

President's Message

WILLIAM N. LAFORGE

A Look at the Law from Bookend Perspectives

WITHIN A PERIOD of 30 days this past fall, I observed the law, judges, and the U.S. system of justice from three unique and fascinating perspectives—volunteering in a state judicial campaign, teaching law abroad, and witnessing oral argument

before the Supreme Court of the United States.

Just prior to Thanksgiving, my family and I spent a few days volunteering in the campaign of my brother-in-law, Jim Davidson, who was seeking election to a chancery court judgeship in Mississippi, which has a dual state court system and nonpartisan judicial elections. For me, the experience of making telephone calls, putting up yard signs, and working at the polls on election day was reminiscent of political activities in which I had participated earlier in my career. But, more important, volunteering on the ground in a judicial campaign reminded me of the grassroots nature of electoral politics and judicial elections in those states that have them. I heard and saw the action at ground zero. I heard the average voter talk about why one candidate would make a better judge than another one would. I saw qualified candidates square off against one another. I watched the local bar weigh in on behalf of its favorite candidate. And I saw hundreds of voters enter polling places to exercise their constitutional right to vote.

Unlike my normal vantage point in the nation's capital, especially during my service on the U.S. Senate staff in the 1980s, what I experienced did not involve a confirmation battle in the Senate Judiciary Committee, as happens with many candidates for *federal* judgeships. Rather, my experience involved fighting cold weather and voter apathy to persuade people to go to the polls two days before Thanksgiving to vote for the best candidate in a *state* judicial runoff election. My confidence in the electorate and in the judicial election process of the state where I grew up was reaffirmed, not just because my brother-in-law is now Judge Davidson, but because the rule of law and a system of judicial selection once again prevailed. Despite its shortcomings, the system works pretty well, and that was a meaningful reminder to me when I thought of the FBA office I now hold.

My second unique perspective on the law occurred thousands of miles from that state judicial race in Columbus, Miss. Under the sponsorship of the Center for International Legal Studies (CILS) in Salzburg, Austria, I spent two weeks as a visiting professor

of law at the University of National and World Economy in Sofia, Bulgaria. In this role I had the opportunity to interact with law faculty and students in the classroom and in seminars and with lawyers and judges in meetings, where we discussed American jurisprudence and compared our respective court systems.

The course I taught focused on company law—commercial or business law in the U.S. system. I covered a wide array of related topics and fields of law that are important to U.S. businesses, including contracts, torts, criminal law, property (real, personal, and intellectual), sales, credit, negotiable instruments, business organizations, banking, bankruptcy, and administrative law. For the first few classes, I concentrated on the U.S. system of government, U.S. constitutional law and principles, and the U.S. judicial system in particular.

In addition to conducting a regular two-and-a-half-hour class each day, I lectured in a number of other classes, including introduction to the law, contracts, business organizations, economics, and European Union (EU) law. As a former participant in the EU Visitors' Programme, I found the timing of my visit and the opportunity to lecture on EU subjects to be especially unique, since Bulgaria was scheduled to join the EU in January 2007.

The context of my visit and the course I taught at this particular institution of higher learning was very interesting. The university's history goes back to the Cold War era and beyond, when it was known as the Karl Marx Institute and a bastion of socialist thought. The institution was then—as it is today—a major economics and business university in the country. The law school is less than a decade old, and CILS-sponsored faculty members are being helpful in expanding the law school's academic vision, mission, and offerings in the field of comparative law—and especially in sharing the story of common law doctrine. This involvement seems especially timely



MESSAGE continued on page 4

and valuable as Bulgaria continues to develop its governmental institutions and a market economy in the wake of its former Soviet-controlled and Socialist background.

In addition to my university activities, I had the opportunity to meet with local lawyers in private practice and with judges on the country's national appeals court. Throughout my discussions with these professionals and with my academic colleagues, it was fascinating to hear about differences between the law and the justice system in the United States and Bulgaria. For example, Bulgarian judges are far more involved in a hands-on way in cases at trial, especially in criminal cases; they can question witnesses and investigate the facts of the case. In Bulgaria, the burden of proof in torts and contracts cases is on the defendant. The Bulgarian system of justice relies much less on the adversary system than the U.S. system does. And, basically, Bulgaria operates under civil law almost exclusively, in contrast to the U.S. system of relying on common law principles in addition to other sources, such as civil codes.

Teaching law students in a foreign country and conferring with Bulgarian attorneys and judges about U.S. law and the U.S. system of justice provided me with a fresh and unique perspective on the strength and value of our ways of settling disputes, interpreting the law, and ensuring the rule of law in the United States. American judges are far more independent. U.S. commercial law is far more advanced. And, the U.S. judicial system's notions of due process and fair play are more pronounced and prevalent because of the development of common law and dependence on the adversary system.

Preparing for and delivering lectures on topics of U.S. law—combined with explaining and sometimes defending many aspects of it—reinforced for me the virtues of our judicial system. Teaching in a country that was solidly in the camp of the former Soviet Union not so long ago—and a country that is still evolving as a market economy—also led me to appreciate all the more the governmental and economic systems that we enjoy in the United States and too many of our citizens do not understand, do not appreciate enough, or even take for granted.

The third prong of my recent bookend revelations and perspectives on the law came directly from a half-day spent at the Supreme Court of the United States. I appeared before the Court to move the admission of a lawyer friend, Dr. Phil Merideth, from Mississippi,

where I attended law school and first practiced law. After the swearing-in, I decided to stay for the oral arguments on two landmark cases from the states of Washington and Kentucky that dealt with the use of race in placing students in public schools. And I'm very glad I stayed!

First, I had a chance to visit with one of the FBA's best friends and supporters, Gen. William Suter, the clerk of the Supreme Court, who has probably visited more FBA chapters than most national officers have! Second, as the Court heard arguments from the parties in *Parents Involved in Community Schools v. Seattle School District*, and *Meredith v. Jefferson County Board of Education*, I was struck, as I have been on many other occasions, by the majesty of the Court and our system of justice in its highest form and in all its glory. The justices and the parties engaged in a historic trip down judicial memory lane as they invoked landmark cases ranging from *Plessey v. Ferguson* and *Brown v. Board of Education* of Topeka, to the more recent *Grutter v. Bollinger* case, which involved the use of race in admissions at the University of Michigan.

Watching and listening to the sparring among the members of the Court and counsel for the parties reminded me how refined and narrow a legal issue can be and also how valuable and probative our adversary system is in helping the Court to understand issues and to arrive at a decision. The very essence of the cases, the questions and answers proffered, and the mind games consisting of "Who on the Court is thinking what?" and "How will they decide?" all add to the majesty and mystery of the Supreme Court. Both cases were very well argued, and I wish that all FBA members somehow could have been in the courtroom that day to see this high drama of case law unfolding in the pinnacle forum of our system of justice.

If you have unique or special perspectives on the law and would like to share them with your colleagues in the FBA, send them along to our national headquarters at tfl@fedbar.org. We might even print some of them in a future issue of *The Federal Lawyer* or post them on the

F B A
W e b
s i t e .
TFL

