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The Journal's Twenty-Fifth Anniversary: Reflections From the Founding to Today

Scott D. Makar

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FOREWORD

OVERVIEW OF THE TWENTY-FIFTH ANNIVERSARY EDITION

*Ronnell Robinzine**

Volume 23, Number 1 is titled “The Twenty-Fifth Anniversary Edition” in honor of the *University of Florida Journal of Law and Public Policy*’s existence since 1987. During the past twenty-five years, the *Journal of Law and Public Policy* has published numerous works on a meaningful variety of subjects. The Twenty-Fifth Anniversary Edition features a diverse range of pieces on the following topics: (1) the constitutional right to effective counsel representation; (2) corporations, independent auditors, and the work product doctrine; (3) public forum doctrine and constitutionally protected speech; (4) video voyeurism and the constitutional right to privacy; and (5) the constitutional right to confront a witness.

The *University of Florida Journal of Law and Public Policy* was founded by Scott D. Makar. Scott Makar, who recently finished serving the state of Florida as Solicitor General, is now serving Florida as a judge for the First District Court of Appeal. The *Journal of Law and Public Policy* is proud and honored to have Judge Makar contribute an introduction to the Twenty-Fifth Anniversary Edition. Judge Makar’s contribution is titled “The *Journal’s* Twenty-Fifth Anniversary: Reflections from the Founding to Today.”

Followed by the Honorable Scott Makar’s introduction is an article written by Covington & Burling LLP Attorney Gary D. Feldon and Tara M. Beech. Their article is titled “Unpacking the First Prong of the *Strickland* Standard: How to Identify Controlling Precedent and Determine Prevailing Professional Norms in Ineffective Assistance of Counsel Cases.” This article examines United States Supreme Court jurisprudence surrounding the *Strickland* standard for evaluating ineffective assistance of counsel claims. Furthermore, the article analyzes cases that applied the *Strickland* standard. In addition, Feldon and Beech provide an explicit structure for identifying controlling precedent. This explicit structure also provides guidance for determining prevailing professional norms that show whether counsel

* Editor-in-Chief

representation was constitutionally reasonable in the absence of controlling precedent. The explicit structure explained by Feldon and Beech brings more clarity to the *Strickland* standard and can be a critical tool for courts and lawyers, as they would be able to assess ineffective assistance of counsel cases in a manner that is transparent, objective, and accurate.

Next, the Twenty-Fifth Anniversary Edition features notes written by Daniel M. Reach, Jenna Leigh Fischman, and Ramon Guillen, Jr. Reach's note is titled "Keep Your Friends Close but Your Auditors Closer: Corporations Risk Waiver When Independent Auditors Request Work Product." This note analyzes the application of the work product doctrine in instances of disclosure to independent auditors. The issue, whether disclosure of attorney work product to an independent auditor waives work product protection, has been subject to varying interpretations by federal courts in light of recent accounting regulations such as the Sarbanes-Oxley Act of 2002, which strives to promote greater corporate transparency. Accordingly, Reach explains the uncertainty in this area of law while highlighting the risks that corporations currently encounter. The note also reviews recent court decisions and provides a comprehensive case-by-case approach that reconciles the competing policy concerns of fairness and transparency. At last, Reach proposes an alternative bright-line test that increases certainty in the area of law surrounding corporations, independent auditors, and attorney work product disclosures.

The notes constructed by Fischman and Guillen, Jr. are tailored toward Florida but may also be relevant to jurisdictions outside of Florida. Fischman's note is titled "Cloud over Florida's Sunshine Laws." This note examines United States Supreme Court jurisprudence for public forum law and explains pertinent cases decided by lower courts. Fischman recognizes that although Florida Sunshine Laws encourage citizens to attend city council meetings, public comment sessions at city council meetings are strictly regulated in a way that limits public speech. Through exploring hypotheticals, Fischman's note demonstrates why public forum law should be clarified. Fischman concludes by proposing recommendations that suggest how local governments in Florida can create clearer guidelines that safeguard citizens' constitutionally protected speech rights.

Guillen, Jr.'s note is titled "Pushing Alice Down the Rabbit Hole: How Florida's Video Voyeurism Laws Protect Victims." Guillen, Jr. recognizes that the crime of secretly recording and distributing images

of individuals, revealing their sexual organs without knowledge and consent, is a real problem in Florida. With the increasing use of small and crafty recording devices, more victims are becoming susceptible to having their privacy invaded by video voyeurs. Guillen, Jr. uses a fictional character, Alice, to demonstrate a journey that a victim of video voyeurism might encounter. The note discusses section 810.145, Florida Statutes (2011), a law that had recently been enacted in 2004 and amended in 2008, which governs the crime of video voyeurism. This note explains the meaning of the statute, how courts are likely to interpret the statute, and how the First Amendment might be applicable in this area of law. Finally, Guillen, Jr. indicates harmful consequences of video voyeurism, how evolving technology may increase the challenges of law enforcement, and how educating the public can help protect individuals' constitutional right to privacy.

The last piece of the Twenty-Fifth Anniversary Edition is Tyler J. Hudson's case comment. Hudson's case comment is titled "Much Ado About Nothing—Prosecutorial Burden and the Sixth Amendment's Impact on Forensic Analysis: *Bullcoming v. New Mexico*, 131 S. Ct. 2705 (2011)." Hudson's case comment reviews the United States Supreme Court's recent decision in *Bullcoming*, which held that the Confrontation Clause of the Sixth Amendment is violated when a defendant is unable to confront an analyst who prepared a forensic report used as evidence in a trial against the defendant, unless the analyst is unavailable, and there had been a prior opportunity to cross-examine the analyst. Hudson addresses the earlier Supreme Court decisions of *Ohio v. Roberts*, *Crawford v. Washington*, and *Melendez-Diaz v. Massachusetts* while analyzing the divergence of the majority and dissent in *Bullcoming*.

The *University of Florida Journal of Law and Public Policy* appreciates all authors for their contribution to the Twenty-Fifth Anniversary Edition. In addition, the *Journal of Law and Public Policy* appreciates all subscribers and readers.

