FLORIDA BUSINESS INSIGHT
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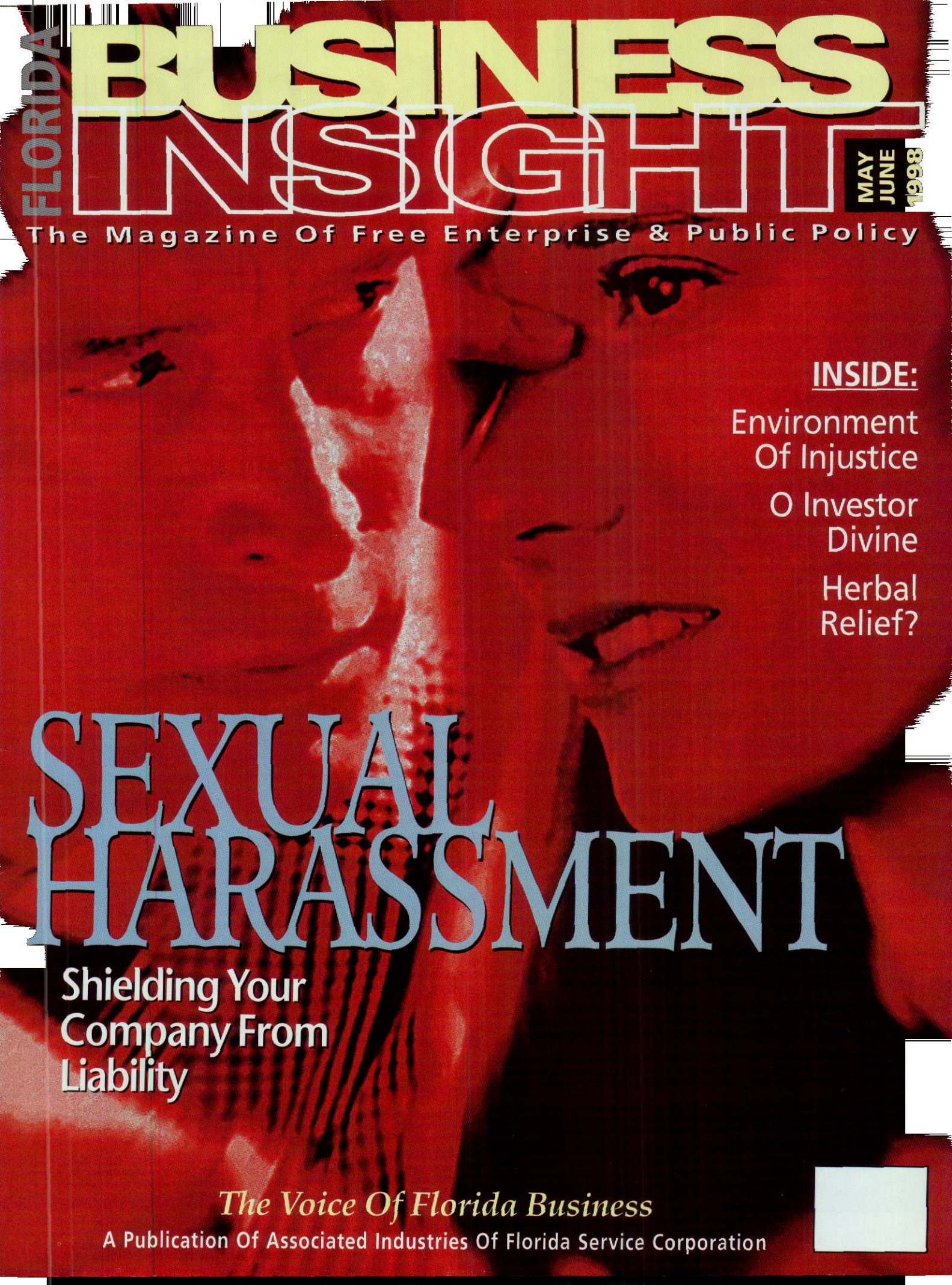
The Magazine Of Free Enterprise & Public Policy



INSIDE:

Environment Of Injustice

O Investor Divine

Herbal Relief?

SEXUAL HARASSMENT

Shielding Your Company From Liability

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FLORIDA BUSINESS INSIGHT

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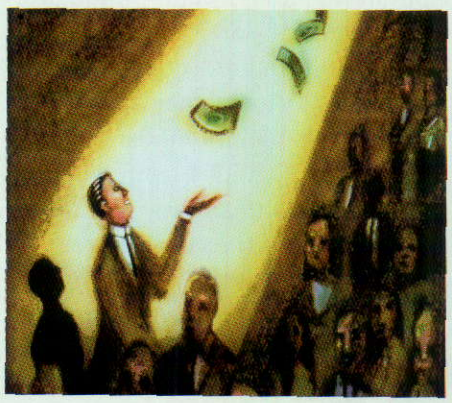
ON THE COVER:
Surviving a sexual harassment lawsuit.
Cover Photo Illustration:
Dwight Sumners

features

page 28



page 40

page 42

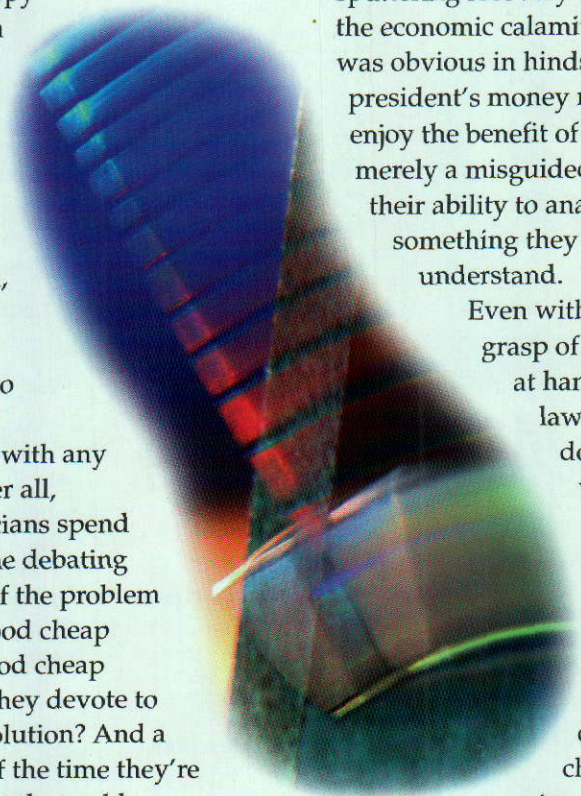
columns

by jon l. shebel, publisher

The Swing Of The Pendulum

Franklin P. Adams once quipped, "There are plenty of good five-cent cigars in this country. The trouble is they cost a quarter. What this country really needs is a good five-cent nickel." A few days later, no doubt, some busybody politician probably proposed a law establishing a five-cent nickel.

It's one of the blasphemies of modern political thought that every unhappy situation is a problem seeking a political solution. Actually, society is too complex, enormous, and organic for anyone to "solve" its "problems" with any finality. After all, don't politicians spend as much time debating the nature of the problem (a lack of good cheap cigars or good cheap nickels) as they devote to crafting a solution? And a good part of the time they're wrong about the problem.



Six years into the Great Depression, Franklin Roosevelt's money mandarins decided that runaway inflation was an incipient problem — in the midst of a depression, mind you. They acted quickly to ward off inflation, clubbing to death a sputtering recovery and prolonging the economic calamity. The result was obvious in hindsight, but the president's money men did not enjoy the benefit of hindsight, merely a misguided confidence in their ability to analyze and fix something they didn't understand.

Even with an accurate grasp of the conditions at hand, the best lawmakers can do is tinker with the artificial systems we develop to control our relationships with each other. They can't change human nature, but they can reshape systems that get out of kilter.

The civil justice system is a perfect example of a system that's out of whack. Through the concerted efforts of the legal brethren, the system lost any semblance of fairness and of certainty of punishment for negligence. Issues of liability and damages became subject to the rule of chance rather than the rule of law.

Often, lawmakers perceive their duties as correcting the swing of the pendulum. Is the civil justice system favoring plaintiffs over defendants? In the debate over tort reform, both sides had statistics and anecdotes to back up their perceptions. But sometimes the facts are little more than snapshots of stops on the pendulum's journey. Just as important to the debate are the ideas and principles that set the endpoints of the pendulum's swing.

That aspect of legislating, namely adherence to the principles that buttress our society, is all too often ignored. If I had to sum up the plaintiff lawyers' philosophy of the civil justice system (beyond the principle of self-enrichment) it would have to be in the words of the man discredited by the 20th century, Karl Marx: "From each according to his abilities, to each according to his needs." Is the principle of redistributing income through the courts one we really want to adopt? That question is just as much a part of the debate as any anecdote or statistical analysis.

At Associated Industries of Florida, we've spent almost 80 years making sure the pendulum swings in a boundary set by the principles of economic liberty and political freedom. Maybe the "problems" will never be "solved" but we'll make sure they don't outlive the principles. ■

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

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by david p. yon

What To Do When You Can't Pay Your Taxes

As some of us unfortunately find out, the IRS has enormous powers to enforce collection of past taxes, penalties, and interest. It needs no court order or judgment to seize just about anything you own. Usually the IRS only has to send you a "demand letter" before it does anything. In some cases, it doesn't have to give any warning at all.

As bad as this may seem, there are protections for taxpayers. Payment terms can be negotiated and action can be temporarily suspended if circumstances warrant. However, if you are behind on payroll taxes, the IRS will not cut you much slack. Withholdings from employees' paychecks are funds that the employer has a fiduciary duty to remit. The IRS is merciless in its collection of these — even to the point of holding the principals of a business personally liable.

If you are having financial difficulties and can't pay your taxes, call the IRS. When you call, be prepared for numerous busy signals. When you finally get an answer, you will have to negotiate your way through the maze of the automated attendant.

While the IRS is notoriously slow in reacting to unpaid taxes, once the process starts it is relentless. Always take notes on the dates, times, contents, and participants when you engage in conversation with the agency.

If no agreement can be reached on the payment, the IRS will institute "enforced collection." This results in a tax lien or a levy.

A lien is a legal charge against your property. It is sometimes reported in local newspapers and is filed with your local credit bureau. This is not something you want on your credit report since it means other creditors will probably not extend any additional credit to you. It can generally only be removed by paying what is owed to the IRS.

A levy, on the other hand, takes your property. This occurs when the IRS physically seizes property to satisfy what you owe. It may also issue a written demand to a third party (such as your bank) that holds any property you own. Filing of a lien does not necessarily precede a levy; the IRS generally will not impose a levy unless you refuse to work with them or you can't be located.

The IRS usually levies bank accounts first, then goes after wages and other sources of income (usually reported on Form 1099). Tax refunds are taken automatically. Other properties or funds held by third parties can also be taken. Even your home and pension plan are not exempt, although taking these is rare.

The IRS cannot take your family's wardrobe, personal effects, and the tools of your trade or part of your wages (as based on IRS tables).

In all of these cases, the dollar amounts that can't be taken are nominal. The IRS can seize the assets of your business or assets in your home only with your permission or a court order.

A lien can be removed by paying at least part of what you owe, with a payment plan worked out for the remainder. Be open and honest with the IRS and negotiate with them in good faith. Never allow your emotions to dictate your actions.

IRS Publication 594, *Understanding the Collection Process*, contains a short, fairly easy to understand description of IRS collection procedures. ■

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

PHOTO: ROGER LEE

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by kathleen "kelly" bergeron

Progressive Discipline

A manager can hope he never has to discipline an employee, but he still should be prepared in the event his hopes are dashed. Many companies adopt a progressive discipline system that includes verbal warnings, written counseling and warnings, and suspension or termination.

This procedure gives managers maximum flexibility in taking the appropriate level of action and dealing effectively with individual employees.

To administer discipline fairly, managers should follow what has been dubbed the "Red-Hot Stove Rule."

- *Immediate.* Just like touching a hot stove, where feedback is immediate, there should be no misunderstanding about why discipline was imposed.
- *Impersonal.* A hot stove burns anyone who touches it. Managers must be similarly impartial; they cannot play favorites. People are disciplined not because of who they are (personality) but because of what they did (behavior).
- *Consistent.* If discipline is to be perceived as fair, it must be administered consistently in similar situations. Consistency throughout the company, as well as individually, is essential.
- *Foreseeable.* A child knows that touching a hot stove results in a burnt hand. Likewise, employees must know clearly what consequences will follow undesirable work behavior. They must be given adequate warning.

The term progressive discipline means that there is a level of discipline to address every problem. It does not mean, however, that each level of discipline must be administered sequentially. That is where the flexibility comes in: Discipline can be tailored to fit the situation.

Documentation is particularly critical when carrying out disciplinary action. A written record should be made of each event, describing in specific detail the transgression and the action taken. A copy of the record should be placed in the employee's personnel file.

Verbal counseling is used for minor offenses, including the first violation of a policy. It is also appropriate when initial performance problems are detected and the employee needs additional guidance or encouragement.

Formal written counseling or warning is reserved for more serious offenses and carries the threat of termination if immediate corrective action is not taken. If appropriate, the employee may be placed on probation for a specific amount of time, usually 30 to 60 days. During this time the employee must correct his deficiencies or face termination.

While on probation, the employee should be given weekly progress reports on his performance. Improvement should be noted and encouraged, but the probation period should not be shortened.

Written warnings should conform to the following guidelines:

- describe what led to the problem (names, dates, times, and other facts)
- describe what corrective action must be taken
- give the time frame and deadlines for correction
- state the consequences if corrective action is not taken

Have the employee sign the written warning to verify that he has read and understands it. A copy of the warning should be given to the employee; the original should be placed in the employee's personnel file.

Using the framework of the system and the Red-Hot Stove Rule, you can choose the appropriate steps to achieve your disciplinary objectives. At the same time, you don't want your managers to become slaves to your progressive discipline system. They must learn to take advantage of the flexibility it offers in order to achieve results: a positive change in behavior and productive performance. ■

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

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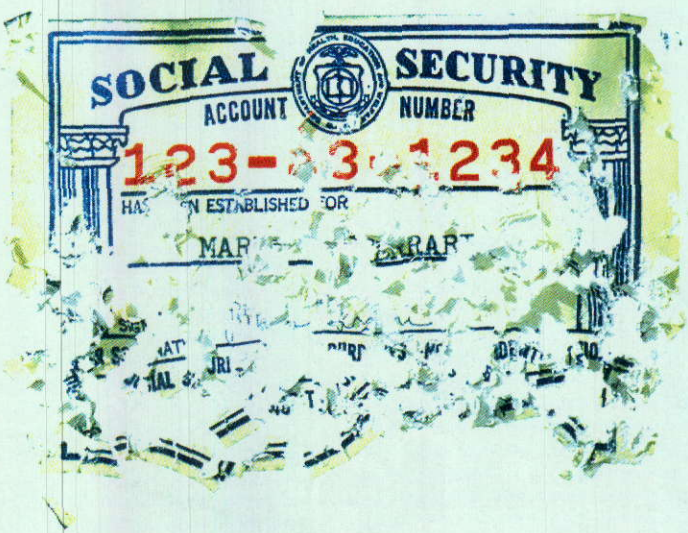
compiled by jacquelyn horkan, editor

The Dark Lining In The Silver Cloud

With government tax revenues booming, hopes for cutting government down to size are dwindling. Without financial pressure, politicians on the state and federal level are not only losing the motivation to eliminate wasteful programs; they're inventing new ones.

The so-called federal budget surplus, however, is non-existent, and not just because it's still only a prediction. If there is a surplus, it's because the balance in the Social Security Trust Fund is larger than the deficit. By law, the trust fund can't hold a surplus; any excess money has to be "invested" in the federal government. In other words, any surplus in the Social Security Trust Fund is going to be handed over to the federal government. President Clinton's call to use the surplus to "save Social Security" is just another one of his truth-challenged statements. The surplus is Social Security.



For politicians, the future only runs to the next election. The rest of us have to look a little farther. The Government Accounting Office projects government surpluses will end in 2012; they'll explode to 22.6 percent of the nation's gross domestic product by 2050. Why? Because Social Security will be paying out more than it collects. And all of those IOUs we're putting in the trust fund today will come due.

If the president and Congress really want to "save" Social Security, they could start by changing the law to allow saving of today's surpluses. That would also force the politicians to face up to the costs of an intrusive government that restricts liberty. Instead, we just get promises of more income redistribution from a government that believes our money is only on loan to us from it.

Ronald Reagan got it right — as he so often did — when he described big government as an infant "with an appetite at one end and no sense of responsibility at the other." ■

PHOTOS: MARIA FERRARI & RICHARD HEINZEN

Teen Angst

A few years ago, the state of Arizona tried to convince kids that smoking wasn't cool by launching its "Tobacco: tumor causing, teeth staining, smelly, puking habit" ad campaign. Teenage smokers snatched up T-shirts with the slogan, burned cigarette holes in them, and wore them as symbols of defiance.

The state of Florida is getting ready to waste hundreds of millions of dollars on a similar effort. It's a waste because nobody really knows what works when it comes to convincing kids to quit smoking. Evidence that high-priced ad campaigns are effective is scarce. In fact, the best anti-smoking programs seem to be those that limit young people's access to cigarettes, either through higher prices or strictly enforced laws against sales to minors.

If the objective is to stigmatize smoking, why not take advantage of two of the strongest forces in the teen world: the joy of flouting authority and parent-induced mortification. If parents would light up every time they ventured out into public with their teenagers, no one under 18 would ever smoke again.

It might work or it might not, but at least we'd be spending less taxpayer money to venture into unknown territory. ■

Second-Class Rights

In 1994, the U.S. Supreme Court issued an important property rights decision in *Dolan v. City of Tigard*. Last November, this tale of feckless and reckless bureaucracy came to an end when Tigard's city fathers settled the case and paid the Dolan family $1.5 million for land they could have purchased for about $14,000 eight years ago.

The case began when John Dolan sought a permit to build a new plumbing and electrical supply store on some land he owned in Tigard, Ore. City planners decided that if Mr. Dolan gave up 10 percent of his property for a greenway and bike path, they would approve the project. Dolan refused to acquiesce in this exercise of forced charity, and thus began the long, arduous journey of *Dolan v. City of Tigard*.

When the case finally reached the Supreme Court, the justices ruled that the city's actions resulted in an unconstitutional taking of the Dolans' property. In the majority opinion Chief Justice William Rehnquist wrote, "We see no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation in these comparable circumstances."

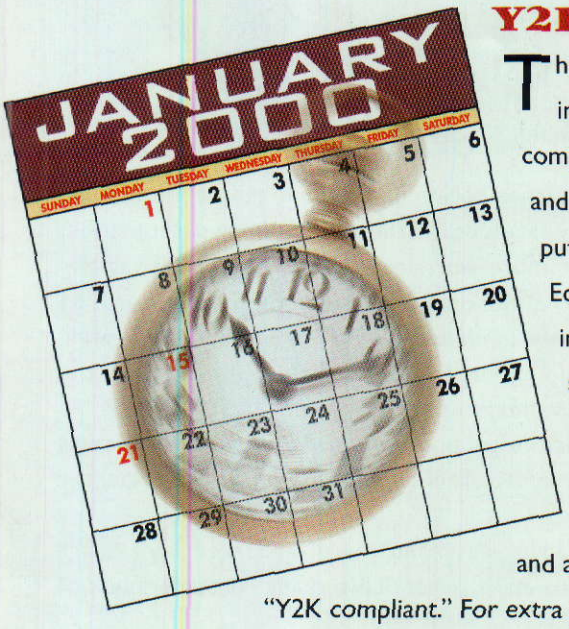
Unfortunately, economic rights continue to play second fiddle to political rights. A person who claims abridgment of his right to free speech has greater access to the federal courts than the citizen who alleges an unjust confiscation of his property by government regulators.

In a takings case, the landowner can't pursue justice in a federal court until the claim is "ripe." Regulators can keep a claim from ripening merely by refusing to tell the landowner just what he can and can't do with property. A landowner can go through multiple permit denials over several years without his claim ripening.

A study of federal courts found that, between 1990 and 1997, the "ripeness" requirement was used to deny review on more than 90 percent of takings cases. This injustice has now caught the attention of Congress. Rep. Elton Gallegly (R-Calif.) has introduced a bill that would remove the unreasonable administrative obstacles to takings cases.

The Gallegly bill, titled the Private Property Rights Implementation Act, would replace the current blurry definition of ripeness with one of clear boundaries. Under the act, a claim would become ripe after a property owner had sought a waiver from an adverse regulatory decision or had appealed the decision.

In 1996, the state of Florida took similar steps to protect property owners from overzealous regulators. But these measures merely represent minor progress in the effort to restore primacy to economic rights. Bureaucrats, judges, and lawmakers continue to subjugate these rights to the "common interest" in a manner that would meet howls of protest if it were applied to freedom of speech, assembly, or the press. ■



Y2K Warning

The Year 2000 computer bug is lurking in other places besides your desktop computers. Machinery around offices and plants often have embedded computerized maintenance schedules. Equipment that might need checking includes: heating and cooling systems, alarm systems, boilers, electronic locks, elevators, and postal machines and scales.

Call the manufacturers and ask them if your equipment is "Y2K compliant." For extra protection, ask them to send you confirmation of their compliance in writing. ■

It's Your Choice

Bobby Moak, a Republican member of the Mississippi House of Representatives, filed a bill that empowered convicted drug users while ensuring just punishment. The measure would have given pushers and junkies a chance to avoid jail by submitting to amputation of a body part, such part to be negotiated by judge and convict.

The bill died in committee. ■

PHOTOS: DWIGHT SUMNERS & ROGER LEE

How Much Longer Can Cuba Afford Castro?

The March 23, 1998, issue of *Forbes* magazine prescribed a course of treatment for the Cuban economy: give Fidel Castro $5 billion to retire to Spain, and save itself in the process.

Between 1959, when Castro seized power, and 1995, Florida's annual per capita gross domestic product climbed from $10,168 to $23,031. Cuba's annual output per person took the opposite course, dropping from $1,839 to $1,300. What if Cuba had remained a free economy? Tracking Florida's growth, people in the island nation would be producing $4,160 worth of wealth every year. According to the magazine, that's just a conservative projection. Cuba was poised for an economic explosion when Castro injected it with his Marxist poison.

Castro will probably never relinquish power voluntarily, nor will he change his ways. Fortunately, he too must one day shuffle off this mortal coil. His death will bring us closer to the end of one of the 20th century's great tragedies, the cruel, impoverishing tyranny of communism. ■

Defining Safety Down

The National Highway Traffic Safety Administration (NHTSA) isn't much interested in traffic safety it would seem. Otherwise, why would it be attacking sports utility vehicles?

In the 1970s, when oil seemed scarce, the federal government embarked on all sorts of misbegotten schemes to conserve this valued resource. One that still survives is the CAFE standard, which forced automakers to increase fuel economy across their entire fleet of passenger cars. The goal was to reduce America's dependence on foreign oil. The effect was to decrease passenger safety.

To get cars to go farther on less gas, carmakers had to cut the weight of the vehicles. These smaller, lighter cars are mismatched against the trucks and SUVs that are exempt from CAFE standards. That's why so many drivers are opting for the heavier, safer vehicles, a choice frowned upon by the anti-safety bureaucrats at NHTSA.

Scarcity of oil is simply no longer a concern for America; adjusted for inflation, gasoline prices have fallen to record lows, a reflection of abundance. Nevertheless, environmentalists claim, fossil-fuel conservation is necessary to prevent global warming. According to some research, however, eliminating every last gasoline-burning vehicle in the nation would reduce worldwide emissions from all sources by a measly eighteen one-hundredths of one percent. Even if global warming were a threat, ridding America's roads of cars, trucks, and SUVs altogether wouldn't even begin to contribute to a solution.

As far as safety is concerned, mismatches between SUVs and sedans are not the major contributing factor in highway fatalities. In the NHTSA's own estimation, high-risk behavior by drivers is by far more worrisome than the types of vehicles involved in the crash. According to the National Transportation Safety Board, 64 percent of the people who died within their vehicles in 1996 were either not wearing their seat belts or were wearing them improperly. Nevertheless, the family in the little passenger car is at a distinct disadvantage in a collision with an SUV.

So what do our non-elected protectors propose to do? Abandon the irrelevant regime of the CAFE standard? Allow manufacturers to build less vulnerable passenger cars? Not a chance.

NHTSA and so-called consumer advocate groups have embarked on a scare campaign to pressure manufacturers to make *lighter* SUVs, giving consumers less of what they really want.

We hardly know how to say thank you. ■

PHOTO: DWIGHT SUMNERS

Proud Partners in Everglades Restoration

Everglades restoration is working.

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The Florida Legislature, which initiated this massive restoration effort in 1994, has maintained diligent oversight of the project. Through their leadership, this initiative is on time and on budget with no new taxes. And the federal government has contributed its share of financing.

Florida's sugar farmers have paid millions more to clean water on our own farms. During the past three years, our new water and soil management practices have reduced the amount of phosphorus that leaves our farms by more than 50 percent. We are proud of this accomplishment, which was done seven years ahead of schedule and achieved twice the standard required by law.

Today, clean water flows into Everglades National Park and the Loxahatchee National Wildlife Preserve.

Everglades restoration is important to the future of ALL Floridians. While much remains to be done, we work every day to fulfill our commitment as partners in this historical Everglades restoration initiative.

United States Sugar Corporation

A Family of Integrated Agribusiness Companies

by robert d. mcrae

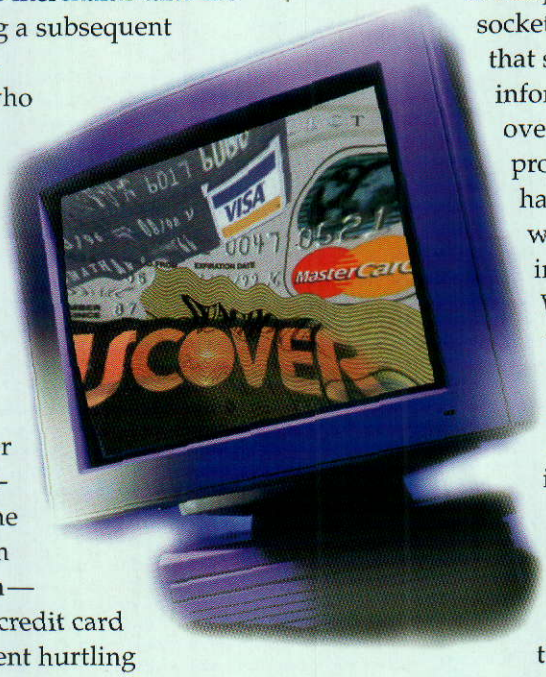
Are You Ready For E-Commerce?

Last year, consumers bought an estimated $2.6 billion worth of goods through the World Wide Web. Web-based sales are expected to grow to anywhere from $100 billion to $600 billion in the next several years. Last year's $2.6 billion, however, only accounts for about four one-hundredths of a percent of total personal consumption in the United States alone.

Electronic commerce, or e-commerce, is a mine most buyers and sellers have yet to explore. One major concern holding them back is the insecurity of Web transactions.

About 80 percent of on-line consumers use credit cards to pay for their purchases. Account numbers are typed in and sent directly to the retailer's Web site when the order is placed. In the interests of transaction security, however, some merchants take the number during a subsequent telephone call.

Merchants who call their customers back are trying to avoid the first peril of e-commerce. When a customer places an order through an on-line catalog, the information on the order form—including the credit card number—is sent hurtling through the network of computers and transmission lines that make up the Internet. Lurking in the side alleys of that network are hackers waiting to steal account numbers. Merchants who place a follow-up phone call to get the number are using old-fashioned technology to foil the hackers. But there are more modern techniques.



The most common Internet security measure is an encryption technique called secure sockets layer (SSL) that scrambles information sent over the network, protecting against hackers who would steal the information. When an Internet user installs browser software, SSL is automatically included.

But how does the merchant receiving the order know that the buyer is not using a stolen credit card? At a store or restaurant, he can compare the signature on the back of the card with the signature on the bill. The latest e-commerce development gives each cardholder a personalized digital signature that confirms his identity.

Several credit card companies have joined together to implement this technology by developing an open standard known as the secure electronic transactions (SET) protocol. The SET protocol is now being tested by, among others, Chase Manhattan Bank and Wal-Mart. They have established an on-line store (*http://www.wal-mart.com*) featuring more than 40,000 items spanning 27 merchandise categories. A group of about 50 friendly users (employees of the bank and the retailer) have been supplied with SET "credit cards" to use to make purchases.

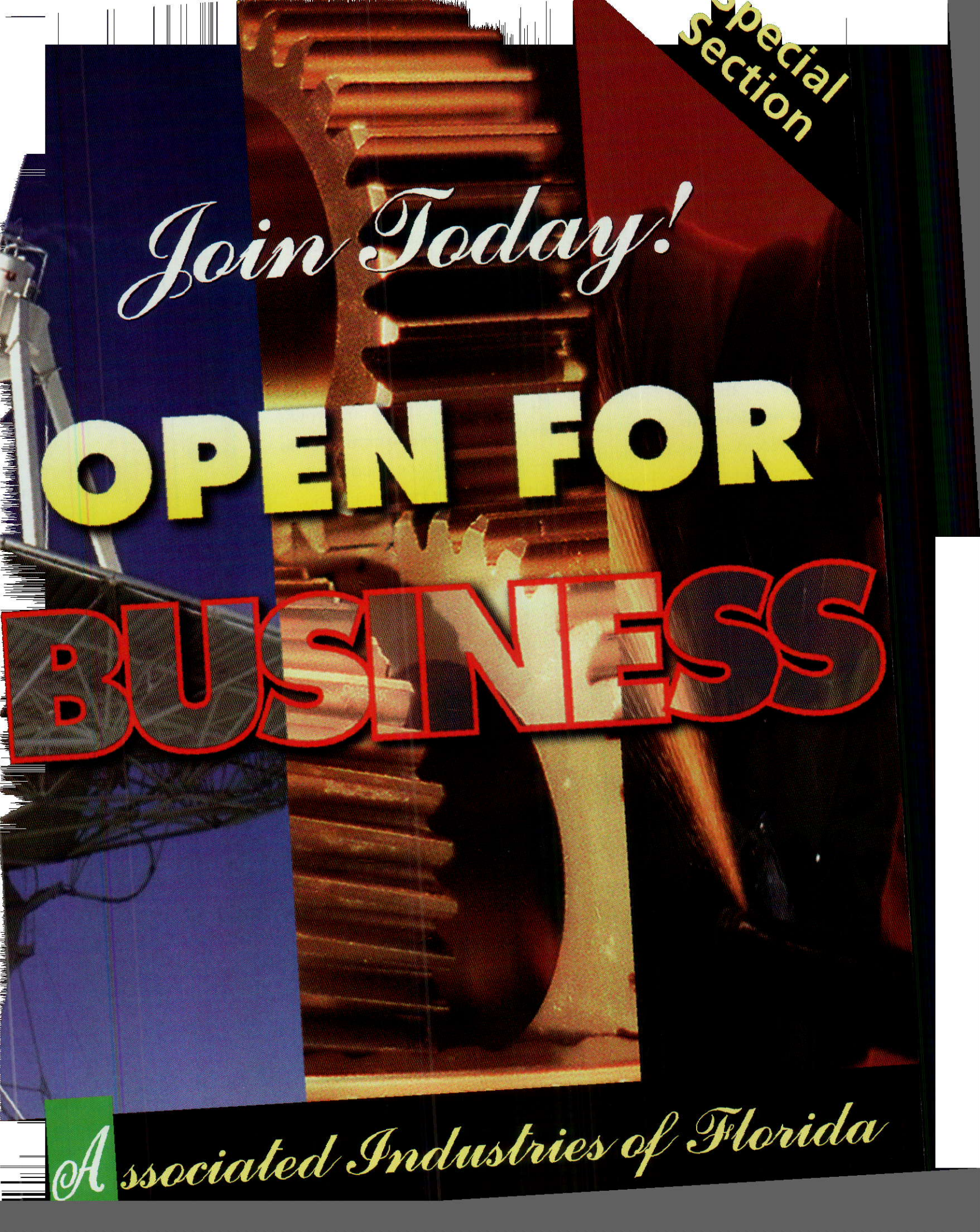
Instead of carrying a piece of plastic in a wallet, the customer has a digital certificate that resides on the hard drive of the computer. The information on the magnetic stripe on the back of the credit card has been replaced by the digital certificate. Both the buyer and the seller authenticate the purchase using the certificate.

If you would like to apply the SET protocol or other security measures to your Web site, talk to your in-house computer personnel or the people who host your site.

As acceptance of e-commerce spreads, the forces of competition will force merchants to establish stores on the Internet. Protecting transaction security will become another facet of customer service. ■

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

PHOTO: DENNIS WANKIS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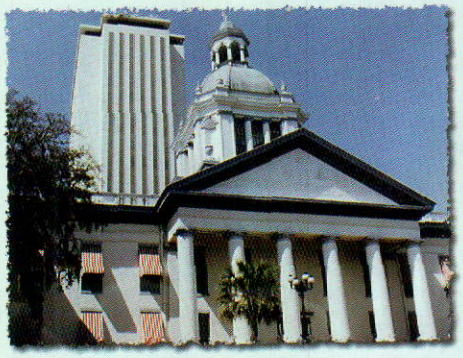

Energy seasoned with experience has made AIF the state's premier business association. Taking the lead in policy debates over such business issues as tort reform, workers' compensation, taxation, and health care, AIF is often the lone voice against the status quo, arguing for policies that promote economic growth.

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- *Florida Business FaxNet* is used to send urgent notices to business people, advising them on matters of government affecting their business interests and to request action from them. The system can send more than 50,000 faxes every hour.
- *In-house TV and Radio Production Services* let AIF use the power of mass media to spread its message of economic prosperity.

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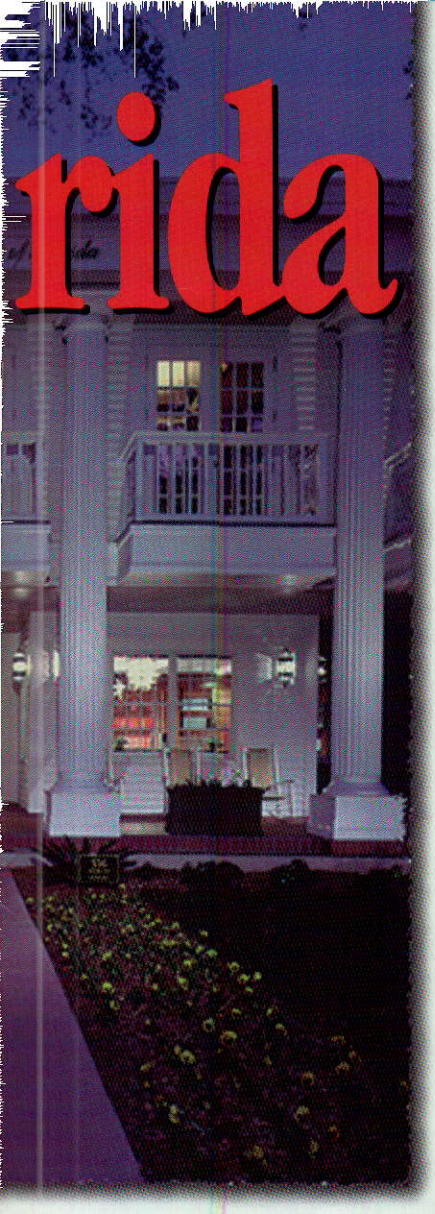
In your quest for timely, insightful, and crucial information, turn to the publications of AIF.

- *Florida Business Insight*, the magazine of free enterprise and public policy
- *Know Your Legislators*, the complete pocket-sized directory of Florida's lawmakers
- *Legislative Fax Report*, a weekly



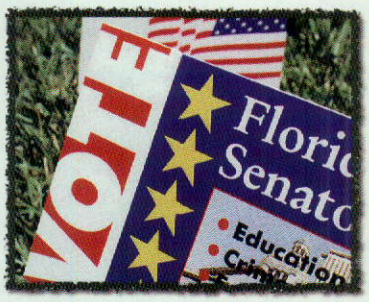
rida Business

update on Capitol happenings

• *Voting Records*, charting each state lawmaker's votes on the bills that matter to business

Political Operations

AIF's political operations department was created to promote the candidacy of those who honor our American legacy of economic opportunity and political liberty. Since the 1994 elections, more than 90 percent of the candidates supported by AIF have won election. The political staff pursues the following objectives:



• identifying, recruiting, and supporting candidates for the Florida Legislature who understand and advocate public policies that promote prosperity

• opposing candidates who, by their actions, voting records, and histories, show they are or will be anti-business public servants if elected or reelected

• collecting and analyzing data to increase understanding of Florida's political climate

• keeping employers and business owners up-to-date on the events and people shaping Florida politics

Florida Business Network

Each legislative session, state lawmakers mull over thousands of bills and legislative proposals.

Florida Business Network, the state's top on-line governmental information system, gathers all the information about the laws and the lawmakers into one easy-to-use database. Subscribers get the inside scoop on every bill, every action, and every vote taken by the politicians and the regulators.

Insuring Your Business Future

AIF's insurance operations were formed to provide AIF members with a stable and affordable source for workers' compensation insurance. Associated Industries Insurance Services, Inc., provides third-party administration services to individual and group self-insureds. Associated Industries Insurance Company, Inc., sells workers' compensation policies to safety-conscious employers.

The insurance operations provide stability for insureds through a philosophy of careful risk selection, unique products and superior claims service. Aggressive claims management, extensive managed care programs, and in-depth loss control programs help reduce claims costs for policyholders, saving money for employers while protecting the safety of their employees.

AIF Membership Application

To the Board of Directors

Firmly believing that every Florida business needs a voice in the state capital and having become convinced that Associated Industries of Florida effectively fulfills this capacity for its members, we desire to participate in its activities. We wish to add strength to our belief that a sound business climate is a basic requirement for our own long-range success and for Florida's economic future. We therefore seek the assistance of the association and agree to support it financially in accordance with the prescribed annual dues schedule until such time as we give notice to the contrary.

AIF Annual Dues Schedule

Corporations

$5 per Employee
Subject to a *Minimum* of $100
Subject to a *Maximum* of $25,000

Associations

$500	Local (city/county/regional)
$1,000	Statewide
$5,000	Multi-State/National

Law Firms

$15,000	Fewer than 50 Attorneys
$25,000	50 or More Attorneys

AIFPAC Annual Dues Schedule

Individuals

$50*

Companies

$250*	Small (1-24 employees)
$500*	Medium (25-99 employees)
$1,500*	Large (100+ employees)

Political Action Committees

$1,500*

**Amounts Reflected are the Minimum Dues. Maximum Dues for All Categories = $10,000*

Florida Business Network (FBN) Annual Subscription

$2,000 Basic On-Line Services

❒ *Please contact me regarding your full schedule of FBN services, prices, and terms.*

(Please print or type) **Date** _____

Firm Name _____

Mailing Address _____

Business Address _____

( ) **Phone Number** _____ ( ) ***Fax Number** _____

***Please indicate the method of facsimile delivery you prefer:**

- ❒ **OK to fax at night and/or during business hours**
- ❒ **Please fax during business hours only**
- ❒ **Please call first; fax machine requires manual switch**

Nature of Business _____

SIC Number _____ **No. of Employees** _____

Annual Commitment to AIF $ _____

Annual Commitment to AIFPAC $ _____

TOTAL ANNUAL COMMITMENT $ _____

Method of Payment:

- ❒ **Please send me an invoice**
- ❒ **Check • money order • purchase order • cashiers check**
- ❒ **VISA/MasterCard #** _____ **Exp. date** _____

We designate _____

whose title is _____

as our official member of Associated Industries of Florida.

Signature _____

Associated Industries of Florida is a tax-exempt trade association as provided by Section 501(c)(6) of the Internal Revenue Code. Accordingly, dues paid to Associated Industries of Florida are not deductible as a charitable contribution, but may be deductible as an ordinary and necessary business expense except to the extent that Associated Industries of Florida engages in lobbying. This nondeductible portion of dues is estimated each year and will be reported on the dues invoice.

Associated Industries of Florida
516 North Adams Street • P.O. Box 784 • Tallahassee, FL 32302
PHONE: (850) 224-7173 • FAX: (850) 224-6532 • E-MAIL: aif@aif.com • INTERNET: http://aif.com

Hickory driver and shaft, circa 1895.

Persimmon driver with enamel-coated shaft, circa 1935.

Persimmon driver with steel shaft, 1955.

Laminated wood driver with steel shaft, 1976.

Graphite driver and shaft, 1988.

Oversized, perimeter-weighted metal driver, 1994.

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SEXUAL HARASSMENT

Shielding Your Company From Liability

The numbers are chilling. A small Miami company hit with a court award of more than $1 million. A verdict of more than $7 million against a California law firm. Damages of $50 million-plus against Wal-Mart.

Ever a threat to morale and productivity, sexual harassment is now becoming a threat to corporate finances. In 1991, Congress allowed plaintiffs to collect compensatory and punitive damages in successful sexual harassment lawsuits. As a result, more lawsuits are being filed and the damages are becoming more costly, thereby increasing the importance of corporate anti-harassment efforts.

One complication to the problem of sexual harassment in the workplace is determining just what constitutes harassment. Statutes and case law provide broad guidelines but, ultimately, the definition is subjective and circular. If an employee says the conduct is unwelcome, then the conduct is presumed harassing. An employer invites trouble if it tries to judge the merits of an employee's complaints.

Sexual harassment falls into two general categories. "Quid pro quo" harassment is the kind where promotions and other conditions of employment are tied to the granting of sexual favors. "Hostile environment" harassment occurs when workplace behavior and conduct is intimidating or interferes with an individual's ability to do the job.

An employer will always be found liable for sexual harassment if an employee complains and the employer does nothing. But what if the employee doesn't complain and the employer has no way of knowing that the harassment is occurring? If the harassment is of the type that creates a hostile environment, the employer may be held liable even if it does not receive a complaint about the harassment. All a plaintiff has to do is establish that the level of harassment was so pervasive or severe, management should have known about it. In the case of quid pro quo harassment, an employer generally will be held liable whether it knows about the conduct or not. Quid pro quo harassment only occurs in the context of an imbalance of power, meaning that the harasser has some authority over the harassee that derives from the employment arrangement. Because the employer has delegated that authority to the supervisory employee, it will be held liable for abuse of that power.

The only protection an employer has against what may seem like open-ended liablility for complaints of sexual

By John-Edward Alley & Amy W. Littrell

PHOTO: LARRY DALE GORDON

harassment is a vigorous and well-crafted anti-harassment program. It must make clear that the company will not tolerate harassing behavior, and will act quickly when it receives complaints.

Implementation of such a program is the right thing to do because it helps reduce incidents of harassment. In addition, as some Florida cases recently decided by the 11th U.S. Circuit Court of Appeals indicate, it erects a potential shield against liability. In effect, the court has ruled that when a company adopts an effective anti-harassment policy and pursues prompt remedial action, it receives a "get out of jail free" card.

THE IMPORTANCE OF PROMPT INVESTIGATION & REMEDIAL ACTION

One of the keys to avoiding liability is to take complaints seriously and to act on them quickly. Since 1989, the 11th Circuit Court, the federal appeals court for Florida, has held that an employer is not liable for a sexually hostile work environment if the employer can show that it acted quickly to stop the harassment. The court recently reiterated this position in *Reynolds v. American Cast Iron Pipe Co.* and reversed a jury award of $500,000 to the employee alleging harassment.

The *Reynolds* case involved an employee who made a complaint to a manager about inappropriate conduct. The manager immediately referred the complaint to the assistant manager of employee relations. The assistant manager met with the employee that same day and told her the complaint would be investigated. A written report on the complaint was submitted to the employee relations senior director who began interviewing employees within a few days.

At the conclusion of the investigation, the employer gave the alleged harasser a verbal warning, ordered him to attend sensitivity training, took away his supervisory duties, and transferred him away from the complainant. After this action by the employer, the alleged harasser said nothing else to the complainant and he never touched her again. The court held that the employer's discipline of the alleged harasser was action "reasonably likely to prevent the misconduct from recurring" and, therefore, the employer incurred no liability for the actions of this supervisor.

An important element of prompt remedial action is communication. The results of the investigation should be made known to the involved parties, including the alleged harasser. The results of the investigation may also warrant announcements to others in the workplace to clarify or reinforce the employer's harassment policy. In making such announcements, however, the employer must take care not to defame anyone involved. The employer may

HOW TO RECOGNIZE ILLEGAL HARASSMENT

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexually harassing nature, constitute sexual harassment when submission to such conduct is made either, explicitly or implicitly, a term or condition of employment; submission to or rejection of such conduct is used as the basis for employment decisions; or such conduct has the purpose or effect of unreasonably interfering with an individual's work or creates an intimidating, hostile, or offensive working environment.

SOME COMMON FORMS OF HARASSMENT

VERBAL
- sexually oriented noises, remarks, or jokes
- negative stereotyping
- sexual propositions
- unwelcome remarks about a person's physical traits, religion, or appearance

NONVERBAL
- displaying sexually suggestive or demeaning material
- leering or lewd gestures
- unwelcome notes or letters
- displaying material that depicts any protected category (disability, race, national origin, etc.) in a demeaning manner

PHYSICAL
- touching, brushing, pinching, grabbing, or patting, etc.
- date rape, sexual assault, attempted sexual assault, etc.
- engaging in horseplay or practical jokes targeting employees because of their protected status

RETALIATION
- changing work assignments, demoting, refusing to promote or refusing to cooperate with a person who has complained about or resisted harassment or discrimination

want to consider additional harassment training if it finds that employees do not appear to be sufficiently familiar with its harassment policy.

In light of the court decisions, the employer's prompt investigation and action in response to a claim of harassment is essential to its defense in a lawsuit. But what happens when the employer doesn't get the opportunity to investigate a complaint and take action?

THE "SHOULD HAVE KNOWN" ARGUMENT

An alleged victim doesn't have to complain about hostile environment harassment to win damages. All the plaintiff has to do is establish the harassment was so severe or pervasive that the employer *should have known* the offensive conduct was occurring. A company may also incur liability when an employee confides in a low-level manager and subsequently claims that the conversation put the employer on notice of the alleged harassment.

Recently, the 11th Circuit Court of Appeals, in *Farley v. American Cast Iron Pipe Company*, narrowed the employer's potential liability in these situations. In *Farley*, the employer had implemented a comprehensive anti-harassment program that included the following:

- adopting an effective sexual harassment policy and communicating it to employees through training
- providing several alternative avenues for employees to complain without requiring that employees go to their immediate supervisor to lodge a complaint
- taking complaints seriously by investigating them and taking prompt remedial action based upon the results of the investigation

The court stated the general rule as follows:

> In sum, we hold that an employer is insulated from liability under Title VII for a hostile environment sexual harassment claim premised on constructive knowledge of the harassment when the employer has adopted an anti-discrimination policy that is comprehensive, well-known to employees, vigorously enforced, and provides alternate avenues of redress.

Another recent 11th Circuit decision, *Faragher v. City of Boca Raton*, involved complaining employees at a remote location controlled by the supervisors who allegedly harassed them. The court held that the fact that the employees failed to complain to higher management at another location precluded them from successfully proving employer liability for hostile environment harassment. (The U.S. Supreme Court has decided to review this decision, which may ultimately lead to an opinion from that court on these issues.)

Faragher and Farley both emphasize the importance of utilizing the employer's established complaint procedure. As the court said in *Farley*,

> Once a company has developed and promulgated an effective and comprehensive anti-sexual harassment policy, aggressively and thoroughly disseminated the information and procedures contained in the policy to its staff, and demonstrated a commitment to adhering to this policy, it has fulfilled its obligation to make reasonably diligent efforts to know what is going on within the company; beyond this point, it is incumbent upon the employee to utilize the procedural mechanisms established by the company specifically to address problems and grievances.

The existence of such a policy, however, may not protect the employer if it has actual knowledge of an incident of sexual harassment and fails to take prompt remedial action. Employers should still encourage all supervisory employees to report complaints of harassment to the appropriate top-level managers so that action may be taken. Based on *Farley and Faragher*, however, an employer can protect itself against liability for a supervisor's failure to do so as long as the company has taken the steps outlined in these decisions. These two decisions set up what might be called a "Triangle of Protection." The employer is protected against liability if (1) it has a vigorously enforced and widely disseminated policy prohibiting sexual harassment that (2) has been made known to the employees through training, and (3) it takes complaints seriously, investigating promptly and taking remedial action calculated to end the harassment.

ANTI-HARASSMENT VACCINATION

The implementation of an effective and well-disseminated anti-harassment policy, and the training of managers and employees, are effective ways to take control of litigation costs and reduce potential liability. They may also

be essential to the very survival of a company if it were to face an harassment claim in the future.

The first step is to adopt a general harassment policy that includes sexual harassment provisions but also informs employees that any type of harassment based upon a category protected by law (including age, religion, national origin, disability, race, color, and marital status) is strictly prohibited.

The training program for management employees should cover the basics of workplace harassment, including sexual harassment, and the pitfalls and dangers of office socialization, including interoffice dating. Supervisors and managers should also be told about issues of liability, including personal liability for the costs of defense, as well as the possibility of liability for damages awarded to the plaintiff, and the irreparable damage to a supervisor's personal and professional reputation. The steps each manager and supervisor should take to avoid liability, both corporate and personal, for any kind of harassment should be covered in detail.

A training program for non-management employees should focus on the issues relevant to employees who are not in supervisory positions. It should be designed to cover the basics of harassment and educate the employee on how to make a complaint pursuant to the employer's harassment policy.

This program should also cover the pitfalls and dangers of office socialization, including inter-office dating; liability for harassment; and the potential damage to an employee's reputation. Finally, the program should also cover, in detail, what steps can be taken to avoid harassment, as well as the importance of seeking help and reporting problems sooner rather than later.

While some employers fear that harassment training for non-management employees will encourage them to file complaints, the focus of this program should be on the prevention of harassment, including sexual harassment. Emphasis should be placed on the employer's policy prohibiting harassment, and the importance of seeking assistance from the employer first (as opposed to a third party such as a lawyer, labor union, or governmental agency).

Training assists in more than the prevention of harassment, however. It also is an element in the protection against liability. Together with vigorous enforcement, training programs act as a vaccine against costly sexual harassment claims. To put your company on an anti-liability treatment program, contact an employment lawyer or human resources professional. They can assist you in developing an anti-harassment program for your company.

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

ANTI-HARASSMENT POLICY

An effective anti-harassment policy should include the following provisions:

- **a statement that harassment is prohibited**
- **a general definition of prohibited harassment, which goes beyond that which is illegal**
- **examples of types of conduct that are prohibited (indicating the list is not exclusive)**
- **specific identification of managers to whom harassment complaints should be directed, with phone numbers and/or office locations**
- **a statement of commitment to the eradication of prohibited harassment but warning that management can only take action about conduct of which it is made aware**
- **a statement that confidentiality will be protected, but that complete confidentiality cannot be guaranteed**
- **an assurance to employees that they will not be subjected to retaliation for complaining of conduct they believe to be prohibited harassment**
- **informing both management and non-management employees of the anti-harassment policy**
- **providing a form for employees to sign indicating they have received and read a copy of the policy and understand it**

An Environment Of

Editor's Note: This article is adapted from a Dec. 5, 1997, article published by the Washington Legal Foundation as part of its Legal Backgrounder *series.*

With the help of a few federal agencies, environmental extremists are gaining a new weapon in their battle to retard industrial expansion. The weapon, familiar to civil rights activists as "disparate impact theory," is a strange breed of no-fault discrimination. Having already made a mess of employment law, it is now beginning to sow seeds of discord in environmental law as well.

Under disparate impact theory, something seemingly harmless and neutral is presumed discriminatory if it more harshly affects minorities than it does the general population. The theory is now being applied by some aggressive environmental agencies to pursue a vision of environmental justice, the notion that minority communities should not have to bear a disproportionate share of polluting activities.

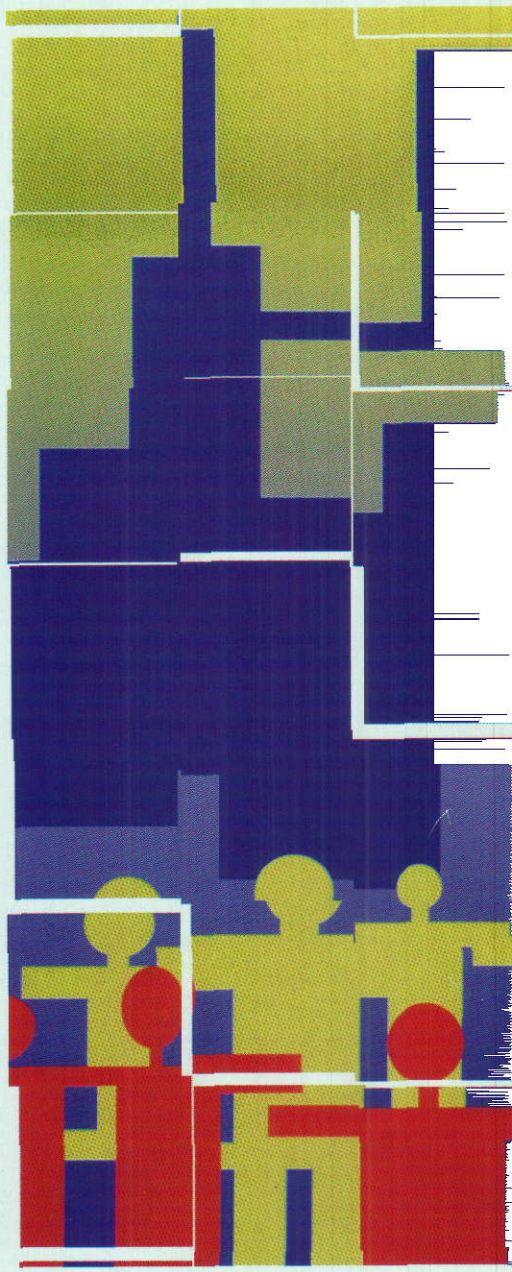
The impetus behind this development was President Clinton's 1994 executive order on environmental justice. Encouraged by the executive order, environmental groups are urging the Environmental Protection Agency (EPA), the Nuclear Regulatory Commission (NRC), and other environmental agencies to apply civil rights law — Title VI of the 1964 Civil Rights Act, in particular — in ways Congress never envisioned.

Despite the fact that executive orders have no legal force and do not change or create new substantive rights, administrators of these agencies are heeding the call and, as a result, are apparently changing the way they make permitting decisions. In doing so, agencies are violating the tenets of administrative procedure, evading federal statutory and case law, and ignoring their own internal regulations.

LAWS WITHOUT SUBSTANCE

The environmental justice movement was born in the early 1970s, but languished as little more than a rallying cry until Feb. 11, 1994, when President Clinton issued Executive Order 12898, breathing new life into the crusade.

In the order, the president mandated that all federal agencies identify and address environmental justice concerns within the agencies, and challenged the agencies to combat racial inequities. The order explicitly cautions that it "is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right [or] benefit, ... substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance ... with this order."



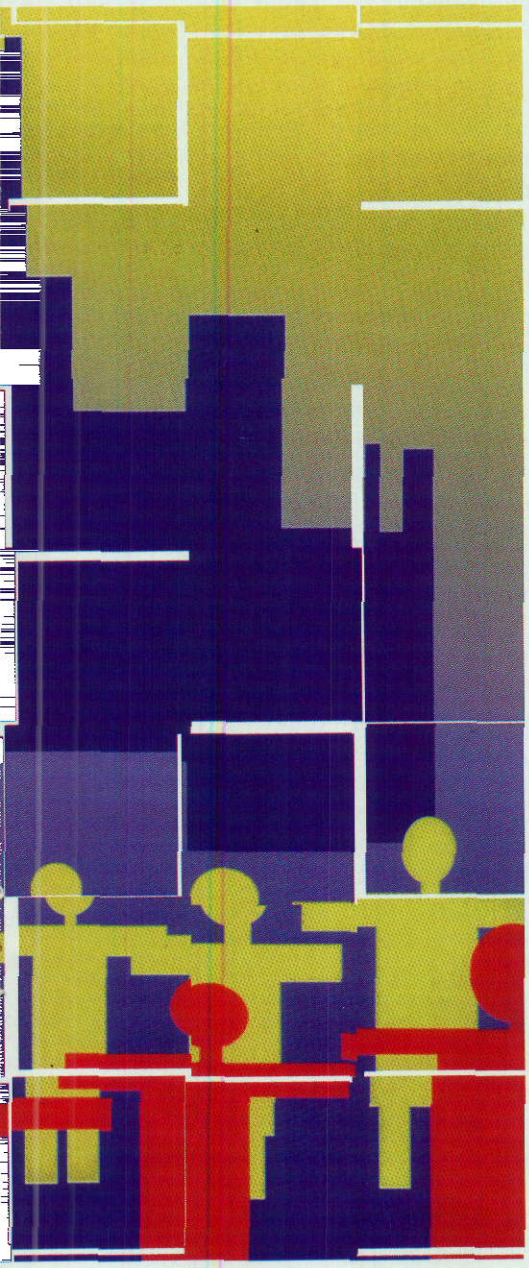
Given the language of the order, it is curious that an agency, in considering a permit application, would give deference to it. Courts considering similar executive orders have found that they do not create enforceable rights or obligations, and the U.S. Supreme Court has held that executive orders must be authorized by statute to have legal effect.

Nonetheless, the environmental justice executive order has prompted some regulators to adopt disparate impact theory in their decision-making processes for the first time. Most notable is a recent decision by the NRC's Atomic Safety and Licensing Board to block a permit for a uranium enrichment facility. In that case, the NRC board retroactively applied the 1994 executive order in refusing the 1991 permit. Despite the

by gregg t. schultz

Injustice

fact that the executive order explicitly refused to grant new substantive rights, the board not only allowed permit opponents to cite it, but eventually relied on it exclusively, in contravention of its own practices and well-established Title VI doctrine. The license applicant, Louisiana Energy Services, LP, has asked the NRC commissioners to overturn the board's decision.



Similar stories are beginning to emerge across the country. In California, oil companies have long participated in a program allowing them to earn extra emissions credits for each old, high-emission car they bought and scrapped. This, the civil rights establishment has argued, amounts to racial discrimination because it takes roving, statewide sources of emissions and concentrates them at the refineries, which are located near minority communities. The program — hailed as a successful example of how conservation goals can coexist with industry realities — is now in serious jeopardy.

The case receiving the most attention is the proposed Shintech plastics plant in Convent, La. EPA Administrator Carol Browner has delayed permitting of the $700 million facility, citing the Clinton Administration's environmental justice concerns as her basis for doing so. Despite overwhelming support by the black community in Convent, some fear EPA will choose to find discrimination where none exists, ignoring the realities of site selection as well as the legal mechanisms of anti-discrimination law.

IS DISPARATE IMPACT DISCRIMINATION?

To understand how the executive order is being used to amend existing federal laws and create new substantive rights, it is helpful to understand the framework of discrimination law. It is a precept of constitutional law that the executive branch cannot legislate without the statutory authority to do so. Thus, no executive order or agency regulation can create substantive rights beyond what the legislative branch intended. To that end, the U.S. Supreme Court's interpretation of Title VI of the 1964 Civil Rights Act defines the outer boundaries of executive branch policy-making powers. In the vernacular of administrative law, Title VI is the *enabling* statute, while the agency regulations are *implementing rules*.

In *Washington v. Davis*, the Supreme Court held that disparate impact alone was not enough to establish discrimination under the 14th Amendment. Subsequent case law has held that Title VI, which coexists with the 14th Amendment, also requires a showing of intent. In *Guardians Association v. Civil Service Commission of New York*, however, while seven justices agreed that Title VI required a showing of intent, five of them held that agencies could adopt regulations pursuant to Title VI that incorporated the disparate impact theory.

Nonetheless, proving a disparate impact case under Title VI has been extremely difficult. Under the Supreme Court's disparate impact analysis, it is not enough that a policy or action disproportionately impacts a protected class; the impact must be unjustified. As Justice Thurgood Marshall cautioned in *Guardians*, "Proof of disproportionate racial impact of a program or activity is, of course, not the end of the case." Rather, disparate impact may prove discriminatory results, but that isn't proof, by itself, of discrimination.

In other words, the plaintiff only meets an initial burden by showing, with statistical support, actual disparate impact. Then, the defendant may rebut the presumption of discrimination by showing that he had a legitimate, nondiscriminatory reason for his decision. If he can do so, the plaintiff must show that the defendant's offered reason cannot be his actual motivation. Finally, the plaintiff must also demonstrate how the defendant could have achieved his goals without disparate results. The burden in showing an acceptable alternative has been an onerous one, and thus far no plaintiff has succeeded in a siting case under Title VI.

DISOBEYING THE RULES FOR MAKING RULES

The executive order has undoubtedly played a role in the agencies' newly adopted aggressive stance on environmental justice. Inasmuch as this shift in policy delineates

ILLUSTRATION: DIANA ONG

NRC's DECISION IS TROUBLESOME because it eviscerates long-held notions of what constitutes appropriate siting criteria.

new realms of substantive law, formal notice-and-comment rulemaking should be an absolute prerequisite before any new obligations are created in the permitting process. It is well settled that an agency may not create new substantive law without notice and comment.

As part of the executive branch, an agency is under the direction of the president, and its legislative authority is limited. Agency rules must remain consistent so that the public is on notice of any duties or obligations, and has fair and reasonable warning of what is prohibited. While an agency is free to change its position on any given issue, it must go through a formal rulemaking process when it does so.

Recent agency actions show how notice and comment rules are being ignored. Contrary to its position in the Shintech case, EPA historically has steadfastly maintained that its singular goal is protection of the environment, and that racial issues are appropriately left to other agencies. Likewise, the NRC admitted in its recent decision that it was imposing new obligations for the first time. Courts have consistently held that changes in licensing and/or permitting standards, without notice and comment, are in violation of the federal Administrative Procedure Act.

While EPA and NRC have not formally changed their regulations, they have, in deference to the president and his executive order, changed the way they are implementing them. One wonders if Shintech would have invested millions of dollars in the Convent plant had it been able to predict EPA's teetering stance. Had the agency followed the notice and comment procedures, Shintech would at least have had the opportunity to make an informed investment decision.

Adherence to notice and comment requirements, however, would still not allow the haphazard application of disparate impact analysis that occurred in the NRC case and may occur with the Shintech site.

OUT OF BOUNDS

Agencies adopting the disparate impact standard are governed by the framework of Title VI, and thus must also implement its burden-shifting standard, giving deference to the legitimate business reasons that guide siting decisions. Otherwise, quite contrary to Justice Marshall's caveat in *Guardians*, a showing of disparate impact would be the end of the case.

NRC's handling of the Louisiana Energy Services permit is illustrative of how an agency can pervert the law by ignoring the enabling statute. In that case, the board curiously allowed the executive order to trump the governing statute, reading it to require the agency to forbid siting decisions that have disparate impacts. Yet the Supreme Court has not forbidden disparate impacts; only *unjustified* disparate impacts are proscribed.

A cursory review of the NRC board's decision reveals the absurdity in ignoring the burden-shifting mechanisms of Title VI. In reaching its decision, the board appropriately allowed the permit applicant to explain how it reached its siting decision. Under Title VI, the applicant would have to show nondiscriminatory reasons, and the burden would shift back to the plaintiff to show pretext. But the board never got to the second part of that equation.

Instead, it rejected the applicant's *legitimate* reasons simply because they created a disparate impact. The NRC board's reasoning turns Title VI and disparate impact theory on its head. Its circular, results-oriented logic converts Title VI into a Draconian form of strict liability, and ignores the clear mandate of the Supreme Court that disparate impacts are allowed as long as they are not motivated by racial animus.

For example, one criterion in siting a nuclear facility is that it be located away from sensitive receptors such as hospitals, schools, and nursing homes. The agency found the criterion racially hostile because black communities generally are unable to afford such amenities. Likewise, the agency took umbrage at the apparent aversion to siting the nuclear facility near a popular fishing lake, holding "quality of life considerations" to be "improper," and tantamount to favoring the middle class at the expense of the poor.

The decision is troublesome because it eviscerates long-held notions of what constitutes appropriate siting criteria. As the Nuclear Energy Institute's *amicus* brief supporting the permit applicant's appeal to the NRC pointed out, if aversion to urban areas, high land costs, flood-prone areas, or non-industrial land becomes unacceptable in environmental siting decisions, what is to become of American industry? Will these well-tested, well-established precepts of environmental engineering be replaced with the illogical social engineering propounded by an elite few in the civil rights establishment?

As a result of the NRC board's decision, a major investor pulled out of the seven-year $850 million project. Likewise, in Convent, where the median salary is around $12,000, residents are worried that the 165 jobs that come with the plant, and which pay over $40,000 annually, will also be taken away from them. Strangely, adoption of an extremist disparate impact analysis would have the most damaging impact of all on the community this legal theory is meant to protect.

Both the procedures and the substance of NRC's recent actions run afoul of the mandate of Title VI. A refusal to accept reasonable scientific and technical siting criteria converts Title VI into a strict liability statute, which is clearly beyond the parameters of the Civil Rights Act as intended by Congress. On the other hand, a fair application of the law will prevent the discrimination Congress sought to eradicate, and will also help minorities and the underprivileged by fostering investment into those communities that need it the most. ■

Gregg T. Schultz is a corporate attorney in Houston who specializes in environmental law.

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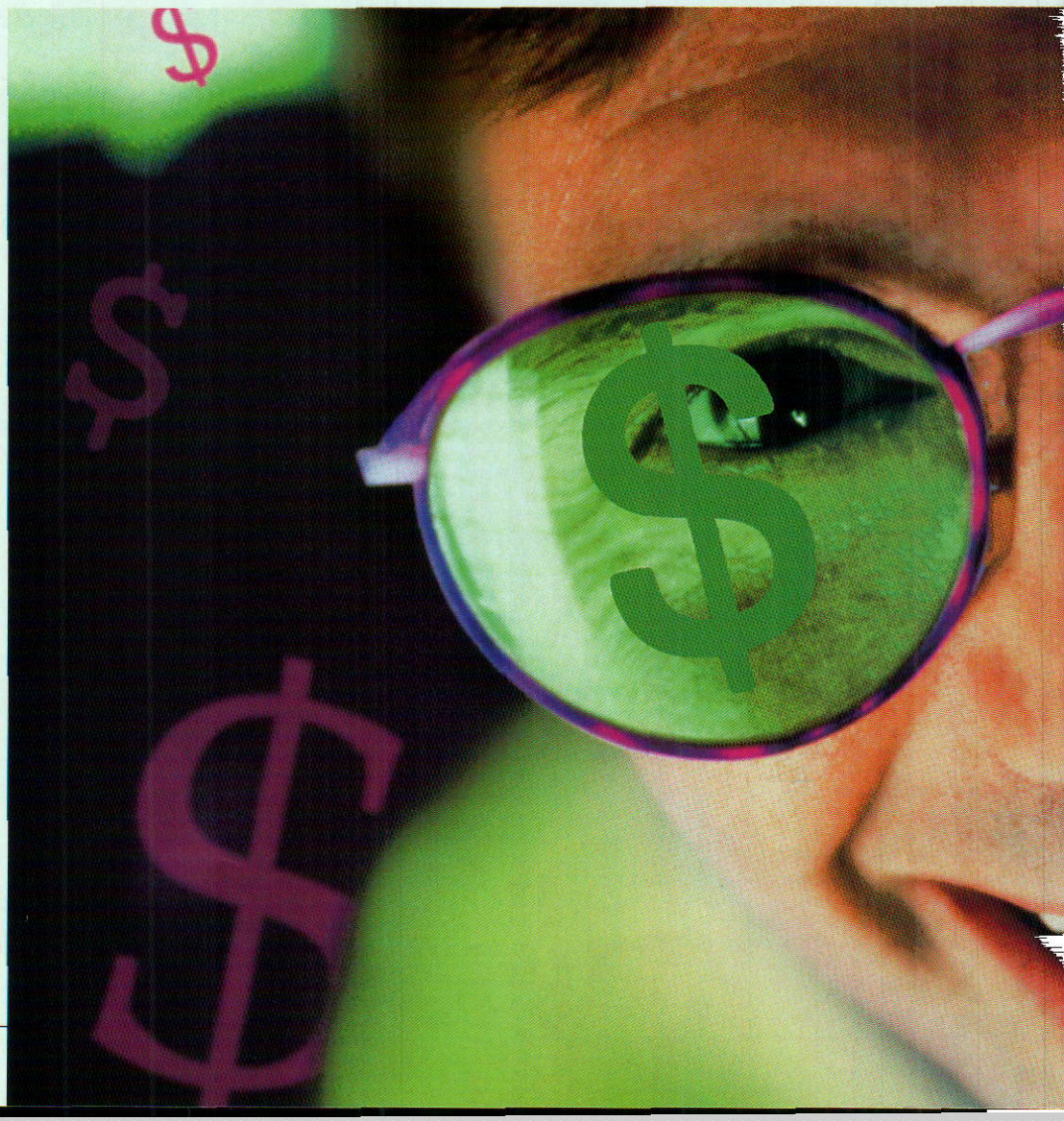

by jacquelyn horkan, editor

IOLTA stands for Interest on Lawyers Trust Accounts.* Lawyers often hold money in trust for their clients (closing costs on a transaction, retainer fees, insurance settlements, etc.). When the money involved is in a small amount or is only to be held for a short period, the lawyer will pool it with similar funds in a special interest-bearing account. On a regular basis, banks will take the interest earned on all these accounts and transfer it to the account of a non-profit organization, usually affiliated with the state bar association.

All 50 states and the District of Columbia have IOLTA programs, most of them ordained by the state's Supreme Court, a few by legislatures. In Florida and 25 other states, participation is mandatory for lawyers; in the remaining states, it is voluntary. Few clients, however, are ever told about the program, and they are never given a choice as to whether or not they want to make a "donation."

The IOLTA concept germinated in Australia in the 1960s, then spread to Canada. It first flowered in the United States here in Florida in 1981. Since then, this quiet little government program has confiscated and spent about $1 billion worth of other people's money.

The money is used, ostensibly, to supply legal services to the poor; in some instances the money is also used to finance lobbying efforts and community outreach, usually in pursuit of left-wing objectives.

IOLTA proponents justify their appropriation of the interest earned on other people's principal with a sparkling bit of legerdemain. Each separate deposit of principal, they explain, is either so small or is to be held for such a short amount of time that any interest accrued would not be enough to cover the costs of setting up an account to hold the money. So, the IOLTAians argue, they are not ignoring the centuries old rule of interest follows principal, because there exists no interest on this principal until they step in to create it.

On the off chance that someone might not fall for that argument completely, the IOLTA people fall back on the populist gambit. They argue that all of those little or short-term deposits collectively equal hefty subsidies to banks that keep the interest they earn on the funds. Therefore, what once brought no economic benefit, is now bringing economic benefit to the banks.

This argument does not admit any possibility that the bank might transfer its benefit to its customers in ways that make it more competitive (in the form of reduced banking fees, for example). It also ignores the power of computers to allow easy accounting of the interest accruing to these funds. Neither does it give the three legitimate parties to the transaction (the bank, the lawyer, and his client) an opportunity to work out distribution of the benefits.

★ *Most states use the acronym IOLTA but Florida uses IOTA; for the sake of clarity, IOLTA is used throughout.*

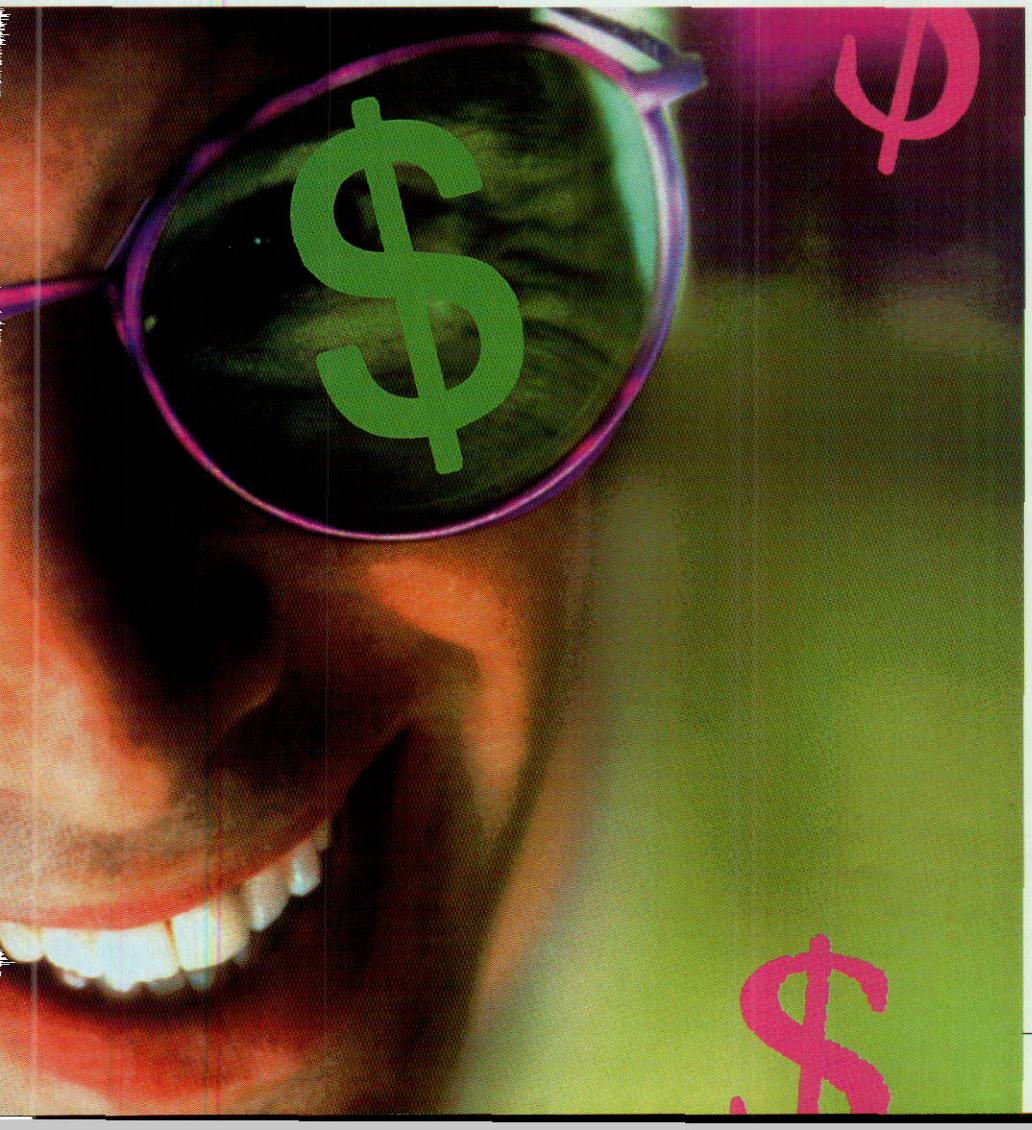

PHOTO: RON CHAPPLE

THIS QUIET LITTLE GOVERNMENT PROGRAM has confiscated and spent about $1 billion worth of other people's money.

If all else fails, IOLTA proponents will trot out the Robin Hood argument. IOLTA subsidizes organizations that provide legal services for the poor. What does it matter if they're taking someone else's property if they're doing it for a good cause?

As far as Richard Samp is concerned, it matters plenty because of the principles outlined in a document commonly referred to as the U.S. Constitution. Samp is chief counsel for the Washington Legal Foundation (WLF), a D.C.-based group that litigates issues in support of the free enterprise system. In 1991, on behalf of WLF, he filed a lawsuit in Massachusetts challenging the constitutionality of IOLTA.

"We lost the suit there," says Samp, "so we decided to bring another case because we thought we were right. We were contacted by some people in Texas and we filed a suit there in 1994."

THE PRINCIPLE OF PRINCIPAL

No matter the strength of their convictions, Samp and his colleagues were saddled with a decided disadvantage. IOLTA had already survived a 1987 challenge here in Florida in a class action filed on behalf of legal clients who resented someone profiting from their money without so much as a by-your-leave. The Florida plaintiffs lost their case when the 11th U.S. Circuit Court of Appeals ruled that there was no unconstitutional taking of the plaintiffs' private property, a result similar to the 1st Circuit's decision in the Massachusetts case.

The reasoning behind the rebuttal of takings claims in IOLTA challenges is similar to that met in other property rights cases: The owner of the money is losing nothing that he had in the first place and besides it's all being done for a good cause (giving poor people access to the courtroom). That argument finally met a skeptical audience in the case of *Phillips v. Washington Legal Foundation*, Samp's second vehicle for an IOLTA challenge.

In September of 1996, the 5th U.S. Circuit Court of Appeals decided the *Phillips* case by ruling in favor of WLF and its co-plaintiffs, a pair of Texans who objected to the judicial branch's confiscation of their property through IOLTA.

In its decision, the appeals court called IOLTA proponents modern-day alchemists who professed to hold the ability to turn nothing into something. "We, however," wrote the court, "view the IOLTA interest proceeds not as the fruit of alchemy, but as the fruit of the clients' principal deposits."

The defendants promptly appealed to the U.S. Supreme Court, which agreed to review the case because the Phillips decision conflicted with the rulings in the Florida and Massachusetts cases.

On Jan. 13, 1998, both sides argued their case before the Supreme Court. The only issue before the court is whether or not the interest earned is the property of the owner of the principal. If the justices rule in WLF's favor, the case will still have to go back to trial to determine whether IOLTA violates the rights of clients who deposit funds with lawyers. Samp expects IOLTA proponents to argue that there is no way for individuals to benefit from the use of their money. Samp checks that claim with a simple economic argument: "There are always ways for private individuals to benefit from their money."

Who benefits from IOLTA money raises another constitutional issue for Samp: violations of First Amendment protections of free speech and association.

COMPELLING SPEECH

Despite its self-advertised goal of supplying due process to the poor and needy, IOLTA is part of network of organizations devoted to controversial projects. In Florida, IOLTA funds have backed the activities of the Legal Environmental Assistance Foundation, commonly known by its acronym, LEAF. Thus, developers and industrial operations that have lawyers holding funds in escrow for them are financing a litigious group rabidly opposed to development and industry.

Florida's IOLTA money has also been used to promote homosexual adoptions, oppose community efforts to control homeless populations, and fund race-based legal scholarships. In no way can these be called non-controversial causes. What's more, only through amazing feats of mental agility can these programs be justified as service to the poor.

Many of the same legal aid organizations that receive IOLTA funding

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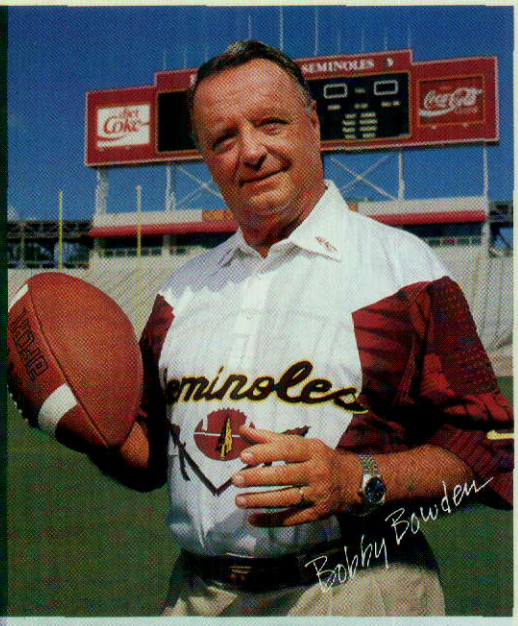

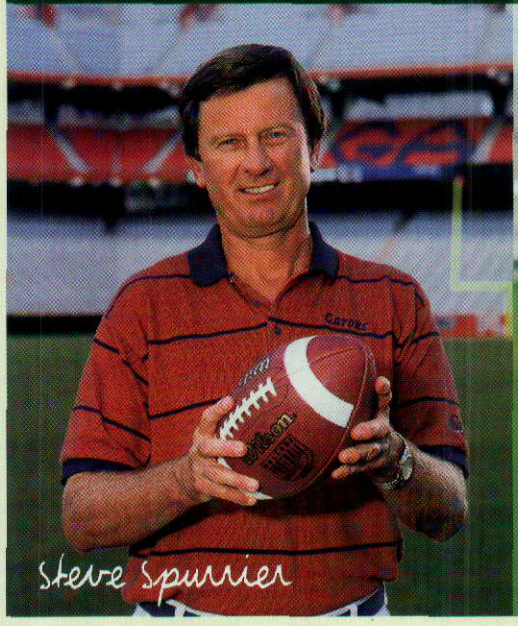

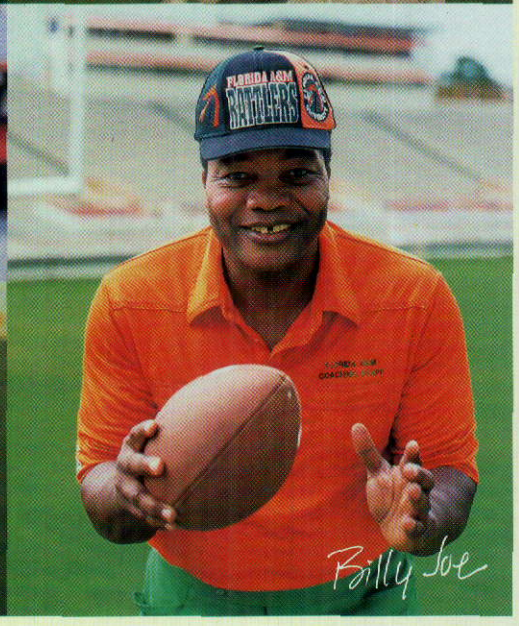

Get in the game where everything is at stake. Join thousands of environmental citizens who are doing their part to conserve Florida's fragile ecosystems. There's a lot you can do, starting right in your home and neighborhood. Get involved in recycling, litter prevention, water conservation and other programs in your area.

It's In Your Hands KEEP FLORIDA Beautiful SM

DEPARTMENT OF ENVIRONMENTAL PROTECTION FLORIDA

It's In Your Hands... Be A Good Environmental Citizen... Keep Florida Beautiful.®

IOLTA IS A TAX, imposed by judicial fiat, collected in virtual secrecy, and appropriated without open review.

are also supported by taxpayer money through the Legal Services Corporation, an agency created by Congress in 1975 to correct an alleged deficit of due process for the poor. LSC does not provide direct services; rather it is the funnel through which congressional funding reaches state and local legal aid organizations.

LSC affiliates have a long and checkered history of backing radical causes. Some of the more flagrant incidents involve lawsuits to prevent public housing authorities from evicting drug dealers and advising lottery winners about how to keep their welfare benefits despite their newly won affluence. In fact, some analysts trace the explosion in welfare costs, in no small part, to LSC litigation that forced extension of benefits to illegal immigrants and contested any restrictions on eligibility.

Legal aid activists scoff at these stories and counter them with their own parade of horribles —the children, the elderly, the young mothers, all in desperate need of legal help. They also decry LSC anecdotes as inflammatory devices that throw a smoke screen in front of what they see as the real issue, namely that without the assistance of publicly funded legal aid organizations the poor would get no justice. It's a variation on that familiar theme: we do nothing wrong and even if we do our actions are excused by our good intentions.

LSC's worst excesses almost led to the agency's extinction when Republicans took control of Congress in 1994. GOP leaders announced a plan in 1995 to phase out funding of LSC over a three-year period. Swiftly followed the outcry that right-wing zealots were robbing the poor of their only chance for justice.

In the end, Republicans repudiated the phase-out plan after one year of cuts. Instead, restrictions were placed on the kinds of activities LSC-funded organizations could undertake. No similar strings exist on IOLTA funding, so some legal aid organizations are sequestering their LSC-funded operations from their other divisions so that they may continue their politically motivated litigation.

Opposition to LSC and IOLTA is always met with shrieking desperation about the abandonment of the poor. Despite the claims of the activists, however, LSC and IOLTA provide only a small portion of the free legal aid dispensed each year in the United States. Although there is no complete record of the amounts involved, David Wilkinson, LSC's first inspector general and a former Utah attorney general, conducted an exhaustive analysis of funding levels. In a study published in November 1996 by Capital Research Center, Wilkinson put total funding at almost $800 million a year. When combined, IOLTA and LSC provide about half that amount. On top of that, Wilkinson estimates a total of 24 million hours (valued at about $3.3 billion) worth of pro bono work donated by the nation's attorneys. In fact, according to Wilkinson's numbers, pro bono attorneys contribute five times the number of hours worked by staff attorneys on the payroll of LSC-funded organizations.

Granted, Wilkinson's figures are based on extrapolations from the limited amount of available data on legal aid funding, and thus cannot be considered fully authoritative. Nonetheless, he offers compelling proof to dispel any fear that eliminating unjust and mandatory IOLTA programs will spell doom for the poor.

Whether or not the level of funding for free legal aid is sufficient, however, is a public policy question that merits consideration. The very nature of IOLTA, however, precludes the possibility of open deliberation. IOLTA is a government program that escapes legislative review because, in most states, including Florida, it was created by the judiciary. Its necessity or wisdom is not subjected to the crucible of debate by the elected representatives of the people.

As this is written, the Supreme Court has not released a decision in the *Phillips* case, but the ruling is expected to be issued any day now. As Samp warns, however, "We are nowhere near the end of the line, even if the court says that it is private property."

If the Supreme Court rules in favor of WLF, IOLTA programs will not magically disappear. For Floridians, it will merely vacate the 11th Circuit's earlier ruling, easing the way for another stab at ending the program. Regardless, it will be a long road of challenges and appeals.

The founders of our nation crafted a judicial system carefully insulated against the brief but powerful gusts of transitory popular passions. In so protecting the courts, however, the people are left at the mercy of the judges who created IOLTA, a tax on people who give their lawyers funds to hold in escrow, imposed by judicial fiat, collected in virtual secrecy, and appropriated without open review. Ironic, isn't it, for a nation born of revolt against taxation without representation. ■

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	Percentage of Return Premium					
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$5,000 to $10,000	6%	5%	3%	3%		
$10,000 to $20,000	8%	6%	5%	3%		
$20,000 to $30,000	10%	8%	6%	5%	3%	
$30,000 to $50,000	12%	9%	7%	5%	3%	
$50,000 to $75,000	15%	12%	9%	6%	3%	
$75,000 to $100,000	17%	13%	10%	6%	3%	
Greater than $100,000	20%	15%	10%	6%	3%	

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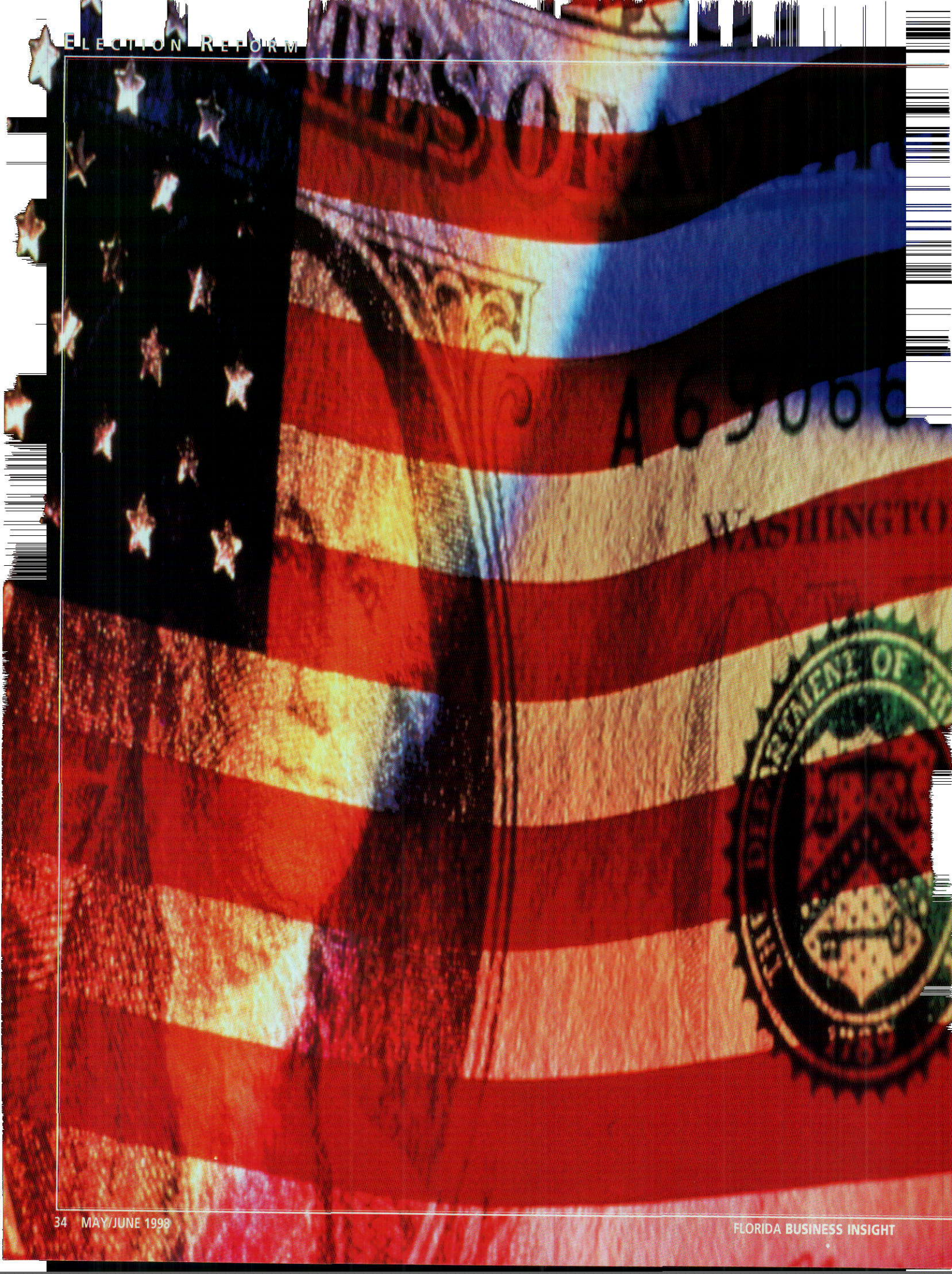


by congressman john doolittle, (r-calif.)

Informing Discretion

FULL DISCLOSURE WILL ENABLE VOTERS TO IDENTIFY AND UNDERSTAND THE INTERESTS THAT MAY INFLUENCE A CERTAIN CANDIDATE AND TO VOTE ACCORDINGLY.

Watch the evening news on any given night and you are bound to hear the litany of campaign finance reform platitudes. Campaigns are becoming too expensive. Only millionaires can afford to run for office. Special interests are buying votes with large contributions.

HOW DO WE KNOW CAMPAIGNS have become too expensive? Compared to what?

These generalizations usually precede an interview with some earnest-looking advocate of good government who wants to reform the system of financing campaigns.

Yet, nowhere in these news reports do the platitudes peppering the campaign finance debate receive thorough examination. For instance, how do we know campaigns have become too expensive? Compared to what? Congressional campaign spending in 1994 reached $724 million, an all-time high, but let's put the figure in context. Madison Avenue spent more than four times that amount—$3 billion—just to advertise toiletries and cosmetics in 1994.

Debunking the myths perpetrated by the advocates of greater campaign finance regulation is not enough, however. There are problems plaguing our current system of financing elections. For instance, it requires current and prospective officeholders to spend too much time raising money and too little time governing and debating issues.

The current system has failed to make elections more competitive. It allows millionaires to purchase congressional seats and inhibits the ability of challengers to raise the funds necessary to be competitive.

Today's system costs taxpayers nearly $900 million in federal taxes that are used to subsidize the presidential campaigns of all sorts of characters, including convicted felons and billionaires.

Finally, today's system hurts voters in our republic by forcing more contributors and political activists to operate outside of the system where they are unaccountable and, consequently, more irresponsible.

These are the problems we face today. And before we decide what reforms should be implemented, we need to decide what kind of new system we want to create. To me, the answer is simple. Our goal should be a system in which any American citizen can compete for and win elective office. It should value political participation and encourage the exercise of our First Amendment rights of speech and association by allowing voters to contribute freely to the candidate of their choice. And, finally, a healthy campaign finance system would require that candidates fully disclose the sources of their contributions so that voters can make informed decisions about who may be attempting to influence a candidate.

NO LIMITS BUT FULL DISCLOSURE

I have proposed a bill to uproot the tired and failed policies of the past and to open the process to more Americans. The Citizen Legislature and Political Freedom Act, H.R. 965, repeals existing limits on the amounts individuals and political action committees may contribute to candidates or parties, and repeals the limits on how much parties may contribute to candidates.

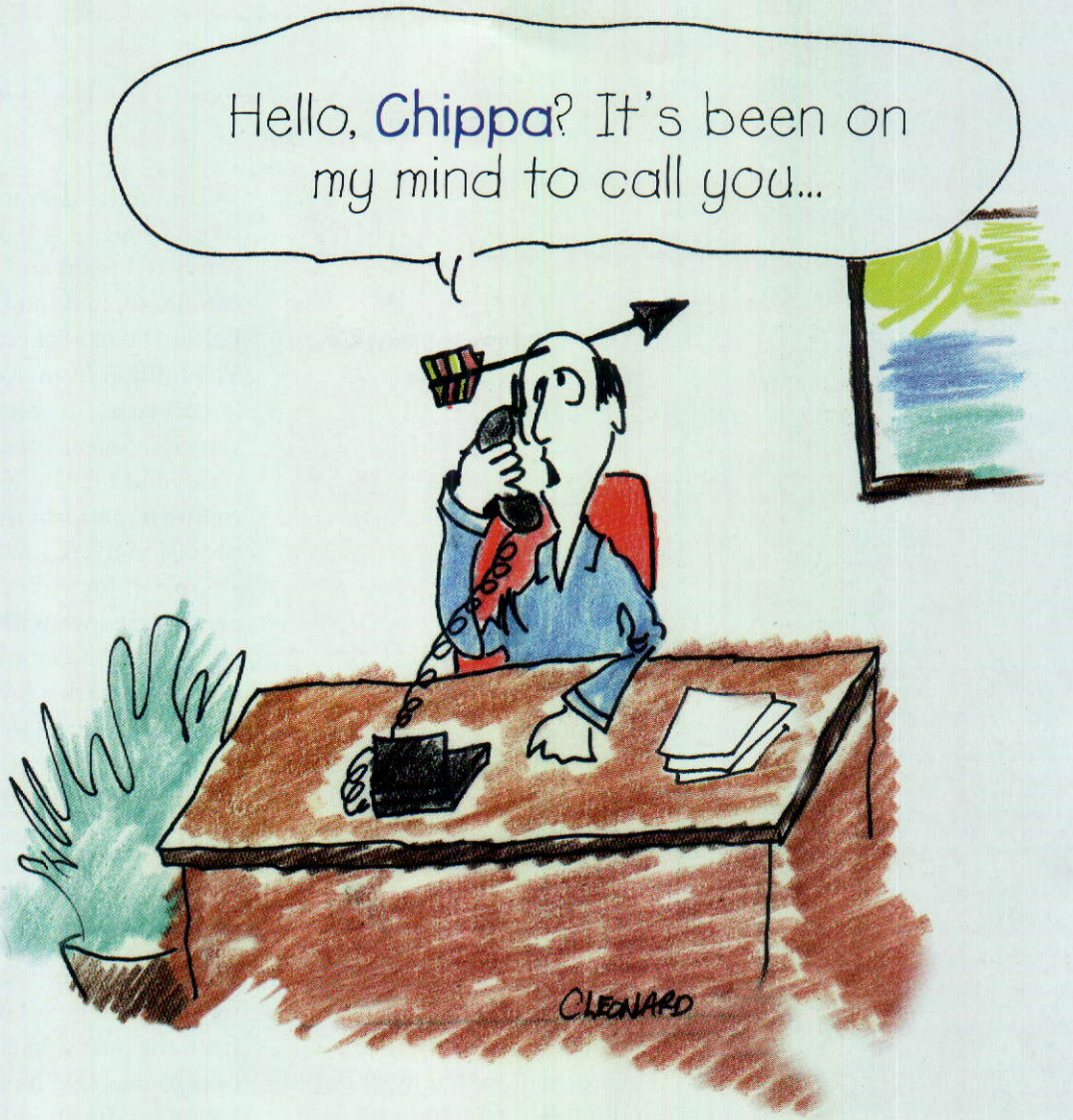
Both academic research and real world experience show that challengers need a lot of money to overcome the advantages of incumbency and to be competitive. Higher spending plainly helps challengers more; spending limits tend to benefit incumbents. In 1994, every successful Senate challenger and two-thirds of all successful House challengers spent more than the limits proposed in McCain-Feingold, the campaign finance regulators' favored bill.

Today's unreasonable contribution limits make it difficult for challengers to raise the funds they need. The answer is to eliminate limits on campaign contributions so that challengers can raise the seed money they need to become competitive.

Lifting contribution limits is a bold proposition in the face of the current regulatory scheme, but it is only half of the equation. The system of financing campaigns will not truly be free until the American people are empowered to make informed decisions about the candidates they vote for and the forces that might influence them.

The key to a free system is the full and timely disclosure of campaign contributions. Full disclosure will enable voters to identify and understand the interests that may influence a certain candidate and to vote accordingly.

The Citizen Legislature and Political Freedom Act accomplishes this goal by making a number of improvements to the current system



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"Because, accidents do happen!"

of disclosing contributions. First, the bill requires electronic filing of campaign reports, including 24-hour filings during the last three months of a campaign. Congress must take advantage of the advances in technology that are enabling campaigns to communicate information to the Federal Election Commission (FEC) much more efficiently than in the past.

While timely reporting to the FEC is important, the information is most powerful when it is available to the voters. That's why the Citizen Legislature and Political Freedom Act also requires the FEC to post all campaign reports on the Internet. Think about it. Every citizen with a computer or access to the Internet can be his own campaign watchdog.

In addition to these disclosure requirements, the issue of so-called "soft money" is addressed by requiring the national parties to distinguish between their federal and non-federal accounts so that parties will be forced to disclose how much money they send to the state parties for state, local, and mixed activities. Additionally, the bill requires state parties to file with the FEC a copy of the same disclosure form they file with their state election offices. In deference to principles of federalism, my bill does not require uniformity among the state forms. Once posted on the Internet, however, a central repository of state disclosure information will be available for all citizens to see how money given to the national parties was spent.

The Citizen Legislature and Political Freedom Act also bars acceptance of campaign contributions unless specific disclosure requirements are met. For example, the Federal Election Campaign Act lists the information that must be disclosed when a campaign takes an individual's contribution, but then guts the requirement in practice by allowing campaigns to claim they made their "best effort" to obtain the proper information. Under my proposal, campaigns would not be allowed to take any contribution without full and proper disclosure.

Support for public financing is at an all-time low, with fewer than 15 percent of Americans checking the box to earmark a few dollars for the presidential fund.

Finally, my proposal terminates taxpayer financing of presidential election campaigns. Thomas Jefferson wrote, "To compel a man to furnish contributions for the propagation of opinions which he disbelieves and abhors is sinful and tyrannical." Since its creation over 25 years ago, the Presidential Election Campaign Fund has spent nearly $900 million in tax dollars to subsidize presidential aspirants who have offended Americans of all political persuasions.

Candidates deemed qualified to receive federal subsidies include convicted felon and perennial candidate, Lyndon LaRouche. LaRouche has raked in more than $2.5 million from taxpayers over the last 20 years, despite the fact that he served a 5-year prison term for fraud and tax law violations and has run on a platform that includes a provision to colonize Mars.

Support for public financing is at an all-time low, with fewer than 15 percent of Americans checking the box to earmark a few dollars for the presidential fund. At a time when we are attempting to balance the federal budget for the first time in a generation, this subsidy for candidates can no longer be justified.

Supporters and critics alike have called the Citizen Legislature and Political Freedom Act a "radical" reform idea. It certainly is different from the heavy-hand-of-regulation approaches that have received lots of media attention thus far. Yet, I believe we are going to see the momentum grow for new thinking on the campaign finance issue.

At some point, Congress will stop trying to micromanage the system, and will follow the advice of Thomas Jefferson, who once wrote, "I know of no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion." ■

John Doolittle has served in the U.S. House of Representatives since 1990, representing the people of California's 4th District, in the heart of Gold Country.

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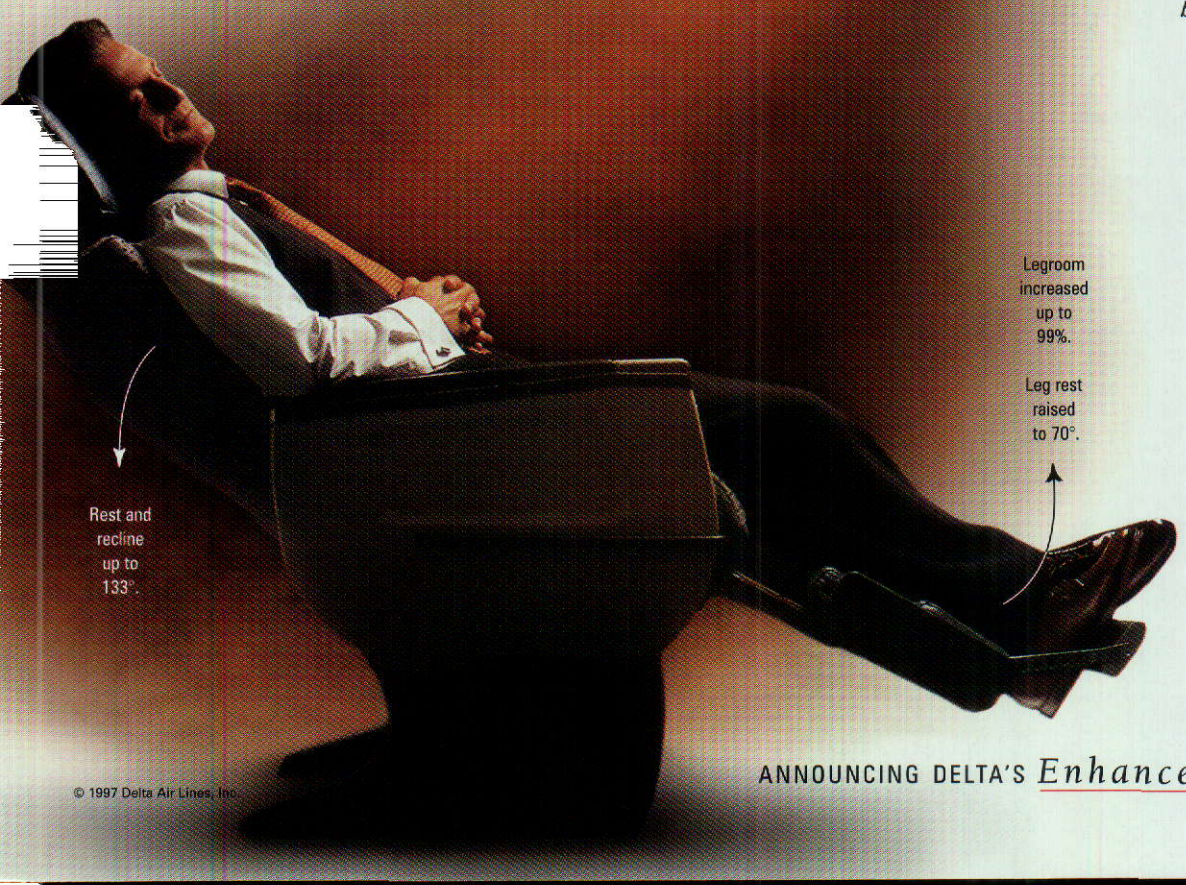
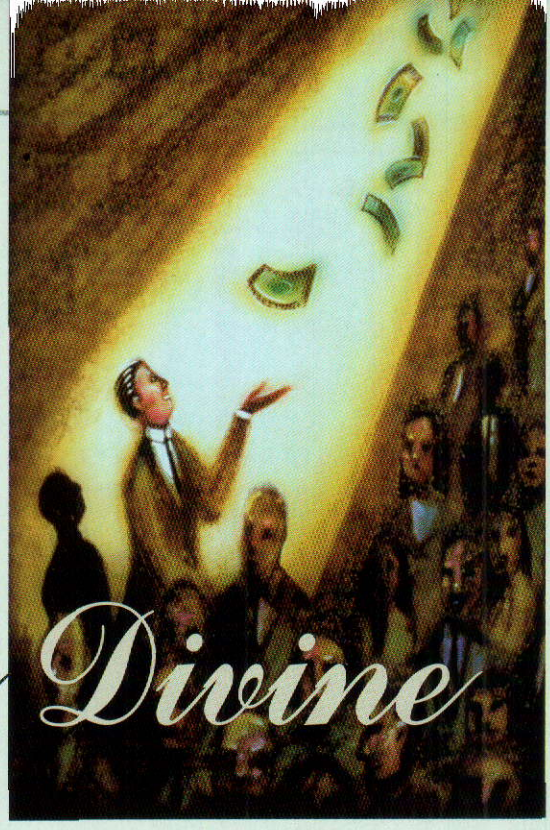


ANNOUNCING DELTA'S *Enhanced* BUSINESS CLASS.



O Investor Divine

Most of us think of entrepreneurs as the people with great ideas, but that's only half of the equation. Entrepreneurs are the people who get the great ideas off of the drawing board and out into the marketplace.

Making the leap from drawing board to marketplace requires many talents—and a lot of money. Among the sources of financing for entrepreneurial firms are professional venture capital firms or those firms that specialize in investing in risky private ventures. However, these professional venture firms only fund a total of about 1,000 to 2,000 deals in a year. The probability of an entrepreneur getting this type of funding is very small.

There is, however, another more likely resource for funding. The primary providers of funds to entrepreneurs, besides the entrepreneur and his family and friends, are private investors referred to as angels. These investors put in between $50,000 and $500,000 per deal. Angels provide a total of somewhere between $10 billion and $20 billion in funding every year to entrepreneurs; on average, angels finance about 30,000 new deals a year nationwide.

As with most other entrepreneurial activities, finding the right investment angel requires innovative thinking, a plan, and plenty of perserverance.

ILLUSTRATION: TODD DAVIDSON

by jerome s. osteryoung, ph.d.

LOCATING AN ANGEL

According to surveys, the typical angel is in his 40s or 50s and is well-educated. Ninety-five percent of angels have college degrees and 51 percent have graduate degrees. Of those with graduate degrees, 44 percent have advanced degrees in a technical field and 35 percent have graduate degrees in business or economics. The angel is typically a self-made millionaire entrepreneur who has the wherewithal and the appetite to take a risk on someone else's success.

How do you find angels? The best source is to start with those you know. Ask your friends, relatives, and business acquaintances (including your lawyer and accountant) if they know of any potential investors. Introduction to an angel from someone he knows gives you an obvious advantage.

That's the first step, and it's the easiest one. Once you've exhausted that resource, however, where do you turn?

In Florida, there is a publication called the *Florida Venture Finance Directory* that lists firms and individuals who invest in entrepreneurial companies. The directory, published by Enterprise Florida, costs $13.60 and can be ordered by calling (407) 316-4646.

Additionally, the Jim Moran Institute (JMI) maintains a venture capital network. The purpose of this computer network is to match entrepreneurs who need funding with angels who are willing to invest. The angel remains anonymous until he finds a deal that interests him. This service is provided free of charge through JMI; for additional information, call (800) 821-7515.

Most major cities in Florida have venture capital clubs that hold monthly meetings. During these meetings they typically have one or two entrepreneurs present their business plans. In many cases, these groups have been very successful venues for raising funds.

CLOSING THE DEAL

After you have identified a potential investor, you need to contact him directly. Dropping off a letter in person with your business plan is best but may not be practical. In your cover letter and in the executive summary of your business plan it is best to highlight the following items that are of critical importance to the angel:

- When and how are you planning to harvest the deal (get the investor out), e.g. IPO or purchase by a larger firm.
- Typically, anything less than 25 percent of equity will not be considered acceptable in an equity deal.
- Who's on the management team? The investor will look first to the credibility and experience of the management team. The investor is betting on the jockey (management) to ride the horse (the business) to the winner's circle.
- What percentage of the business do you envision giving up for the money from the investor? This can be worked out quite simply with a mathematical formula that will show the amount of equity needed to be given up in order for the investor to realize his desired rate of return.
- Majority ownership of the business does not have to be given up if adequate controls are put in force to protect the investor. Some of these controls include: the number of seats on the board of directors if performance goals are not reached; limits on the salaries and perks paid to the management; and types of approval necessary for large expenditures.

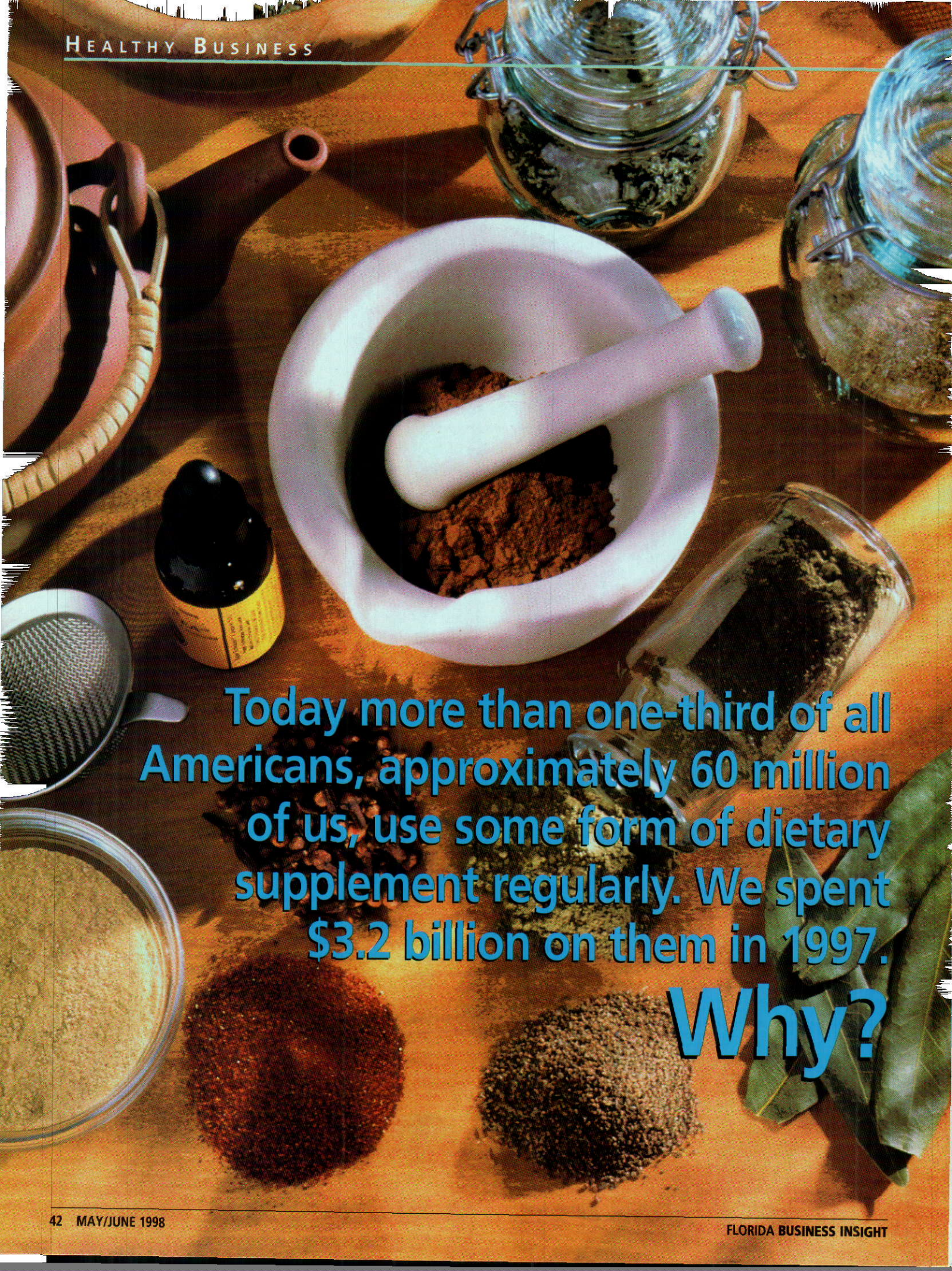
Try to find angels who bring more than just money to the table. The best type of angel is one who brings both money and some type of experience that is lacking by the management team.

You should prepare a list of potential investors at least six months before you think you will need the funds. Finding an angel can be a long and time-consuming process that won't necessarily conform to your schedule. Perservering in the money hunt, however, determines the profitability—and the survivability—of the firm. ■

Jerome S. Osteryoung is the executive director of the Jim Moran Institute of Global Entrepreneurship in the Florida State University College of Business.

Where The *Angels* Are

- Look close to home. Most angels invest in deals that they can drive to in half a day.
- Look for individuals who are familiar with your technology or targeted market. These angels will be quick to understand and appreciate your proposal.
- Many angels are active in civic and charitable affairs. The people who sponsor such organizations are a good source of potential angels. Look for their names in the local paper and on boards of directors.
- Most angels are risk-takers in their leisure-time activities. Therefore, check with the U.S. Coast Guard and Federal Aviation Authority in your area for the names of owners of aircraft and yachts. This is public information. ■



Today more than one-third of all Americans, approximately 60 million of us, use some form of dietary supplement regularly. We spent $3.2 billion on them in 1997.

Why?

by andrew cutler, m.d.

HERBAL Relief?

Making Sense Of The Latest Healthcare Fad

If you're like most Americans, you got up this morning, peered into the medicine cabinet, and confronted a challenge. You're sure you need a multivitamin, but what about a supplement? Vitamin C is supposed to be good, and lately you've been hearing about vitamin E, selenium, St. John's wort, ginkgo biloba, and lots of other tongue-twisting tonics. With all of the medical miracles we see and read about daily, isn't it reasonable to expect that a pill can enhance our success and help us live our lives in disease-free bliss? It depends.

When we were young, our mothers told us to eat all of our vegetables and drink our milk. Only then could we get dessert. It turns out that mom was onto something. Despite all the hype and beguiling claims, there is actually very little evidence to indicate that most supplemental herbs, minerals, or megavitamins have a meaningful impact on good health. There is even evidence that too much of some of them can be dangerous.

TODAY'S NEW CURE-ALL

The Food and Drug Administration (FDA) is the government watchdog over everything that we are likely to swallow, inject, or put on our skin. The FDA has strict procedures and guidelines for regulating food and medicines. Prescription and over-the-counter drugs must be rigorously tested and proven to be safe and effective before they can be marketed. Claims that manufacturers make must be supported by scientific evidence that has been carefully reviewed by the FDA.

Vitamins, minerals, and herbs, however, are classified as nutritional or dietary supplements and, therefore, are not regulated nearly as strictly. The current boom in the use of these supplements dates to 1994, when Congress shielded them from most government oversight. The FDA is supposed to intercede only if it is proven that a supplement poses an unreasonable risk or is marketed as a drug.

While producers of supplements are prohibited from making claims as to the treatment or prevention of specific diseases, wide latitude is given to vague claims of the supplements' effects on functions. For example, "Herb X helps your brain to function better" is allowed, but "Herb X cures migraines" is not.

The former claim is enticing to everyone, in part because it is so vague. Herb X may actually help prevent migraines, but people who have never had a migraine will be taking it to improve their brain-functioning. Just like your horoscope, dietary supplements can seem tailor-made for you, offering all kinds of wondrous benefits for your particular ailments and concerns.

Interest in alternative approaches to health is not new. Certainly the 1960's ushered in some unusual spiritual and dietary techniques, and started the trend toward legitimacy and mainstream acceptance of alternative remedies. Since the 1994 legislation, however, there has been an unprecedented stampede to the health stores where all manner of vitamins, herbs, and chemical supplements can be bought. Our culture has embarked on a Ponce de Leon-like search for the Fountain of Youth.

Today more than one-third of all Americans, approximately 60 million of us, use some form of dietary supplement regularly. We spent $3.2 billion on them in 1997. Why? Do our trusted doctors recommend them? Probably not. Is there a body of research to support such widespread use? Except for certain vitamins, not yet.

PHOTO: SPENCER JONES

NUTRITIONAL SUPPLEMENTS are not merely trendy, however; they involve matters of public health and safety.

CAVEAT EMPORIUM

In our culture, many products are sold through hype and hope. With nutritional supplements, the distance between hype and hope is staggering. There is virtually no reliable, statistically significant, or compelling research to support the use of most trendy supplements, such as melatonin and DHEA.

Nutritional supplements are not merely trendy, however; they involve matters of public health and safety. The FDA has logged reports of 79 deaths and more than 2,500 cases of side effects associated with nutritional supplements. Many of these tragedies are well-publicized, such as the deaths of two college wrestlers in Michigan who were taking supplements to build lean muscle while using drastic weight loss techniques.

The FDA has documented that many supplements, especially if used in very high doses, can increase one's risk of cancer as well as damage to the heart, liver, and brain. An example of the research that should make us pause in our rush to take more pills is a study performed by the National Cancer Institute involving beta carotene (an antioxidant relative of vitamin A). Smokers who took relatively high doses of beta carotene had a 28 percent higher incidence of lung cancer and a 17 percent higher death rate than smokers who did not take it.

In the same study, nonsmokers who took beta carotene did not realize any obvious benefit. There is some evidence, however, that antioxidants such as beta carotene, at certain doses, can decrease our risk for cancer and maybe even for heart disease as well.

One especially problematic substance is ginkgo biloba. A recent study published in the *Journal of the American Medical Association* (JAMA) showed that ginkgo biloba actually improved cognitive and overall functioning in dementia patients. On the other hand, case reports about dangerous bleeding and strokes possibly associated with this plant extract are emerging.

As the beta carotene and ginkgo biloba stories show us, the same supplement can be both good and bad for you. Maybe a certain dose of one is beneficial, but a higher dose is too much of a good thing. Maybe some people shouldn't take certain supplements that are helpful to others.

Clearly more research is needed to help guide us in our use of supplements. Some benefits are beginning to emerge, however.

UP THE RDA?

It is well known that vitamin deficiencies underlie such dreaded diseases as scurvy, pellagra, rickets, beriberi, and pernicious anemia. We don't know if higher doses than the recommended daily allowance (RDA) set by the National Academy of Sciences actually cure or prevent more common conditions, including the effects of aging. There is a body of emerging evidence, however, that for some vitamins and minerals, the RDA simply doesn't cut it.

Vitamin E is reliably proving to help people with Alzheimer's dementia by counteracting the destructive effects of "free radicals" on brain cells. Free radicals are dangerous products of a chemical process called "oxidation" (hence the term "antioxidant"). For example, in a study published in the April 24, 1997, *New England Journal of Medicine*, vitamin E was found to slow the progression of the disease.

Vitamin E may also protect us from heart disease by keeping cholesterol from sticking to the walls of blood vessels. Harvard researchers have found a 40 percent reduction in heart disease among people who took 100 to 400 IU a day for at least two years. Research is also beginning to suggest a positive effect of vitamin E on the immune system, particularly in the elderly.

It seems clear at this point that we should be taking more vitamin E. Standard vitamin pills only contain 30 IU, and as noted above, it is probably wise to take more (I take 400 IU daily). The data on other vitamins is less clear, but still suggestive of benefit with little risk, as long as one does not "mega-dose."

Other supplements are promising. Folate (a B vitamin) prevents some birth defects and may decrease the risk of heart disease. The optimum dose for folate is 400 micrograms a day, the amount found in standard multivitamins.

Selenium, a mineral found in soil, is an antioxidant that has been shown in one significant

study published in JAMA to decrease the risk of certain cancers. It also helps the body to absorb and use vitamin E. Most vitamin preparations contain very little selenium and our soil in America is relatively low in selenium, so we should take a supplement of 100 to 200 micrograms daily (I take 100 mcg.).

Vitamin C is also an antioxidant and is believed to be beneficial for a variety of conditions. Most of the evidence for vitamin C, however, is anecdotal, rather than rigorous. For instance, Linus Pauling, the Nobel Prize-winning scientist, took large doses of several vitamins, especially vitamin C, and lived to be 93. The only benefit that is supported by careful research at this point is a decrease in cataracts.

Calcium with vitamin D (which helps the body absorb calcium) decreases the risk of osteoporosis and bone fractures in the elderly. Estrogen, a hormone, has been shown to decrease the risk of osteoporosis, heart disease, and even dementia in post-menopausal women. The benefits of estrogen replacement clearly outweigh the risks.

The story on St. John's wort (also called hypericum), though still murky, is beginning to clear. This herb may be useful for mild to moderate depression at doses of 600 to 1200 milligrams a day. It is true that it is widely used in Europe, especially Germany. The potential risks, side effects, and drug interactions are not well known, however. A large-scale study, designed to answer those questions and sponsored by the U.S. National Institute of Health, is currently in progress.

SIMPLY HEALTHY

Recently, a Harvard medical school commencement speaker told the newly-minted doctors: "Half of the information you have learned over the past four years is true and half is false. The problem is, we don't know which half is which."

With all the advances made in medicine, there is still so much that is unknown. As with most other activities, the trick with health supplements is moderation. Take enough of a supplement to help (or at least to create a robust placebo response) but not too much to hurt you. Of course, where lies the point of moderation for many of these substances is not yet known.

Until those questions can be answered, the best source for nutrients is still Mother Nature. There are lots of nutrients we need, but we either don't know we need them or we haven't discovered them yet. To use a good homegrown example, a vitamin pill may contain vitamin C. Orange juice also contains vitamin C, as well as beta carotene, folate, fiber, and who knows what else.

Vitamins are supplements, not replacements. Plants are full of unknown chemicals, many of them valuable nutrients that may be essential for optimum health. This is one of the reasons why authorities recommend eating a diet rich in fruits and vegetables. Food is still the best source of nutrients in the most useable form for our bodies.

While the jury is still out on most nutritional supplements, an abundant and mounting body of evidence supports the old truth that proper diet and regular exercise really hold the keys to health and longevity.

So go ahead and give Mother Nature some help, but don't forget the simple basic rules of good health: eat sensibly, drink alcohol moderately, avoid smoking, and get enough rest and regular exercise.

The real Fountain of Youth is not hard to find here in Florida: Physical activity and more fruits and vegetables. ■

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PHOTO: DWIGHT SUMNERS

STOCKING THE MEDICINE CABINET

As more and better research accumulates, we will be better able to make healthy decisions about what to take and what not to take. At our current state of knowledge, my recommendations for daily vitamin and mineral supplements are as follows:

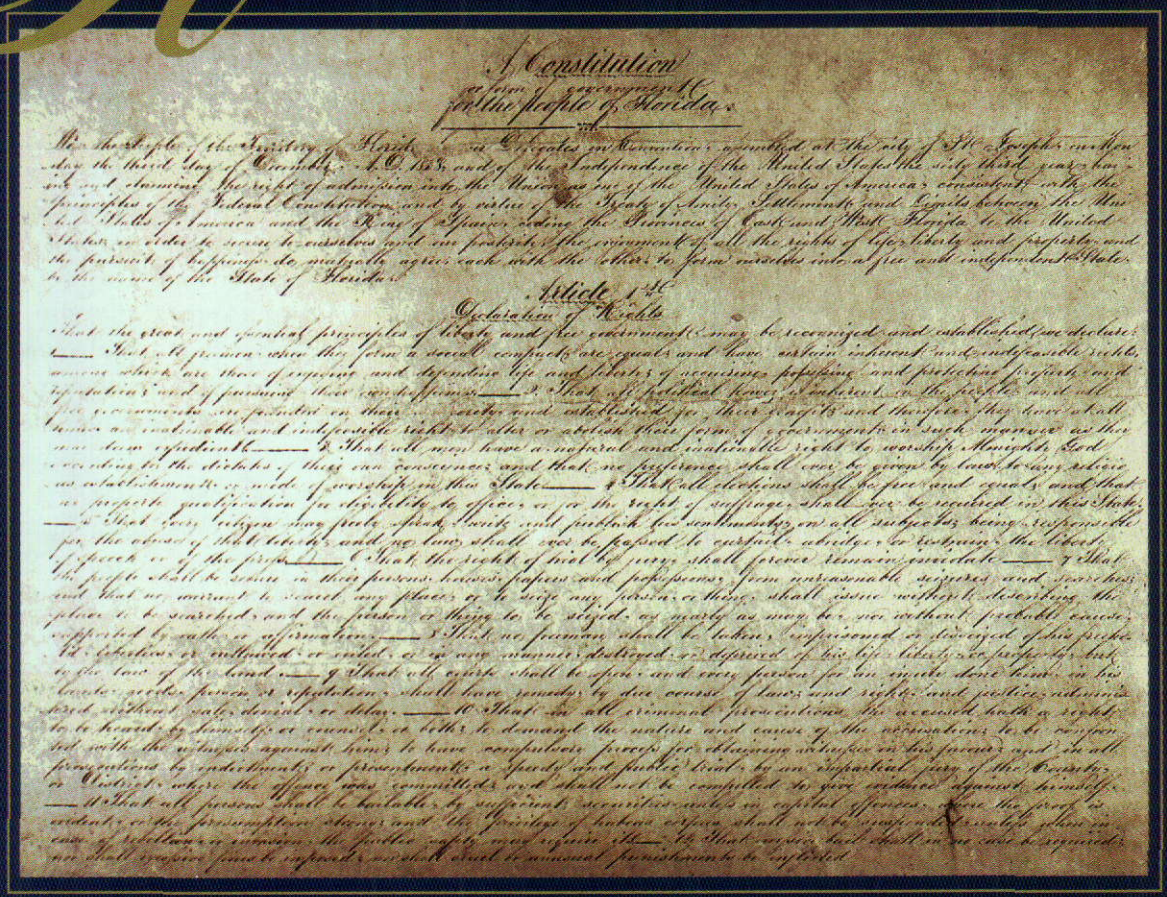
- a man's or woman's multivitamin preparation; those 65 or older should take a geriatric or "silver" preparation
- 400 IU of vitamin E (after age 65 increase to 1,000 IU)
- 100 mcg of selenium
- a daily aspirin to thin the blood and decrease the risk of heart disease and stroke
- women should also take 1,000 mg of calcium each day

Additionally, post-menopausal women without contraindications (smoking, history of blood clots or liver disease) clearly benefit from estrogen replacement. Benefits include decreased risk of osteoporosis, heart disease, and Alzheimer's dementia. ■

Pursuit of Happiness

"We, the People of the Territory of Florida, ... do mutually agree, each with the other, to form ourselves into a Free Independent State, by the name of the State of Florida."

Constitution of 1838



A Constitution
or form of government
for the people of Florida.

We the People of the Territory of Florida, ... Delegates to Convention assembled at the city of St. Joseph on the third day of December A.D. 1838, and of the Independence of the United States the sixty third year, having the right of admission into the Union as one of the United States of America consistent with the principles of the Federal Constitution, and by virtue of the Treaty of Amity Settlement and Limits between the United States of America and the King of Spain ceding the Provinces of East and West Florida to the United States in order to secure to ourselves and our posterity the government of all the rights of Life, Liberty and property and the pursuit of happiness do mutually agree each with the other to form ourselves into a free and independent State by the name of the State of Florida.

Article 1st
Declaration of Rights

1 That the great and general principles of liberty and free government may be recognized and established we declare — 2 That all power when the form a social compact are equal and have certain inherent and indefeasible rights, among which are those of acquiring and defending life and liberty of acquiring possessing and protecting property and reputation and of pursuing their own happiness — 3 That all political power is inherent in the people and all free governments are founded on their authority and established for their benefit and therefore they have at all times an unalienable and indefeasible right to alter or abolish their form of government in such manner as they may deem expedient — 4 That all men have a natural and inalienable right to worship Almighty God according to the dictates of their own conscience and that no preference shall ever be given by law to any religious establishments or mode of worship in this State — 5 That all elections shall be free and equal and that no property qualification ought to be required for any office or for the right of suffrage except what is required in this State — 6 That every citizen may freely speak write and publish his sentiments on all subjects being responsible for the abuse of that liberty and no law shall ever be passed to curtail or abridge or restrain the liberty of speech or of the press — 7 That the right of trial by jury shall forever remain inviolate — 8 That the people shall be secure in their persons houses papers and possessions from unreasonable seizures and searches and that no warrant to search any place or to seize any person or things shall issue without describing the place to be searched and the person or thing to be seized as nearly as may be nor without probable cause supported by oath or affirmation — 9 That no freeman shall be taken imprisoned or disseized of his freehold liberties or privileges or outlawed or exiled or in any manner destroyed or deprived of his life liberty or property but by the law of the land — 9 That all courts shall be open and every person for an injury done him in his lands goods person or reputation shall have remedy by due course of laws and right and justice administered without sale denial or delay — 10 That in all criminal prosecutions the accused hath a right to be heard by himself or counsel or both to demand the nature and cause of the accusation to be confronted with the witnesses against him to have compulsory process for obtaining witnesses in his favour and in all prosecutions by indictments or presentments a speedy and public trial by an impartial jury of the County or District where the offence was committed and shall not be compelled to give evidence against himself — 11 That all persons shall be bailable by sufficient securities unless for capital offences where the proof is evident or the presumption strong and the privilege of habeas corpus shall not be suspended unless when in case of rebellion or invasion the public safety may require it — 12 That excessive bail shall not be required nor excessive fines imposed nor cruel and unusual punishments be inflicted

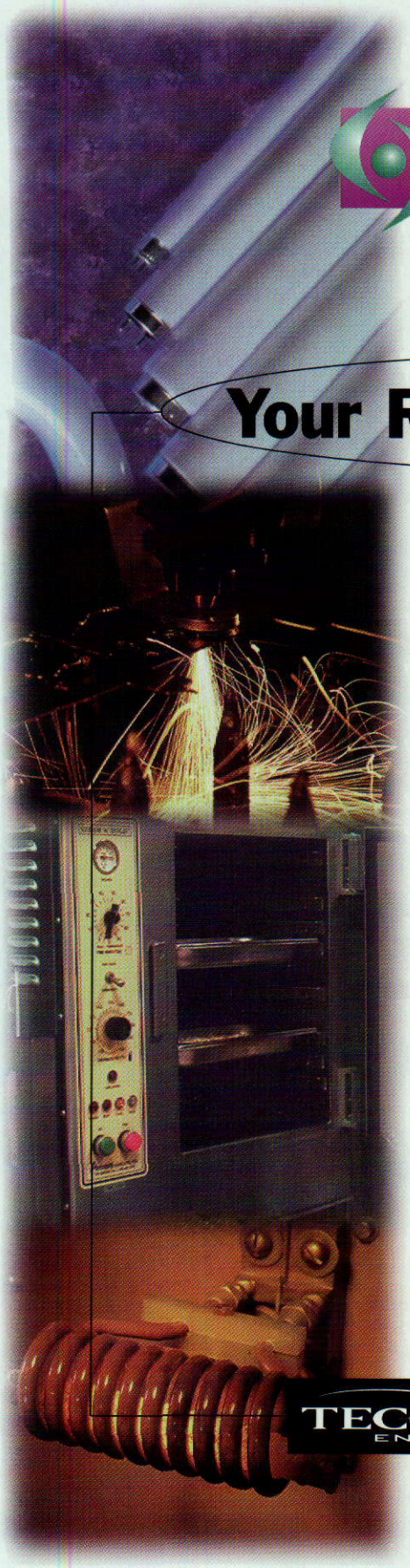
PHOTO: FLORIDA STATE ARCHIVES

Florida's first constitution, written in 1838 as a condition for gaining statehood, was the product of a constitutional convention held in the Gulf Coast boom town of St. Joseph. The town was a mere three years old at the time of the convention, born of political machinations, frontier boosterism, and economic speculation.

By March 3, 1845, when Congress approved Florida's admission to the union, St. Joseph was no more. In 1841, a yellow fever epidemic had swept through city, decimating the population. Then, just six months before Florida achieved statehood, the lingering remnants of the once proud city were wiped out by a killer hurricane.

All that remains to mark the spot of the 1838 constitutional convention is a monument erected in 1922 on the spot where the delegates met. A small museum was added to the site in 1955. Both are set back from a remote stretch highway on the outskirts of tiny Port St. Joe, the successor to the vanquished city of St. Joseph.

There are no photographs, paintings, or sketches of St. Joseph, the convention hall, or the proceedings. Gone is our version of Philadelphia and Independence Hall. Gone also is the original copy of our first constitution. Nobody knows when it was lost, but lost it remains. In its place, we are left with a copy made by the convention secretary, a tenuous link to our past. ■



Energy Technology Resource Center

Energy Efficient Solutions from TECO Energy

Your Resource for Success

The Energy Technology Resource Center (ETRC) is Florida's answer to showcasing, researching and evaluating the latest energy-efficient technologies.

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Evaluate and compare equipment efficiencies

Explore technical reports, online information and training opportunities

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TECO ENERGY

For more information, visit us online:
www.etrc.com or call 813-202-1770.

Geology 1010,
Florida International University, Miami

Will the Bright Futures scholars please raise their hands?

Last fall, over 42,000 freshmen entered Florida colleges with full or partial scholarship funding. It wouldn't have happened without your help.

This is the first year of the Florida Lottery's Bright Futures Scholarship Program. Now high-achieving high school graduates have more opportunity than ever for post-secondary education. It's just one of the ways the Florida Lottery is boosting education in our state.

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

When you play the Florida Lottery, you're giving deserving students a better opportunity to enter college.

Looking around Florida's campuses, it looks like they're taking advantage of it.

Florida Lottery

When you play, we all win.

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