

2017

Tribute to Professor George W. Dent

Jonathan L. Entin

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>



Part of the [Law Commons](#)

Recommended Citation

Jonathan L. Entin, *Tribute to Professor George W. Dent*, 68 Case W. Rsrv. L. Rev. 5 (2017)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol68/iss1/4>

This Tribute is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

George W. Dent, Jr.: Engaged Scholar

Jonathan L. Entin[†]

George Dent is retiring after forty years in law teaching. For most of that time, he has been my colleague. When he arrived at Case Western Reserve University as a visitor in 1989, he had spent virtually his entire adult life in New York City: as an undergraduate and law student at Columbia University, as a clerk to a distinguished judge of the United States Court of Appeals for the Second Circuit, as an associate at a prominent law firm, and as a professor at two Manhattan law schools.¹

But my connection with George goes back a decade before he joined us. As a second-year law review staffer, I worked on George's first article.² That piece focused on derivative suits and taught me almost everything I know about the subject.³ It attracted widespread attention from leading scholars⁴ and continues to be cited regularly.⁵

[†] David L. Brennan Professor Emeritus of Law and Political Science, Case Western Reserve University. This is a slightly revised version of remarks delivered at a retirement celebration on May 26, 2016.

1. George clerked for Judge Paul R. Hays, was an associate at the firm now known as Debevoise & Plimpton, and taught at the Benjamin N. Cardozo School of Law at Yeshiva University and at New York Law School. Along the way, he also earned an LL.M. in corporate law from New York University and was a visiting professor there as well.
2. George previously published two unsigned student pieces while serving as a staff member and as a notes and comments editor of the *Columbia Law Review*. Note, *Employment Testing: The Aftermath of Griggs v. Duke Power Company*, 72 COLUM. L. REV. 900 (1972); Recent Development, *Section 441 of the Tax Reform Act of 1969 Permits a Public Utilities Commission to Impute the Benefits of Accelerated Depreciation with Flow-Through*, 72 COLUM. L. REV. 1102 (1972).
3. George W. Dent, Jr., *The Power of Directors to Terminate Shareholder Litigation: The Death of the Derivative Suit?*, 75 NW. U. L. REV. 96 (1980).
4. See, e.g., Victor Brudney, *The Independent Director—Heavenly City or Potemkin Village?*, 95 HARV. L. REV. 597, 611 n.39 (1982); Richard M. Buxbaum, *The Internal Division of Powers in Corporate Governance*, 73 CAL. L. REV. 1671, 1677 n.29 (1985); John C. Coffee, Jr. & Donald E. Schwartz, *The Survival of the Derivative Suit: An Evaluation and a Proposal for Legislative Reform*, 81 COLUM. L. REV. 261, 263 n.13 (1981); Daniel R. Fischel & Michael Bradley, *The Role of Liability Rules and the Derivative Suit in Corporate Law: A Theoretical and Empirical Analysis*, 71 CORNELL L. REV. 261, 262 n.2 (1986); Ronald J. Gilson, *A Structural Approach to Corporations: The Case Against Defensive Tactics in Tender Offers*, 33 STAN. L. REV. 819, 822 n.8 (1981); Reimier Kraakman, Hyun

George went on to be a prolific scholar in corporate law.⁶ He regularly has organized the biennial George A. Leet Business Law Symposium, the proceedings of which have appeared several times in these pages.⁷ In addition, George has written about other important issues that are quite distinct from his main area of specialization. He long has been concerned about questions of religious liberty and wrote a widely noted article about religious issues in public education.⁸ Several years later, he wrote one of the principal papers for a symposium on religion and the public schools in the wake of the Supreme Court's decision in *Lee v. Weisman*,⁹ which held unconstitutional a prayer at a middle school graduation.¹⁰

More recently, George has turned his attention to same-sex marriage, even while continuing to write in his main area of specialization. He is a staunch defender of traditional, heterosexual

Park & Steven Shavell, *When Are Shareholder Suits in Shareholder Interests?*, 82 GEO. L.J. 1733, 1735 n.6 (1994).

5. See, e.g., John Matheson, *Restoring the Promise of the Shareholder Derivative Suit*, 50 GA. L. REV. 327, 331 n.10 (2016); *In re UnitedHealth Group Inc. S'holder Derivative Litig.*, 754 N.W.2d 544, 558 (Minn. 2008); *Einhorn v. Culea*, 612 N.W.2d 78, 90 n.37 (Wis. 2000); *In re Oracle Sec. Litig.*, 829 F. Supp. 1176, 1187 (N.D. Cal. 1993); *Rosengarten v. Buckley*, 613 F. Supp. 1493, 1500 (D. Md. 1985); *Zapata Corp. v. Maldonado*, 430 A.2d 779, 782 n.5 (Del. 1981).
6. See, e.g., George W. Dent, Jr., *The Revolution in Corporate Governance, the Monitoring Board, and the Director's Duty of Care*, 61 B.U. L. REV. 623 (1981); George W. Dent, Jr., *Ancillary Relief in Federal Securities Law: A Study in Federal Remedies*, 67 MINN. L. REV. 865 (1983); George W. Dent, Jr., *Toward Unifying Ownership and Control in the Public Corporation*, 1989 WIS. L. REV. 881; George W. Dent, Jr., *Venture Capital and the Future of Corporate Finance*, 70 WASH. U. L.Q. 1029 (1992); George W. Dent, Jr., *Corporate Governance: Still Broke, No Fix in Sight*, 31 J. CORP. L. 39 (2005); George W. Dent, Jr., *Business Lawyers as Enterprise Architects*, 64 BUS. LAW. 279 (2009); George W. Dent, Jr., *Why Legalized Insider Trading Would Be a Disaster*, 38 DEL. J. CORP. L. 247 (2013).
7. Symposium, *The Future of Private Equity Financing*, 51 CASE W. RES. L. REV. 421 (2001); Symposium, *The Role of Lawyers in Strategic Alliances*, 53 CASE W. RES. L. REV. 857 (2003); Symposium, *Corporate Governance: Directors vs. Shareholders?*, 55 CASE W. RES. L. REV. 525 (2005); Symposium, *Lawyers in the Crosshairs: The New Legal and Ethical Duties of Corporate Attorneys*, 57 CASE W. RES. L. REV. 337 (2007).
8. George W. Dent, Jr., *Religious Children, Secular Schools*, 61 S. CAL. L. REV. 863 (1988).
9. 505 U.S. 577 (1992). See Symposium, *Religion and the Public Schools after Lee v. Weisman*, 43 CASE W. RES. L. REV. 699 (1993).
10. George W. Dent, Jr., *Of God and Caesar: The Free Exercise Rights of Public School Students*, 43 CASE W. RES. L. REV. 707 (1993).

marriage.¹¹ Some of his work on gay rights reflects his longstanding concern for religious liberty.¹² George and I have very different views about same-sex marriage, and we have debated our differences several times, including at the law school and on Cleveland's public radio station. Through it all, we have agreed to disagree while maintaining mutual respect.

Of course, sharp intellectual disagreement is the stuff of academic life. George has helped to bring vitality to the law school precisely because he has strong views and does not hesitate to express them. But it would miss the mark to regard him as doctrinaire. Rather, he often raises questions that force others, regardless of their outlook, to rethink assumptions. This reflects one of the most significant benefits of vigorous debate: "it brings about 'the clearer perception and livelier impression of truth, produced by its collision with error.'"¹³

Despite our differences, George Dent has mattered to me, to the law school, to the university, and to the legal profession. In addition to his work on campus, he has been active for many years in the Federalist Society, the National Association of Scholars, the Alliance for Marriage, the Section on Business Associations of the Association of American Law Schools, and the Ohio Advisory Committee to the United States Commission on Civil Rights, which he chaired for five years. He is smart, well-read, and highly cultured, a connoisseur of art and opera. Dining with George is always a treat, because everyone else can be confident that our resident oenophile actually knows the wine list. We will miss him after his retirement but take solace in the knowledge that he will continue to teach part-time, write, and just be around.

-
11. See, e.g., George W. Dent, Jr., *The Defense of Traditional Marriage*, 15 J.L. & POL. 581 (1999); George W. Dent, Jr., *Traditional Marriage: Still Worth Defending*, 18 BYU J. PUB. L. 419 (2004); George W. Dent, Jr., "How Does Same-Sex Marriage Threaten You?", 59 RUTGERS L. REV. 233 (2007) (symposium on *Lewis v. Harris*, 908 A.2d 196 (N.J. 2006) (holding that New Jersey must afford same-sex couples the same rights and privileges that it affords to married, opposite-sex couples)).
 12. See Dent, *supra* note 8; George W. Dent, Jr., *Secularism and the Supreme Court*, 1999 BYU L. REV. 1; George W. Dent, Jr., *Civil Rights for Whom?: Gay Rights Versus Religious Freedom*, 95 KY. L.J. 553 (2006).
 13. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 279 n.19 (1964) (quoting JOHN STUART MILL, *ON LIBERTY* 15 (Blackwell Publishing Ltd., 1947) (1859)).

An echo of George's concern over the suppression of dissenting views can be heard in "Doubts in the Priesthood," another *Academic Questions* article.⁹ He wrote:

Until recently academics who harbored doubts about the wisdom or propriety of racial preferences and multiculturalism were well advised to keep their thoughts to themselves; to question them publicly would at least provoke criticism from one's colleagues, and could incur loss of professional privileges and even severe punishment.¹⁰

Taking note of several left-of-center academics who had framed criticisms of racial preferences as harmful to blacks or an obstacle to economic equality, George saw signs of a fracture within the left's solid support for admitting, hiring, and advancing people on the basis of skin color. He may have been too optimistic about that, but clearly George himself was never among those who kept his thoughts to himself.

Early on, he was a fierce opponent of racial preferences as morally wrong, educationally destructive, and legally doubtful. He carried his opposition forward by filing freedom of information requests to pry out of public universities in Ohio information about their racial preferences and by fearlessly publishing his own views. He was a strong and vivid supporter of the Michigan Civil Rights Initiative, itself an outgrowth of the successful 1996 ballot initiative for Proposition 209 in California, formulated by NAS leaders in that state. George has also sustained a critique of the Association of American Law Schools for its heavy-handed promotion of identity-group "diversity." In his 2011 *Academic Questions* article, "The Official Ideology of American Law Schools,"¹¹ George admits it is "unrealistic" to expect law school faculties to move away from their deep-sunk commitments to progressive political pieties, but "it is important to put the problem of political discrimination in the public eye."¹²

The tone of that sentence isn't weariness, exhaustion, or defeat. It is the voice of the man who knows there will be no quick victory but who remains unyielding in his judgment of the merits of his position.

George has always seemed to me in person a man of steady principle backed by quiet determination without a trace of histrionics.

9. George W. Dent, Jr., *Racial Preferences: Doubt in the Priesthood*, 21 ACAD. QUESTIONS 332 (2008).

10. *Id.* at 339.

11. George W. Dent, Jr., *The Official Ideology of American Law Schools*, 24 ACAD. QUESTIONS 185 (2011).

12. *Id.* at 193.

And yet he has taken on four of the most fiercely aggressive ideologies of our time: secularism, racial preferences, academic feminism, and gay marriage.

What kind of person rushes into those burning buildings? The best answer I can give is a reader. One of the first times I met George, he noticed my bookmarked copy of James Joyce's *Ulysses* and we were at once off on a conversation about literature. My NAS colleagues report similar experiences. I couldn't say what works of political or social theory George has been reading in recent years, but Houellebecq's *Submission*, works by Julian Barnes and Ian McEwan, Dickens's *Our Mutual Friend*, Sinclair Lewis's novels, *Anna Karenina*, and George Meredith's novel, *The Egoist*, are on his recently-read shelf.

For more than twenty years as a member of the board of directors of NAS, George has kept a close eye on our finances, by-laws that he revised, mission, and initiatives. He ceaselessly offers ideas for how NAS can attract new members and donors, build alliances with like-minded organizations, and shape new research projects. He is that rarity among the trustees and directors of an organization who takes the trouble to understand every piece, large and small, of the organization's pursuits.

It is hard to make that sound as vibrant as it is. NAS is a membership, research, and advocacy organization that has frequently involved itself in cases of individual faculty members who have come under reputational assault, such as Richard Zeller at Bowling Green. Figuring out how to assist in these cases is never easy, and the results are often disappointing. How does a body such as NAS sustain its confidence in these stormy seas? In no small part by having someone like George keeping watch and reminding us at crucial moments that the race is not always to the swift or the battle to the strong.