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## Tribute to Donald A. Winslow

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## Tribute to Donald A. Winslow

*Judge Elbert P. Tuttle\**

Don Winslow applied to me for a position as law clerk when I was a judge on the Court of Appeals for the Eleventh Circuit. He was recommended to me by another Cornell graduate law clerk, Fred Aman. Don was chosen to serve the court year 1980-81 but actually stayed on another six months at a considerable financial sacrifice to himself in order to finish an important work that we were handling at that time.

Don was an excellent lawyer and he admirably performed the usual activities of an appellate court law clerk; that is, he prepared memoranda for the cases to be argued before a panel of the Court and then after the Judges met and decided how the case should be disposed of, I would usually ask him to take one of the cases and draft a proposed opinion along the lines that the three judges had agreed upon. The work of this kind that he did was so excellent that I frequently accepted the opinion for publication without even dotting an "i" or crossing a "t".

The most important work that Don did for me was on a case in which I had been appointed special master by the United States Supreme Court. This was the case of *Arizona v. California*.<sup>1</sup> The State of Arizona had filed suit against the State of California in a dispute over the division between the two states of water from the Colorado River for irrigation purposes. The case had been tried some ten years previously. At that time, the five Indian tribes that were

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\* Senior Circuit Judge, United States Court of Appeals for the Eleventh Circuit, Atlanta, Georgia.

<sup>1</sup> No. 8 Original (U.S. Feb. 22, 1982) (Report of Special Master Tuttle). For the Supreme Court's discussion of the report, see *Arizona v. California*, 460 U.S. 605 *passim* (1983).

located along the river between the Hoover Dam and the mouth of the river had been represented by the United States. Now, in this new case, the five Indian tribes sought to intervene.

It was at this point that the Chief Justice called and asked me if I would act as special master in the case. My first problem was to determine whether to let the tribes intervene at this stage of the litigation. My other law clerk, Lana Sensenig, worked with me on that issue and we soon entered an order allowing the intervention of all five tribes. We then set about holding hearings on the merits of their claims. We held three weeks of hearings in Phoenix, Arizona, some two weeks in Denver, Colorado, and at least a couple of days in Pasadena, California.

After these hearings had been completed, I was convinced that the Indian tribes were entitled to substantially more water than had been granted to them by the special master at the earlier trial. In the Supreme Court's opinion at that time, there was a final paragraph that seemed to me clearly to provide that the Court retained jurisdiction to make any changes necessary in the future. I, therefore, asked Don to work on a draft of an opinion giving substantial additional water rights to the Indian tribes.

The draft that he prepared, over 300 pages, was a masterpiece of mathematics, agricultural studies and knowledge of Indian tribal law in relation to the United States. In effect, I adopted it verbatim and we filed it with the Supreme Court as the Special Master's Report. I should note at this point that a member of the staff of the Solicitor General of the United States told one of my former law partners in Washington that this report had been adopted by them as a standard to follow in all future cases.

Unfortunately, about five months later, the Supreme Court found that the earlier decision of the Court was final and could not be modified.<sup>2</sup> If they had only made that clear before appointing a special master, the parties would have saved a very substantial amount of time, effort and money in going through the trial.

In order to complete his work on this case, Don voluntarily stayed on as my law clerk for an additional six months before going to work as a lawyer at more than twice the salary that the Government paid for his services.

I am glad that, on one occasion after Don became ill, I talked to him on the telephone and told him again how much I appreciated his work in *Arizona v. California*. He told me that he had just reread it a few days before and I was glad that he said that the work on the case was the most interesting part of his year and a half as my law clerk.

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<sup>2</sup> *Arizona v. California*, 460 U.S. at 615-16.

I am so glad that the *Kentucky Law Journal* is giving me an opportunity to express my deep appreciation and affection for my dear friend, Don Winslow.



*Rutherford B Campbell\**

Great human beings come in all shapes, and often their names are not household words. It is, of course, their contributions, not their notoriety, that make them great. Great men and women do not live lives of quiet desperation; they do not measure their lives out in coffee spoons.

Although some of these men and women are in the public eye, governors for example, most of the truly great people I have known are unknown to most of you. They may have been a college professor who opened a generation's eyes to the world of literature. They may have been a sheriff in a rural Eastern Kentucky county who had the physical and moral courage to enforce the laws of the Commonwealth. They may have been a high school basketball coach who provided a role model and instilled notions of discipline and sacrifice in young boys.

By any measure, Don Winslow was a great man. Although I knew him only a few years, the quantity and quality of Don's contributions were apparent to me and, indeed, to everyone.

Don's awesome intellect was obvious to all of us who knew him. It was demonstrated by his educational achievements and his work as an attorney and a law professor. He was a dedicated and outstanding teacher, and his research won for him a significant national reputation.

As Don's health deteriorated, he most feared the loss of his reasoning power and intellectual capabilities. Mercifully, that never came. I saw him the day before he went into the hospital for the last time, and that wonderful mind of his was bright and clear.

Notwithstanding his intellectual vigor and his ability to lay bare sophistry with a fell swoop, Don had a gentleness about him that was genuine and disarming. He was one of the most decent and kind persons I ever knew. Even when he argued his points most vigorously, he did so without malice and without any purpose other than getting to the truth.

Watching Don face the certainty of death was unbearably sad to all of us who loved him. But, even in those last difficult months, Don's greatness shone. His courage was beyond description. He never complained. He never became self-absorbed. His love for his family, his students and his law school fully occupied his life until the very end.

Don was our colleague and our dear friend. We all miss him.

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\* Dean and Professor of Law, University of Kentucky College of Law.





*Patricia T. Morgan\**

Everyone who knew Don Winslow experienced an enormous loss on November 9, 1992. Mine was somewhat unusual: Don's and my professional careers are nearly identical, and Don remained a trusted confidant and friend, notwithstanding that we had not seen each other since 1986. I first met Don as part of the recruiting process at the law firm (Sutherland, Asbill & Brennan in Atlanta) where I was a new associate and Don the prized recruit.

Don's work in private practice centered largely on tax controversies, and he and I each worked on a case that would shape our academic careers, *Estate of Spruill v. Commissioner*.<sup>1</sup> That case involved a civil tax fraud penalty assessment following a criminal investigation of the parties, who were eventually exonerated by the court of any wrongdoing. Although my involvement in the case ceased when the Justice Department declined to bring a criminal prosecution, Don kept me apprised of the civil aspects and eventual trial. More than any other matter on which either of us worked, this case engendered in each of us an abiding interest in the field known loosely as "tax fraud" and "tax procedure."<sup>2</sup>

Don interviewed to enter the legal teaching field one year before I did. One year after I began teaching, Don accepted a position at the University of Kentucky College of Law. We taught the same subjects and shared the same research interests. In fact, we had planned to write a casebook together.

David Grise, Don's friend and neighbor, aptly described Don at his memorial service as having no tolerance for arrogance, corruption or hypocrisy. All who spoke at the service, and all of us who knew Don, marvelled at his courage in facing his tragic condition. I take this occasion to describe another facet of this extraordinary man: he was a trusted and loyal friend to many, including those whose only recent contact with him was by telephone.

One's early years in law practice and teaching can be very trying. Without friends, those times can be overwhelming. Fortunately for me and others, Don was always available to talk through the crisis of the moment, to read the draft and make painstakingly thorough comments, and to provide whatever

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\* Associate Dean, Georgia State University College of Law. B.A. 1973, Michigan State University; J.D. 1979, Emory University School of Law.

<sup>1</sup> 88 T.C. 1197 (1987).

<sup>2</sup> For Don's own acknowledgment of the importance of his experience in this case, see footnote \* of his article, *Tax Penalties—"They Shoot Dogs, Don't They?"*, 43 FLA. L. REV. 811 (1991) (expressing "his gratitude to Randolph W. Thrower, Esq. for very kindly introducing him to this subject," and identifying himself as "one of several attorneys representing the petitioners" in the *Spruill* case).

support he sensed was needed. Don could always be counted on to take the time to understand exactly what was going on, and to commiserate and advise and help in any way he could.

Particularly *after* his illness was diagnosed, Don kept in frequent contact with his distant friends. He kept us apprised faithfully not only of his physical condition but, more importantly, his reactions to his plight. Ever the teacher, Don frequently talked with me about how to deal with medical professionals and what to do in similar circumstances. Last August he told me he felt fine and that he was looking forward; that he had learned that the only way to approach life was to look forward, and to enjoy and appreciate what we have.

I miss Don. He taught many of us a great deal about law, about life, and about friendship.

*W. Thomas Halbleib, Jr. and Susan Stockton\**

At a time when law schools are producing unprecedented numbers of graduates, our society, as well as our community, is well-served by students who had the opportunity to learn the law, and a bit about life, under the guidance of a professor such as Don Winslow. His capability and caring nature guided his interactions with his students, and his enthusiasm motivated them to perform their best.

Pretentiousness and intimidation were not among the character traits students came to know in Professor Winslow. He donned his tie just before class, and soon afterwards he returned it to its accustomed hook on the back of his office door. He addressed his students by name in the hallways. And he showed an imperturbable knack for seeing the best in his students, despite their sometimes subconscious attempts to, as he would say, "hide their lights under a basket." From Professor Winslow's commitment to teaching and his sincere desire to see and help each student succeed, he developed the legacies that will continue to benefit his students throughout their careers and lives.

Law students first come to know their professors in the classroom, and they spend much time outside of class discussing the manner in which a professor conducts his class. Occasionally, they also go to great lengths during class to avoid serving as the next victim of the Socratic Method. This sort of scholastic recalcitrance, however, found no home in Professor Winslow's classes. The enthusiasm he brought to, and with which he tended to infect, his classes drew enthusiastic class participation from even the most bashful of students.

Some of his classes might start slowly; it is sometimes unapparent to students that the control and management of publicly-held corporations might provide the conversational fodder necessary to rouse their slumbering emotions. But as Professor Winslow peeled back the dry rules of law, to reveal the underlying policy issues, his enthusiasm became contagious. Students aggressively offered their views. During his classroom discussion of the social responsibilities of corporations, the discussion became so boisterous that one might have forecast an exchange of blows.

Having inspired sufficient enthusiasm for the seemingly spiritless material, Professor Winslow reasserted his control over the class. He calmly explained how the students' arguments about the proper balance of a corporation's duty to make money for its shareholders and its duty of social

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\* The authors served as editors of the *Kentucky Law Journal* during Professor Winslow's tenure as faculty advisor to the *Journal*. Tom Halbleib is an associate with Stites & Harbison in Louisville, Kentucky. Susan Stockton is an associate with Taft, Stettinius & Hollister in Cincinnati, Ohio.

responsibility followed, if somewhat less artfully and more emotionally, some of the classic theories on the subject. The students departed not only with a fuller understanding of the competing policies and the balance struck, but also with an opinion about the balance struck and a renewed enthusiasm for the study of the law.

Although students first came to know Professor Winslow as a teacher, their interaction with him was by no means limited to the classroom. During an age when the demands upon a lawyer's time can be described only as oppressive, Professor Winslow's office was always open to his students. The visitors to his office did not confine their questions to the law of corporations, the law journal or even the law in general; Professor Winslow entertained, with equal enthusiasm and infinite patience, questions regarding choice of classes, choice of careers and the choices of life that affected his students.

The sincerity of his concern and his enthusiasm for the law showed in all of Professor Winslow's interactions with his students. His concern for a student's understanding of the subject matter of a course did not end with the submission of a final exam. He seized the opportunity created by students' extraordinary interest in the grading of their exams. When a student discussed an exam with Professor Winslow, in addition to a thorough explanation of the grade, the student received instruction in those areas of the course of which the exam might reveal the need for some additional study.

Students always knew that Professor Winslow had faith not only in their abilities, but also in their judgment and sense of responsibility. During the year that he served as a visiting law professor at Cornell University, he demonstrated the abundance of his faith by entrusting his home to three law students. As most people know, law students seem to prefer living conditions that may be euphemistically described as squalid. Indeed, Dean Campbell once admitted that when Professor Lawson visited his law student abode, he tactfully asked how in the hell human beings could live there. Nevertheless, Professor Winslow felt enough trust to surrender his home to three law students.

This faith he showed had a way of bringing out the best in his students. The law students that stayed in his home justified his faith by returning his home, largely undamaged, the following spring. (There was the unexplained demise of one tree in Professor Winslow's yard. None of the students has ever offered a plausible explanation for the cause of the tree's demise.)

Students also came to know Professor Winslow through their interaction with him while they served as members of the *Kentucky Law Journal*. He began his service as faculty advisor during a time of great transformation for the *Journal*. A faculty committee the prior year had studied the *Journal's* operations and recommended sweeping changes. A brand new editorial board met with Professor Winslow, a brand new faculty advisor, to implement a brand new method of operation for the *Journal*. Few would have sought a more daunting challenge.

Professor Winslow's trust and faith in his students, as well as his enthusiasm and ability to motivate them, served him well as he met this challenge. He provided the sort of restrained guidance best suited to the talented, if sometimes free-wheeling, members of the *Journal* as he guided it through this transitional period. Although he gave the members a relatively "free hand" to run the *Journal*, the members always knew that he expected much, and they never doubted that much would be accomplished with his guidance. The trust and faith that Professor Winslow showed, and the enthusiasm and motivation that he provided, helped to impress upon the members the magnitude of their responsibilities as stewards of one of the nation's oldest and proudest scholarly legal periodicals.

The changes whose implementation Professor Winslow guided have had a dramatic impact on the educational opportunities available to every member who has since served on the *Journal*. In addition to the *Journal*'s requirement that every member produce a scholarly note of publication quality, every member now obtains some experience, and develops some expertise, in both substantive and technical editing of scholarly legal writing. Second-year members writing their notes now receive intensive personal instruction from third-year associate editors. Under Professor Winslow's guidance, the *Journal* members implemented these pervasive changes with minimal dislocation and disruption of the orderly flow of *Journal* business.

Professor Winslow did not limit his contributions to the *Journal* to his service as faculty advisor. While he served as a visiting law professor at his alma mater, Cornell University, the *Journal* published his article on retrospectively rated insurance and federal income taxation. More recently, the *Journal* published another article, coauthored by Professor Winslow and Seth C. Anderson, concerning the definition of suitable investments. This issue of the *Journal* contains one of Professor Winslow's final pieces, also coauthored with Professor Anderson, which provides an amusing and insightful comparison of insider trading regulation with baseball's gambling prohibitions. The entrustment of his work to the members of the *Journal* provides another demonstration of his enthusiasm for, and his faith in, his students.

Finally, students came to know Professor Winslow as a provider of sound career advice. Unsatisfied merely to guide the educational and personal development of his students, he took an active role in shaping the paths their careers took. Those students who expressed any desire to obtain federal clerkships received liberal amounts of encouragement from Professor Winslow, whose own experience as a law clerk for Judge Elbert P. Tuttle of the Eleventh Circuit enabled him to offer invaluable insights. His discussions began to open the door of enlightenment to the seemingly arcane world of the federal judiciary. He reified the abstract clerk selection process and, as a result, better enabled his students to compete in that process.

But his assistance did not end with encouragement; he graciously provided detailed letters of recommendation concerning his students.

Commenting upon one of Professor Winslow's recommendation letters, one jurist stated that he routinely accords little weight to recommendation letters, unless of course they are as thorough as the ones provided by Professor Winslow. The increasing number of federal clerkships occupied by University of Kentucky College of Law graduates during recent years serves as another fitting legacy to his efforts.

These few pages can hardly begin to describe Professor Winslow's impact upon the lives of those who had the privilege of studying under him. He provided instruction in the law of corporations, guidance in the operation of the *Journal*, and practical assistance in career and personal development. We will miss him for his ability to motivate us to do our best by showing his faith that we would offer no less. And we will miss him as a professor and a friend whose legacies will shape our lives.

*Robert E. Wier\**

Some losses, in situation and toll, most threaten the silent acceptance of life's sequence. Such it was for me when Professor Winslow left too soon the communities in which he so valuably participated.

A sustaining presence at the College of Law, Professor Winslow demonstrated rare harmony with vocation. As a scholar, he produced sturdy, insightful work covering an array of topics. As a lecturer, he blended humor and humanity with a dextrous grasp of subject matter. As a student advocate, he sought always to sharpen the law school experience by encouraging student exploration and championing sound principles of education. He seamlessly met his craft.

Professor Winslow's personal attributes shone with constancy. A being of more complete worth and dignity would be difficult to conjure. He was generous with talent and time, welcoming any inquiry without regard to scope or significance. To crisis, as to casual discussion, he brought impeccable reason, common sense, and good taste. The standard he expected mirrored the standard he demonstrated—excellence for its inherent reward.

Inevitably, gratitude for Professor Winslow one day will supplant regret at his departure. The permanency of his influence assured, time will pass to yield only appreciation for and witting duplication of his merit. A truer gauge of human worth than this surely does not exist.

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\* Robert Wier, a former editor of the *Kentucky Law Journal*, graduated from the University of Kentucky College of Law in 1992 and is currently serving as a judicial clerk for Judge Eugene Siler of the United States Court of Appeals for the Sixth Circuit.