Wells and J.R. Wells. In 1957, he graduated from William R. Boone High School in Orlando and received his bachelor's degree from the University of Florida in 1961. As a student at Florida, he was president of the Florida Blue Key leadership honorary. He also served as Chair of the University of Florida Homecoming Committee. After receiving his juris doctor degree from the University of Florida in 1964, he achieved one of the three highest grades on the Bar examination in 1965 and was the speaker at the induction ceremony held at the Second District Court of Appeal in June 1965. He was elected to the University of Florida Hall of Fame in 1961.

Upon graduation from law school, Justice Wells entered private practice in Orlando with the law firm of Maguire, Voorhis, and Wells, P.A. He

remained with that firm until 1969, when he served for one year as a trial attorney with the United States Department of Justice in Washington, D.C. He returned to the firm in 1970 and remained there until 1976. He then formed the firm of Wells, Gattis, Hallowes, and Carpenter, P.A., in Orlando, where Justice Wells practiced law until his appointment to the Supreme Court.

During his twenty-eight years in the private practice of law, he was an active civil trial lawyer engaged in commercial, insurance, and personal injury litigation. He was certified by The Florida Bar Certification Program as a Civil Trial Attorney.

Justice Wells is a member of The Florida Bar, the American Bar Association, the Orange County Bar Association, and the Tallahassee Bar Association. He is a Fellow of the American Bar Foundation.

He actively participated in the Orange County Bar Association while residing in Orlando. He was president of that association from 1989 through 1990 and president-elect vice president from 1988 through 1989. He was also actively involved in the Orange County Legal Aid Society from 1968 until 1994. He served on the Society's Board of Trustees from 1988 through 1989. From 1985 through 1994, Justice Wells participated in the Guardian Ad Litem Program, representing dependent and abused children in juvenile and domestic court proceedings. The Society awarded him its Award of Excellence in 1989 in recognition of his outstanding pro bono service. Justice Wells was elected to The Florida Bar Board of Governors in 1990 and served in that capacity until 1994. Further Florida Bar activities include membership on the Disciplinary Review Committee, Disciplinary Procedure Committee, and the Rules and Bylaws Committee.

He was Chair of the Grievance Committee, Ninth Judicial Circuit, Committee "B" (1983-85), and Chair of the Trial Court Nominating Committee, Ninth Judicial Circuit (1971-74).

He has lectured on topics including Commercial Fraud in Florida and the Medical Malpractice Reform Act of 1988. He has also delivered various CLE lectures on Florida Civil Procedure and Trial Tactics, and Mediation of Insurance Claims. Justice Wells is a member of St. Luke's United Methodist Church of Windemere. He was on the Board of Directors of the Orlando Area Chamber of Commerce, Orlando Jaycees, and Orange County YMCA. Other civic activities included chairing the Criminal Justice Study Commission of the Orlando Area Chamber of Commerce, Governor Reubin Askew's Orange County Advisory Committee, and the Professional Division of the United Appeal of Orange County. He served as President of the Orange County Chapter of the University of Florida Alumni Association and was a member of the Human Relations Council of Orange County and the Civil Service Board for the City of Orlando. Justice Wells also served in the United States Army. Justice Wells is married to Linda Fischer Wells of Clearwater, Florida. Mrs. Wells is a graduate of the University of Florida and George Washington University College of Law. Mrs. Wells was a partner with the law firm of Carlton, Fields, Ward, Cutler, and Smith, P.A., in Orlando prior to Justice Wells' appointment to the Supreme Court. Justice and Mrs. Wells have three children: Charles Talley Wells, Jr., Shelley Blythe Wells, and Ashley Dawn Wells.

Justice Harry Lee Anstead

Justice Harry Lee Anstead was appointed to the Florida Supreme Court on August 29, 1994, by Governor Lawton Chiles. One of six children, he was born in Jacksonville, Florida, on November 4, 1937. He was raised by his mother, Loretta, in the Brentwood housing project and graduated from Andrew Jackson High School in 1956. He served with the National Security Agency in Washington, D.C., before attending law school.

He received bachelor of arts and juris doctor degrees from the University of Florida, and an LL.M. degree from the University of Virginia. He is a graduate of the regular trial judges education program of the National College of the State Judiciary, and numerous other national judicial education programs.

After 13 years as a trial and appellate lawyer, he was elected to the Fourth District Court of Appeal in 1976 and served there until his appointment to the Supreme Court. He served as chief judge of the district court and also served as an acting circuit and county court judge. He consistently received the highest approval ratings among Supreme Court Justices and appellate judges in the statewide judicial polls of Florida lawyers, including the highest rating of 95% in 1994.

Justice Anstead has published numerous articles relating to legal education, constitutional law, appellate practice, and various other topics. He served as an ad hoc member of the American Bar Association's advisory committee of the Appellate Judges Conference which was devoted to planning and implementing the LL.M. program on the judicial process at the University of Virginia.

He was a member of the Supreme Court Commission on the Structure of Florida's Courts; served for twelve years as an active member and Vice-Chair of the Supreme Court Committee on Civil Jury Instructions; and was a founder and president of the American Inns of Court for Palm Beach County.

He has been a lecturer on appellate practice at Nova Southeastern University Law School and served on the School's Board of Governors. He was honored by students there for his longtime work with the Moot Court program.

He has served on The Florida Bar's steering committee for its CLE publications on Florida appellate practice and comparative negligence. Justice Anstead initiated the regular publication of the attorney's oath in the Bar *Journal* as well as the practice of providing bar members with a formal copy of the oath upon admission to the bar. He and his wife, Sue, have five children—Chris, Jim, Laura, Amy, and Michael. He has been a founder and leader in numerous civic and charitable organizations in his community as well as an active member of Holy Name of Jesus Catholic Church in West Palm Beach. His wife, Sue, graduated from law school in 1990 and is a former child advocate for the Legal Aid Society. She has left this position to join Justice Anstead in Tallahassee.

In the Supreme Court of Florida

IN RE: AMENDMENTS TO THE FLORIDA
RULES OF APPELLATE PROCEDURE CASE NO. 87,134

COMMENTS OF THE FLORIDA BAR
APPELLATE PRACTICE AND ADVOCACY SECTION

The Florida Bar Appellate Practice and Advocacy Section hereby files the following comments on the proposed amendments to the Florida Rules of Appellate Procedure:

OVERVIEW

At its January 11, 1996, meeting, the Executive Council of The Florida Bar Appellate Practice and Advocacy Section reviewed the proposed amendments to the Florida Rules of Appellate Procedure. These comments set forth the conclusions reached by the Council.

RULE 9.100
ORIGINAL PROCEEDINGS

The Council voted unanimously to endorse the proposed amendments to this rule, but to also suggest that steps need to be taken to reduce the confusion resulting from the coexistence of this rule and Florida Rule of Civil Procedure 1.630, which establishes procedures for considering requests for extraordinary writs.

The Council recognized that a great deal of confusion presently exists with regard to these two rules. Some circuit courts follow the procedure set forth by the appellate rule and some follow the procedure set forth by the civil rule. Frequently, cases within the same circuit utilize different procedures depending on the preference of the judge to whom the case is assigned. Some petitioners have attempted, with varying degrees of success, to dictate the applicable procedure by referring in petitions only to that rule that sets forth the process preferred by the party bringing the proceeding.

The present proposal specifically indicates in subsection (f) its applicability to circuit court proceedings, but refers only to those proceedings "that invoke jurisdiction of the circuit court described in rules 9.030(c)(2) and (c)(3)," and not those that invoke the jurisdiction described in the rule of civil procedure. The Council believed that the result of this approach would likely be to make the present situation even more confusing.

While the Council did not agree on a particular solution to this problem, several possible approaches were discussed. Some members believed that the appellate rule should specifically state that it also applies to proceedings that invoke the jurisdiction of the circuit court pursuant to the civil rule. Others suggested that the civil rule be amended in a manner to render it inapplicable to proceedings that seek review of judicial or quasi-judicial action. Still others supported repealing the civil rule and incorporating any procedures that might be appropriate for circuit courts, but not district courts, within rule 9.100(f).

Although no consensus was reached as to how to deal with this issue, the Council was unanimous in its belief that the matter should be addressed by establishing one procedure, whatever that procedure may be, to be used whenever circuit courts are considering actions for the issuance of extraordinary writs.

RULE 9.140
APPEAL PROCEEDINGS IN CRIMINAL CASES

The Council voted unanimously to express concern over the proposed amendments to subsection (h) of this rule, which would require appellants to file their briefs within 15 days of their notices of appeal when seeking review of orders summarily denying relief under Florida Rule of Criminal Procedure 3.800(a) or 3.850.

The Council recognized that in many instances those briefs are not filed in such appeals and that, as a result, those cases remain inactive until the time expires for the filing of briefs. Clearly, the intent of the present proposal, which is to eliminate the delay in cases that are ripe for decision, is a laudable one.

The Council recognized, however, that in some cases briefs will be filed and believed that the 15 day period contemplated by the present proposal would be an insufficient time for such briefs to be properly prepared. This would be particularly true when, as will often be the case, the defendant is represented by the Public Defender. Under such circumstances, the case will generally be transferred from a trial attorney to an appellate attorney and it will usually take longer than 15 days for the appellate attorney

to even receive the case.

Thus, although the Council felt that it might well be appropriate to reduce to some extent the time for the filing of briefs in cases of this nature, the Council voted unanimously to oppose the idea that the period should be reduced to just 15 days.

RULE 9.146
APPEAL PROCEEDINGS IN JUVENILE DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS CASES AND CASES INVOLVING FAMILIES AND CHILDREN IN NEED OF SERVICES

The Council voted unanimously to support this proposed rule, but to also suggest that a subsection be added to establish the procedure for obtaining belated appeals in termination of parental rights cases, as authorized by *In the Interest of E.H.*, 609 So. 2d 1289 (Fla. 1992). This could be accomplished either by stating that the procedure shall be the same as that established by proposed rule 9.140(i) for criminal cases or by specifically setting forth the procedure.

OTHER RULES

The Council voted to endorse all other proposed amendments to the rules. The vote was unanimous in all instances, except as regards the proposal to eliminate the requirement of rule 9.120(c) that the statement of the case and of the facts in an answer brief should clearly specify the areas of disagreement with the statement set forth in the initial brief. The vote as to that proposal was 10-2, with 2 abstentions.

WHEREFORE, The Florida Bar Appellate Practice and Advocacy Section respectfully submits the above comments for this court's consideration.

Respectfully submitted,

Anthony C. Musto, Chair
The Florida Bar Appellate Practice
and Advocacy Section
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Federal Civil Appellate Update

by Robert W. Thielhelm, Jr. and Lea Ann Banks
Baker & Hostetler, Orlando

Appealability of unfavorable qualified immunity rulings.

Recent opinions from the United States Supreme Court and the Eleventh Circuit Court of Appeals address the jurisdiction of the appellate courts to decide appeals of unfavorable qualified immunity rulings.

In *Behrens v. Pelletier*, 9 Fla. L. Weekly Fed. S384 (Feb. 21, 1996), the Supreme Court rejected the Ninth Circuit's "one interlocutory appeal" rule in cases involving qualified immunity. Respondent was fired as the provisional managing officer of Pioneer Savings and Loan Association after petitioner, the federal official responsible for monitoring Pioneer's operations, recommended such action because respondent was under investigation for potential misconduct relating to the collapse of another financial institution. Respondent filed this suit, seeking damages for alleged constitutional wrongs. In partially denying the petitioner's motion to dismiss, the district court rejected petitioner's asserted defense of qualified immunity from suit. On appeal, the Ninth Circuit held that denial of qualified immunity is an immediately appealable "final" decision under 28 U.S.C. §1291 and *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949), but also stated, in dictum, that "[o]ne such interlocutory appeal is all that a government official is entitled to and all that we will entertain." *Pelletier v. Federal Home Loan Bank*, 968 F.2d 865, 879 (9th Cir. 1992).

On remand and after further proceedings, the district court denied petitioner's motion for summary judgment, which again claimed qualified immunity. Petitioner's appeal from that denial, his second pretrial appeal based on a rejection of the qualified immunity defense, was summarily dismissed by the Ninth Circuit "for lack of jurisdiction."

The Supreme Court rejected the Ninth Circuit's "one interlocutory appeal" rule on the authority of the Court's decision in *Mitchell v. Forsyth*, 472 U.S. 511 (1985). In *Mitchell*, the Court held that a district court's rejection of a defendant's qualified immunity defense is a "final decision" subject to immediate appeal under the general appellate jurisdiction statute. The Court reasoned that *Mitchell* "clearly establishes that an order rejecting the defense of qualified immunity at *either* the dismissal stage *or* the summary judgment stage is a 'final' judgment subject to immediate appeal." The Court went on to state that "[s]ince an unsuccessful appeal from a denial of dismissal cannot possibly render the later denial of a motion for summary judgment any *less* 'final,' it follows that petitioner's appeal falls within §1291 and dismissal was improper."

Similarly, in *Johnson v. Wayland Clifton*, 9 Fla. L. Weekly Fed. C797 (11th Cir. 1996), the appellate court reversed the denial of summary judgment on qualified immunity grounds. This appeal arose from the district court's denial of qualified immunity to the Police Chief for the City of Gainesville. Public officials are entitled to qualified immunity from "liability for civil damages insofar as their conduct does not violate clearly established . . . rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). A public official may immediately appeal a denial of qualified immunity where the disputed issue involves whether or not the defendant's conduct constitutes a violation of clearly established law.

When faced with a motion for summary judgment based on qualified immunity, one issue the district court must determine is whether there is a genuine issue of material fact as to whether a reasonable public official could have believed that such conduct was lawful based on clearly established law. The Eleventh Circuit held that resolution of this issue constitutes a final, collateral order and is immediately appealable.

The consequence of unartful pleading below.

A third case involving qualified immunity issues is presented as an example of how unartful pleading below can affect your case on appeal. In *Anderson v. District Board of Trustees of Central Florida Community College*, 9 Fla. L. Weekly Fed. C878 (11th Cir. 1996), the Eleventh Circuit affirmed an order denying the defendant's motion for summary judgment based on qualified immunity. However, the court's decision

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was based on the state of the pleadings. The court stated that "[plaintiff's] complaint is a perfect example of 'shotgun' pleading, in that it is virtually impossible to know which allegations of fact are intended to support which claim(s) for relief." (Citation omitted.) Although the Federal Rules of Civil Procedure would not require a defendant faced with such a complaint to frame a responsive pleading, nevertheless, the defendants did not move the court to order the plaintiff to file a more definite statement as a matter of strategy. Counsel's strategy was to "fight fire with fire—to respond to the plaintiff in kind."

Due to the state of the pleadings, the Eleventh Circuit reasoned that for it to decide whether the district court ruled correctly would require it to, in effect, amend the plaintiff's complaint to conform to the evidence amassed by the parties. This the court declined to do. Instead, the consequence of the court being unable to determine from the pleadings of both parties whether the district court should have granted immunity is that the denial of immunity was affirmed.

Appellate jurisdiction pursuant to the separability requirement of Rule 54(b).

In re Southeast Banking Corp., 9 Fla. L. Weekly Fed. C654 (11th Cir. 1995).

A trustee of a holding company filed a complaint in the district court against 18 former directors and officers of the holding company asserting various breaches of duties. After several amendments, the defense moved to dismiss the second amended complaint on several grounds including statute of limitations. In response, the district court denied most of the motion to dismiss, but did dismiss certain averments relating to conduct occurring outside the limitations period. Significantly, the district court also directed that a final judgment on the dismissal be entered certifying that there was no just reason for delaying the proceedings pursuant to Rule 54(b).

The trustee appealed the dismissal and relied on the district court's certification under Rule 54(b) for appellate jurisdiction. Rule 54(b) provides, in pertinent part:

> When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of final judgment as to one or more but fewer than all of the claims of the parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of a judgment.

Noting that Rule 54(b) determination is not conclusive of appellate jurisdiction, the Eleventh Circuit analyzed the standard of review applicable to such jurisdictional issues. The Eleventh Circuit ruled that it apples a two-pronged test to review Rule 54(b) certifications. First, the Eleventh Circuit considers "whether the district court completely disposed of one or more claims . . . ." Second, the Eleventh Circuit considers "whether there is just reason for delay." Noting that it applies considerably more deference to the circuit court's determination on the second prong than it does on the first prong, the Eleventh Circuit indicated it would not disturb "the district court's assessment that there is 'no just reason for delay' unless the court's conclusion was 'clearly unreasonable'. . . ."

The significance of the Eleventh Circuit's decision in *Southeast Banking Corp.* is its analysis of the separability requirement for Rule 54(b) certification. "A judgment properly may be certified under the terms of Rule 54(b) only if it possesses the requisite degree of finality. That is, the judgment must completely dispose of at least one substantive claim." Cautioning that an inflexible rule should not be applied to jurisdiction issues, the court announced certain guidelines applicable to a Rule 54(b) certification. In particular, "claims are separable when there is more than one possible recovery, or if 'different sorts of relief' are sought . . . . When either of these circumstances exist, claims are 'separately enforceable' and subject to Rule 54(b) certification even if they arise out of a single transaction or occurrence." However, if the possible recoveries under various portions of a complaint are mutually exclusive, or substantially overlap, then separable claims are not involved.

In announcing the guidelines applicable to the separability requirement under Rule 54(b), the Eleventh Circuit also stressed that these guidelines must be considered in light of the purpose and practical implications of Rule 54(b). The purpose of Rule 54(b) was to codify past practice of permitting appeals **only** from final judgments except in "the infrequent harsh case" in which the district court determines that an immediate appeal is proper. Concerned with avoiding an increase in its caseload by improperly multiplying appeals in a single case, the Eleventh Circuit cautioned against a liberal construction of Rule 54(b).

Significantly, the Eleventh Circuit determined that it lacked jurisdiction to review the district court's statute of limitations ruling as it did not dispose of separable claims. As the district court's statute of limitations ruling only disposed of certain averments outside the limitations period, the district court's ruling was not a final judgment within the meaning of Rule 54(b).

Rule 407 of the Federal Rules of Evidence apply to strict products liability cases.

Wood v. Morbark Industries, Inc., 9 Fla. L. Weekly Fed. C679 (11th Cir. 1995).

In a case of first impression, the Eleventh Circuit held that Rule 407 of the Federal Rules of Evidence applied to exclude evidence of subsequent remedial measures in a strict products liability case. Although Rule 407 is an exclusionary rule, the Eleventh Circuit found that the district court erred when it instructed the jury to disregard testimony concerning subsequent remedial measures admitted for impeachment purposes.

After hearing argument on defendant's motion in limine, the district court properly determined that evidence of a post-accident design change could not be introduced to prove negligence or culpable conduct. However, during the trial, the defendant opened the proverbial door for certain rebuttal testimony regarding subsequent remedial measures offered for the purpose of impeachment. While the district court ini-

continued...

tially permitted plaintiff's counsel to introduce certain evidence of post-accident remedial measures, the district court subsequently instructed the jury to disregard such evidence.

Presented with the issue of the whether Rule 407 applies to strict products liability cases, the Eleventh Circuit held that "Rule 407 does apply in strict product liability cases when the plaintiff alleges that a product is defective because the design is unreasonably dangerous." The Eleventh Circuit believed that Rule 407 was "necessary in such cases to focus the jury's attention on the product's condition or design at the time of the accident." Although Rule 407 allows defendants to exclude evidence of subsequent remedial measures, its exceptions prevent defendants from taking an unfair advantage of the exclusion. Under Rule 407, evidence of subsequent remedial measures is admissible "to prove ownership, control, feasibility or for impeachment." As the defendant in *Morbark* had opened the door, making evidence of subsequent remedial measures admissible for impeachment purposes, the Eleventh Circuit reversed the district court and remanded for further proceedings.

It should also be noted that the *Morbark* court rejected an argument that the plaintiff had waived any objection to the district court's instruction by failing to object to the instruction at the time it was given. In doing so, the *Morbark* court ruled that even if it had determined that the plaintiff did not object to the district court's instruction, it would depart from the rule of waiver when the district court's instruction amounts to plain error or results in a miscarriage of justice.

Power to grant certiorari, vacate the judgment below and remand the case.

Lawrence v. Chater, 9 Fla. L. Weekly Fed. S345 (Jan. 8, 1996).

In this case, the United States Supreme Court analyzed its power to grant certiorari, vacate the judgment below, and remand the case ("GVR"). Respectfully disagreeing with the arguments of Justice Scalia, the Court refused to adopt certain limitations on its GVR power. Justice Scalia contended that the Court's traditional practice and the constitution and laws of the United States imposed certain implicit limitations on the Court's GVR power. Noting that the GVR power has become an integral part of the Court's practice, the majority respectfully disagreed with Justice Scalia's position, asserting that:

> A GVR order conserves resources of this Court that might otherwise be expended on plenary consideration, assists the court below by flagging a particular issue that it does not appear to have fully considered, assists this Court by procuring the benefit of the lower court's insight before we rule on the merits, and alleviates the 'potential for unequal treatment' that is inherent in our inability to grant plenary review of all pending cases raising similar issues.

The majority believed that the GVR power gives the Court the ability to grant further reconsideration to the court below in situations where intervening or subsequent developments could not have been considered by the court below or where it appears that the decision rests on a premise that the lower court would have rejected upon further consideration. The majority also noted that:

> Whether a GVR order is ultimately appropriate depends further on the equities of the case: if it appears that the intervening development, such as confession of error in some but not all aspects of the decision below, is part of an unfair or manipulative litigation strategy, or if the delay and further cost entailed in a remand are not justified by the potential benefits of further consideration by the lower court, a GVR order is inappropriate.

As examples of the appropriate use of the GVR power, the Court noted it had exercised the power in the advent of its own decisions, state supreme court decisions, new federal statutes, administrative re-interpretations of federal statutes, new state statutes, changed factual circumstances and confessions of error or other positions newly taken by either the Solicitor General or the state attorney generals.

Appellate jurisdiction to review remand orders.

Things Remembered, Inc. v. Petrarca, 9 Fla. L. Weekly Fed. S340 Dec. 5, 1995).

The United States Supreme Court affirmed that a federal court of appeals has limited appellate jurisdiction to review a district court order remanding a bankruptcy case. The general statutory provision for the review of remand orders is found in 28 U.S.C. §1447(d), which provides:

> An order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the state court from which it was removed pursuant to §1443 of this Title shall be reviewable by appeal or otherwise.

Relying on its prior decision in *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336 (1976), the Court ruled that "Section 1447(d) must be read *en pari materia* with Section 1447(c), so that only remands based on grounds specified in Section 1447(c) are immune from review under Section 1447(d)." Therefore, if the remand is based on a timely raised defect in the removal procedure or on lack of subject matter jurisdiction, there is no appellate jurisdiction to review the remand order under Section 1447(d).

Although this case also involved the bankruptcy removal statute under 28 U.S.C. §1452(a) (1988), Section 1447(d) still controlled. Significantly, the bankruptcy removal statutes do not contain an express indication that it was to be the exclusive provision governing removals and remands in bankruptcy. Similarly, the general removal statute does not contain any indication that it was not to apply to bankruptcy cases. Therefore, the Court ruled that a court of appeals lacks jurisdiction to review a remand order under §1447(d), regardless of whether the case was removed under the general removal statute or the bankruptcy removal statute. As the remand at issue in the case fell squarely within §1447(d), appellate jurisdiction was lacking, and the lower court orders dismissing the appeal were affirmed.

FEDERAL CRIMINAL APPELLATE UPDATE

by Barbara Arlene Fink

United States Supreme Court

The sentencing court must take into account the actual weight of the blotter paper containing LSD when calculating the weight of an LSD mixture or substance for sentencing purposes.
Neal v. United States, 9 Fla. L. Weekly Fed. S375 (1996).

In 1988, Neal pleaded guilty to possession with intent to sell and conspiracy to possess with intent to sell 11,456 doses of LSD on blotter paper, or 109.51 grams of LSD. Because the substance weighed more than 10 grams, Neal was subject to a minimum mandatory sentence of 10 years. In 1993, the U.S. Sentencing Commission revised the method of calculating the weight of LSD for guidelines purposes. Neal claims the amendment is retroactive, and under the new guidelines, he possessed only 4.58 grams of LSD. He should be resentenced to 70 to 87 months.

The district and circuit courts upheld the method of calculating the weight of the LSD, but they reduced Neal's sentence to 120 months because the guidelines no longer authorize sentences that are greater than the statutory minimum mandatory.

In affirming the circuit court's decision, the Supreme Court reasoned the statutory meaning of a mixture or substance is construed to have its ordinary meaning. Since LSD is diffused among the fibers of the paper and can neither be distinguished nor easily separated from it, the actual weight of the paper, with its absorbed LSD is the weight sought under the statute. Additionally, the Court held that while the guidelines amendment for determining weight may have relevance in other contexts, it is an alternative method for weighing LSD and does not alter the interpretation of the statute. *See Chapman v. United States*, 500 U.S. 453, 460-61 (1991).

An attorney's inadvertent failure to timely file a proof of claim is "excusable neglect."
Stutson v. United States, 9 Fla. L. Weekly Fed. S379 (1996).

Stutson is serving a federal sentence of 292 months for cocaine possession. He was denied appellate review because his notice of appeal arrived one day late of the 10 day deadline, and it was sent to the circuit court when it should have gone to the district court.

One day before Stutson's brief was due to be filed in the district court, the bankruptcy court rendered a decision holding that in some circumstances a party could rely on his attorney's inadvertent failure to file a proof of claim in a timely manner in bankruptcy proceedings as "excusable neglect" under the bankruptcy rules. *Pioneer Investment Servs. Co. v. Brunswick*, 507 U.S. 380 (1993). The Court determined that *Pioneer* applies to Rule 4 cases and held that the court of appeals' decision was premised on the erroneous assumption that more stringent rules as to filing deadlines apply to prisoners than to creditors filing claims in a bankruptcy proceeding.

Eleventh Circuit Cases

The "aggregation " of penalties for multiple petty offenses does not mandate a jury trial when the maximum sentence for each offense is no more than six months.
United States v. Brown, 9 Fla. L. Weekly Fed. C713 (11th Cir. 1996).

Brown was charged with multiple petty offenses for which his combined sentence exceeded six months, but the allowable sentence for each offense was no more than six months. He appealed the denial of his request for jury trial. The circuit court held that concerns for judicial economy may motivate the joinder of multiple charges in one trial, but joinder does not affect the constitutional entitlement to a trial by jury, which is triggered only when a popularly elected legislature has deemed a crime to be serious. In other words, absent legislative mandate, a number of petty crimes do not equal a major crime.

A private residence is not involved in interstate commerce for purposes of 18 U.S.C. §844(i) if the owner has a home computer which is used in connection with employment where the employer is engaged in interstate commerce, but the home computer is not connected to the company computer, has no modem, no link to interstate phone lines, and no other interstate connections.
United States v. Denalli, 9 Fla. L. Weekly Fed. C771 (11th Cir. 1996).

Denalli was convicted on a 21-count indictment arising from fraudulent acts he committed against his next door neighbor. While the neighbor was out of town, Denalli entered the neighbor's residence and torched it using gasoline. The resident, along with the pet cat, was destroyed. Denalli's only point on appeal questioned his conviction under the Federal Arson Statute. The circuit court found that the neighbor worked for Harris Corp., a company engaged in international business and interstate commerce. He maintained an office in his home which was equipped with a personal computer. However, Harris did not require the neighbor to work at home, and the home computer was not connected to any Harris computer. Further, the home computer had no modem, no link to interstate phone lines, and no other interstate connections. As a result, no substantial impact on interstate commerce was proved, and the conviction on the count arising from the Federal Arson Statute was reversed. *See United States v. Lopez*, 115 S.Ct. 1624 131 L.Ed.2d 626 (1995).

Less is more.
Buenoano v. Singletary, 9 Fla. L. Weekly Fed. C823 (11th Cir. 1996).

Buenoano was convicted and sentenced to death for poisoning her husband so she could collect death

continued...

benefits from his life insurance policies. In upholding the conviction, the circuit court made the following observation in a footnote:

> Buenoano's habeas petition contains 21 claims and is 275 pages long. It reads as if it is both a petition and a brief. Many of the claims in the petition are characterized by conclusory references to reported decisions. This practice, which has become common, is not contemplated either by the habeas rules or the civil rules and makes it difficult for courts to identify discrete claims in a petition. We expressly disapprove of this practice. *See Kennedy v. Herring*, 54 F.3d 678, 681-82 n.1 (11th Cir. 1995).

Id. at C826 n.1.

STATE CRIMINAL LAW UPDATE

by David A. Davis
Assistant Public Defender
Second Judicial Circuit

In *Coney v. State*, 653 So.2d 1009, 1013 (Fla. 1995), the Florida Supreme Court held that a defendant "has a right to be physically present at the immediate site where pretrial juror challenges are exercised." Hoping to preclude hoards of appellants from rushing to the courthouse clutching *Coney* in their hands, the Court also concluded that "[o]ur ruling today clarifying this issue is prospective only." Stalled but not stopped, lawyers have been huddled around their computers ever since busily pecking out briefs explaining why *Coney*'s "prospective only" language had no application to their clients.

Despite the frequency with which courts have faced the issue of the retroactive application of law, they have historically had difficulty formulating a consistent analytical approach to resolving the problem of who should have the benefit of changes in the law. This article explores the reasons for the confusion.

A. Ex post facto

Article I, section 10 of the United States Constitution and Article I, section 10 of the Florida Constitution prohibit the ex post facto application of legislative enactments. The United States Supreme Court, being made up of lawyers who delight in making a simple idea complex, however, has allowed the retroactive application of legislative enactments in certain instances. Apparently, laws which are "procedural" do not implicate the ex post facto proscription, even though they may cause substantial harm to the defendant. *Collins v. Youngblood*, 497 U.S. 37, 110 S.Ct. 2715, 111 L.Ed.2d 30 (1990); *Dobbert v. Florida*, 432 U.S. 282, 97 S.Ct. 2290, 53 L.Ed.2d 344 (1977). The nation's high court limited the intuitive scope of the constitutional ex post facto provision by holding that "[l]egislatures may not retroactively alter the definition of crimes or increase the punishment for criminal acts." *Collins*, 497 U.S. at 46. Thus, changes affecting only "procedure" can be applied retroactively.

With some exceptions, Florida courts have construed our state constitutional prohibition against ex post facto laws consistently with its federal counterpart. *See State v. Smith*, 547 So.2d 613, 616 (Fla. 1989). The Fourth District Court of Appeal made a significant distinction in *Monsour v. State*, 572 So.2d 18 (Fla. 4th DCA 1990). There, the court held that only defendants have standing to assert ex post facto violations. Also, relying on Article X, section 9, another ex post facto type prohibition in the Florida Constitution, the court held that a defendant should be sentenced for a crime according to the law that existed when the offense was committed.

B. Retroactive application of court decisions

The more complex and confusing analysis in the retroactive application of law arises in instances where a party, usually the defendant, wants the benefit of some change in case law that occurred after his or her conviction and sentence. The Florida Supreme Court summarized the history of the law on retroactivity of court opinions by admitting it was "troubled by the inconsistency or lack of clarity in various decisions of the Court and others concerning the application of the prospectivity rule in [the context of the sentencing guidelines.]" *Smith v. State*, 598 So.2d 1063, 1064 (Fla. 1992). Noting that "[t]he inconsistent application of retrospectivity has much precedent," *id.*, the court in *Smith*, crafted a simple rule to control when a change or modification in the law could be applied retroactively.

> [W]e hold that any decision of this Court announcing a new rule of law, or merely applying an established rule of law to a new or different factual situation, must be given retrospective application by the courts of this state in every case pending on direct review or not yet final.

Id. at 1066. Said differently, reviewing courts apply the law in effect at the time of the appeal not at the time the crime was committed or was trial held. *Domberg v. State*, 661 So.2d 285, 287 (Fla. 1995).

This pronouncement completed the court's analysis of retroactive application of the decisional law. Earlier, in *Witt v. State*, 387 So.2d 922 (Fla. 1980), the court had announced when a change in the law could apply to defendants seeking post-conviction collateral relief. Under that case, a new rule of law may not apply retroactively unless it (1) originated in either the United States Supreme Court or the Florida Supreme Court, (2) was constitutional in nature, and (3) had fundamental significance. *Witt*, 387 So.2d at 929-30.

Smith and *Witt*, thus, nicely contrast the tension between fairness to the defendant and the doctrine of finality existing when the courts consider the retroactive application of the law. In *Smith*, "principles of fairness and equal treatment" compelled

the court to apply the change in the law to "pipeline" cases. Notions of finality, on the other hand, inspired the court to craft a much more limited rule to guide courts in applying changes in post-conviction, collateral litigation. *Witt*, 387 So.2d at 925.

The bright line rule adopted in *Smith* was easy to apply, and brought needed reliability to this area of the law. When the Supreme Court announced that there was no such crime as attempted felony murder, it carefully noted that "[t]his decision must be applied to all cases pending on direct review or not yet final." *Gray v. State*, 654 So.2d 552, 554 (Fla. 1995). The court could perhaps have said the same thing by noting that the decision would apply "prospectively," but by being more specific it avoided the ambiguity of that term. Clearly, the court intended *Gray* to apply to pipeline cases.

Lower courts followed the path blazed by *Smith* and *Gray*. *See, e.g., Wilson v. State*, 660 So.2d 1067, 1068 (Fla. 3d DCA 1995); *Harris v. State*, 658 So.2d 1226 (Fla. 4th DCA 1995).

For example, in *Preston v. State*, 641 So.2d 169 (Fla. 3d DCA 1994), the trial judge allowed the state to peremptorily excuse two men from Preston's jury without giving any gender neutral reason for doing so, as requested by the defendant. This was in direct violation of a United States Supreme Court decision, *J.E.B. v. Alabama ex rel. T. B.*, 114 S.Ct. 1419, 128 L.Ed. 2d 89 (1994), and a Florida Supreme Court case, *Abshire v. State*, 642 So.2d 542 (Fla. 1994). Relying on *Smith*, the Third District applied that law retroactively to Preston's case, and it reversed for a new trial.

Similarly, the Second District used *Smith* to justify applying a Supreme Court refinement in the law to strike the consecutive habitual violent offender sentences imposed in *Brown v. State*, 630 So.2d 596 (Fla. 2d DCA 1993). *Smith*, thus, brought some clarity to this traditionally confusing area of the law. This happy state, however, did not last.

In *Fenelon v. State*, 594 So.2d 292, 295 (Fla. 1992), the court was

> persuaded that the better policy in future cases where evidence of flight has been properly admitted is to reserve comment to counsel, rather than to the court. Accordingly we approve the result below although we direct that henceforth the jury instruction on flight shall not be given.

Applying *Smith*, district courts uniformly concluded that *Fenelon* should be applied retroactively. *See, e.g., Lewis v. State*, 623 So.2d 1205, 1207 (Fla. 4th DCA 1993); *Keys v. State*, 606 So.2d 669 (Fla. 1st DCA 1992); *Bryant v. State*, 602 So.2d 966 (Fla. 3d DCA 1992).

Those courts, however, failed to read *Fenelon* closely. The Supreme Court in *Taylor v. State*, 630 So.2d 1038, 1042 (Fla. 1993), later refused to give retroactive application to that change of law. It rationalized its ruling by noting that in *Fenelon* it had said the holding of that case applied to "future cases" and "henceforth the jury instruction on flight shall not be given." "Future" cases apparently meant something more than merely those cases decided post-*Fenelon*.

The halcyon days of *Smith* were gone, and *Taylor* became a dark cloud of confusion and illogic hovering over the retroactivity landscape. Other cases suggested that the Supreme Court had forgotten what it had said in *Smith*.

In *Wuornos v. State*, 644 So.2d 1000 (Fla. 1994), the defendant argued that the court should have given the penalty phase jury in a capital case a limiting instruction on the "doubling" of aggravating factors. She relied on *Castro v. State*, 597 So.2d 259 (Fla. 1992). However, the Supreme Court rejected retroactive application of that case because "*Castro* was intended to have prospective effect only, as we have held in analogous contexts." *Wuornos*, 644 So.2d at 1007.

Admitting that ruling "may seem contrary to a portion of *Smith*," the court reconciled the two cases by reading *Smith* "to mean that new points of law established by this Court shall be deemed retrospective with respect to all non-final cases unless this Court says otherwise."

continued...

Section Annual Meeting Schedule

Thursday, June 20

8:30 - 11:30 a.m. Committee Meetings

- Appellate Certification Liaison Committee (8:30 - 9:30)
- Civil Appellate Practice Committee (8:30 - 10:00)
- Criminal Appellate Practice Committee (8:30 - 10:00)
- Appellate Court Liaison Committee (9:30 - 11:00)
- CLE Committee (9:30 - 11:30)
- Appellate Mediation Committee (10:00 - 11:30)

10:00 -11:00 a.m.
Appellate Rules Liaison Committee

2:30 - 4:00 p.m.
Section Executive Council/Annual Meeting

4:00 - 5:00 p.m.
Discussion with the Court

10:00 a.m. - 1:00 p.m.
Dessert Reception/Presentation of the James C. Adkins Award

Wuornos, 644 So.2d at 1007-08 n.4.

The court not only eroded the simple, ready application of *Smith*, it also weakened *Witt*. In *Ree v. State*, 565 So.2d 1329 (Fla. 1990), the high court held that a sentencing court must file written reasons for a departure sentence contemporaneously with imposing sentence. That holding, the court continued, however, had prospective application only. *Smith* modified that ruling so that *Ree* would apply to pipeline cases.

Keith Brown would have gotten relief under *Ree*, but his appeal became final before the court filed *Smith*. Tough luck under *Witt*. Undeterred, he filed a motion for post-conviction relief under rule 3.850, Florida Rule Criminal Procedure. Without mentioning *Witt* or the necessity of finality, especially in post-conviction matters, the court concluded "it would be unfair not to extend the rule announced in *Smith* to Brown in light of the ability of other defendants, who were in the direct appeal 'pipeline' at the same time as *Ree*, to take advantage of the retrospective application of the contemporaneous writing requirement because their cases were still not yet final at the time of the decision in *Smith*." *Brown v. State*, 655 So.2d 82 (Fla. 1995). Justice Anstead, trying to save some face for the court, frankly admitted that the state supreme court, "like other institutions composed of human beings, makes mistakes." *Brown*, 655 So.2d at 85 (Anstead, J. concurring). Justice Grimes, in dissent, relied on *Witt* and its rationale that "there is a point at which the doctrine of finality must prevail." *Id.* (Grimes, J. dissenting). At least one district court has followed *Brown*. *Tarver v. State*, 658 So.2d 636 (Fla. 2d DCA 1995).

Thus, we return to the court's ruling in *Coney*. Had the court simply held "[t]he defendant has a right to be physically present at the immediate site where pretrial juror challenges are exercised" then the *Smith* rule would apply. That is, *Coney* would apply to pipeline cases. It did not do so, however. It also concluded that "[o]ur ruling today clarifying this issue is prospective only." *Coney*, 653 So.2d at 1013. Under the *Smith-Wuornos* rule, only those cases that were tried after the court issued *Coney* could benefit from that rule. That is, the law at the time of trial, not appeal controlled.

The First District was troubled by the illogic and unfairness of the *Smith-Wuornos* rule in *Lett v. State*, 21 Fla.L.Weekly D580 (Fla. 1st DCA March 5, 1996). It was illogical because by limiting *Coney* to prospective application, it denied relief to other defendants who, at the same time Coney's problems arose, were also excluded from being present when their lawyers were exercising peremptory challenges. The court in *Lett* concluded by certifying to the state high court the question of whether *Coney*'s prospective application applied to "pipeline" cases. Or, as that court phrased it, did *Coney* apply to "similarly situated Defendants whose cases were pending on direct review or not yet final during the time *Coney* was under consideration but prior to the issuance of the opinion."

More glaring, consider Taylor's situation. He had objected to the court instructing the jury on flight as evidence of guilt and had raised it on appeal. Although the court agreed he was correct it affirmed his sentence anyway. Why? Because it had already decided *Fenelon* and would only apply it prospectively. Taylor's mistake was that he lost his race with Fenelon to the Supreme Court. Such bizarre rulings, especially in light of applying *Ree* to post-conviction litigation, returns this area of the law to one that "historically has been one of the most confusing and unprincipled areas of jurisprudence." *Smith*, 598 So.2d at 1064.

The First District, reading and understanding the limiting language of *Wuornos*, nevertheless, wants to know if that case really means what it says. Has "prospective" become a term of art precluding pipeline defendants from the benefit of a later decision? Or, can courts give it a broader pre-*Wuornos* application? The answer is as obvious as it is illogical.

Appellate Practice and Advocacy Section Budget 1996-97

REVENUE	**1996-97**
Dues	$20,000
Dues Retained by Bar	10,000
Net Dues	10,000
Directory Ads	1,200
Reception Sponsor	2,000
Videotape Sales	200
Audiotape Sales	300
CLE Courses	3,494
Interest	894
Material Sales	150
TOTAL REVENUE	**$18,238**
EXPENSES	
Postage	$1,200
Printing	250
Newsletter	2,000
Photocopying	150
Council	500
Bar Annual Meeting	4,000
Awards	600
Committee Expense	500
Council of Sections	300
Staff Travel	1,038
Membership	500
Directory	9,700
Operating Reserve	1,101
TOTAL EXPENSES	**$21,839**
Beginning Fund Bal.	**$17,878**
Plus Revenues	**$18,238**
Less Expenses	**$21,839**
Ending Fund Bal.	**$14,277**

CONVENTION ACTIVITIES
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and is expected to be well attended.

Later that evening, the Appellate Practice & Advocacy Section, in coordination with the Young Lawyers Division, will sponsor its Annual Dessert Reception at 10:00 p.m. During the reception, the Appellate Practice & Advocacy Section will present the second annual James C. Adkins Award. The award honors former Florida Supreme Court Justice James C. Adkins. The first award was presented posthumously last year to Justice Adkins. The section established the honor to recognize individuals who significantly contribute to appellate practice in Florida. All of the Appellate Practice & Advocacy Section events will be held at the Convention site.

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Book Review

"The Unpublished Opinions of the Rehnquist Court"

by Bernard Schwartz

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"Decision: How the Supreme Court Decides Cases"

by Bernard Schwartz

□ □ □ □ □

"The Center Holds: The Power Struggle Inside the Rehnquist Court"

by James F. Simon

Reviewed by Scott D. Makar*

Following Justice Thurgood Marshall's death, an intellectual frenzy of sorts occurred. The Justice had bequeathed his personal papers to the National Archives for the use of scholars and others interested in the Supreme Court's internal operations. Marshall's papers included documents that previously were unavailable to the public. Confidential internal memoranda. Drafts of unpublished opinions. Personal interchambers letters and notes. Marshall set no time limits on their availability. As a result, correspondence and draft opinions of sitting justices were made available to the public. The availability of Justice Marshall's papers, although igniting some significant criticism, has resulted in the release of a number of "inside" accounts of the Supreme Court, particularly during the reign of Chief Justice Rehnquist when a conservative majority was predicted to turn back decades of liberal, Warren court precedents.

Prior to Marshall's death, scholars had to exercise ingenuity to obtain snippets and peeks at the inside workings of the "Marble Palace." Woodward and Armstrong's publication of *The Brethren* in 1979 is the most obvious example of the era. Following *The Brethren* came a series of books on the Supreme Court's inner sanctum written by a professor of law at the University of Tulsa, far removed from the D.C. beltway. Professor Bernard Schwartz is one of a select few scholars who have had access to individual Justices and internal court documents, particularly those of Justice Brennan. He has written over seven books on the topic of judicial decision-making including *The Unpublished Opinions of the Warren Court* (1985) and *The Unpublished Opinions of the Burger Court* (1988).

In the first of two recent releases, Professor Schwartz has extended his previous work on the complexities of judicial voting and opinion writing into the period following Justice Rehnquist's ascension to Chief Justice. Like his prior books, the recently released *The Unpublished Opinions of the Rehnquist Court* (Oxford 1995 $49.95) provides an insightful and inside account of a number of decisions arising during the tenure of Chief Justice Rehnquist. Likewise, *Unpublished Opinions* contains reproductions of the actual draft opinions circulated among the Justices. A number of the cases discussed are high profile abortion decisions such as *Webster v. Reproductive Health Services* and *Hodgson v. Minnesota* and *Tompkins v. Texas* which involved race and peremptory challenges.

Closer to home (and to the hearts of Florida tax practitioners), the Court's equally-divided "decision" in *Ford Motor Credit Co. v. Florida Department of Revenue* is presented as an example of the expenditure of substantial judicial labor for naught. The case, which involved the constitutionality of Florida's intangible property tax, was initially assigned to Justice Blackmun after a conference vote of six to two to uphold the tax (Justice O'Connor recused). Justice Blackmun changed his vote and simultaneously circulated an opinion invalidating the tax. The majority opinion was then reassigned to Justice Stevens who circulated a draft. In response, Blackmun drafted a dissent that Justices Marshall and Kennedy quickly joined. The existing five vote majority, however, "unraveled" when Justice Souter decided to join the dissenter. A per curiam affirmance by an equally divided Court resulted. As Schwartz recounts, the "vote switches in the case prevented the [constitutional] question from being answered.

Therefore, the lacuna in this highly technical area of constitutional law that would have been filled by the Blackmun opinion still remains." The moral to the story being that shifting voting alliances and "second thoughts" can derail judicial decisions and perpetuate uncertainty in the law.

In *Decision: How the Supreme Court Decides Cases* (Oxford 1996 $25.00), Prof. Schwartz synthesizes and expands upon his prior work on the Supreme Court, particularly his three *Unpublished Opinions* books. He makes clear that his writings on the Court's work have "been made possible by the willingness of some Justices to speak to me, not only generally about the Court's operations, but also about how specific cases were decided. They have given me virtually unlimited access to their files, containing conference notes, draft opinions, letters, and memoranda. Likewise, former law clerks have furnished me with information on the Court's work during their years of service."

In 262 pages, *Decision* covers a lot of ground. The role and leadership of the Chief Justice. The assignment of opinions. The role of individual justices. Vote switching. The Court's continual deliberative process. There is even a chapter on "near misses" -- which Schwartz describes as "cases where the Justices came close to committing serious blunders. . . . Only last minute changes enabled the Justices to avoid grave judicial blunders in the cases discussed." For example, in *Bolling v. Sharpe* -- a companion case to *Brown v. Board of Education* -- Chief Justice Warren's personal draft of a majority opinion analyzed state segregation laws and those of the District of Columbia under the Fourteenth Amendment Equal Protection clause. The problem (that went unnoticed by the Chief Justice and three of his law clerks) was that the Fourteenth Amendment only applied to states and therefore had no applicability to the D.C. case. Fortunately, a law clerk who was primarily responsible for the drafts of the *Brown* decision caught the oversight and brought it to the Chief Justice's attention for correction. Schwartz states that "[o]ne shudders at what might have happened had the original Warren approach treating the state and D.C. cases similarly been followed in the final *Brown* opinion. The landmark decision would have suffered from a crucial legal defect and the Court's error would quickly have been spotted by the press and the public. Imagine the field day that the critics of *Brown* would have had if the Court ruled that D.C. segregation, like that in the states, had violated the Equal Protection Clause, which is binding only upon the states, not the Federal Government."

Schwartz' style will appeal to appellate lawyers. He writes with an eye toward issues that lawyers appreciate. Moreover, his preface makes no apologizes for his willingness to write with candor about the Court's internal operations, the judicial styles of individual Justices, and the general "unveiling" of the cloud of secrecy surrounding the Court. His position is that public support of an institution requires "an informed public opinion." In *Decision*, Schwartz has provided precisely the type of "responsible scholarship about the Court" that Justice Brennan desired by releasing his personal files.

While Professor Schwartz' writings provide an interesting but sometimes more impassive scholarly account of the Supreme Court and its inner-workings, a *The Center Holds: The Power Struggle Inside the Rehnquist Court* (1995 Simon & Schuster $25.00) by legal journalist James F. Simon has a slightly more dramatic, personal tinge. The preface to *The Center Holds* describes the book as "the story of a conservative judicial revolution that failed." And much of what Simon describes pits the Chief Justice Rehnquist and his arch-conservative cohorts against Justice Brennan and his "liberal" camp in warfare over issues of race, abortion, free speech, religion, and the death penalty.

Simon writes with a flair, but at times seems to ornament situations. In describing an ongoing battle for votes in the *Patterson v. McLean Credit Union* case, he states that "Brennan's frontal attack on Kennedy's analysis set off a spiraling verbal brawl between the two justices." Now, now. There is no doubt that, even at 82 years of age, Justice Brennan could intellectually spar with any Justice. And Justice Kennedy, a cautious but independent thinker and writer, suffers no fools. But it is hard to envision these two gentile judicial statesmen in a "verbal brawl" in the halls of the high court. Simon is probably quite correct that Brennan's and Kennedy's law clerks were far more prone to engage in a fracas with one another over "fine phrases" and to question one another's commitment to the Constitution. But is seems relatively doubtful that it was as personal between the Justices as to arise to a "brawl."

In any event, Simon's account of the Supreme Court is a fast-paced narrative that, despite its occasional embellishments, is readable and easily understandable. Its central premise -- that centrist justices such as Souter, Kennedy, and O'Connor decelerated the growing conservatism of the Court -- is not a new revelation, but Simon has presented it well. His prediction that the "conservative" movement has "failed", however, is not fully borne out, particularly in light of recent cases (such as *Seminole Tribes of Florida*). Nonetheless, The Center Holds has staked its own place in the genre of inside accounts of the high court.

New Internet Site: The proliferation of Internet home pages has yielded one of interest to appellate practitioners. "The Oral Argument" page (http://oyez.at.nwu.edu/oyez.html) a/k/a "Oyez, Oyez, Oyez" is a compilation of thirty-four summaries of Supreme Court cases along with down-loadable audio of oral arguments. The earliest case is *Mapp v. Ohio* in 1961 and the latest is *City of Ladue v. Gilleo* in 1994. The project is sponsored by Northwestern University Library and NU's Academic Technologies Department. The project promises periodic updates and "hundreds" of cases and oral arguments in the future. Stay tuned.

Scott D. Makar, a member of the Executive Counsel, is a partner in the Jacksonville office of Holland & Knight where he works on litigation, administrative and legislative matters.

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