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A Candid Conversation with New SBA V.P.

by Lane Brent Forsythe

The following is an interview with Scott FitzGerald, the newly elected Vice-President of the Student Bar Association. Mr. FitzGerald is from Milwaukee, Wisconsin and is a recent graduate of Johns Hopkins University. This interview focuses on FitzGerald's views concerning the role of the SBA and the presence of a Jesuit tradition at Fordham Law School.

Q. What exactly does the Student Bar Association do?
A. The SBA is the representative governing body of students. It is the direct voice between students and the administration. The SBA coordinates student complaints. People in the SBA should know to whom to speak to solve problems or be able to find out.

Q. Does the SBA have any official powers? Can it act unilaterally?
A. Yes, for example, we can negotiate with Marriott about TANGS and Bar Nights. We can seek sponsorship of our events. We also review class schedules to see if they are reasonable.

Q. What if the class schedule is unreasonable? What exactly can the SBA do about it?
A. The SBA can go to Dean Rivera with the complaint but it is up to the Dean to actually make changes.

Q. It sounds like the SBA is an ombudsman or a conduit for student complaints. Can you unilaterally act or do you just make suggestions to the administration?
A. We are like a group of ombudsmen, but we can organize social events on our own. Although I don't know what the administration would do if we did Fordham Night at a strip club!

"It is not a popularity contest, it's more name recognition and how many people you know."

Q. What exactly can you do as Vice President?
A. For one thing, I chair the Student Faculty Committee which is responsible for the faculty what the students want. Representatives of each faculty and student committee get together, they tell us their plans and we respond. This is a new program.

Q. Why do you think you won the election?
A. Because I pulled the sympathy vote with my crates. Seriously, last year I ran and lost-I deserved to lose. I was stupid to think I could win as a first-year. With the way the election is set up, this is impossible. They use a ticket format. As you can see, this year the whole ticket was on won. We have a great ticket. I think we all deserved to win, but last year my whole ticket lost and we certainly qualified.

New SBA Executive Board

From left to right: Scott FitzGerald, Terri Austin, Chris Hawke, Kelly Crawford, J.R. Wilson.

"Fordham students want free booze and free food."

Q. During the campaign, somebody put up signs around school which

Continued on page 2

Supreme Court Justice Scalia Comes to Fordham

Sixteenth Annual Kaufman Moot Court Competition

by William Bruno

Scalia congratulates participants.

The University of Miami might have Brennan, but we had Scalia for one evening, courtesy of the Fordham Moot Court Board. Supreme Court Justice Antonin Scalia, joined by Chief Judge James Oakes and Judges Lawrence Pierce and Joseph McLaughlin, all of the Second Circuit, judged the final round of the sixteenth annual Irving R. Kaufman Securities Law Moot Court Competition (Garinhe Dovel- tian, editor).

The two finalists were Duke and Emory. The problem was based on a hypothetical involving one Tip Trader (respondent represented by Emory) allegedly engaged in insider trading based on information obtained from Switzerland about a pending tender offer for a Swiss corporation and a subsequent transaction on the Swiss market. The petitioner (represented by Duke), was an American citizen adversely affected by Trader's transaction.

Although the regulation involved (SEC Rule 14(e)-3) was a securities regulation matter, the two questions dealt jurisdictional and administrative law questions. First, could American courts exercise jurisdiction over a trader who received information garnered overseas that induced him to make an overseas transaction? Second, was the SEC within its authority when it promulgated Rule 14(e)-3 which states that once a tender offer is underway, an investor who purchases securities of the company after having acquired information (directly or indirectly) from one of the tendering parties in said tender offer shall have committed a fraudulent, deceptive or manipulative act or practice within the meaning of section 14(e) of the Act (Securities Exchange Act of 1934).

Catherine SanMartino, for Emory, in her response (n.b.—Chris Campbell for Duke actually argued second but the Emory position is being done here so that the reader can get a better grip on the opposing positions on each issue), used a but-for analysis that no financial fluctuations would have taken place but for the lunch conversation in Switzerland that resulted in the information being acquired and the share purchase in the Swiss market. SanMartino also argued in response to Judge Pierce asking why Congress didn't intend for foreign, as well as interstate commerce, to be regulated that the Congressional intent was that the act should not apply outside the country and that international comity and respect for foreign countries right to police themselves indicated that U.S. courts shouldn't hear cases that primarily involved foreign markets.

In rebuttal (n.b.—again, the rebuttals took place after the arguments but are presented out of sequence to more clearly present the arguments on each issue) Winnock argued that §27 of the Act gave jurisdiction to the district courts in any district where the defendant is found or transacts business and that this did not yield to the interests Switzerland might have in policing its own markets.

The questions addressed to Campbell on the validity of the regulation centered largely on whether insider trading constitutes a fraudulent practice. Section 10(b) of the Act of 1934 prohibited "manipulative and deceptive devices" while §14(e), under which the SEC promulgated the rule in question permits the SEC to "define, and prescribe means reasonably designed to prevent, such acts and practices as fraudulent, deceptive, or manipulative" (emphasis added) includes insider trading. Campbell responded to Justice Scalia's inquiry as to what Congress' adding fraud to §14(e) means, stating that a party was guilty of it if he had knowledge that a party who didn't have the trader's sources couldn't get with a diligent inquiry. When further pressed, Campbell stated that even a lucky acquisition of knowledge could be fraudulent if the knowledge included essential facts to the transaction to which Scalia responded, "Counselor, you're taking all the sport out of investing."

Steve Kasher, for Emory, argued that the traditional deference to administrative application of statutes through regulation should not allow an abuse of the statute. Since the section of the Act that applies to tender offers ($14(e)) mentioned fraud explicitly, as opposed to $10(b), the com-
Breeden Descends on Fordham

by Paul F. Cavanaugh

On February 27, 1991, Richard Breeden, the Chairman of the Securities and Exchange Commission, was invited to make a presentation at the Fordham University Graduate Colloquium. Breeden spoke on "The Role of Accounting in the Thrift Crisis." Despite the seemingly dry subject, Breeden was able to make the speech interesting and informative.

Breeden stated that "the question was not whether, but when" the thrift industry crisis would occur. He saw the problems originating in the creation of thrifts in 1934 as institutions that borrow short (savings accounts) and lend long (mortgages).

Deregulation of the thrift industry in the 1980s increased the risk, as rates paid to depositors climbed. Breeden pointed to the federal deposit insurance as a factor in pre- venting the sound management of risk by thrift executives. Greater risk in diversification, Breeden said, would result in banks that could not absorb their losses.

After setting this backdrop, Breeden explained some of the practices which contributed to the impending crisis. Breeden described a change in regulatory accounting principles, set by the Home Loan Bank Board, which allowed institutions to convert a loss into an asset. This was done by reflecting a loan at a loss as a "deferred loan loss" and then amortizing it over the original life of the loan. Breeden outlined an optional adjustment created in 1982. A bank was allowed to list an asset at market value when market value exceeded cost, thereby "writing up" the asset. However, this same procedure did not apply to "writing down" an asset in the event of its drop in value.

These accounting practices created an appearance of health, while according to Breeden, the Home Loan Bank Board was aware of the distortions being created. Breeden used the creation of "goodwill" as an example. If the Bank Board merged two insolvent institutions, losses would be converted to "goodwill" and listed as an asset. This policy led to $500 billion in deposits being lent out in 1982 and backed up by $15 billion in goodwill (banks had a 3% capital requirement). $500 billion in loans x 3% equals $15 billion in capital requirement.

To conclude his presentation, Breeden discussed areas for future change. At present, securities offerings by thrifts and banks are not subject to SEC regulation. Breeden suggested that all institutions making securities offerings be regulated by one agency under a set of rules. Federal Savings and Loan Insurance Corporation has been run by the Home Loan Bank Board. This created a conflict of interest because thrift equity investors absorbed any losses before the FSLIC and the Home Loan Bank Board determined what bad information these investors received.

Finally, Breeden believes that the accounting standards should be changed to eliminate the treasury bills held by thrifts which have a precise value and can be listed at this value; however, the loans made by the thrifts do not have a precise value. Because these non-liquid assets are not able to absorb losses, they should not be listed as assets by the banks.

Although many may not find such a discussion compelling, it did reveal some of the roots by which the public is assured of the safety of many financial institutions. The details of accounting may not be thought provoking to everyone, but as described by Richard Breeden, the results can be more classes on theology and the law. If we can offer classes on sex roles and the law, we can certainly have something on theology.

Q. Do you think any of these changes you are suggesting would alienate non-Catholic students?
A. No, and I don't think they should be alienated. Mass at a Catholic law school should also become. It would be ridiculous for people to be offended. What happens to be a Catholic law school and it is time for the administration to start to implement some of these changes.

Q. We should have weekly Mass on the campus of the law school.

Q. Wouldn't this discourage non-Catholics from applying to Fordham?
A. No, I disagree. This is a Catholic school. I believe we should have Mass on campus. I think the school will always be accommodating to the religious needs of people. I see no reason for anyone to be threatened. If students of other religions wish to organize religious gatherings on campus, I support them whole heartedly, and I hope that both ends work.
The Inevitability of Pro Bono by Keith A. Styrcula

One need look no further than recent headlines: "One Congressman, at least, concedes in the integrity of the legal profession is flagging." Attorney Steven J. Romer abandoned $25 million from 40 clients in January 1991. The New York Times quoted Mr. Romer as being accused of billing his clients $2.5 million for work never performed. Negligence-case counselor Morris J. Eisen and six associates of the New York City Housing Court were convicted of failing to provide evidence and bribing witnesses to obtain multi-million dollar verdicts in bogus law suits.

Recurring scandals of this sort have the most unfortunate effect of tarnishing the entire profession, one that is already unfairly stereotyped as greedy, self-absorbed and amoral. Accordingly, now is a perfect time to implement a pro bono requirement program for the 88,000 practicing attorneys in the state.

Of course, pro bono service for the poor and needy is far more than a mere panacea for lawyer-bashing. It is necessary to contend with a social need that has attained new proportions with the current recession. An American Bar Association study found that nine out of ten impoverished people are not having their legal needs represented by licensed attorneys.

Federal and state budget cuts have all but slammed the courtroom door shut to the people who need access to the judicial system in a time when the disparity between those who have and those who have not is greater than at any time in American history, nowhere is the chasm more painfully evident than in the courtroom.

To redress this crisis, New York Chief Judge Wachtler last May gave the profession two years to implement a wide-scale voluntary pro bono program before he imposed mandatory public service on all attorneys. The New York City Bar Association's Criminal Justice Committee reported to Judge Wachtler that an all-volunteer option would far fall short of filling the gap and urged that the mandatory pro bono requirement on all members of the bar immediately.

"Much of the law and what lawyers do is about providing justice," the Committee report said. "Lawyers have a special obligation to ensure a legal system that protects the rights of individuals and their political freedom." A substantial segment of the state's bar is vehemently opposed to being compelled to zealously represent a client who cannot afford to pay legal fees. Indeed, some have called a pro bono requirement "unconstitutional," a form of "involuntary servitude," and a violation of the Equal Protection clause. Regrettably, it is this type of rhetoric that reinforces the unsavory image of attorneys as individuals whose financial self-interests consistently come before the public interest. Proponents of pro bono contend that the practice of law is in reality a state- granted monopoly, a privilege and not a right to which even a "proper" tax on the privilege to practice law. Further, it is argued that the attorney's devotion to the greater public good is an obligation inherent to membership in Bar. The Code of Professional Responsibility unambiguously states that the provision of legal services to the impoverished is a "moral obligation of each lawyer as well as the profession generally." From an objective perspective, twenty hours per year is not too onerous a burden when compared to the rigors of lengthy, low-paying residency doctors and physicians must complete before commencing a career in medicine. Attorneys have no such requirement. Further, the general public has an obligation to participate in jury duty when so called; an obligation from which the lawyers are legally exempted. By implementing a pro bono requirement would be tantamount to the lawyer's equivalent of jury duty.

If changing the mindset of the profession is a prerequisite to the acceptance of pro bono requirements, the law schools have a unique opportunity to set the trend. At present, only four of the 153 law schools have mandatory pro bono, but the trend is moving decidedly toward public service as a 4-6 to 1 creditor to graduate—a part of the curriculum rather than formal work.

One of the many methods currently in use is a nationwide computer system using the same technology as credit card checks. Many feel that this system is a panacea for lawyer-bashing. It is necessary to implement a nationwide computer system using the same technology as credit card checks. Many feel this system is years away from feasibility.

The NRA-controlled Congressmen who would never in a million years vote against their money tree, have Ronald Reagan to thank. He is their excuse. Reagan, the patriarch of the conservative movement, has a wing-span large enough to cover those in the House, Senate and White House who were looking for that seemingly elusive escape hatch from the "unconstitutional," has been saved once again. Bush, the ever-shrewd and professional politician; should utilize this opportunity to link last year's failed anti-crime package directly to this now unstoppable locomotive. This would be the great win of his career. It is not inconceivable that law firms could perhaps someday hold their devotion to public service in the same esteem as their ability to execute top-flight legal work.

Regardless of the ongoing rhetoric, the handwriting is on the wall. If we don't voluntarily embrace a public service requirement out of our own choice, Chief Judge Wachtler will impose one upon us. As members of a largely self-regulating profession, legal practitioners must set aside every concern for the public that we are capable of meeting the needs of society and of serving in the interests of "justice for all." Indisputably, this is one of those opportunities.

To the Editor:

I have read with interest your articles dealing with alcoholism and Al-Anon. I have found them provoking and valuable. As a senior at the law school, a recovering alcoholic and a member of Alcoholics Anonymous, I too feel the need to convey my feelings on this most serious subject.

Alcoholics Anonymous saved my life and has enabled me to begin anew, one day at a time.

I only hope that our fellow students can begin to comprehend the devastating effects of alcoholism. A disease that destroys your physical, emotional and spiritual well-being. One that has no cure. Recovery is only possible through the guidance and love of other alcoholics.

Alcoholism does not discriminate as to age, race, creed or social class. One need only open their eyes and see the suffering pangs. In fact, I was a periodic drinker, able to function in my job and personal relations, at least for a while. However, alcoholism is a progressive disease and the effects eventually led me to emotional bankruptcy.

But it was one of the lucky ones. I found A.A. A program founded by alcoholics, dedicated to helping alcoholics. A.A. is not only about putting down the drink, but dealing with the daily trials of a sober life. Something that most of us have never done.

The Fordham community has been an integral part of my recovery. There are at least 3 weeks A.A. meetings here at Lincoln Center and countless others in both New York City and the surrounding areas. There is help for everyone. For those who are drinking problems, I implore you to reach out for help. The first step means only putting down the drink. This could be the difference between life and death, it was for me.

Anonymous

LETTERS

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The Gipper Talks GUNS

by Steven Budi


Congress still oppose it. Why? The answer is simple: the NRA. The National Rifle Association supposedly opposes this legislation. This is the same NRA that pours millions of dollars into the re-election coffers of Congress. Mr. Romer was correct. Why would a Congressman in his right mind vote against a bill 90 percent of Americans support? The answer to this question is also simple: the NRA. The National Rifle Association obviously opposes this legislation.

This is the same NRA that pours millions of dollars into the re-election coffers of Congress. Mr. Romer was correct. Why would a Congressman in his right mind vote against a bill 90 percent of Americans support? The answer to this question is also simple: the NRA. The National Rifle Association obviously opposes this legislation. This is the same NRA that pours millions of dollars into the re-election coffers of Congress. A campaign that cannot afford to pay legal fees. Indeed, some have called a pro bono requirement "unconstitutional," a form of "involuntary servitude," and a violation of the Equal Protection clause. Regrettably, it is this type of rhetoric that reinforces the unsavory image of attorneys as individuals whose financial self-interests consistently come before the public interest. Proponents of pro bono contend that the practice of law is in reality a state-granted monopoly, a privilege and not a right to which even a "proper" tax on the privilege to practice law. Further, it is argued that the attorney's devotion to the greater public good is an obligation inherent to membership in Bar. The Code of Professional Responsibility unambiguously states that the provision of legal services to the impoverished is a "moral obligation of each lawyer as well as the profession generally." From an objective perspective, twenty hours per year is not too onerous a burden when compared to the rigors of lengthy, low-paying residency doctors and physicians must complete before commencing a career in medicine. Attorneys have no such requirement. Further, the general public has an obligation to participate in jury duty when so called; an obligation from which the lawyers are legally exempted.

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