

FLORIDA

BUSINESS

INSIGHT

SEPT.
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The Magazine Of Free Enterprise & Public Policy

PLUS:

HMO Or
Menacing Ogre

Constitution
Revision

Malathion
Misery

Managing Instability

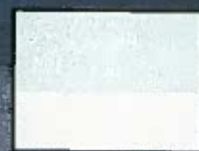
*William Flaherty,
Chairman of the Board*

*Michael Cascone,
President & CEO*

**The Florida Blues Sail
Smoothly Through The
Tempestuous Waters
Of The Health Insurance
Market**

The Voice Of Florida Business

A Publication Of Associated Industries Of Florida Service Corporation



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FLORIDA BUSINESS INSIGHT

The Magazine of Free Enterprise & Public Policy

September/October 1998

Volume 2, Issue 5

ON THE COVER:

A quiet legend of Florida health insurance retires.

COVER PHOTO: PAUL FIGURA

features

COVER STORY

Managing Instability **16**

"The limits on what we do are going to be the limits of what we can think of."

by jacquelyn horkan, editor

HEALTH CARE

Health Maintenance Organization Or Horrible Menacing Ogre **22**

What do HMOs really stand for?

by jacquelyn horkan, editor

Special Report: CONSTITUTION REVISION

Visions Of Revisions **25**

by jacquelyn horkan, editor

A Constitutional Guide To Deciding **27**

by martha edenfield

Examining Amendment No. 5: The Environmental Amendments **28**

by dale patchett

WORKFORCE DEVELOPMENT

Learning To Work **32**

Putting Head, Heart, Health, and Hands to work.

by ami neiberger



page **22**



page **28**



page **40**

EMPLOYEE RELATIONS

Unwelcome Guests **36**

Making the best on an EEOC investigation.

by john-edward alley & amy littrell

ENVIRONMENT

Malathion Misery **40**

Battling medflies and paranoia.

by bobby m'kown

columns

COMMON SENSE **4**

by jon l. shebel, publisher

LINE ITEMS **6**

by david p. yon

THIRD WAVE **8**

by robert d. mcrae

IN BOX **10**

THE HUMAN SIDE **14**

by kathleen "kelly" bergeron

PURSUIT OF HAPPINESS **46**

by jacquelyn horkan, editor

by jon l. shebel, publisher

A Blind Disposition

The election of Andrew Jackson 160 years ago this November ushered in a radical transformation of American politics. It also brought to power a man who would save the country even as he ruined its economy.

Jackson was a self-made man, barely literate with atrocious grammar and spelling. He was a stubborn and bitter man, famous for his volatile temper. As America's first territorial governor of Florida, perceived indignities suffered at the hands of Spain's last territorial governor inspired Jackson to imprison the official on trumped-up charges.

Jackson only stayed on as governor for three months, leaving to pursue higher ambitions. In 1824, he failed in his first bid for president; four years later he succeeded.

Almost immediately upon taking office, Jackson faced the Nullification Crisis, as South Carolina threatened to secede from the union in a huff over high tariffs. The president dodged catastrophe by talking tough while negotiating a tariff reduction.

After that, Jackson's first term dissolved into virtual paralysis, spawned by a simmering conflict over the controversial wife of his secretary of war, John Eaton. Peggy O'Neale Eaton, a boisterous and flirtatious woman, infuriated the upright matrons of the capital city. Jackson's stubborn defense of Mrs. Eaton created a rupture in his own

Cabinet, leading to the creation of the Kitchen Cabinet, an informal group of advisers. It was the precursor of today's proliferating White House cadre of handlers and spinners.

In 1834, Jackson sent Eaton to Florida as its third territorial governor. Eaton found little peace there. The Second Seminole War broke out in late 1835, precipitating an already brewing economic crisis brought on by his mentor's misguided populism.

Like many self-made, rough-hewn men, Jackson hated traditional institutions of wealth and prestige, particularly banks. Jackson's animus toward banks was based partly on irrational prejudice and partly on a level of information deep enough to make him dangerous but not deep enough to make him wise.

The particular target of presidential venom was the Second Bank of the United States. A symbol of big government and a warehouse of power, the Bank represented everything despicable to this believer in the goodness of "regular" people. His ideology blinded Jackson to the Bank's role as a reliable source of capital for the growing nation. The Bank's

benevolent influence helped create the prosperity of Jackson's first term, which sheltered him from his critics and gave him his landslide victory in 1832.

So, Jackson forged ahead with his imbecilic attack on the Bank and the nation lost the one stabilizing force in its banking community.

Jackson's last term ended before the inevitable financial crisis occurred. Martin Van Buren, his vice president and handpicked successor, was left to absorb the full force of public anger when the financial panic of 1837 collapsed into a full-scale depression. Van Buren would lose his bid for reelection in 1840 to the opponents of Jacksonian democracy.

In Florida, the banking collapse would singe Jackson's proteges, who had developed into an anti-Jackson ruling elite that benefited by the foolhardy banking scheme set loose by Old Hickory himself. In 1838, the anti-banking party grabbed control of the convention called to draft a constitution for Florida, the first step toward the territory's admission in the United States. Into that constitution would go a clause prohibiting bankers from holding elected office.

In March of 1845, Florida was admitted to the Union under that Constitution, which would survive for 16 years until Florida seceded from the Union. The state's first Legislature convened on June 23, 1845 and immediately adjourned to mourn the passing of Andrew Jackson 15 days earlier. ■

Jon L. Shebel is president and CEO of Associated Industries of Florida and affiliated companies.

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by david p. yon

What To Do When The IRS Says "Audit"

Why me? It's the first question asked when the Internal Revenue Service selects an individual or businessperson for an IRS audit. Visions of past misdeeds or oversights — the undocumented dinner, the cash not reported — immediately trigger a flood of guilt.

If you are a sole proprietor and file a Schedule C with your Form 1040, you are more likely to be audited than if your business is a partnership or corporation, in which case you file a separate tax return for the business.

The IRS calculates whether the expenses reported on sole proprietors' returns are higher than those reported for similar

businesses and in relation to your revenues. If your expenses are higher, the likelihood that you will be selected for an audit is increased.

Although recent legislation has curtailed some of the powers of the IRS, it is still up to you to prove that you have reported all your income and are entitled to the deductions you claim for expenses.

The tools at the disposal of the IRS auditor are impressive.



They include the power to inspect your checks, bank statements, invoices and bills, and the journals, ledgers, and financial statements that record and summarize your transactions. The auditor can inspect your premises and can also require outsiders to provide records relating to their

relationship with you.

There are two types of IRS audits: the office audit and the field audit. The office audit is conducted in the IRS offices and is generally used for smaller businesses. The field audit is used for larger businesses, is more intensive and takes longer. Where possible, you should avoid having the IRS come to your office.

The first thing the IRS auditor looks for (and also the worst thing

that can be found) is *unreported sales or receipts*. This is particularly prevalent in businesses that have a lot of cash transactions, such as restaurants, cab drivers, bars, etc. If the auditor obtains convincing evidence that you have deliberately not reported all your sales or receipts, you could be found guilty of fraud and could even go to jail. The IRS shows little mercy to taxpayers who understate sales or receipts.

The next area of interest to the auditor is *whether you deduct personal expenses as business expenses*. Separating personal expenses from business expenses is sometimes complicated, especially in a smaller business. A favorite target of the IRS auditor is the claiming of personal auto expenses as business expenses and claiming personal entertainment, meals, and travel costs as business expenses.

The best way to avoid this is to fully document (through logs, etc.) any business use of a personal asset or personal use of a business asset.

Other areas of interest relate to *employment/payroll issues: reporting employees as independent contractors and filing payroll tax returns and making payroll tax deposits*. You can be personally liable if you fail to make payroll tax deposits.

Audit notices are typically sent out about a year after you file your return; however, the IRS has three years after your return is filed (including extensions) to select you for an audit. If you fail to file a return, there is no time limit. Also, the IRS can extend the deadline if it suspects fraud.

David P. Yon is executive vice president and CFO for Associated Industries of Florida.



Wednesday, January 23
4:30 am ... English 1102
11:15 am ... Race Ethnicity
12:30 pm ... Geology lab (week!)
2:30 pm ... Sociology
4:30 pm ... Volunteer at Hospital
7:00 pm ... Dorm Movies!!!

Lakesha Rivers,
Bright Futures Scholarship recipient

Time Management 101.

Lakesha Rivers still schedules free time, but she's usually studying. Studying is nothing new to Lakesha.

Last spring, she was awarded one of the Florida Lottery's new Bright Futures Scholarships. Now, seventy-five percent of her tuition is paid for at Florida International University.

So there's a little extra time for Lakesha's other activities, like volunteering at North Shore Medical Center. There's even time for choir practice and an active dorm life.

The Bright Futures program is sending more

high-achieving Florida high school graduates to college or vocational school than ever before.

Over 42,000 freshmen entered Florida colleges last fall with full or partial scholarship funding.

It all comes from the Florida Lottery, meaning, it all comes from you.

The Lottery funds earmarked for education have reached an unprecedented \$820 million for education in our state. The Bright Futures Scholarship Program will receive \$75 million.

That's why Lakesha Rivers is still spending most of her time studying. She's made it into college.



When you play, we all win.

For more information, visit our website at www.flalottery.com.

by robert d. m-rae

A Meeting In A Box

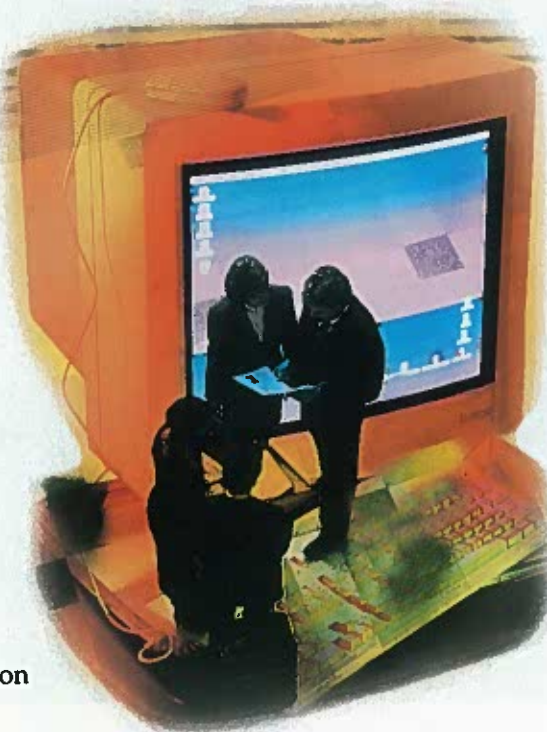
The big guys are doing it, why can't you? Hold your next meeting over the Web, that is. The costs are lower than you might expect and the benefits can be great.

The increasing dominance of the Internet in the daily life of business has made "gee-whiz" technology affordable for the small business owner.

As reported in the June 1, 1998 edition of *Electronic Commerce*, the management of the British Petroleum Co. (BP) held a meeting to discuss the future of the company and the oil industry. Traditionally, attendance would be limited to only a few key participants, but this time that meeting was not held behind closed doors. BP used the Web to increase participation by 47,000 employees.

While most employers do not need to involve 47,000 employees in a meeting, you can use the Web to connect 10 or 12 people together to share information and ideas. Products like White Pine Software's CU-SeeMe and 3Com Bigpicture Video allow up to 12 people to be pictured simultaneously in full color and live audio. Other software manufacturers also offer video-conferencing software. Microsoft's NetMeeting and Intel Internet VideoPhone have similar products.

The desktop conferencing software offers several benefits.



- **Reduced Costs.** Web meetings do not require meeting rooms, catering, or equipment rental.

- **Improved Attendance.** Attendees do not have to travel to a central site, a boost for your travel budget's bottom line.

- **Greater Participation.** Utilizing E-mail or discussion groups allows each voice to be heard.

- **Sharing Documents and Ideas.** Participants can each access the same spreadsheet or use a shared whiteboard to communicate ideas.

What does it take to hold a meeting over the Internet? If you have bought a computer within the last 18 months, you probably have enough computing power already. Now all you need is a digital camera, microphone, and speakers or headphones. Your computer should have a sound card and you will need an Internet connection. The package (camera, microphone, and software) can be set up for between \$250 and \$400 per user. When you consider the potential savings in travel costs and the lost productivity during the hours spent traveling, you may find that desktop video conferencing is the right solution for you.

For larger companies that want to expand desktop video conferencing to include larger numbers of participants, an industry is developing to provide such a service.

Companies such as AudioNet and CNBC/Dow Jones offer a variety of services from simple discussion boards to Web-based audio conferencing. The level of sophistication ranges from static graphics to full-motion video broadcasts.

These companies can provide Web servers to handle Web events without affecting the corporate servers.

Start small. Try video conferencing between two or three desks. Work out the bugs and evaluate the product. You will not get broadcast quality video and audio over a modem but you may find that the technology is just right for sharing information and ideas where overcoming the distance between meeting participants is the challenge.

Robert D. McRae is senior vice president and information services director for Associated Industries of Florida.

U.S. Sugar Is Hard At Work

Florida's natural environment and the ingenuity of its people have always been its principal resources. And because of these assets, the state has a booming population and a prospering economy. As a result, the environment has often suffered due to human progress. Today, Floridians are more aware of the importance of balancing the needs of the environment and the demands of the economy.

In South Florida, we must find ways to maintain a sustainable human habitat, a vigorous and diverse business economy, agriculture vital to the nation, as well as preserve and protect the Everglades. At U.S. Sugar we are committed to this goal for the future.

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compiled by jacquelyn horkan, editor

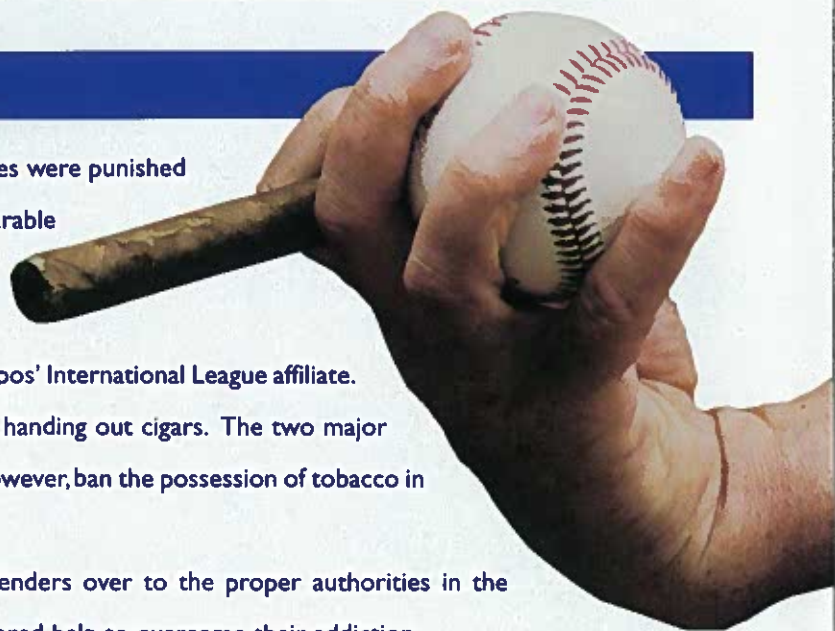
Major League Nonsense

In an all-too-familiar story, in June, two professional athletes were punished for possession of a banned substance. This, however, is a parable with a twist.

The story involves two Montreal Expos who traveled with the team to Ottawa to play an exhibition game against the Expos' International League affiliate. An outfielder for Ottawa celebrated the birth of a child by handing out cigars. The two major leaguers put the cigars in their lockers. Minor league rules, however, ban the possession of tobacco in ballparks and during team travel.

The tobacco police found the cigars and turned the offenders over to the proper authorities in the commissioner's office. Both players were fined \$300 and offered help to overcome their addiction.

Wielding fake science, false compassion, and manufactured outrage, public health zealots have made such absurdities possible. What can they do for an encore?



Subliminal Hypocrisy

One Hollywood director planted subtle anti-gun messages in his latest silver screen offering. In the background of one scene is a poster that reads, "A child a day is killed by a handgun. Don't let them put guns in the wrong hands." Another poster features the National Rifle Association logo with a slash through it. According to the director, "It's best if you sneak it in." The movie? *Lethal Weapon IV*.

For Whose Good?

At the July meeting of the U.S. Conference of Mayors, the nation's city leaders unanimously enacted a resolution condemning the Clinton Administration's environmental justice rule.

As reported in the May/June edition of *Florida Business Insight*, the environmental justice crusade purports to eliminate discrimination in plant-siting decisions. That it also threatens the revitalization of low-income areas, however, is of little concern to the crusaders.

But does industry really target minority communities? Apparently not. Stephen Huebner of Washington University in St. Louis conducted a review of environmental justice studies and found that the demographics of neighborhoods around industrial facilities are created by economic and housing dynamics. In other words, when the plant moves in, the higher income residents move out.

The Environmental Protection Agency won't release its own studies of the link between pollution and skin color, apparently because they support Huebner's conclusions. *Detroit News* reporter David Mastio unearthed two unpublished EPA demographic analyses of Superfund sites. While looking for environmental racism, in both cases the investigators found none. In fact, they discovered that whites were more likely to live near the contaminated sites than were blacks.

In other words, it's time to thank environmental activists for yet another policy that destroys the economic hopes of Americans while transferring local control to Washington, all in an effort to solve a non-existent problem.

PHOTOS: (LEFT) DAVID SACKS; (ABOVE) DWIGHT SUMMERS

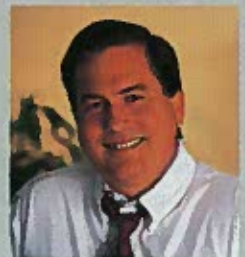


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Is The End In Sight?

Now that the U.S. Supreme Court has ruled that the interest paid on your money actually belongs to you, how much longer before the unjust reign of IOLTA comes to an end?

As reported in the May/June edition of *Florida Business Insight*, IOLTA (which stands for Interest on Lawyers Trust Accounts; Florida alone uses the acronym IOTA) programs take the interest on funds that lawyers hold in escrow for their clients and use it to fund legal services for the poor and other pet projects. In many states, including Florida, participation by lawyers is mandatory; in no state is a client given a choice about donating his money to an IOLTA program.

Since these programs were first created, proponents have argued that without IOLTA there would be no interest paid on these deposits and therefore the owner of the principal enjoys no property right in the interest. On June 15, the U.S. Supreme Court repudiated that logic and dismissed the IOLTA side's contention that the property involved was unworthy of constitutional protection simply because its value lacked sufficient heft.

So what now? The decision gives IOLTA opponents a powerful legal weapon to use in getting programs in their states overturned. Supporters of the programs are quick to point out that the U.S. Supreme Court did not declare IOLTA unconstitutional. Opponents, on the other hand, believe that the decision destroys one of the key underpinnings of IOLTA by making clear that the interest on the principal belongs to the owner of

Putting The Pieces Together

A fragmented rental industry that is growing at a compound annual rate of 26 percent in which no company holds more than a 3 percent market share? Sounds like a job for Wayne Huizenga.

The consolidation whiz is putting his magic touch on NationsRent, a heavy equipment rental company headquartered in Ft. Lauderdale. The company rents equipment such as bulldozers, backhoes, and generators to construction and industrial companies, many of which are cutting costs by outsourcing equipment needs. That trend is driving the move to consolidation.

NationsRent is the fourth equipment-rental company to go public in the last 18 months.

Huizenga is an investor in NationsRent, along with his son Wayne Huizenga, Jr., a cofounder of the company, but neither is involved in daily operations.

James Kirk, the company's CEO, was previously founder and chairman of OHM Corporation, an environmental cleanup firm in which the elder Huizenga also invested.



the principal, not IOLTA. "We think that was the most difficult question and it was answered in our favor," says David Young, a lawyer with the Washington Legal Foundation, which argued the winning side of the decision. The Supreme Court has remanded the case to the federal district court in Texas for a final determination on whether IOLTA represents an unconstitutional taking of private property. In all likelihood, the only question remaining is how long the legal establishment and recipients of funds will fight to keep IOLTA alive. Right now, people on both sides of the debate seem to be waiting for a decision from

the Texas court before acting. But what will really happen to the poor if IOLTA disappears? According to estimates, the country spends a total of \$800 million dollars a year funding legal services for the poor; less than 13 percent of that is IOLTA money. On top of that, the nation's lawyers contribute 24 million hours of pro bono work a year, valued at \$3.3 billion. Whether or not the level of funding of legal services for the poor is adequate or not is properly a subject for legislative debate. Advocates of these programs should be willing to argue the merits of their beliefs in the sunshine rather than hiding behind shady IOLTA programs financed by a sneaky, involuntary seizure of private property.

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by kathleen "kelly" bergeron

Motivation: Alternatives To Money

A certain amount of turnover is the price of doing business, but when there is constant personnel turbulence, other employees resent the disruption to their own routines, which affects morale and productivity overall. When that happens, employers can take some positive actions to enhance the work environment and discourage voluntary, premature departures.

Your employees want to receive what they have earned, whether it's through monetary or personal recognition, so start by examining your compensation and benefits structure. Make sure your salary and benefit plans (health, dental, life insurance, retirement, disability, vacation and sick days, etc.) are competitive with the marketplace for your industry. Participate in a statewide survey and administer frequent employee needs/benefits surveys. Quiz your employees on how you're doing as an employer in meeting their requirements and give them feedback on the survey results.

People want to be treated fairly. Fairness is not equal, but rather equitable. Employees will do what they are rewarded for doing. In other words, compensation increases and bonuses should be based on merit; they should not be a cost of living allowance.



Monetary rewards and promotions should go to the employees who have earned them. But monetary incentives are self-explanatory. Non-monetary incentives are less obvious, but equally important.

Create a comfortable workplace as much as possible. Design functional, sensible, ergonomic work stations and offices with aesthetic appeal. Pay attention to equipment and machinery (phones, fax machines, computers, copiers, elevators, vending machines, etc.) and ensure that all are maintained and kept in good working order. You might want to establish a business casual dress code for the summer months and only require formal business attire for special meetings.

Publish a quarterly newsletter that features input from each of your departments, along with a local events calendar, book or restaurant or movie reviews, health tips, and

other articles provided by the employees. Have a raffle once a quarter where employees have the opportunity to win a dinner at a local restaurant or tickets to a movie, play, or sporting event. Send company birthday cards to employees. Budget for a pizza lunch for employees once in a while at the conclusion of a particular project. Sponsor a cookie recipe contest, let the employees be the judges, and provide a small prize to the winner.

Develop a list of at least 20 ways to recognize employees for their performance and contributions. Some ideas to get you started: a thank-you card or praise-a-gram, certificates of recognition, employee of the month, salesperson of the quarter.

But remember. If you develop a non-monetary (or monetary) reward system, you must ensure that it adheres to the following rules:

- *Simplicity.* The rules must be clear, brief, and understandable.
- *Specificity.* Employees must know exactly what they are expected to do.
- *Attainability.* Every employee should have a reasonable chance to win.
- *Measurability.* Winners should be chosen by objective, not subjective, criteria.

Go ahead and be creative; there are many ideas for incentive programs that will enhance the work environment and encourage productivity. Talk to your employees and find out how they expect to be treated. It goes beyond performance rewards. It is creating an atmosphere where all employees feel that their contributions are recognized and appreciated. ■

Kathleen "Kelly" Bergeron is executive vice president and chief of staff of Associated Industries of Florida and affiliated companies.

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Managing



PHOTO: PAUL FIGURA

Michael Cascone (right) succeeds William Flaherty as chief executive officer of Blue Cross and Blue Shield of Florida.

Instability

The farewell parties for William Flaherty mostly took place under darkening skies, heavy not with storm clouds but with the smoke of raging forest fires, souvenirs of the summer inferno.

When Flaherty stepped down as chief executive officer of Blue Cross and Blue Shield of Florida on June 30, he ended a 37-year tenure in the health insurance business; 19 of those years were spent with the Florida Blues.

It is fitting that Flaherty's retirement began as firefighters struggled against the blazes all about the company's Jacksonville headquarters because, in a way, Flaherty's career bears a metaphorical resemblance to the work of the firefighters. It was spent adjusting, maneuvering, and battling in unruly and tempestuous circumstances.

by Jacquelyn Horkan, Editor

“There are so many competitors out there trying to innovate and the market has not yet voted.”

As an executive, Flaherty has four times wrenched a company back from the brink, while participating in the total overhaul of the health insurance market. In the final act of leadership, he is leaving Blue Cross and Blue Shield of Florida, posting profits for the ninth straight year, in the capable hands of a well-prepared successor, Michael Cascone, a 30-year veteran of the company.

So it is fitting as well that, on the day of one of the last good-bye parties, rain from the night before had cleared away the pall of smoke, leaving behind the air-blue skies of a Florida summer.

TURNAROUND

In 1961, Flaherty, a Michigan native, started working at Blue Cross and Blue Shield of Michigan. On the same day, the local newspaper ran a front-page story on the company's proposed 20-percent rate hike.

“The assumption in the early sixties was that health care inflation was reasonable and good,” Flaherty recalls. Higher prices meant better services for patients and higher wages for health care workers.

The inflationary euphoria would not last. By the early 1970s, health insurance companies across the nation were struggling with skyrocketing costs. Flaherty left Michigan to take over the Delaware Blues in 1975. In 1979, he moved on to Florida, each transition bringing with it the task of turning around a struggling company.

In Florida, the situation was particularly dire with the company on the verge of insolvency. At that time, Blue Cross and Blue Shield was organized as two separate companies, the first a cooperative with hospitals, the second with doctors. One of Flaherty's first steps was to sever the formal bond between the two non-profit corporations and the medical community.

“We referred to it as a separation but not a divorce,” says Flaherty.

The next step in the reinvention was to merge the two Blues into one tax-paying mutual insurance company.

With a return to some form of stability, Flaherty and his management team next turned their attention

to the competitive issue of the day: creating a health maintenance organization. Flaherty wanted to structure the launch of the HMO in a manner that would infuse it with an entrepreneurial spirit, a challenge for any large corporation.

“We made the decision that it had to have a very local focus on a community by community basis,” explains Flaherty. “And that meant starting a series of small companies and trying to, as we used to say, not let the elephant kill the mouse.”

As it turned out, the biggest threat to the mouse was not the elephant but the youth of the rodent itself.

“There was no experienced [HMO] industry management you could go out and hire because it was a new business activity,” says Flaherty.

Part of the lack of experience was an imperfect knowledge of how much it would cost to run an HMO. By 1987, it was obvious that the state's HMOs had underestimated their costs. Blue Cross and Blue Shield's HMO, Health Options, was failing so badly that the entire company posted \$118 million in losses in 1987 and 1988.

Some blamed Health Options's brush with death on the company's tardy entry into the HMO market, but Flaherty says the slow pace was deliberate. It paid off. As Michael Cascone remembers, when they began developing an HMO in Jacksonville, the city had none. “Six months later, we were operational,” he says. “We were number six.”

“Most of them went under,” Flaherty adds.

In 1988, Flaherty reinvigorated Health Options by hiking prices and implementing cost controls. Turnaround time came in 1989 when the company recorded a net income of \$35.4 million on revenues of \$1.3 billion. Blue Cross and Blue Shield has been profitable ever since.

BEYOND THE LIMITS

The health insurance industry remains tumultuous. The threat of government intervention is one source of the turmoil. Justified or not, politicians are playing on public fears over the adequacy of health care to defend a massive regulatory incursion into the business of HMOs (see related story on page 22).

Government intervention is particularly threatening at this point in time because, while HMOs have proven successful at holding down medical costs, the inflationary beast is not yet vanquished. Many HMOs, including Health Options, lost money last year because health care costs, particularly pharmaceuticals, are growing faster than expected. Bureaucratic regulation would also stifle the remarkable dynamism in the industry.

"There are so many competitors out there trying to innovate and the market has not yet voted," says Flaherty. "And what they vote for today, they may reject tomorrow."

An example of that creativity can be found in Minneapolis where a group of Fortune 500 companies, having already moved from traditional fee-for-service plans to the HMO model, are now making their way back to a new form of fee for service. This time, however, using the data and experience gained with HMOs, the Minnesota group is contracting with a network of trusted physician group practices. Instead of negotiating on price, the employers are using quality and productivity standards as the basis of expectation.

Whether Florida can eventually adopt a similar approach remains to be seen because of the differences between the two markets. Minneapolis is a city of large companies and large group practices. It has already been through the disciplining experience of HMO pricing. Florida does not share those characteristics.

Florida's market does seem prepared to embark on a spree of consolidation in the managed care industry. Cascone, believes that in the next couple of years Blue Cross and Blue Shield will have no choice but to join in the merger and acquisition fever. The company has been investigating possible candidates but hasn't found the right strategic fit. Until it does, Cascone will continue to grow the business internally, rather than entering into a partnership where, as Flaherty puts it, "We're simply two wheels on a four-wheel buggy."

Cascone is also seeking to acquire other capabilities that will help the company hold down costs or increase revenues. One project with the potential to do both is the insurer's Virtual Office.

Virtual Office will connect the computers of participating physicians with those of Blue Cross and Blue Shield. The system will not only speed up the flow of claims data; it will provide a valuable data base of patient information, including records of referrals to specialists, what services are covered by the patient's policy, and what deductibles or co-payments are due. Physicians will also have access to the latest information on



The Other Side

For Kerry L. Herndon, health insurance, politics, and bromeliads are a natural mix.

Kerry's Bromeliad Nursery is the nation's largest orchid grower, shipping flowering plants from greenhouses in Homestead, Fla., to clients throughout the country and overseas. With 230 employees, the availability of quality health insurance at an affordable rate is a priority for Herndon. He's found the product he needs through Health Options, the HMO of Blue Cross and Blue Shield of Florida.

Making sure that product stays available inspired him — and 12,000 other Blue Cross customers — to participate in the company's grassroots public affairs campaign.

Blue Cross implements its grassroots program in response to attacks on the managed care system. Sometimes, subscribers are called and asked to contact their elected officials, urging them to support managed care. Customers are provided with information on the issue, but they write their own letters in their own words.

"Blue Cross advocating solutions is not nearly as effective or as influential as our customers advocating points of view," says Bruce Davidson, the company's senior vice president for south Florida.

On average, more than 30 percent of those contacted agree to take action.

In some cases, Blue Cross will fly subscribers to Tallahassee where they give lawmakers firsthand accounts of managed care's success stories.

The company also runs television ads and is getting ready to launch a public policy Web site. This year, the public relations staff began circulating "Success Stories of the Week," to the state's newspapers and television stations.

All of this is done in an effort to counteract the propagation of anti-managed care stories, to make sure the other side gets heard. It's a weapon in the war against the kind of government intervention that stifles market dynamics and adds waste to the system.

"As far as I'm concerned," says Kerry Herndon, "managed care saved health insurance for working people." ■

treatments for specific diseases. The program is still in the pilot project stages, with selected physicians participating in field trials. When fully operational, Virtual Office promises to save administrative expenses for providers, savings that can be passed on to its customers.

"If we can improve the efficiency and effectiveness of the provider's office and our office together," says Cascone, "there's a huge benefit and a value there to our customers."

Cascone also hopes one day to market Virtual Office to other providers, making a profit center out of something that was originally designed as a cost-control strategy.

"The limits on what we do are going to be the limits of what we can think of," says Flaherty.

Now though, Flaherty no longer bears the responsibility for testing those limits. He remains with Blue Cross and Blue Shield as chairman of the board, while Cascone serves as president and CEO. The succession was a smooth one that actually began 10 years ago, in annual reviews of the strengths and weaknesses of the senior executives.

Cascone's management talent was apparent to Flaherty from the day he joined the Florida Blues in 1979. Then, Cascone was running the company's Medicare Part B section. "It was clearly the highest performing unit in the company," recalls Flaherty.

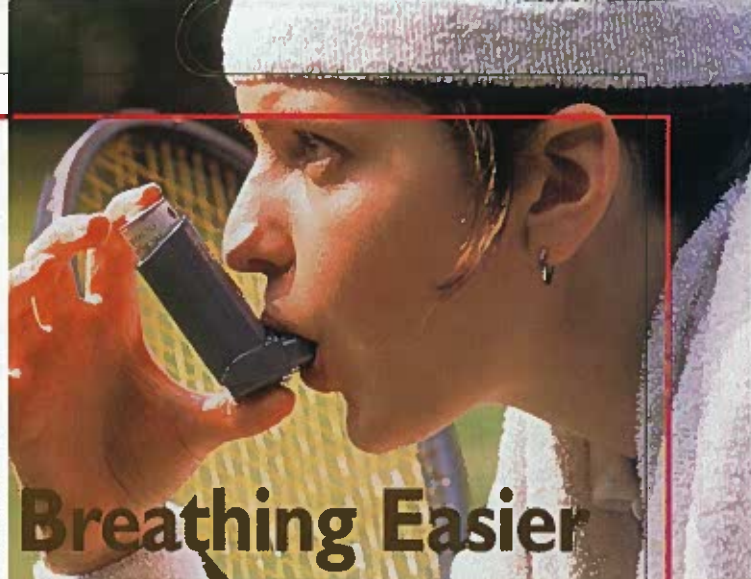
Cascone was unofficially tapped as Flaherty's successor in 1995, when Flaherty was named chairman and passed on the title of president to Cascone.

Now that the round of parties is over and the succession completed, Flaherty says he plans to spend time traveling with his wife and visiting the grandchildren in Denver, Bradenton, Fla., and Madison, Wisc.

And he will continue to play a role, albeit smaller, in shaping the future of health insurance, a task that holds more than economic significance for him.

"If you can do it better, cheaper, smarter," he says, "that means there's more resources out there for the population to get more services or to get the same services at a different cost, which lets them get something else they want as much or more."

Which is why one man braved the upheavals of his chosen field over a span of four decades. Call it the morality of the marketplace. ■



Breathing Easier

Asthma is a potentially life-threatening disease that afflicts 14.6 million Americans. Fortunately, the risk is one that can be minimized through an aggressive plan of treatment and patient cooperation. Making sure that Blue Cross and Blue Shield HMO patients get that kind of care is the job of the staff of Dr. Larry Tremonti, vice president for quality and care delivery.

Tremonti is responsible for the development and implementation of care management programs for sufferers of such chronic conditions as congestive heart failure and diabetes, as well as asthma. These programs focus on identifying patients, assessing the severity of their condition, developing treatment plans based on the best science available, and educating patients and doctors about what they can do to lessen the impact of the disease on the patient's quality of life.

"We now have the tools in managed care," Tremonti says, "where we've got all the information together in one place to identify those individuals who would benefit by this more aggressive therapy."

Those tools allow health care professionals to attack illness aggressively and comprehensively, an advantage that didn't exist in what Tremonti calls "the fragmented traditional system."

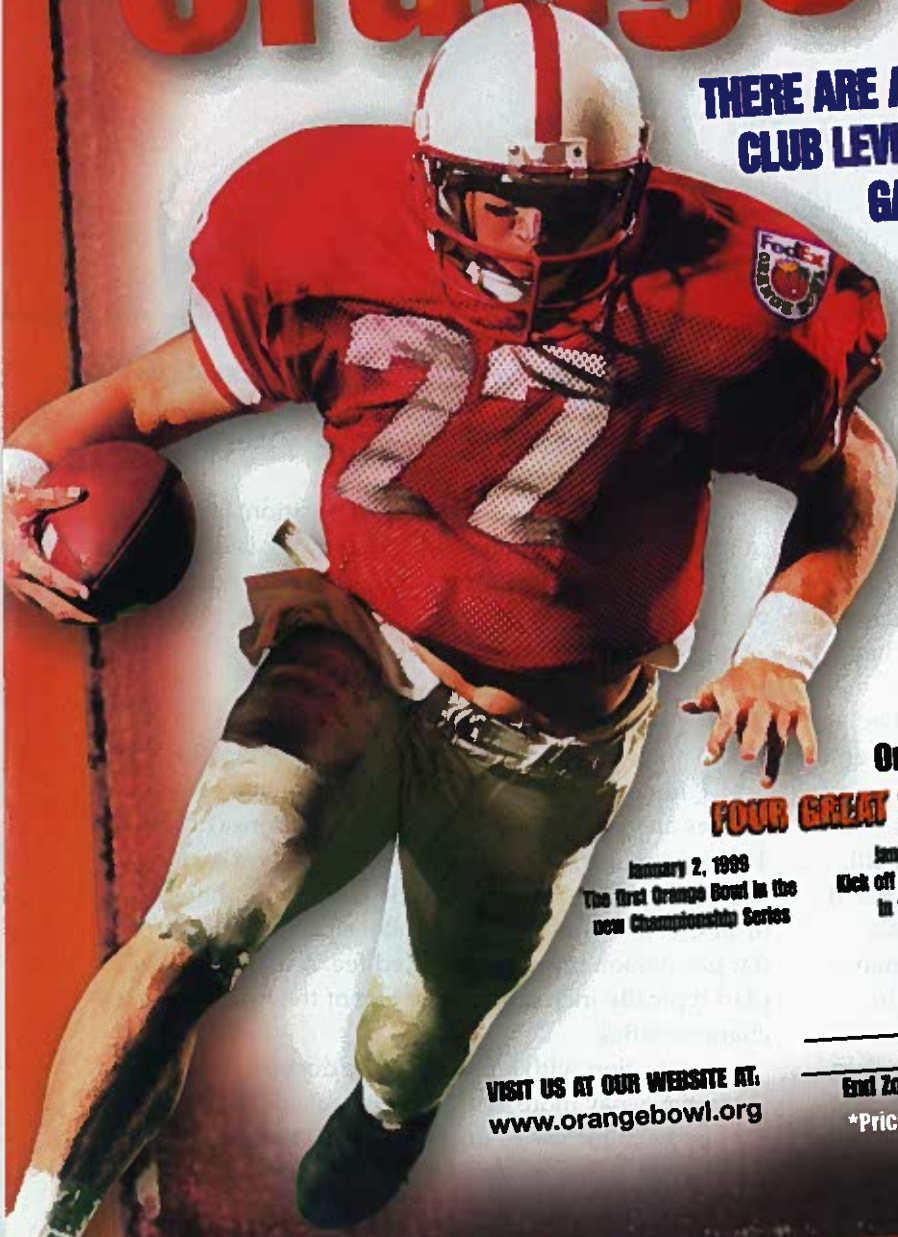
Blue Cross and Blue Shield identifies potential candidates for its Asthma Care Plus program by reviewing computer runs of diagnosis codes, emergency room visits, and drug prescriptions. A candidate is contacted by a case manager who helps coordinate an evidence-based regime of treatment with the patient's primary physician. The case manager also makes sure the patient understands his own role in managing his illness.

According to a recent survey, patients in the asthma program rate their satisfaction at 4.87 on a scale of 1 to 5. They also credit the program with increasing their quality of life by third. ■



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What Do Really St For?

In a classic case of life imitating art, Democratic congressmen are reportedly trying to enlist the help of actress Helen Hunt in their crusade against managed care. Hunt's lobbying credentials spring from her Oscar-winning performance in the film *As Good as it Gets*, in which she plays a single mom with an asthmatic son.

According to managed care-bashers, audiences across America sprang to their feet and cheered loudly when the actress let loose a stream of expletives over her health maintenance organization's refusal to give her son the care he needed. What Democratic congressmen and Hollywood screenwriters conveniently forget is that HMOs are revolutionizing the treatment of chronic diseases, including asthma (see related story on page 20).

A chronic ignorance of the facts feeds the resonance of the attack on managed care this election season. As a writer for *Time* magazine wrote, "[Managed care] may be the only issue compelling enough to get voters to look up from their barbecue grills."

Since its genesis last century in the form of what were then called "prepaid group practice plans," the concept of managed care has been anathema to organized medicine, which abhors any limits on practitioners. The other anti-managed care camp is peopled mostly by those who love the idea of restrictions, but only if they

are exercised by public servants in a government-run health care system. Recently, plaintiffs' lawyers have joined forces with both camps, drawn by the scent of hefty contingency fees.

According to all of those in the opposition, managed care, as practiced by insurance companies, is endangering the safety and freedom of Americans by putting profits ahead of health.

So just what is this ogre we're fighting?

PROFITING FROM MANAGED CARE

Managed care plans come in many forms, the most familiar of which are health maintenance organizations and preferred provider organizations (PPOs). These organizations are comprised of networks of doctors and other providers who contract with the HMO or PPO to provide care to the plan's participants for a flat per-person rate or negotiated fee. A managed care plan typically includes at least one of the four following characteristics:

- registration with a primary care doctor
- patients pay more to use doctors outside the network
- approval for use of doctors outside the network
- referral from the plan required for visits to specialists

In the eyes of some, these conditions mean that managed care amounts to withheld care and, in a certain



HMOs and

by jacquelyn horkan, editor

insurance plans was about 600 days per 1,000 participants. Precursors of today's HMOs were routinely registering 350 days per 1,000 participants, and with no deterioration in the health of the HMO patients.

One oft-repeated criticism of managed care is the allegation that it involves the rationing of care. This argument ignores the economic fact that health care will be rationed no matter what, simply because we live with limited resources and health care is not the only thing we need or want to purchase. Paradoxically managed care, by improving the value of the product while decreasing costs, has made it possible to stretch those limited resources further.

On the other hand, every health care regulation and mandate is a negative form of rationing because it raises the cost of insurance, forcing some consumers either to purchase coverage they don't want or to do without because the cover-

age has gotten more expensive than it is worth to them.

A CLEAN BILL OF HEALTH

Earlier this year, the Kaiser Family Foundation published a study of media coverage of managed care revealing that the press was, overall, neutral on the subject. When reporters took sides on the topic, however, they were overwhelmingly anti-managed care. The bias grew as the decade of the 1990s grew older.

Most anti-managed care coverage begins with a horror story about someone who suffered or died because an HMO bureaucrat refused to authorize necessary care. Putting aside the issue of whether these anecdotes present an accurate portrayal of the facts, are these tragedies typical or atypical of the care provided under managed care? Scientific reviews of medical outcomes indicate that they are the exception, not the rule.

The *Journal of the American Medical Association* published a review of 16 research studies on managed care between 1980 and 1994. The studies, chosen only from those either conducted by the federal government or published in peer-reviewed articles, compared the quality of care provided to similar populations through HMOs and in other settings. In 14 out of the 17 indicators of care analyzed, HMO care scored as well or better than the care provided outside of HMOs.

sense, that's an accurate analysis because, sometimes, withholding care is in the best interests of the patient.

For example, from 1950 to 1955, 200 to 300 children under the age of 15 died each year as a result of tonsillectomies, most of which were performed for no compelling clinical reason. As early as the 1930s medical researchers had established that tonsillectomies were rarely necessary. Physicians, however, continued to perform the procedure in face of evidence against it and they were never challenged. Patients went to the doctor, the doctor prescribed a course of treatment, and the insurance company paid the bills. No one asked any questions. There was no mechanism for systematic measurement of care outcomes. As a result, we had a product that was both unaffordable and unaccountable.

By contrast, managed care provides the ability to conduct a coordinated review of what practice patterns improve health outcomes, and to transmit knowledge of those practice patterns. It replaces the old rule of health care — more is better — with a new adage — better is better.

One example of the power of HMOs to reduce costs by improving quality appeared early on. A common measurement of a health plan's efficiency is the number of days spent in the hospital for each 1,000 participants. Twenty years ago, the standard for traditional health

BY CONTRAST, MANAGED CARE replaces the old rule of health care — more is better — with a new adage — better is better.

These results have been duplicated again and again. A 1994 study of California residents who underwent appendectomies found that indemnity patients were 20 percent more likely to suffer a ruptured appendix than were HMO patients. The authors believe that ease of access enjoyed by HMO patients made the difference because a rupture typically occurs within 24 hours of the onset of acute appendicitis.

A 1996 study of patients with rheumatoid arthritis revealed no significant differences in the quantity or quality of care for patients covered by HMOs and fee-for-service health plans. According to a 1993 study published in the *New England Journal of Medicine*, HMO patients with clogged arteries needed less surgery to enjoy outcomes similar to patients in fee-for-service plans.

These results are in direct contradiction to a study often cited by critics of managed care that found elderly and poor chronically ill adults in HMOs had worse outcomes than did those in fee-for-service plans. That study, however, relied on the subjective opinions of the patients while omitting other significant indicators of health. What's more, the average reported difference between HMOs and fee-for-service was a statistically insignificant two points on a scale of 0-100.

Another study, published in the Fall 1997 edition of *Inquiry*, contradicts the popular impression that HMO patients are frequently denied care. The article reported that of 2,000 physicians caring for patients in managed care plans, the denial rate for all types of care was at most 3 percent. Surgical procedures and specialist

referrals were only denied 2.6 percent of the time, while requests for hospital admissions were rejected in 1 percent of the cases.

Other reviews found that managed care outperformed indemnity in screening rates for breast and cervical cancers in patients with 12 years or less of formal education. A 1992 study found that low-income prostate cancer patients in HMOs live longer than fee-for-service patients.

A WORK IN PROGRESS

For all the successes of the managed care system, it is still a work in progress. With so much money at stake, the health insurance market inevitably draws some who are motivated by short-term profits. How to control or eliminate these predators is a corollary to the question that must be answered but usually isn't even asked: What do we want our health insurance system to look like and how do we get there? Or, to put it another way, who should control the decision making?

Most of the solutions coming from the politicians demand immediate action to shift decision-making power either to government bureaucrats through regulation or to the legal system through the trial lawyers.

There is a third option, however. That is to let the free market continue to work its magic on the health insurance industry.

The transition to managed care has, indeed, been chaotic; chaos is a sign of change. Providers, patients, pharmacists, hospitals, and insurers have all been forced into new relationships. Some paperwork and pre-approval procedures are absurd. With time and experience, however, the silly and wasteful processes are being discarded. Insurers that treat patients poorly, or that underprice their products, lose patients and will not survive.

At the same time, consumers are taking charge of their health care and insurance. Groups such as the National Committee for Quality Assurance are springing up to help consumers evaluate their choices. Insurers and consumers of health care are exploring new relationships with providers to pursue higher quality of care at lower costs.

Speaking before Congress on proposed managed care legislation, James C. Miller of Washington-based Citizens for a Sound Economy best explained why we should trust the marketplace over bureaucratic management: "This is not to say that abuses do not occur in free markets. It is simply to suggest that consumer choice corrects abuses faster than does government regulation." ■

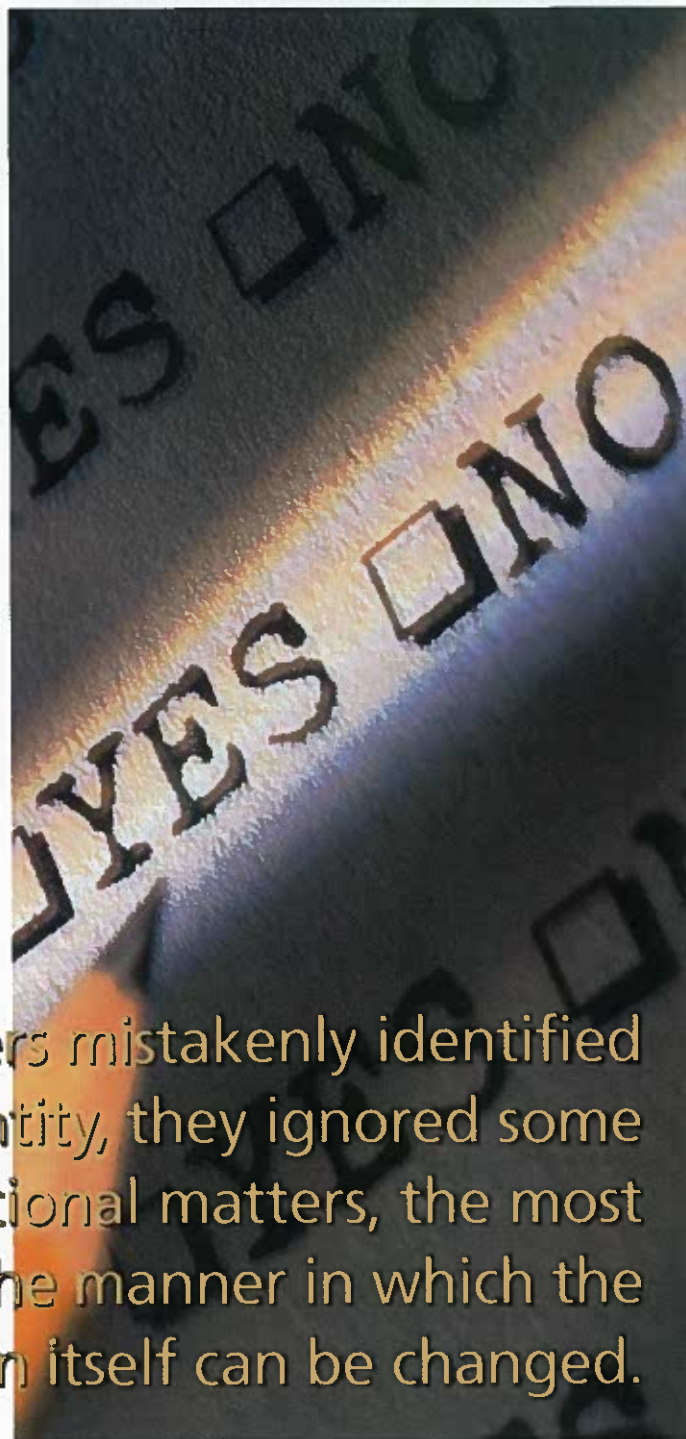
Visions Of REVISIONS

According to The Collins Center for Public Policy, the idea for Florida's every-20-years exercise in constitution writing sprang from the fertile pen of Thomas Jefferson.

In an 1816 letter to one Samuel Kercheval, our third president wrote, "[Each generation] has then ... a right to choose for itself the form of government it believes most promotive of its own happiness. ... It is for the peace and good of mankind that a solemn opportunity of doing this every nineteen or twenty years, should be provided by the constitution."

For all his brilliance, Jefferson's political philosophy could occasionally veer into the chaotic. After all, this is the man who, in a burst of passion over the French Revolution, wrote, "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure."

While the commissioners mistakenly identified productivity with quantity, they ignored some pressing constitutional matters, the most important of which is the manner in which the constitution itself can be changed.



Nonetheless, Florida has received as a legacy from this Founding Father yet another method for change in what already seems to some a hyperactive constitutional process. During the last half of 1997 and the first four months of 1998, the 37-member Constitution Revision Commission played host to a parade of Florida residents, each with a different notion of an essential provision missing from the state's fundamental political document.

The commission process began with reminders of the lack of success met by its predecessor in 1978, a group that put 87 changes in eight groups of amendments on the ballot, none of which met with the approval of the electorate. Despite promises to avoid repeating that mistake, the 1998 ballot will include 33 revisions grouped together into nine amendments.

The commission's work product will appear on the ballot as Amendments 5 through 13 (the first four were placed on the ballot by the Legislature). Each category of amendments must be voted on as a group, forcing voters either to accept the bad with the good or to repudiate the entire package.

While the commissioners mistakenly identified productivity with quantity, they ignored some pressing constitutional matters, the most important of which is the manner in which the constitution itself can be changed. Florida's document allows changes to the Constitution by a simple majority vote, rather than a super majority. There are two good reasons for making difficult the process of amending constitutions. First the sanctity of the document itself needs a shield against the shifting winds of public opinion. Second, erecting a high hurdle for approval of amendments increases the chance that only the best ideas will become enshrined in a constitution.

Increasing that hurdle to two-thirds of the voters is an idea widely discussed over the last several years. The commission itself required a three-fifths vote of the full body before placing a proposal on the ballot. In the end, however, the group declined to take action on what might have been a controversial matter, apparently agreeing with one of their colleagues who told a reporter, "We really have to look at our long-term goal,

which is to get something accepted by the voters."

This view of constitution revision as popularity contest led to the placement on the ballot of two amendments that seem innocuous, but may prove exceedingly mischievous.

The first of these is the Environmental Bill of Rights contained in Amendment No. 5 (see page 28 for an analysis of the environmental amendments). The second is in Amendment No. 6, which requires the Legislature to provide a public education system that is "efficient, safe, secure, and high quality," and "that allows students to attain a high-quality education."

Promoters of this language describe it as aspirational. A common argument in support of Revision No. 6 is that it restores the state's commitment to education to the level of the 1868 Constitution. The key phrase in the 1868 language, however, was "without distinction or preference." Remember, this was the document written to replace a political regime under which slavery was legal and education of slaves was illegal.

At best the public education amendment is meaningless. After all, try to find a politician who is against an "efficient, safe, secure, and high quality" system of education. If this amendment has any affect it will be as a source of fuel for lawsuits. In the worst case scenario, Florida could find its schools under the control of the judiciary.

The peril that comes with amending constitutions with nebulous "aspirational" language is that doing so calls down upon us the law of unintended consequences. Vague, imprecise language usually ends up before the Supreme Court for interpretation. Justices have a tendency to read into a constitutional amendment a desire on the part of the citizenry for a change of policy. How the justices decide to make that desire manifest often comes as a surprise to the desirers.

Casting a ballot on election day might be described as the paperwork of democracy. Just one piece of advice before you get started on this year's paperwork. In the words of an old, wise man, "When it comes to constitutional amendments, always vote no unless you're absolutely sure you know what you're doing."

by martha edenfield

CA Constitutional Guide To Deciding

This November, the voters of Florida will confront challenging decisions over whether and how to amend the document that protects Floridians' basic and fundamental rights. So how should they go about making those decisions?

Many proposed amendments seem to offer appealing — even much-needed — solutions, but the merit of the proposal is only one consideration when it comes to amending a constitution. The question must also be asked: Does the amendment really belong in the constitution? After all, in the hierarchy of laws, constitutions serve a unique function, different from statutes and rules. A constitution should serve the following four basic purposes:

- outlining the framework for government
 - assigning and limiting powers
 - assigning the manner in which government carries out its functions
 - establishing safeguards to protect personal and property rights
- Chesterfield Smith, chairman of the constitution revision commis-

sion that drafted Florida's 1968 Constitution, identified seven foundations for a state constitution. These are as relevant today in assessing constitutional amendments as they were in the writing of the current Constitution 30 years ago. Smith defines the constitutional foundations as:

- consistency with the U.S. Constitution
- inclusion of a bill of rights
- provision for a sound balance of powers among the various branches of government
- clear expression of and provision for ample authority of each branch to perform its functions
- language that is clear, simple, and intelligible to the average citizen
- encompassing fundamental law of the state only, with more detailed measures left to statutory law
- granting of powers to citizens

to amend the constitution without interference from the Legislature or governor.

Each revision should fit within at least one of those seven foundations without entering into conflict with any of the others.

Each and every voter will have to assess the merits of each of the proposed constitutional amendments and vote as conscience and good judgment dictate. However, due to the subject matter groupings, analysis and decision-making on the issues may be difficult and confusing.

Each amendment should be analyzed as to whether or not the amendment belongs in the Constitution, based on whether it adheres to the purpose of the state constitution and on the principles for the foundation of a state constitution.

Ultimately, each voter has to determine whether or not each individual amendment, regardless of its grouping, belongs in the basic document that protects the rights of Florida's citizens. Choose carefully and thoughtfully. ■

Martha Edenfield is a partner in the law firm of Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., and an environmental consultant to Associated Industries of Florida.

Over the course of a year, the 1998 Constitution Revision Commission (CRC) reviewed dozens of proposals that concentrated on the environment and natural resources. Among the ideas put forth was a radical environmental bill of rights that guaranteed Floridians the "right to live in an environment free of toxic pollutants and manmade chemicals." Another proposal would have made the emission of particulates or noxious gases into the atmosphere a felony. Another would have extended the reach of the Everglades polluter pays amendment to the entire state so that "those who cause pollution are primarily responsible for paying the cost of abatement of that pollution."

Eventually, only one of these, a watered down version of the environmental bill of rights, passed CRC muster. It is joined by four other provisions to form the CRC's package of environmental amendments, which will appear as Amendment No. 5 on the ballot.

Despite its presentation as one revision, Amendment No. 5 actually constitutes five distinct amendments that

Examining Amendment

No. 5 The Environmental Amendments

cover four subject areas located in five separate articles of the Constitution. Voters will only be allowed to approve either all or none.

If adopted, the amendments will modify the future of Florida because they create new legal rights and alter the mechanism by which government carries out its functions. Thus, this package should be assessed on the merits of each individual proposal. One undesirable feature may be reason enough to vote against the entire package. As far as business and economic interests are concerned, Amendment No. 5 contains more than one of those disqualifying propositions.

THE GIST OF AMENDMENT NO. 5

When citizens enter the voting booth on Nov. 3, they will be asked to make a decision on the five separate amendments comprising Amendment No. 5 based on the following language that will appear on the ballot:

Conservation of natural resources and creation of Fish and Wildlife Conservation Commission.

Requires adequate provision for conservation of natural resources; creates Fish and Wildlife Conservation Commission, granting it the regulatory and executive powers of the Game and Fresh Water Fish Commission and the Marine Fisheries Commission; removes legislature's exclusive authority to regulate marine life and grants certain powers to new commission; authorizes bonds to continue financing acquisition and improvement of lands for conservation, outdoor recreation, and related purposes; restricts disposition of state lands designated for conservation purposes.

That's 87 words to summarize 800 words worth of constitutional changes that hold the potential to disrupt, not just the state's economy, but also the traditional relationship between the governed and their government.

CONSERVATION OF NATURAL RESOURCES

Article II, Section 7 of the Florida Constitution, entitled "Natural Resources and Scenic Beauty," provides that, "It shall be the policy of the State to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise."

The first of the CRC's proposals in Amendment No. 5, commonly referred to as the "Environmental Bill of Rights," adds a requirement that "adequate provision shall be made ... for the conservation and protection of natural resources."

While less expansive than the original bill of rights

proposal, this environmental policy statement still comes loaded with potential for mischief. It leaves undefined what constitutes "adequate provision" for the conservation and protection of natural resources. The judiciary, through litigation on a case-by-case basis, will ultimately define the extent of the adequacy of protection.

Florida's Constitution already offers a broad framework for conservation and protection of natural resources. What's more, our state now has on the books some of the most stringent environmental laws in this nation. This amendment does not appear necessary and adds very little to strengthen or clarify the already strong environmental directives in the Constitution. At best, it seems that it will spawn more legal challenges by environmentalists to the state's laws and regulations.

CREATION OF THE FISH AND WILDLIFE CONSERVATION COMMISSION

The second provision of Amendment No. 5 creates the Fish and Wildlife Conservation Commission by merging the Game and Fresh Water Fish Commission and the Marine Fisheries Commission. This proposed merger is the most controversial of the environmental revisions because it creates a new, powerful constitutional agency.

The present Game and Fresh Water Fish Commission is the only state agency created in the Constitution. It consists of five members who are appointed by the governor and subject to confirmation by the Senate. The Constitution provides that the commission shall exercise regulatory and executive powers with respect to matters concerning wildlife and freshwater aquatic life. The Constitution restricts the Legislature's power over the agency to the enactment of laws in aid of the commission. It also grants the Legislature budget authority over the commission. No elected official, however, has oversight of the commission.

The existing Marine Fisheries Commission, on the other hand, was born by the more traditional means of a statute enacted by the Legislature. It is housed within the Department of Environmental Protection (DEP) and is charged with the responsibility of exercising rulemaking authority over all marine life, except for endangered species.

Actions of the Marine Fisheries Commission are subject to review and approval by the governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund. The seven members of the commission are appointed by the governor and confirmed by the Senate. The commission is specifically

required to conduct itself pursuant to the Administrative Procedure Act.

In recent years, the Game and Fresh Water Fish Commission has been embroiled in controversy over the status it holds in the framework of Florida's government. As a constitutionally created agency, neither the executive nor the legislative branch may oversee the commission. The commission was originally created in the Constitution for the purpose of avoiding disputes regarding hunting season days and permit fees. Over the last decade or so, the commission has expanded its interpretation of the meaning of its creation in the Constitution and now cloaks itself in a garment of "constitutional status," refusing to accept the regime of laws that govern and control other executive branch agencies.

The commission most notably has not allowed provisions of the Administrative Procedure Act (APA) to be applied to many of its functions. APA is the law that controls the process by which bureaucrats develop the regulations that implement state law. While some criticize APA as the red-tape machine of government, it also protects citizens against agencies that try to overstep the boundaries of their power and authority.

By exempting itself from APA, the commission has shielded itself and its actions from public scrutiny and challenge. In general, any shield from public participation and public input is not in the public's best interest. No agency should be beyond challenge by the public, protected from legislative oversight, and beyond the reach of the governor.

This proposed constitutional amendment combines the jurisdiction of the Game and Fresh Water Fish Commission and the Marine Fisheries Commission and requires the commission to ensure due process in its exercise of powers. The new seven-member Fish and Wildlife Conservation Commission would be constitutionally granted executive and regulatory powers over matters pertaining to wildlife, freshwater aquatic life, and marine life. The Legislature would retain authority over some marine life, specifically endangered marine species. Authority to regulate air and water pollution would remain with DEP or whomever the Legislature so designates. The current Marine Fisheries Commission and the Game and Fresh Water Fish Commission would cease to exist.

There clearly is merit to having one centralized agency to regulate both animal and marine life. As a constitutional agency, the commission would be insulated against many political influences. However, the creation of a new constitutional agency will likely continue the controversy over whether the checks and balances

embodied in APA are applicable to a constitutional agency with broad executive and regulatory powers.

Chesterfield Smith's seven foundations for a constitution (see page 27) are helpful in analyzing the merits of this proposal.

- Does this proposal contribute constitutionally to the sound balance of powers among the various branches of government?
- Does it provide a clear expression of and provision for ample authority of each branch to perform its functions?

The constitutional agency, as defined by the Game and Fresh Water Fish Commission, effectively operates as a fourth branch of government, unlike any other executive agency, since it is unencumbered by review and regulation by the Legislature, the governor, and, ultimately, the public. So the amendment seems to fail the first test of contributing to the sound balance of power.

Instead of clarifying the authority of each branch of government, this amendment potentially creates a hybrid super-agency with both executive and legislative authority. Additionally, with a constitutional grant of virtually unbridled authority over animal, marine, and aquatic life, the commission cannot be kept from undermining the policies of the other branches of government, policies set by the elected representatives of the people. Its actions may only be challenged in the courts on their constitutionality.

The amendment also potentially creates further uncertainty as to the full range of authority of a constitutionally created agency — an issue that must ultimately be resolved in the judiciary. The only remaining "check" on the agency is a constitutional debate of private property rights versus the authority of a constitutional agency to regulate the use of property.

The amendment does not address the staff and funding for the new agency, leaving those issues to be resolved in the future.

The proposed language does specifically require the new commission to establish procedures to ensure adequate due process in the exercise of its constitutionally granted regulatory and executive powers. The adequacy of those procedures, however, could only be tested in judicial proceedings, an arduous, expensive, and lengthy process.

PURCHASE OF CONSERVATION LAND

The third subject area addressed in Amendment No. 5 is the funding of the purchase of conservation lands. This proposal would provide new authorization for revenue bonds for the acquisition and improvement of land, water areas, and related property interests for the

purposes of conservation, outdoor recreation, water resource development, restoration of natural systems, and historic preservation.

This proposed amendment expands indefinitely the bonding authority for the purchase of conservation lands, which now will expire in the year 2013.

DISPOSITION OF CONSERVATION LAND

The fourth area addressed in the amendment is the disposition of conservation lands, providing that lands purchased and designated for the purposes of natural resources conservation may be disposed of only by a two-thirds vote of the entity holding the property and only upon determination that the property is no

longer needed for conservation purposes.

Currently, the two-thirds vote requirement only applies to the governor and Cabinet; the amendment would extend it to the new Fish and Wildlife Conservation Commission and water management districts.

This amendment provides clear authority under which the governmental entities holding property must perform the function of disposition of land and assigns the manner in which government carries out its functions. ■

Dale Patchett is president of R. Dale Patchett Management, Inc., and he serves as an AIF lobbyist. He was formerly Republican leader of the Florida House of Representatives and a top-ranking official of state environmental agencies.

The full text of the revisions contained in Amendment No. 5

ARTICLE II

GENERAL PROVISIONS

SECTION 7. Natural resources and scenic beauty.—

(a) It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise and for the conservation and protection of natural resources.

ARTICLE IV

EXECUTIVE

SECTION 9. Fish and wildlife conservation Game and fresh water fish commission. — There shall be a fish and wildlife conservation game and fresh water fish commission, composed of seven five members appointed by the governor, subject to confirmation by the senate for staggered terms of five years. The commission shall exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life, and shall also exercise regulatory and executive powers of the state with respect to marine life, except that all license fees for taking wild animal life, and fresh water aquatic life, and marine life and penalties for violating regulations of the commission shall be prescribed by general law specific statute. The commission shall establish procedures to ensure adequate due process in the exercise of its regulatory and executive functions. The legislature may enact laws in aid of the commission, not inconsistent with this section, except that there shall be no special law or general law of local application pertaining to hunting or fishing. The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing shall be as provided by law. Revenue derived from license fees for the taking of wild animal life and fresh water aquatic life shall be

appropriated to the commission by the legislature for the purposes of management, protection, and conservation of wild animal life and fresh water aquatic life. Revenue derived from license fees relating to marine life shall be appropriated by the legislature for the purposes of management, protection, and conservation of marine life as provided by law. The commission shall not be a unit of any other state agency and shall have its own staff, which includes management, research, and enforcement. Unless provided by general law, the commission shall have no authority to regulate matters relating to air and water pollution. Revenue derived from such license fees shall be appropriated to the commission by the legislature for the purpose of management, protection and conservation of wild animal life and fresh water aquatic life.

ARTICLE VII

FINANCE AND TAXATION

SECTION 11. State bonds; revenue bonds. —

(e) Bonds pledging all or part of a dedicated state tax revenue may be issued by the state in the manner provided by general law to finance or refinance the acquisition and improvement of land, water areas, and related property interests and resources for the purposes of conservation, outdoor recreation, water resource development, restoration of natural systems, and historic preservation.

(f)(e) Each project, building, or facility to be financed or refinanced with revenue bonds issued under this section shall first be approved by the legislature by an act relating to appropriations or by general law.

ARTICLE X

MISCELLANEOUS

SECTION 18. DISPOSITION OF CONSERVATION LANDS. — The fee interest in real property held by an entity of the state and designated

for natural resources conservation purposes as provided by general law shall be managed for the benefit of the citizens of this state and may be disposed of only if the members of the governing board of the entity holding title determine the property is no longer needed for conservation purposes and only upon a vote of two-thirds of the governing board.

ARTICLE IX

SCHEDULE

SECTION 22. Fish and wildlife conservation commission. —

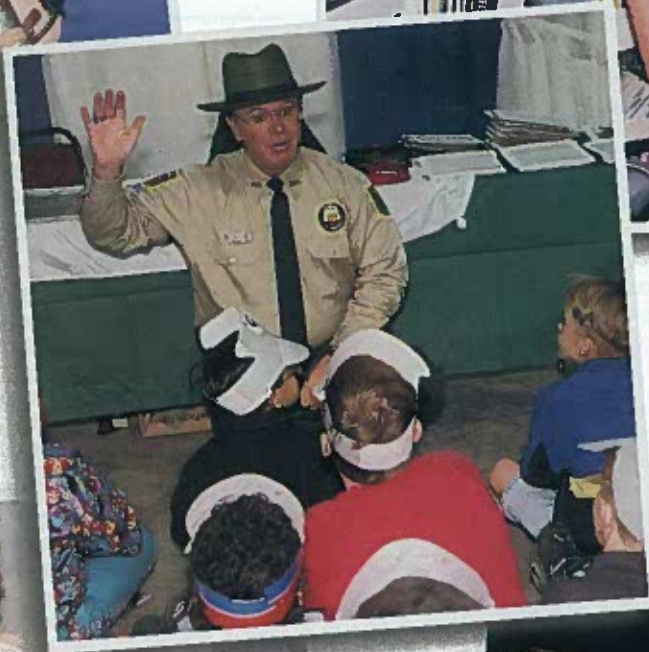
(a) The initial members of the commission shall be the members of the game and fresh water fish commission and the marine fisheries commission who are serving on those commissions on the effective date of this amendment, who may serve the remainder of their respective terms. New appointments to the commission shall not be made until the retirement, resignation, removal or expiration of the terms of the initial members results in fewer than seven members remaining.

(b) The jurisdiction of the marine fisheries commission as set forth in statutes in effect on March 1, 1998, shall be transferred to the fish and wildlife conservation commission. The jurisdiction of the marine fisheries commission transferred to the commission shall not be expanded except as provided by general law. All rules of the marine fisheries commission and game and fresh water fish commission in effect on the effective date of this amendment shall become rules of the fish and wildlife conservation commission until superseded or amended by the commission.

(c) On the effective date of this amendment, the marine fisheries commission and game and fresh water fish commission shall be abolished.

(d) This amendment shall take effect July 1, 1999.

4-H leaders are forging community partnerships with business people and



Learning

(Photos clockwise from top left): Sandra Smith of the Museum of Science and History fields questions at 4-H Career Adventures in Jacksonville. Photo by Tom Wright; Alachua County 4-Hers polish their computer skills. Photo by Milt Putnam; Forestry ranger Ken Harwood quizzes Duval County 4th graders about household products made from trees. Photo by Tom Wright; Ty Ready (left) of Pasco County and Seth Weaver of Volusia County discuss legislation at the 1998 4-H Legislature in Tallahassee. Photo by Ami Neiberger; Amanda and Jeff Hart test their automobile maintenance and repair skills at 1997 Florida 4-H Congress. Photo by Milt Putnam.

educators to introduce young people to the world of work.

He's got quite a green thumb. Flowers, watermelon, cucumbers, broccoli, lettuce — all proof of the abundance of his garden. Is he a farmer? A retiree with plenty of time to kill? No. Michael Hansen is a 13-year-old with a special interest in horticulture, particularly landscape design. In pursuit of his future in that interest, Hansen is participating in a 4-H mentoring program in Alachua County that gives him a chance to shadow a professional for a month.

"We're trying to give Michael a good feel for the operation, for how we work," says Elisabeth Weise of Gainesville Landscape Contractors. In the course of a morning, Hansen will observe a commercial sod laying operation, make deliveries, and watch how computers are used to design the layout of a landscape. He is keeping a journal and will make a presentation on his experience at the end of the summer.

Hansen and Weise are just two participants in 4-H's wide-ranging effort to prepare today's students to be tomorrow's employees. Most people think of 4-H only as an agricultural club for the young, but the organization is really about youth development. Agriculture and animal science remain important components, but the subject matter is merely a vehicle for teaching skills that will stick with young people throughout their lives.

"A lot of people are not aware of 4-H programs in technology awareness, community development, and workforce preparation," says Damon Miller, assistant dean for 4-H programs at the University of Florida. Those programs are applying 4-H's traditional models for youth programs for kids to the workplace, a key to their future success.

"Kids need to have a career pathway laid out early," says Ben Wood, a consultant on workforce preparation to the National 4-H Council. "Probably at least 50 percent of the kids in this country are exiting high school without any career plan. And many that go on to college end up dropping out. This has got to change."

4-H leaders are forging community partnerships with business people and educators to introduce young people to the world of work, giving them an opportunity to develop the skills they may not learn in the classroom.

"Youth are often not prepared for the technology and problem-solving skills required for today's business world," says Joy Cantrell, extension youth development specialist in the Department of Family, Youth and Community Sciences at the University of Florida's Institute of Food and Agricultural Sciences. "Sometimes the kids that don't go to college are overlooked," adds Cantrell. "4-H has a lot to offer for preparing kids for the workplace, whether or not they go to college."

LEARNING THE 4-H WAY

Youth involved in a 4-H program may find themselves snorkeling on a lake, tramping through the woods on an owl prowl, organizing a beach clean-up or canned food drive, learning how to write a resume, or going horseback riding. 4-H's traditional themes of "learning by doing" and "making the best better" adapt easily to new endeavors. Through hands-on learning in 4-H projects, youth develop knowledge and organizational and technical skills, as well as initiative, confidence, poise, responsibility, and conflict resolution skills.

"4-H offers several avenues to involve children, depending on what they are interested in," says Miller.

To WORK

"Young people can join 4-H clubs, enroll in a special project they are interested in, or attend a special program at one of our camps."

Miller is responsible for the 4-H program in the state of Florida, which serves more than 331,000 youth, ages 5 to 18. There are four 4-H camps around the state, providing marine, forestry, and environmental education programs. 4-H is active in every county in the state through the Florida Cooperative Extension Service. Under the Morrill Land Grant Act, the extension service is charged with delivering information from the state's land-grant university, the University of Florida, to the people of Florida. 4-H is the youth development program for the extension service.

The four H's stand for head, heart, health, and hands. The easiest way to explain the significance of the H's is through the 4-H pledge: "I pledge my head to clearer thinking, my heart to greater loyalty, my hands to larger service, and my health to better living — for my club, my community, my country, and my world."

"Responsibility for oneself and one's community are important lessons we try to teach young people," says Miller. "By teaching them to make the best better, we encourage youth to strive for excellence. By incorporating community service into our programs, we teach young people to think about their relationships and connections with other people."

ONE-ON-ONE

Michael Hansen, the budding landscape designer, and hours together during the one-month summer program, learning and teaching.

"I think that the sooner you expose kids to employment opportunities the better it is for them," says Weise. "Personally, I love my job and I think it's fun to get to show what I do to someone else."

Mentoring programs like this one are growing in popularity around the state, meeting an educational need. "One of the challenges we face as educators today is helping youth realistically experience what their potential earning power will be, with and without education opportunities. Hands-on activities help youth understand that," says Cantrell.

Stephen Eccleston of Gainesville, 16, is already mapping out his career plans, thanks to the mentoring program. He worked at Sal's Automotive, a locally owned repair shop, last summer doing oil changes and minor repairs. "I got to do a little bit of everything last summer. I plan on becoming an ASE-certified mechanic." This summer Eccleston is learning about auto detailing at a different shop. He is trying to learn as much as he can about his passion — cars.



Morgan Buchanan of Crescent City paints playground equipment at Hank Bryan Park on State Road 20 in Palatka. Photo by Ami Neiburger.

"We've had kids work with an architect, a veterinarian, an auto mechanic, a nurse, an environmental engineer, a baker, an attorney, and a physical therapist," says Alachua County 4-H agent Bill Heltemes. Heltemes tries to pair teens with business people working in their field of interest.

"Sometimes they find out that they may not like something as much as they thought they would," says Heltemes. "We had someone work with a veterinarian one summer, who decided that he definitely did not want to do that for the rest of his life. Programs like this can help [young people] make better and informed decisions about their education and career path. It can end up saving them a lot of money."

SHOWCASING CAREERS

School enrichment programs, such as 4-H Career Adventures held in Duval County last spring, are helping young people of every age explore job opportunities.

More than 20 business and community sponsors manned stations at the one-day event, which drew 500 elementary students from disadvantaged neighborhoods. Using hands-

“By incorporating community service into our programs, we teach young people to think about their relationships and connections with other people.”

on activities, youth examined careers in fields such as medicine, nutrition, law enforcement, and pest control.

“We wanted to expose these kids to the many different career options open to them in their own communities,” says Tamara Dinkins, the 4-H volunteer coordinator in Duval County, who organized the event. “Young people need to start thinking about their careers early in life.”

“You’d be surprised at how many children do not know what a Realtor is,” says Jan Kenzie, who staffed a booth for Marsh Landing Realty of Jacksonville at the event. “They especially enjoyed hearing about some of the famous people we’ve worked with. Everyone can relate to wanting a home.”

In Walton County, teenagers attended a spring weekend retreat at 4-H’s Camp Timpoochee near Niceville. “They wrote resumes, practiced interviews, and learned how to dress for the workplace,” says Heather Seigler, 4-H agent in Walton county, who organized the retreat. More than 20 teens, ages 14 to 19, attended the event, which was geared to focus on jobs in the local community.

“We learned about different kinds of jobs in the health and food industries,” says Saundra Ingram, 14. “Some of it was hands-on and some of it was listening. I think it helped me.” Her sentiments are echoed by Jason Haiford, 19, of Cherryville in Holmes County. “There were kids there who had never thought about careers before,” says Haiford, who plans to attend Chipola Junior College and eventually study animal science at the University of Florida. He believes he’s better prepared to enter the workplace because of the interview practice and resume writing.

Jack Pate from the Florida Restaurant Association gave a presentation to the teens on food industry careers. “I wanted them to see the careers beyond being a cook or a waitress, and to realize that there are many professional careers available in the food industry,” says Pate. “We have a need to recruit more young people into the food industry because we anticipate a shortage of qualified managers.”

Pate told the teens about his association’s Pro-Start program, an intensive curriculum for high school juniors and seniors that provides training and 400 hours of paid work site experience. The curriculum was developed by the Educational Foundation of the National Restaurant Association, and showcases the industry’s partnership with education to train young people for the future.

4-H also uses its awards and recognition program to teach students interviewing and resume-writing techniques. “The process is deliberately structured to be very

similar to what they would go through in a real work experience,” said Rebecca Salmon, former events coordinator at the state 4-H office in Gainesville.

More than \$20,000 in scholarship awards and money is distributed annually through the Florida 4-H Foundation. Private and business donors provide the funding. First Union sponsors 10 annual \$1,000 college scholarships. Several individuals sponsor annual scholarships ranging from \$400 to \$1,000 for 4-H members who complete the application and interview process.

Another important source of funding for the organization is the annual 4-H/Sprint Golf Classic, held each May in central Florida. A signature sponsor of the event for the past five years, Sprint donated \$5,000 to this year’s tournament.

“4-H is such an important part of the more than 250 communities that Sprint serves in 36 Florida counties, that supporting 4-H is a natural choice for us,” says Brian Craven of Sprint Communications. “This benefits the community as a whole.”

Eighteen organizations and businesses contributed \$450 donations to the tournament, and 69 contributors gave \$100 each to be hole sponsors. The Florida Marlins Baseball Club Foundation made an underwriting contribution.

Last year, U.S. Sugar Corporation, based in Clewiston in south Florida, received the 4-H Golden Circle of Friends award for its long-time support of 4-H environmental education curriculum development, which won the Governor’s Award for Environmental Education in 1993. The curriculum incorporates career awareness with education through hands-on activities. “We consider 4-H clubs to be an investment in the future,” said Andy Rackley, Director of Corporate Affairs and Grower Relations as he accepted the award before 500 youth delegates at the 1997 Florida 4-H Congress.

“There are plenty of ways for business people to get involved in 4-H programs,” says Miller, “whether it’s through direct contact with young people, mentoring, or donations. The important thing is that we are all coming together to support young people.” ■

For more information about 4-H programs in your area, contact your local county extension office or visit the 4-H Web site (<http://ifas.ufl.edu/~4hweb>).

Ami Neiberger is the information coordinator for the 4-H Youth Development Office of the Institute of Food and Agricultural Sciences at the University of Florida.

UNWELCOME

Making The Best Of An EEOC Investigation

Jo Ann Bass had it right when she told a reporter, "The government should have better things to spend its money on." Bass and her stepmother, Grace Weiss, owners of Joe's Stone Crab, have spent the last seven years battling the Equal Employment Opportunity Commission (EEOC), the federal anti-discrimination agency.

Female or minority business owners, or those with proven track records of nondiscriminatory employment practices, who believe they are safe from EEOC censure may have lulled themselves into a false sense of security. Bass and Joe's Stone Crab, the landmark Miami Beach restaurant, are proof positive of that.

In July 1997, the U.S. District Court for the Southern District of Florida found that Joe's Stone Crab had discriminated against women when hiring servers for the restaurant even though it found no evidence of an express policy of excluding women from food server positions. In fact, the court praised the owners and managers as "courageous in opposing overt discrimination." Despite this, the court concluded that the evidence showed that Joe's management "acquiesced in and gave silent approbation to the notion that male food servers were preferable to female food servers."

For EEOC investigators, discrimination is a numbers game. If a certain favored group is underrepresented in a workplace, in the opinion of EEOC, discrimination must be the explanation. EEOC investigators may even find evidence of discrimination if members of the under-represented group aren't applying for jobs.



GUESTS:

In some of the more egregious EEOC investigations, agency personnel seemed determined to find discrimination where none existed. In pursuit of its objectives, the commission enjoys a great deal of power and discretion, not just in investigating employers, but also in initiating the investigations themselves.

Mixing it up with EEOC is not only expensive and aggravating; it can harm the reputation and goodwill a business enjoys. Fighting a charge of discrimination from EEOC can seem like a complex and intricate legal waltz, the steps of which are not easily learned.

FINDING DISCRIMINATION

EEOC has established certain recordkeeping requirements. For example, the commission requires all employers with 100 or more employees to file an employer information report, or EEO-1. EEOC may perform a statistical analysis of this information, and, based upon that information, determine that an investigation into an employer's employment practices is warranted.

EEOC requires employers to maintain certain records, especially those that may be relevant to "the determination of whether unlawful employment practices have been or are being committed." EEOC will expect to review any such records in an on-site investigation and may seek the production of such documents in a request for information.

PHOTO: CHRIS CLOSE

It may then draw any number of conclusions from this information.

For example, EEOC may require employers to provide what it calls applicant flow data, which is information on who applied for what jobs. When EEOC investigated Joe's Stone Crab, it found fault with the procedure Joe's had used for years to interview applicants for server positions. Joe's would hold what it termed a "roll call" when it was preparing to hire. The date for the roll call was advertised primarily via word of mouth, with server applicants showing up on the scheduled day for interviews. Few women were hired because few women applied.

Commission investigators argued that this applicant flow data was skewed. According to the investigators, very few women applied for server positions at Joe's because of its "reputation" for not hiring women for those positions and, thus, Joe's recruitment of new employees was discriminatory.

The court agreed with EEOC's conclusion that Joe's had discriminated against women based on a statistical disparity between the number of women hired at Joe's and the number of women available in the labor pool. This is just one example of how records, which at first glance appear supportive of the employer, may not be interpreted that way by EEOC.

NO COMPLAINTS NECESSARY

Employees, past and present, are often the source of an EEOC investigation, but the commission doesn't need an actual complaint of discrimination from a past or current employee to initiate an investigation of an employer.

EEOC has a weapon it calls the commissioner's, or systemic, charge that it wields "to raise the level of compliance within industries and occupations having a high incidence of non-compliance" with any of the statutes EEOC enforces. Any one of the five EEOC commissioners may file a charge against an employer, regardless of whether a specific individual has complained of discrimination.

EEOC will also file a commissioner's charge based on information commission personnel obtain in the course of investigating individual charges. Some of these charges also result from leads supplied by the media and members of the community. Additionally, any person or organization may request the issuance of a commissioner's charge. Unions have been known to use this tactic as part of the corporate campaigns they wage against employers they can't unionize by more traditional means, such as an employee election.

A commissioner may file an EEOC charge on behalf of a group of individuals believed to have been the victims of

discrimination. There is no requirement that a member of the aggrieved class authorize a commissioner's charge; EEOC can even act when the aggrieved individuals have refused to cooperate.

Joe's Stone Crab was charged with sex discrimination even though, according to co-owner Jo Ann Bass, there was no indication that any woman had accused the restaurant of discriminatory practices. Nevertheless, the investigation and litigation have lasted well over seven years and have already cost Joe's over \$650,000 in attorney's fees alone. Joe's will also have to pay a yet-to-be-fully-determined amount of damages.

Another recent high-profile discrimination case arising out of EEOC's Miami office (EEOC also has a Florida field office in Tampa) was the one against the office of the state's top legal officer. EEOC has come in for some scathing criticism from the pen of Attorney General Bob Butterworth over its handling of the accusation filed by Elaine Thompson, a former assistant attorney general in south Florida.

In a letter to the director of the Miami office, Butterworth wrote, "It is clear that the EEOC here in Florida now has a regional office running out of control." The attorney general then equated the commission with the Internal Revenue Service in terms of its arrogance and to a "Star Chamber in which the accused is handed a 'confession' and told 'Sign here.'"

According to Butterworth deputies, EEOC investigator told them that the commission had received other complaints besides Thompson's but refused to identify the sources of those other complaints. As Butterworth observed, "Even the commonest criminal in the nearest county jail has the right to know who his accusers are so he can defend himself."

Thus, employers should be aware that they may not even be informed of who the alleged victims of discrimination are and may be subject to a commissioner's charge even if there are no identified "victims."

SCATTERSHOT INVESTIGATION

Once an investigation begins, EEOC gathers evidence in two ways. First, it will ask the employer to supply certain documents and position statements within a specified period of time. It may also request an on-site examination of the employer's workplace for the purpose of face-to-face interviews, examination of documents, or inspection of facilities. These documents and position statements must be prepared with great care, and not only because they may be used in the EEOC investigation. They will also be made available to lawyers for the other side and, thus, may be used as evidence against the employer in any subsequent litigation.

Employers run into numerous problems with the investigatory process. First, the investigators often do not limit themselves to information specifically related to charges they are investigating. Instead, they may submit a standardized request for all kinds of documents and information that have nothing to do with the allegations they are investigating. Efforts by employers to curtail the EEOC investigatory process based on claims of undue burden have usually been unsuccessful. If the employer refuses to provide the documents requested, EEOC might simply subpoena the information.

The agency's investigatory process has often been criticized by frustrated employers. For example, the EEOC investigator may draw inferences from the documents produced that the employer finds questionable, and may or may not interview all of the individuals the employer believes relevant and necessary to making an informed determination of the claims being investigated. Attorney General Bob Butterworth expressed his irritation with the investigatory process, citing what he called "professional sloppiness, inaccuracies, improper application of the law, and an absence of anything resembling internal oversight." However, an employer's recourse is limited, since complaints are made to EEOC itself or to the court during any resulting litigation. Employers are generally not permitted to file suits against EEOC.

The potential result of an EEOC investigation of a charge is litigation in federal court. However, since EEOC's investigation of a charge may be broader than the actual allegations in that charge, litigation may be permitted on claims that were not actually included in the EEOC charge. Thus, an employer may find itself defending allegations in federal court that were never raised in the EEOC charge, and that were based upon an investigation the employer believes was inappropriate or inadequate.

NEGOTIATING FROM WEAKNESS

Conciliation is a stated statutory goal of the EEOC procedure. However, settlement negotiations with EEOC differ in a number of ways from those conducted with a private plaintiff. There are agency regulations that must be followed that severely limit the employer's negotiating power. Additionally, EEOC may not be interested in settling with the employer for damages; it may prefer to seek injunctive relief or structural changes in an employer's workplace.

For example, when the judge ruled against Joe's Stone Crab on liability in 1997, he reserved jurisdiction to conduct a trial on damages and other affirmative and injunctive relief. In a subsequent hearing, the judge ordered Joe's to take action to eliminate what he determined was continuing discrimination. Those measures included a require-

ment that Joe's notify the National Organization for Women when it was preparing to hold its next roll call. Furthermore, Joe's was also required to place ads for the roll call, with the judge outlining exact specifications concerning the wording of the ad and even the size of the type. The judge even dictated the wording of the recorded telephone message applicants would hear when they responded to the ads.

The court also required Joe's to utilize certain detailed procedures in the 1997 roll call that, according to the restaurant owners, increased their costs for the roll call from \$650 to \$100,000. At the trial on damages in April of this year, EEOC not only sought monetary damages on behalf of six individual women; it also asked the court to monitor the company's hiring processes for the next five years. As of this writing, no decision had been issued on damages.

Many employers find EEOC less than cooperative during the conciliation process. When Attorney General Butterworth's deputies went to a conciliation conference, they were only able to meet with one non-lawyer investigator. According to press reports, they were told the supervisor was "too busy" to meet with them.

According to Butterworth, an EEOC official told his deputies that the attorney general's office was in compliance with federal law with respect to the numbers of women and minorities working there. The official, however, refused to put that statement in writing, a result the attorney general sought to combat the negative publicity he had already received when the results of the confidential EEOC investigation were leaked to the press.

WHAT TO DO

Dealing with EEOC is a complicated process. At all stages it should involve consultation with and assistance from an attorney who is experienced with the workings of EEOC. If you would prefer to deal with the EEOC one on one, you would still be well advised to consult with an experienced labor and employment law attorney for advice on how to proceed. Employers must remember that information obtained during an EEOC investigation may be used against them in any subsequent litigation, making competent legal advice a necessity throughout the investigation.

"EVEN THE COMMONEST CRIMINAL in the nearest county jail has the right to know who his accusers are so he can defend himself."

Employers should also seek legal advice before communicating with EEOC in writing because such communication can be used against them in the future. One document that became a crucial piece of evidence against Joe's Stone Crab was a letter written by co-owner Grace Weiss to U.S. Sen. Connie Mack (R-Florida) in 1992. Weiss wrote, "I cannot explain the predominance of male servers, but perhaps it has to do with ... the ambiance of the restaurant." In referring to this letter in the order granting summary judgment against Joe's, the court held that "Grace Weiss provided

a clue to the true cause [of the small number of female servers] with her reference to the 'ambiance of the restaurant.'" EEOC will use the most innocent remarks as evidence against an employer.

The best defense against EEOC can be erected before it even makes an entrance. Employers should develop and promulgate policies setting forth a position of zero tolerance for discrimination, making it clear that the organization will not tolerate prohibited discrimination or harassment of any kind. These policies should be prominently posted in the workplace and distributed to employees.

When employees are given copies of the policy, they should be required to sign a document acknowledging that they have read, understood, and agreed to comply with the policies. Part of the court's holding in *Joe's Stone Crab* focused on the fact that Joe's had no policy specifically prohibiting discrimination, and advertisements for the roll call failed to state that the company was an equal opportunity employer. In criticizing the employer's delegation of hiring decisions to male subordinates, the court noted that the delegation was done "without the benefit of policies or guidelines."

Pro-active steps by an employer to evaluate its employment policies, to promulgate and enforce effective anti-discrimination policies, and to monitor its workforce will go a long way in protecting the employer in the event of an EEOC investigation or litigation. An awareness of the rights of the employer and EEOC during an investigation is essential in protecting the employer. ■

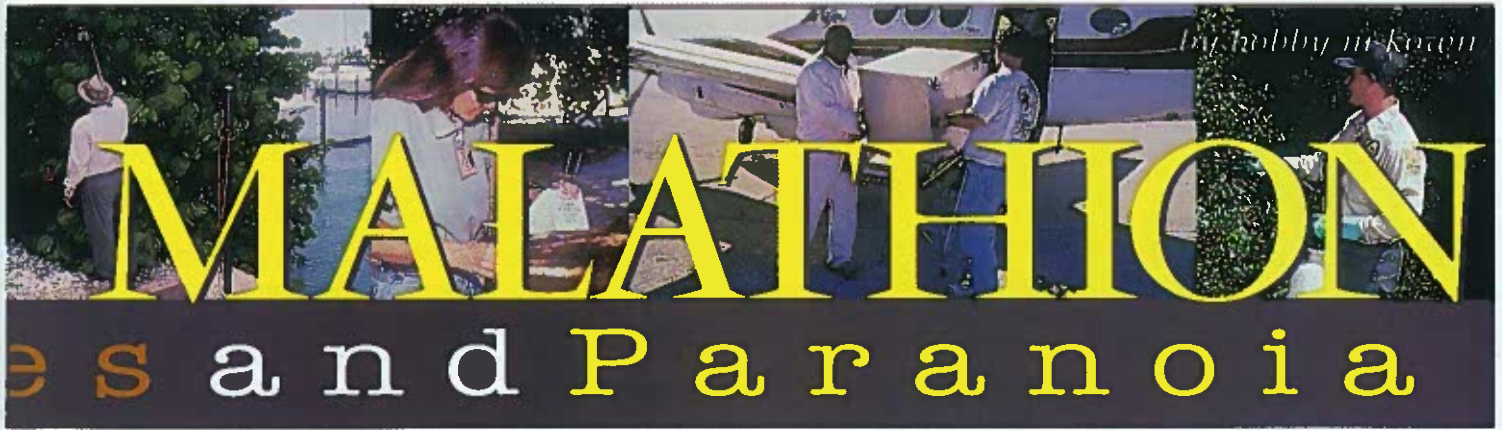
John-Edward Alley and Amy W. Littrell are with the law firm of Alley and Alley/Ford & Harrison, LLP, where Alley is a partner.



Battling Medfli

A program proven safe by years of study and critical to safeguarding Florida's agriculture industry has come under fire.





by hobby m-koren

MISERY

When it comes to emotional outbursts and exaggerated rhetoric about pesticides, facts take a back seat.

For example, Tampa Bay area television coverage of the June 4 public hearing on the Mediterranean fruit fly eradication program in Bradenton focused on the angry confrontation between the mother of a wheelchair-bound child and a tomato grower.

"This is my child's life," the mother said as she pushed her son toward the tomato grower. "You look Benjamin in the eye and tell him a tomato is more important than my child's life."

The exchange overshadowed a discussion of the scientific basis for the use of malathion by the U.S. Department of Agriculture and the Florida Department of Agriculture and Consumer Services to control the Medfly. Unfortunately, melodrama makes for good TV clips — facts don't.

Reporters' fascination with controversy is only part of the reason a program proven safe by years of study and critical to safeguarding Florida's agriculture industry has come under fire. Add a small contingent of anti-pesticide activists who spread misinformation about the program, mix in a large population of new Florida residents who don't understand agriculture's importance to the state's economy and factor in a government-doubting electorate reliant on biased, often inaccurate, information on the Internet and you have a recipe for disaster.

DANGEROUS PESTS

"There's a certain amount of paranoia [in the general public] that allows malicious intent to spread," says Lance deHaven-Smith, professor of public administration and policy at Florida State University in Tallahassee, and associate director of the Florida Institute of Government.

He points to the popularity of a television series like "The X-Files" and movies such as "Conspiracy Theory" and "Mercury Rising," and their use of government conspiracy themes, as indications of current public sentiment. Florida agriculture, and Florida citrus in particular, faces a potential catastrophe if the use of the malathion bait spray to battle the Medfly meets an untimely and unnecessary end because of that paranoia.

Malathion is the most effective tool to battle the Medfly, one of agriculture's most threatening pests. Medflies are attracted to 260 host fruits, vegetables, and plant material and represent one of Florida's citrus industry's most notorious enemies because oranges, grapefruit, and specialty citrus fruit are particular favorites of the pest.

The rapidly reproducing pest — a female Medfly is capable of producing hundreds of offspring during her 20- to 30-day lifetime — ruins the host fruit or vegetable by laying eggs in it, which causes it to drop to the ground prematurely. The larvae then burrows its way into the ground and makes a subsequent reappearance as an adult fly.

PHOTOS: JEFFREY LOTZ

MALATHION HAS BEEN SAFELY USED by mosquito control programs around the country for more than 30 years.

A Medfly infestation left unchecked could quickly spread throughout Florida agriculture, wreaking havoc on the state's second largest industry. Every year, agriculture pumps \$16 billion into the state's economy, providing 212,000 full-time jobs. Citrus, Florida's best known and largest crop, alone is an \$8 billion economic engine, providing 112,000 full-time jobs.

But raising this specter of dire consequences shouldn't even be necessary. Few ill side effects from the malathion bait spray have been demonstrated in reviews of previous programs in California in the 1980s and 1990s. One person showed a reaction to the corn syrup bait. In tests of people who reported skin reactions in the California program, none showed reactions to the malathion.

There's a rule in toxicology that the dose is the poison, meaning anything is poisonous in a large enough quantity. Malathion, as used in the Medfly eradication program, is considered safe because it's used in such small quantities — 2.4 ounces of malathion are diluted with 9.6 ounces of the syrupy bait and then spread over a one-acre area. That's the equivalent of spraying a Coca-Cola-sized can of the bait mixture over a football-sized area. Homeowners often use larger quantities of malathion to fight pests in their own home gardens. The pesticide can also be found in flea collars and dips for pets and in shampoos to treat head lice in humans.

If a 22-pound child absorbed all of the malathion sprayed through the program on a one-square-foot area every day for 47 days, the child would still not feel any ill side effects, according to the Florida Department of Health. Creatures found to be most at risk are bees and certain kinds of fish. Since bees are less active at night, nighttime aerial applications used in the Florida Medfly

eradication program helped protect them. Preventing airplanes and helicopters from spraying water bodies by creating buffer zones helped shield aquatic life. Nevertheless, some critics blamed the Medfly eradication program for fish kills with little evidence and despite the fact that such occurrences are common during the summer months when oxygen levels in the water drop.

Malathion has been safely used by mosquito control programs around the country for more than 30 years. Thirty-four counties in Florida currently use it in their mosquito control efforts. Yet malathion's use for Medflies has drawn so much criticism that other alternatives are being considered. A compound called Sure-Dye is being studied, but it's still not acceptable because, as the name suggests, it contains a dye that turns objects red.


With fly counts of more than 1,300 in Umatilla, more than 550 in Bradenton, and more than 100 in Sebring, the malathion bait spray is the only weapon available that's known to work. Researchers are investigating effective alternatives to malathion. People in the citrus industry support these efforts, along with the use of an integrated pest management system similar to the one in Bradenton, where ground and aerial applications of the malathion bait spray are combined with the release of sterile flies. But the malathion bait spray must still be used to diminish fly populations before sterile flies can be used effectively.

ANATOMY OF A CONTROVERSY

Despite the facts proving malathion's safety and reliability, controversy over its use continues. A small contingent of activists in Tampa and Sarasota calling themselves Citizens for Responsible Alternatives to Malathion (CRAM) and Sarasota Citizens for Responsible Alternatives to Malathion (SCRAM) have gained support for their cause by playing on peoples' fears. Their tools are exaggerated claims, emotional images, and out-of-context statements pulled from government reviews of previous programs. They have used the media's propensity to focus on activists' opinions, and the power of the Internet to distribute skewed viewpoints, to their advantage.

For instance, these activists use portions of one study to support claims that malathion doesn't break down in the environment for years. Yet such a statement isn't realistic. According to Dr. Marion Fuller, chief of the Bureau of Pesticides for the Florida Division of Agricultural Environmental Services, for malathion to last that long it would have to be maintained at an acid pH of 4, a condition unlikely to occur in the outdoor environment of a Medfly eradication program.





In reality, malathion dissipates faster of than any of its sister compounds. That's one of the reasons why the Environmental Protection Agency has approved it for use in people's homes.

However, scare tactics based on pseudo-science resonate with a public raised with a heightened sense of environmental fragility and an exaggerated distrust of government dating back to Vietnam and Watergate. The public's suspicious disposition toward government also touches other institutions, including education, the media, and business, which includes agriculture.

"It's 'big' against 'us,'" says Jim Kane, editor of *The Florida Voter*, a monthly political journal, referring to people's perception of these institutions. "They believe the 'big' guys can come up with bucks." The special interest groups that often campaign against these 'big' concerns are usually a small segment of the electorate. "They're usually single-issue individuals," Kane said. "For many of them, [promoting or opposing an issue] would be their whole life."

When it comes to influencing public opinion, anything short of an out-and-out fabrication is acceptable to some of these organizations to get the results they're seeking. For example, Kane says, it would be tough for activists to gain public support by merely saying that the malathion bait spray used in the Medfly program "may be a problem." He adds, "But if they're saying 'This will kill your children,' it's such an outlandish charge some people might think that it's true."

However, even the most extreme statement doesn't register with people if it doesn't impact them directly. "Seeing is believing" in the public opinion arena, according to FSU's deHaven-Smith.

He uses the story of three whales trapped in ice off the Alaskan coast several years ago as an example of this phenomenon. The whales received international coverage. After seeing photographs of them in local newspapers people started giving names to the whales, remembers deHaven-Smith.

"If the issue isn't visible, people don't pay attention to it," he explains. In the case of the Medfly eradication program, people who are in the spray zones can smell the bait spray and hear the planes and helicopters. The bait spray smells like a chemical and the aircraft are loud and intrusive.

"Credibility is given to alarmists when there are visible signs of spraying, which gives a feeling of an ominous nature," says deHaven-Smith.

Fortunately the more closely an issue affects people, the more likely they are to be accepting of it because

they've educated themselves about it. For example, when a prison is being built in an area, the people who live next door are less afraid of it than the people living farther away because the next-door neighbors have gone to the meetings to learn about it, he says.

"Ignorance is not bliss in public opinion," according to deHaven-Smith. "The less knowledge people have, the more likely they are to be alarmed." Turning to the Internet for information, as many people did to learn about the Medfly, doesn't help. Opponents of the Medfly program were quick to use the new technology to spread their viewpoints and misinformation.

"If you think newspapers give credibility [to underserving sources]," deHaven-Smith says, "the Internet has no standards." In addition, people who use the Internet are pre-selecting the information they want so it's a way for interest groups to "feed" their targeted audience, he says.

Given all the new technology available to help inform people, they still remain relatively ignorant on public issues, he says. Dr. Susan MacManus, a political science professor and pollster at the University of South Florida, agrees, noting that most people get their political news from television programs.

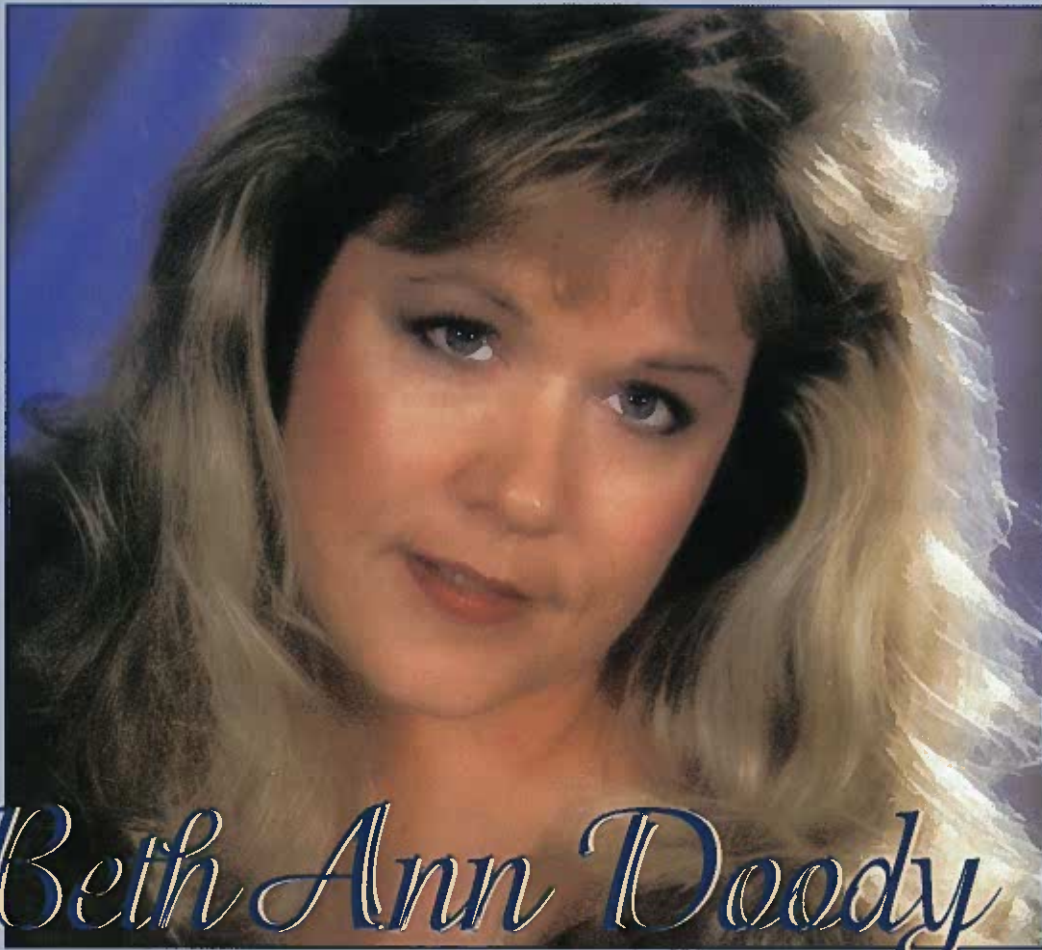
Yet most people restrict the amount of time to learn about an issue to an average of 1 minute and 20 seconds, MacManus says, which makes it difficult for proponents of the Medfly eradication program to get their more complicated message across.

MacManus, who has a unique perspective on this issue as both a Tampa resident and a citrus grower affected by last summer's Medfly program, believes the negative reaction to the program stemmed from people who didn't understand the importance of agriculture to the state and local economies.

"There are a lot of people who moved to Florida from the urban areas of the Northeast and Midwest who don't understand the importance of agriculture here," MacManus says. "Many of them moved here for the environment so anything they perceive as a threat to it freaks them out." In addition, they are the same people who grew up as part of the "recycling generation," she said.

"They grew up hearing about saving the environment, but heard nothing about agriculture being important," MacManus adds. "The key word here is 'balance.' That's what's gotten lost. There are two sides to any story." ■

Bobby F. McKown is the executive vice president/CEO for Lakeland-based Florida Citrus Mutual, the state's largest citrus grower organization with nearly 12,000 members.



Beth Ann Doody

1955 to 1998

In a city of Southern drawls, Beth Doody's laconic style held its own charm.

A native of Caribou, Maine, Beth moved to Tallahassee in 1979, a year after she graduated from Eastern Nazarene College in Quincy, Mass. Shortly after that, she came to work for Associated Industries of Florida as a legislative assistant and then lobbyist. In 1991, Beth left AIF to pursue a lobbying career on her own.

Those who knew Beth remember fondly her warming laugh, dedicated

friendship, and fondness for finery. She was also a master of the New England colloquialism, once describing a slow colleague as "dumber than a stump." When asked if she was acquainted with someone, Beth declared, "I wouldn't know him from Adam in a suit."

By the time Beth was diagnosed with cancer last August, her body was riddled with disease and doctors held little hope of recovery. No one was surprised, however, when she announced her determination to fight fate. She moved back north to receive treatment and to draw closer to the

love of a devoted family.

As the end of her days drew near, Beth was comforted by her faith in God, and drew on that faith to comfort those around her. She was laid to rest on June 6, in a mountaintop cemetery outside of Caribou, cradled by the natural beauty of her childhood home.

Beth is survived by her parents Dana and Ina (Jackson) Doody, her maternal grandmother, three sisters and their husbands, two brothers, seven nieces and nephews, aunts, uncles, and a large circle of close friends who won't soon forget her. ■



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“The political bug bites people and makes them interested in politics in varying degrees. In some cases the bite is well-nigh fatal and causes the victim to spend every waking hour running for office, sometimes for several offices at the same time.”

How to Win in Politics,
by Fuller Warren

Pursuit of Happiness



After his election as governor in 1948 and while waiting to take over his official duties, Fuller Warren wrote a book called, *How to Win in Politics*, a topic the governor-elect knew well since, by his own admission, he began running for office at age 13 and never stopped.

For Warren, politics was enjoyment, avocation, and a noble calling. It was also hard work. “Action counts,” he advises novice politicians. “Gesticulate wildly.”

He counsels the use of “an array of euphonious, alliterative adjectives.” For example, he suggests calling a mean man a “snarling, snapping monstrosity.” A sweet voice becomes a “soft, susurrant, satisfying accent.” An opponent is not

vicious; he is a “lying, libidinous, lecherous libertine.”

But Warren, a graduate of the Roget school of oration, quickly repudiates Mark Hanna’s advice to “use a lot of fancy words and say nothing.” Instead, Warren recommends “taking a positive and unequivocal position on all pertinent issues.”

A victim of his own innocence and honesty, Warren left office touched by scandal and failure. After one more bid for the governor’s mansion in 1954, he retired from politics to a life of genteel poverty. In 1973 he died alone in an apartment on Miami Beach, leaving behind little more than a dim memory of one who brought high idealism and joy to the business of politics.

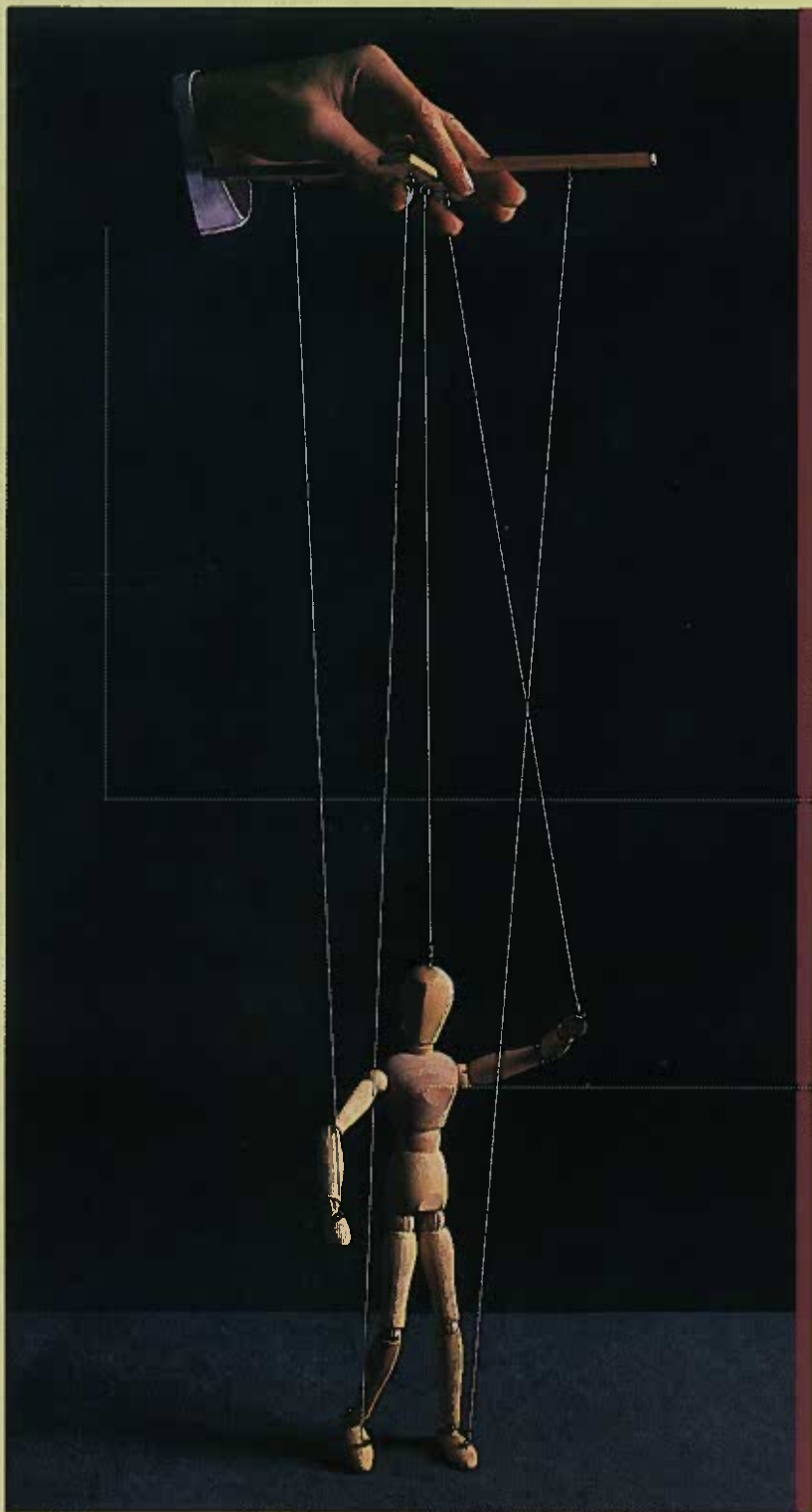
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