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The Georgia Scrivener

A Weekly Publication serving the University of Georgia Law School Community

Ducktown Revisited

by Jennifer McCune

According to Professor Peter Appel, one of the most helpful things in his case preparation as an attorney for the U.S. Department of Justice, Environment & Natural Resources Division, was to visit the site in question. So on Saturday, October 21, 2000, he took a small contingent of students in his Law & Environment class to Ducktown, TN. Ducktown is the site of a severe environmental disaster and background to two of the very first cases the class discussed this semester, Madison v. Ducktown Sulfur, Copper & Iron Co., 113 Tenn. 331, 83 S.W. 658 (1904) and Georgia v. Tennessee Copper Co., 206 U.S. 230 (1907).

The "Ducktown Desert"

Ducktown is located in the Copper Basin, which encompasses a tri-state area of Georgia, Tennessee & North Carolina. Copper was discovered there in 1843, much to the chagrin of the prospector who thought he had found gold.

Fueled by the Civil War effort and, later, construction of a railroad spur, Ducktown's copper industry grew rapidly – along with its environmental problems. In order to get a useful product from the copper ore; it had to be "open-roasted". The ore was piled up, covered with firewood, and allowed to smolder for three months. The smoke, laden with sulfur dioxide particulate, was often so bad that residents sometimes had to light a lantern at midday just to see where they were going.

As early as 1861 the environmental damage was apparent. Trees were becoming scarce due to the huge amount of firewood necessary for the open roasting, the sulfur dioxide particulate that settled on the ground converted to sulfuric acid when it rained, severely retarding plant growth. The combination led to topsoil erosion and by 1878, 32,000 acres (roughly 50 sq. miles) had been stripped bare, "devoid of plant, animal & insect life."

The barren landscape grew to be a part of life for the area residents, who referred to it on more than one occasion as "hauntingly beautiful." Lamar Dodd painted its "barren red hills" in the early 20th century. The smoke was even purported in advertisements to be a cure for ill health!

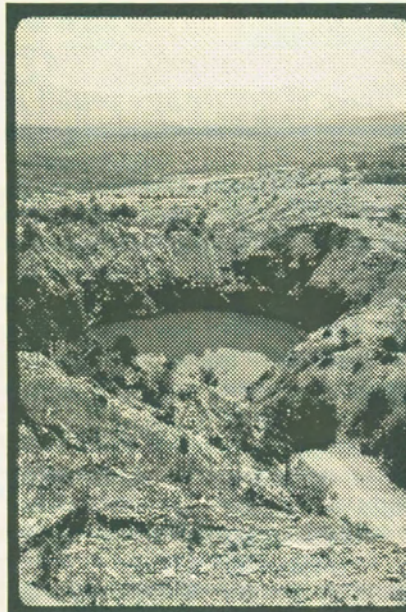
Nuisance Litigation: 1904 & 1907

In 1904, some residents filed a private nuisance lawsuit in the Supreme Court of Tennessee seeking damages and an injunction to stop the air pollution. They were concerned that the smoke was injurious to their crops, rendered their homes less comfortable, and their lands less profitable. The Court refused to grant the injunction, reasoning that to grant the injunction would be "an appropriation of the property" of Ducktown Sulfur, Copper & Iron Company for the benefit of a few local farmers. However, damages

were allowed.

That same year, the State of Georgia filed an original jurisdiction public nuisance action in the United States Supreme Court, complaining of property damage in Georgia. In response, the company agreed to change their method of operation in order to reduce emissions if Georgia agreed to drop the lawsuit. Georgia agreed, but the company simply installed taller smokestacks so that the smoke would be dispersed further.

Georgia again filed suit in 1907, and that year the Supreme Court upheld the injunction, but suggested the company be allowed to build new acid chamber plants which were designed to convert sulfur dioxide captured from smelter smoke. Interestingly, this new process became an even more valuable manufacturing product for the region.



Reclamation Efforts

Reclamation efforts, surprisingly, didn't begin until 1929. Reforestation was continually unsuccessful, however, and the region continued to resemble a "moonscape" until the early 1970's. In fact, the area was easily visible on infrared satellite pictures due to its lack of vegetation.

Later efforts to reforest the area proved more successful with the additional help of the Tennessee Valley Authority, the Environmental Protection Agency, and the University of Georgia. The success can be attributed by the development of new grasses and trees better able to withstand highly acidic soil. The grasses are very important because they quickly grow and prevent further soil erosion. The grasses have lowered the sediment discharge into the Ocoee River by 80%.

Further Environmental Concerns

The company changed ownership multiple times, and in the late 1980's filed for bankruptcy. In order to sell the land, the State of Tennessee agreed to enter into a covenant not to sue with the prospective owners, a Swedish company named Intertrade Holdings, Inc. According to the company's representative, this was the first covenant not to sue of this type in Tennessee. Under the terms of the agreement, the company was to spend nearly \$7,000,000 on environmental compliance.

Predecessors of Intertrade dumped slag, a by-product of the copper smelting process, into the nearby waterways. The students were able to observe the effects on the stream, which was tinged red from iron content and has a very acidic PH. Under the covenant not to sue, the company must treat all rainwater that falls on the 120 acres that it owns. They accomplish this through a very complicated network of ditches and treatment

(see Ducktown, back page)

Opinion

"If you take out the killings, Washington actually has a very, very low crime rate."

- Marion Barry, Mayor of Washington, D.C.

Bowing at Windmills

There has not been a careful examination of the law firm recruiting process and its utility to both students and employers. I believe that there are serious flaws in the process that, if left unaddressed, will result in a decrease in the quality of legal services with a commensurate decrease in the quality of life of new associates. My argument relies on two assumptions. First, as noted by the New York Law Journal (N.Y.L.J.), "it is statistically impossible for more than a small number of law firms to meet their hiring goals while limiting their hiring to the top 20 percent of the class at the top 20 law schools." (9/8/98). Second, since most hiring occurs through summer programs, students who hit their stride in their second or third year typically are out of luck. (See Legal Times, 9/4/00).

The flaws in the recruiting process begin with the determination of who is bestowed the privilege of an interview. Caroline Levy, a career services dean at Hofstra, summarizes the essential dilemma:

"When confronted with literally hundreds of resumes, it is readily understandable that . . . law firms establish certain threshold criteria. It is not the setting of minimal qualifications which frustrate . . . but rather some employers' slavish adherence to such arbitrary qualifications. The refusal to consider any applicant who does not fit squarely within the preset criteria is a disservice to both the law firm and the job applicants." (N.Y.L.J., 9/8/98).

Indeed it is a disservice, especially when one considers the dual-arbitrariness inherent in the system. Not only are employers making decisions at arbitrary cutoff points, but grades themselves are subjective at best, arbitrary at worst. This practice is not limited to private-sector employers. Levy cites one governmental agency that will "under no circumstances" consider a candidate outside the top third of the class.

At some firms, attorneys don't make these decisions. Instead, legal recruiters screen all the candidates to determine who gets an initial interview. "Sure, [the legal recruiter] might make a few mistakes, but as one partner admits, the hiring process is a 'crapshoot' anyway. Why not give the dice to a nonlawyer and take what she rolls? You always get to roll again. And again. And again." (Legal Times, 9/11/00). The inevitable result of this practice is that thousands of law students each year are foreclosed from working at the biggest law firms and the biggest

law firms have foreclosed substantial opportunities to hire high-quality employees. (The Legal Times reports that the academic emphasis so informs employment policies that even prospective partners may have their transcripts scrutinized.)

The flaws continue at the callback stage. Can one seriously suggest that a 20 minute interview is sufficient to explore a job candidate's "other qualifications" besides GPA and journal experience (presuming, for the moment, that there is genuine interest in "other qualifications")? In this regard, anecdotal evidence is telling. One student told me that they received a rejection letter

...upon learning that the student had a 3.2, the partner barked, "Why do you want to work for us and why in God's name would we hire you?"

following an initial interview that was dated prior to the date of the interview. (Some students never receive any letter. Stranger still, one student told me she received a rejection letter and then got a callback interview. Go figure.) The vast majority of legal employers have their minds made up before the interview begins, which inevitably means that the primary criteria is again the magical three letters: GPA.

For their part, students are limited in their ability to make determinations about employers during the initial interview. Questions concerning salary and billable hour requirements are frowned upon. Evidently, students are not to consider compensation or work conditions in selecting a firm. Seeing an attorney for 20 minutes is supposed to suffice.

The callbacks themselves are adventures in banality. As if five 30 minute interviews are vastly superior to one 20 minute interview. Now five people have exchanged pleasantries with the interviewee and asked about their note topic. And it is always nice to be herded from one office to another to talk with busy attorneys who have no interest in talking to you. One lawyer actually shuffled through a newspaper during a callback. At least he could have shared the box scores. Another, upon being told that I chose the University of Georgia over Ivy League options

because of financial considerations, responded, "I think an Ivy League education is important, my son is going to Penn right now." Maybe she just missed the "financial considerations" part of my answer. Oh well, at least she feigned paying attention unlike the newspaper-reader-guy. The New York Law Journal relates the following incident: A Fordam student volunteered to assist a partner from a New York firm at the school's career fair in exchange for an interview afterward. But upon learning that the student had a 3.2, the partner barked, "Why do you want to work for us and why in God's name would we hire you?" The partner checked the time, snapped shut her briefcase, and said, "Do you have any more questions?"

When the foregoing is laced with the two assumptions described at the outset, the problem becomes acute. Not only are the interviewing stages flawed, but a student realistically only gets one chance at the entire process. Some high quality candidates are not given the opportunity to demonstrate their success potential. The employer and the lucky students, however, have problems of their own. High levels of associate attrition plague major law firms and the recruiting process is partially to blame. Two recent studies

"[w]hile suggesting numerous ways in which law firms and law schools can help minimize associate defection, [do] not consider the possibility that the hiring criteria of the large law firms may be contributing to the problem. In other words, it is possible that these firms are defining the 'best and the brightest' in ways that may substantially promote early attrition." (N.Y.L.J., 9/8/00).

Firms should begin to focus on a broader diversity of students for their own self-interest, even if the concerns of students are only marginally relevant in their decision-making process.

What we, as future members of the legal community, should do, however, is beyond my intellectual capacities. Hopefully, raising these issues in a public forum will at least prompt discussion among members of our own legal community.

Editor's Note: It is not the general practice of The Georgia Scrivener to print anonymous submissions. In some instances, however, names may be withheld to protect those deserving anonymity.

"Cassandra"

This just in...

Oh boy, do we get mail!

This is just a sampling of stuff by which you can defray those student loan payments.

Entertainment Law Initiative

Professor Patterson dropped off a info sheet on an essay writing contest. Deadline for entering is Nov. 15 and first prize is \$5,000. Second place finishers get to go to the Grammys and boo Lars Ulrich.

It's supposed to be a 3,000 word essay on a "compelling legal issue facing the music industry." Gosh, I can't think of anything...

Interested students should go see Professor Patterson for more info.

The Epstein Becker & Green, P.C. Health Law Writing Competition

Application Deadline: 1/19/2001

Description: Epstein Becker & Green, P.C. announces its Third Annual Health Law Writing Competition.

Epstein Becker & Green, P.C., a national firm engaged in the practice of health law, is pleased to announce its Third Annual Health Law Writing Competition. The competition is designed to encourage the preparation of scholarly papers on current topics of interest relating to health law.

Cash prizes will be awarded as follows for the three best papers:

First Place: \$4,000

Second Place: \$2,000

Third Place: \$500

Students should take advantage of the fact that health law is a very broad and diverse field, encompassing aspects of almost every area of law. Papers may address any traditional area of the law as applied to health care (e.g., antitrust, tax, corporate), or areas of law unique to health care (e.g., fraud and abuse, managed care, Medicare/Medicaid).

Competition entries must be received by January 19, 2001.

If you are interested in receiving a complete set of the rules and an official entry form for the Epstein Becker & Green, P.C. Health Law Writing Competition, please visit: http://www.ebglaw.com/article_346.html

or you may contact:

Neil Rosenbaum, Esq.

Attention: Health Law Writing Competition

Epstein Becker & Green, P.C.

1227 25th Street, N.W.

Washington, D.C. 20037

202/861-0900

Fax: 202/296-2882

competition@ebglaw.com

American College of Legal Medicine

Application Deadline: 2/1/2001

Description: Award for best paper on any aspect of legal medicine.

Contact Info:

American College of Legal Medicine

Student Writing Competition

611 East Wells St.

Milwaukee, WI 53202

Firearms Civil Rights Legal Defense Fund 2000-01 Writing Competition

Application Deadline: 3/31/2001

Description: The NRA Civil Rights Defense Fund is sponsoring a writing contest commencing March 1, 2000 and concluding March 31, 2001 for law students. The subject of the contest is "The Right of the Individual to Keep and Bear Arms as a Federally Protected Right." Cash prizes will be awarded to First, Second, Third and Fourth place winners in the amounts of \$5,000, \$3,000, \$2,000 and \$1,000 respectively.

The contest is open to all individuals who are law students at date of submission and who have not been previously admitted to practice law in the United States. Admission to practice after submission of the student's paper is not disqualifying. Papers should be double spaced, not exceed 30 pages in length, exclusive of endnotes, of law review quality, and cannot have been previously published. Publication subsequent to submission is encouraged. Citations should conform with "A Uniform System of Citation" current edition. Violations of Blue Book Style will be shot.

Papers are to be submitted to:

NRA Civil Rights Defense Fund

11250 Waples Mill Road

Fairfax, VA 22030

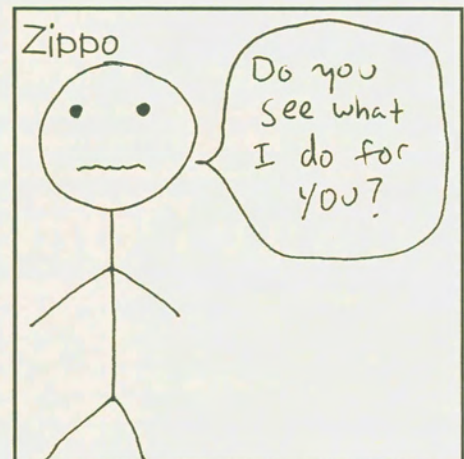
State Bar of Texas Computer & Technology Section

Application Deadline: 6/15/2001

Description: For law school J.D. students enrolled in a U.S. law school, this contest strives to promote scholarly legal analysis and writing pertaining to current computer law and Internet law issues. Submissions should be no more than 10,000 words, double-spaced with footnotes, and forwarded in duplicate hardcopy and in electronic form with email and law school status. 1st Prize is \$500 and 2nd Prize is \$250 for meritorious papers only.

Contact Info:

Al Harrison, Esq.
Harrison & Egbert
1018 Preston Street,
Suite 100
Houston, Texas
77002



The Georgia Scrivener

The Georgia Scrivener is published weekly on Tuesdays and distributed to UGA Law School Faculty and Students. The Georgia Scrivener welcomes opinions, letters, submissions, cartoons, jokes, etc. Submissions should be placed in the Scrivener box in the first floor mailroom. Deadline for submissions is Thursday noon for the following week's edition. The Georgia Scrivener reserves the right to edit for spelling, space constraints, and to reject anything too offensive or stupid. Also, these are personal opinions, not necessarily the opinions of The Georgia Scrivener, its staff, or UGA School of Law.

scrivener@bellsouth.net

Calendar

Campus Center for Jewish Life.

Grad Student Shabbat Oneg following services (approximately 8 PM).

Friday, November 3

Friday night services start at 7:00 and you may attend either Conservative, Orthodox and (if enough people show) a Reform service.

This is a special program for only grad students!

There will be lots of food, drinks, and fun.

More information to come.

Graduate Happy Hour

November 9

7-9 PM.

Location - TBD.

(Any questions please contact Alyssa, 543-6393, ugajcsc@hotmail.com)

Christian Legal Society

Bible Study

October 25th, 8:30 am

Room E

General Meeting/ Bible Study

October 30th, 3:30 pm

Room D

CLS now has available a list of churches in the area recommended by your fellow law students. You can request the list by e-mailing

badykes@arches.uga.edu or jd4jen02@arches.uga.edu.

WLSA

(Women's Law Student Association)

General Meeting

Tuesday, October 24th 3:30 pm

Room C

We will be discussing our annual pot luck Fall Feast, to be held at Prof. Love's house on Nov. 19 at 6 p.m.

Dues are \$20/year.

Why isn't your organization's stuff in here? Drop calendar listings into the Scrivener box in the mailroom or email to scrivener@bellsouth.net

Justice Denied

A speaker's panel on the death penalty in America. Featuring Stephen Bright, Director of The Southern Center for Human Rights; Billy Moore, former death row inmate; and the Honorable Jean-Paul Monchau, Consul General of France for the southern region. October 24 at 7 p.m. Unitarian Universalist Church of Atlanta. 1911 Cliff Valley Way, N.E. (706)624-4311

A Forum for Discussion

UGA School of Law's chapter of the Federalist Society for Law and Public Policy Studies invites law students to join in its promotion of debate among students, academics, legal practitioners and public policy experts. The Federalist Society scheduled a speech from Michael S. Greve on Real v. Cooperative Federalism to take place Mon., October 23, but the speaker was unavoidably delayed. Information on this topic is still available, however, on the front counter in the steno pool. The National Federalist Society states that it is "founded on the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be." Jeanne Marie Rakowitz, President of UGA's Federalist Society, adds that while the National Society's goals are to promote public policy in this direction, the law school's society primary purpose is to promote discussion. Our Federalist Society has a strong reputation among law students for offering well-balanced debate and discussion because they often choose round table forums for chosen topics. In January, the Society plans to present a discussion on the implications of the recent increase in law firm associate salaries. Although the Federalist Society membership primarily consists of conservatives and libertarians, they welcome a diverse membership of students interested in timely legal topics. For more information please contact Jeanne Marie Rakowitz (jmrakowitz@yahoo.com) or attend their next advertised meeting.

Ducktown

from front page

facilities. Intertrade operates under an NPDES permit, which is required by the Clean Water Act.

Historically, the area has been a non-attainment area under the Clean Air Act. In 1998 it became an attainment area.

Law School Field Trips?

The students who went on this trip were, on the whole, very pleased with the outcome of the trip. "It helped me put everything together," one student observed. Professor Appel noted that the trip was "quite eye-opening" for him, and that he hoped it had allowed the students to better understand the concepts "we have been discussing in an abstract way."

Professor Appel was also quite entertaining and informative during the trip, relating stories of his career at the Department of Justice. For those students aspiring to similar careers, the information, and the trip, were invaluable.

Professor Appel will be teaching a course in Natural Resources spring semester, and says it will be in much the same format, including a field trip.

Special Thanks to Mr. Frank Wilson, our very informative guide at Intertrade Holdings, Inc; Ms. Dawna Standridge of the Ducktown Basin Museum; and the family of Allison Sosebee (3L) who provided us a great lunch and Professor Appel's favorite apple cake.