

FLORIDA LAW REVIEW®

VOLUME 68

MAY 2016

NUMBER 3

ARTICLES

SHAREHOLDER PROTECTION ACROSS TIME

Brian R. Cheffins
Steven A. Bank
Harwell Wells

COMING TO GRIPS WITH THE ETHICAL
CHALLENGES FOR CAPITAL POST-CONVICTION
REPRESENTATION POSED BY
MARTINEZ V. RYAN

John H. Blume
W. Bradley Wendel

POLICING THE IMMIGRANT IDENTITY

Eda Katharine Tinto

ESSAY

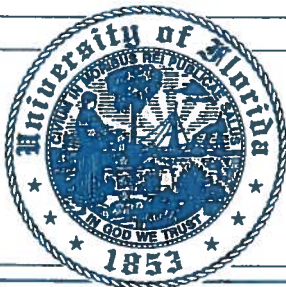
GOLDEN PARACHUTES, SEVERANCE, AND FIRM
VALUE

Andrew C.W. Lund
Robert Schonlau

NOTES

“Where the Cause of Action Accrued”:
Florida’s Venue Statute Violates the Policy
It Was Designed to Protect

Kristin Nelson Royal



UNIVERSITY OF FLORIDA
LEVIN COLLEGE OF LAW



Dedication for Winston Nagan

It's an honor to share reflections regarding the astonishing amount of important contributions made by Winston P. Nagan during his 41 years of full time teaching at the UF Levin College of Law. Blending perspectives drawn from a faculty colleague, frequent collaborator, and friend, Don; and a former student, mentee, and non-faculty colleague, collaborator, and friend, Craig, this dedication touches on a few specifics regarding the depth, power, and value of Winston's myriad accomplishments and achievements.

We are among innumerable students, faculty, and practitioners at UF and around the world who have been—and continue to be—inspired by Winston, the teacher, scholar, practitioner, tireless advocate for human rights and social justice, mentor, friend and ally, and more. In all he does, Winston's characteristic intellectual energy, the warmth he engenders, the range of his scholarly curiosity and his zeal for working with a diversity of people from all walks of life and around the world comes shining through, in his determined effort to improve the lives of actual persons by helping them solve real and persistent problems.

Winston's vast knowledge is the sum total of the remarkable experiences he's been able to squeeze into single lifetime—while he was professor of international law and Sam T. Dell Research Scholar at UF Law, he held affiliate UF professorships in anthropology, Latin-American, and African studies, and was Founding Director of UF's Institute for Human Rights, Peace and Development. He was also Chairman of the Board of Amnesty International USA, a two-time Fulbright winner, and an Acting Justice for the High Court of the Republic of South Africa. He has been one of the few professors in the United States, in any field, to have been elected a Visiting Fellow by the dons at Brasenose College, Oxford University, is a Fellow and Member of the Board of Trustees of the World Academy of Arts and Sciences, is a leading member of the Society for the Policy Sciences, and is one of a small number of scholars to be elected a Fellow of the Royal Society of Arts (RSA) in London (other notable RSA Fellows have included Benjamin Franklin, Adam Smith, and Charles Dickens). He has been a Visiting Professor at Yale, Harvard, Oxford, the *Pontificia Universidade Católica do Rio de Janeiro* (Brazil), the University of Warsaw (Poland), the Central European University (Hungary), Monash University School of Law (Australia), Makerere University (Uganda), Leiden University (the Netherlands), the University of Cape Town (South Africa), the University of Stellenbosch (South Africa), Al-Farabi Kazakh National University (Kazakhstan), and has advised, collaborated with, and catalyzed social and economic development initiatives for the United Nations, the World Bank, and governments and non-governmental organizations in countries across North and Sub-Saharan Africa, Latin America, Eastern Europe, and Southeast Asia. He has published more than one hundred articles, book chapters, essays, and reviews spanning a range of disciplines, which have generated innovative ideas and insights

on human rights development and implementation, global inequities, indigenous people's rights, bio-piracy, and more.

So where did all of this *start*?

Forged while growing up in South Africa when apartheid authorities were busily constructing a police state, Winston's passionate commitment to social justice and human rights was nurtured at Fort Hare University, the school that produced Nelson Mandela and many founders and early leaders of the African National Congress. At Fort Hare Winston began his life-long commitment to social justice action by organizing programs to develop legal defenses and basic legal rights education for political prisoners. After narrowly escaping the security police by hiding in a captain's lavatory on a passenger ship in Cape Town harbor, Winston earned BA and MA degrees from Oxford University. He then moved to the United States and received LM and MCL degrees from Duke University, and a JSD from Yale University. He continued his work to overturn South African apartheid from the United States, publishing important articles regarding legal aspects of the apartheid system and effective use of sanctions, testifying before the U.N. Subcommittee on the Policies of Apartheid, serving on the board and executive committee of the International Defense and Aid Fund for Southern Africa, and consulting with the South African Constitutional Watch Committee.

Winston's commitment to social justice and human rights recognition in Africa continued throughout his stellar career. He remained an active member of the South Africa National Democratic Lawyer's Association. His significant involvement in Uganda's transition from extreme dictators to more rule of law sensitive government started in the mid-nineties, when he created and convened an important conference on the new Ugandan constitution and did much effective behind the scenes work. Don recalls interrupting a UF meeting so that Winston could take a call from an advocate in Uganda seeking advice regarding staying the imminent execution of a political prisoner there. Winston's advice helped stay this prisoner's execution and ultimately secure his exoneration and release. He then co-founded and served as a principle investigator for the Human Rights and Peace Centre [HURIPEC] at Makerere University in Kampala, Uganda, an important educational and service institution that continues to do vital work in East Africa. Don recalls how quickly HURIPEC built its campus home as a result of Winston's suggestion that all foreign visiting faculty return 10% of their per diem to fund this structure. Moreover, Winston co-founded and for a time edited the East African Journal of Peace & Human Rights at Makerere University.

Winston's social justice and human rights work only intensified thereafter. For example, during his tenure as Chairman of the Board of Amnesty International USA, he focused the organization's mission on how the core principles of the humanistic disciplines, particularly universal morality and humanitarianism, could be better integrated in international legal instruments. He thus devised and personally spearheaded the organization's campaign to convince Congress to ratify

three of the most important international humanistic legal instruments in recent history: the International Covenant on Civil and Political Right (ratified by Congress in 1992); the International Convention on the Elimination of All Forms of Racial Discrimination (ratified by Congress in 1994); and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT,” ratified by Congress in 1994). The last of these instruments was a particular milestone in the practical application of the humanistic philosophy on international policy. Its ratification by the United States is directly attributable to Winston’s natural leadership and collaborative skills because the U.S. Senate had previously blocked the ratification of the CAT. Winston personally undertook to give Congress another opportunity to ratify it. He exercised the full convening power of Amnesty International and personally worked with Republicans, including Senator Bob Dole, and Democrats, including Senators Richard Lugar, Claiborne Pell, and Paul Sarbanes, to lay the framework for ratification of the ‘CAT.’ Following years of collaborative and instructional effort— extending even beyond Winston’s tenure as Chairmanship of Amnesty—the CAT was ultimately ratified by Congress in 1994. A leading professor of philosophy subsequently described his effort as “a monumental achievement for the United States.” Ultimately, this initiative to secure ratification of the ‘CAT’ became the cornerstone of the landmark Torture Ban championed by Senator John McCain and signed into law by President Bush. Winston’s policy work has served as critical support for decency and the rule of law in the United States and as an example for the world.

Winston’s scholarly and advocacy skills not only enhanced his teaching in multiple ways, he consistently involved UF students in his technical and operational work around the world, his interdisciplinary research, and in his effective collaborations with local lawyers, judges, civil society advocates, and concerned citizens. Craig recalls (in vivid detail) the moment when Winston, from behind a three-foot pile of papers on his office desk, encouraged him to review and comment on a draft document Winston had prepared for the Shuar Nation (an indigenous community in the Amazon Basin of Ecuador)—it was their *Bill of Fundamental Rights*. On his latest trip to Miasal, Ecuador, the Shuar had designated Winston *Procurador Judicial, Abogado Defensor* so that he and the Shuar’s *Directiva* could undertake a rigorous collaborative process to chronicle the coercive and repressive acts to which the community had been subjected since the time of the conquistadores, and to design a document to assert the Shuar’s rights once and for all. Winston handed the draft to Craig, who was fortunately armed with a coffee from Wilbert’s, without realizing that this casual encouragement would change Craig’s life. Winston had gently recruited yet another student to join him in his lifelong commitment to and pursuit of social justice, good governance, and sustainable development.

As a mentor with unusual intellectual gifts and leadership capacity, Winston has motivated his colleagues and students throughout his years of teaching and collaboration to take the humanistic disciplines seriously. He accomplished this by ensuring global visibility for UF Law and global

exposure for students. It is no accident that two of UF Law's most successful international collaborations in recent years were with institutions that had hosted Winston on visits. The first was a long-term faculty exchange with Monash University in Melbourne, Australia. The second followed Winston's return to South Africa in the 1990s and was the very successful Summer Program at the University of Cape Town which he created, administered, directed, and taught in for several years. This program enabled students from UF and elsewhere to benefit from immersive learning opportunities ranging from South Africa's experiences rebuilding the rule of law after apartheid abuses to its foundation of British common, Dutch civil, and African customary law traditions.

Consistent with his commitment to experiential learning, clinical legal education, and direct social justice involvement, Winston ensured that Cape Town's summer program involved opportunities to meet and observe local lawyers. He supported the inclusion of consensual dispute resolution in the program's curriculum, emphasizing negotiation and mediation action theories and skills which had played major roles in the relatively peaceful South African transition from apartheid. Don recalls that while teaching in this program's second year, Winston received a call from the South African attorney general seeking assistance in challenging the unusual and unprecedented action of a trial court judge enjoining an act of Parliament. Winston soon involved program students in researching this question and one week later, when these students visited Parliament, they watched the politicians debate the underlying issue that stimulated the injunction which had been overturned. Don also remembers thinking then that law school summer abroad program experiences probably do not get much more relevant and exciting.

Winston's warm, gregarious, and engaging nature created welcoming, supportive environments that enriched generations of UF students who learned in his classes much about the human and personal dimensions of effective social justice lawyering as they studied the legal and procedural frameworks that underlie human rights and transnational law systems. He was always available to students and eager to listen and share insights with them outside the classroom, in his office—Craig remembers Winston's permanent open door policy (his availability was only ever an incidental issue, when he was obscured by a variously sized mountain of research and books)—and in his home for a plateful (or three) of Winston's famous curries.

His wonderful sense of humor and proclivity for easy and infectious laughter has enriched all that he did and everyone around him. Winston somehow manages to be respected and liked even by those who strongly disagree with him. Don remembers experiencing the high regard which Winston's students held him when, early in both of their careers, students from different civil procedure sections they taught gathered to watch them in a titanic ping pong battle at term's end. Don also recalls learning then the importance of never playing public, competitive ping pong with someone born outside the United States.

Winston's unique blend of sharp intellect, boundless energy, unbridled enthusiasm, passionate commitment, and engaging humor has left the building, in the sense that he has recently retired from full-time teaching and faculty governance. He and his talents will be missed. We congratulate him on work well done and a retirement richly deserved, and look forward to his future scholarship, social justice efforts, and human rights contributions. We also are proud to join the members of the *Florida Law Review* in dedicating this issue to now Professor Emeritus Winston P. Nagan.

Don Peters
Craig Hammer