

# Washington University Law Quarterly

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VOLUME 69

NUMBER 2

1991

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## IN MEMORIAM: F. HODGE O'NEAL

*The following are excerpts from Professor F. Hodge O'Neal's  
memorial service held on January 29, 1991.*

**DORSEY D. ELLIS, JR.\***

We come together to celebrate the life and professional achievements of our colleague, former dean, and George A. Madill Professor of Law Emeritus, F. Hodge O'Neal. Although we are all saddened by Hodge's premature death, this is not a sad occasion. It is an opportunity to share our joy in having known and been taught by Hodge. It is a time to recall his many achievements and his enduring contributions to the law. When I became dean, I was given a sage bit of advice by a colleague. He said never try to gauge your performance by that of your predecessors. That came back to me on one of the first occasions in which I saw Hodge. It was orientation for those who were entering law school in the fall of 1987 and it was an orientation for me as well. The activities included a riverboat cruise. Down on the lower deck there was a band playing and there was a dance floor. I went down just to see who was there. To my surprise I found the dance floor occupied by Hodge and his date while the students stood around the edges watching in awe. Well, that was a skill that did not appear in my job description and it is a good thing because I would not have been even considered for the position if it had.

Awe is the word that comes to mind when one reflects on Hodge's accomplishments. He began life in Rayville, a little town in the northeast

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\* Dean, Washington University School of Law.

corner of Louisiana. After a couple of years at Northeast Louisiana University, he completed his education at Louisiana State University, receiving a bachelor's degree in 1938 and a J.D. in 1940. He graduated first in his law school class, was elected to the Order of the Coif, and was the Editor-in-Chief of Volume II of the *Louisiana Law Review*. That volume included articles by William Prosser, John Wigmore, and Jerome Hall, and a Case Comment and a Note by Hodge O'Neal. The Note is particularly significant because it demonstrates that Hodge was already thinking ahead of the law. The subject was charitable immunity, a doctrine that was then pervasive in the law of tort. Hodge scrutinized each of the arguments in favor of the doctrine and found each wanting. It was not until the 1960s that the courts began to do the same thing, and today virtually nothing remains of the doctrine of charitable immunity.

After graduation from LSU, Hodge received a Sterling Fellowship at Yale Law School. He then spent a year with the prestigious New York law firm of Sullivan and Cromwell, following which he enlisted in the Navy, serving as a lieutenant until 1945. After the war he truly began his academic career by joining the faculty of the Mississippi Law School. From there he went on to Mercer University in Macon, Georgia to serve as acting dean and then as dean, a position he held for nearly a decade. In the meantime he completed work for his J.S.D. from Yale as well as an S.J.D. from Harvard. In later years he was on the faculty at Vanderbilt, twice a visiting professor at New York University, and a professor at Duke. He was dean of the Duke Law School in the late 1960s and then returned to full-time teaching at Duke as the James B. Duke Professor of Law. In 1976, Hodge joined the Washington University School of Law faculty as the George Alexander Madill Professor of Law. He served as dean of the School of Law from 1980 to 1985.

I want to share with you parts of a letter from Edward T. Foote II, dean of the School of Law when Hodge joined the faculty and who currently the president of the University of Miami. He says:

Like any lawyer, I had known of Hodge O'Neal before the privilege of serving the School of Law. He had that kind of exceptional reputation as a scholar. It was not until I became dean of the School that I had the fun of meeting him. The circumstances are interesting to recall these seventeen years later. My faculty was putting up with me as I tried to learn the ropes of deaning in 1973-74, and when I had accepted the deanship, Chancellor Bill Danforth had generously committed to an expansion of the faculty by several senior positions. By telephone and in person we canvassed virtually every law faculty in the country. We spoke to scores of people, narrowed

the possibilities and made our choices. All would agree that Hodge occupied a very special place in the School of Law. He was a great scholar, enormously knowledgeable. He was also a strong, committed teacher who cared deeply about his students and their understanding of the law. He taught in the fullest sense, including by example. For many, Hodge O'Neal came to personify the lawyer or law professor that I hoped to become one day. He and I kept in touch over the years, the common denominator being the School of Law we both had come to love. His imprint on our institution has been tremendous, good and lasting. I will miss Hodge O'Neal.

Although Hodge officially retired in 1988, there appeared to be no change in the level of his professional activity. Since that time he has served as the Stephen C. O'Connell Distinguished Visiting Professor at the University of Florida and was a visiting professor last spring at the McGeorge School of Law of the University of the Pacific. In each of the last two years he taught a full load in the fall semester at Washington University and had intended to do so again next fall.

Hodge's bibliography of publications is published in volume 66 of the *Washington University Law Quarterly*. I have not counted his articles published in law journals but the list takes up more than two pages in the *Law Quarterly*; his books and portions of books fill almost another page. While he was producing a body of scholarship as impressive in its quality as in its extent, he was also making the entire canon of scholarly work in corporate law more accessible by editing the *Corporate Practice Commentator* for over thirty years.

Merely listing his publications does not do justice to the impact his work has had on the law. Few scholars can legitimately claim to have created a new subject of study; the development of the law related to closely held corporations, however, is synonymous with Hodge's scholarship in that area. He was the first to identify the field as a topic worthy of study and of separate attention, beginning with law review articles in the 1950s and culminating in the authoritative treatise on the subject, *O'Neal's Close Corporations: Law and Practice*,<sup>1</sup> which is now in its third edition and co-authored by Professor Robert Thompson. Hodge's scholarship in this field has always reflected an abiding concern for the expectations of the minority stockholder. His attention to the law relating to the oppression of minority owners and their potential for being squeezed out by those in control culminated in another treatise that dominated its

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1. F. H. O'NEAL & R. THOMPSON, *O'NEAL'S CLOSE CORPORATIONS: LAW AND PRACTICE* (3d ed. 1988).

field, *O'Neal's Oppression of Minority Shareholders*.<sup>2</sup>

Lawyers have always counseled clients about compliance with legal requirements in order to avoid litigation, but the subject of preventive law as a systematic, self-conscious process was unknown until Hodge identified its importance through his work on the close corporation. Hodge served for many years on the Board of the Emil Brown Fund, which promoted the teaching of preventive law. His own teaching, particularly in the business planning and drafting course, also embodied the prevention concept. Again, Hodge's work anticipated and foreshadowed future developments in the law.

Hodge was a dedicated teacher, a natural teacher, a demanding teacher, and a beloved teacher. I mentioned at the outset of my remarks that we are here to recall our joy at being taught by Hodge. I include in that group his students, his family, and his colleagues, and I certainly include myself as one who has learned a great deal from him. On many occasions I went to that corner office on the first floor to seek his advice. It was always good advice. His wise counsel and the little notes that he would send me from time to time, usually commendatory but occasionally embodying a gentle suggestion of something that needed doing that I had overlooked, were always laced with wit.

Hodge always relished a good story and was an avid and aggressive collector of anecdotes. In 1964, he and his wife, Annie Laurie, published a compilation of favorite stories of congressmen and other officials entitled *Humor, A Politicians Tool*. Let me conclude by sharing with you an excerpt from Hodge's *Humor* book. It is a story about Adlai Stevenson when he was campaigning in California. A woman asked him where he got his coat of deep tan. "You've been playing golf," she accused him. "No," replied Adlai, "I got this tan making outdoor speeches in Florida." "Well," the woman told him, "if you got that brown you talked too long."

WILLIAM H. DANFORTH\*

Our institution has a great deal for which to be thankful. We have

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2. F. H. O'NEAL & R. THOMPSON, *O'NEAL'S OPPRESSION OF MINORITY SHAREHOLDERS* (2d ed. 1985).

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buildings, classrooms, libraries, and large endowments by many friends, but of course, these are just the outer trappings of our institution. At the core are the men and women whose lives are devoted to learning and to scholarship, and who create the traditions which are passed from older to younger faculty and from faculty to students. At the center are the commitments to learning, to excellence and the dedication to passing on to new generations the best that has been learned and thought. Hodge O'Neal was an active, vital participant in the central activities of Washington University. Indeed, he played a special role. In the late 1970s we had some very ambitious ideas about adding to the School of Law some of the most talented legal academics of the era. When Hodge O'Neal agreed to join us we knew we had arrived; we knew we had been successful. As one consultant from another law school noted, "Hodge O'Neal was pure gold." Indeed, Hodge was pure gold; he was after all a scholar's scholar, and had already served as dean at two excellent schools of law. With Hodge on our faculty, with his reputation, with his energy, and his knowledge to help us, the horizon was unlimited. Hodge ultimately joined us as the Madill Professor of Law.

He set an example as a scholar and a teacher. It was remarkable, but his contributions did not stop there. He was enormously admired and respected, and perhaps even more important for his next role, he was liked and trusted. All people of different persuasions and approaches to academic life and to the law looked to Hodge for leadership, as did many non-lawyers. When Tad Foote stepped down as dean, I had the privilege of talking to a large number of the faculty and hearing about Hodge O'Neal and the respect that people had for him. There was really only one individual to succeed Tad Foote; the only question was would Hodge agree to a third go of one of the most difficult and thankless tasks. Fortunately for us, he agreed to serve for a five-year term. He was not as young as he used to be and he wanted time after completing his deanship to complete scholarly work, which was very important to him. He wanted to complete the work while he had his energy and ability. So between 1980 and 1985 we were all fortunate to work with Hodge in his role as dean. He was of course the perfect individual to follow Tad Foote, an able dean from a very different background, a nonacademic background. He represented the School well with the other deans and with the central administration. During that period I had the opportunity to know Hodge much better. He took his scholarly work and his administrative responsibilities seriously and performed these duties ex-

traordinarily well. His work gave meaning to his life. It was a very important centerpiece of his life. I would like to express our condolence on the loss of an individual who accomplished what few of us never accomplish. Hodge O'Neal reached the top of his chosen profession, not as a law academic but as he would say, as a law teacher. He reached the top of his profession winning respect in his own community and throughout the entire nation. We will all miss him.

**KATHLEEN F. BRICKEY\***

Hodge O'Neal was a bright star in the firmament. He was blessed with the gift of vision, and he used it exceedingly well. He grasped the significance of emerging issues long before his peers. He was not merely "on" the cutting edge. He defined it. He crafted an entirely new field of study and, having created it, had the genius to occupy the field. His scholarly work has had an enormous impact on close corporation law and has provided the impetus for recognizing the importance of preventive law as well. He was, and is, "Mr. Close Corporations." His was a brilliant career, and his contribution to legal scholarship is a priceless legacy to us all.

But that is not the end of the matter, for what Hodge had was anything but tunnel vision. Hodge not only foresaw the coming importance of issues in his own field, he was able to make connections between his work and that of his colleagues as well. Having anticipated important developments in our substantive fields, he generously shared his insights with us and challenged us to develop our own, if inferior, brand of vision. He provided encouragement, support, and even inspiration.

That Hodge's collegial nudging produced tangible results is beyond dispute. From among countless possible examples I have selected two treatises written by members of this faculty and published during Hodge's tenure as dean. In the first, *Qualified Deferred Compensation Plans*, Gary Boren wrote in 1983, "Hodge O'Neal started me on the project that ultimately became this book. I thank him for his confidence in me and for his encouragement along the way."

The following year in the second book, *Corporate Criminal Liability*, I

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identified Hodge O'Neal and Frank Miller as two colleagues who deserved a special word of thanks. I wrote of Hodge:

Hodge O'Neal, Dean and George Alexander Madill Professor of Law, first interested me in this venture when he suggested that there was a real need for a work of this nature, and he encouraged me to fill the void. During the three years that I worked on the manuscript Hodge was more than generous in his enthusiastic support of both the endeavor and the author and I am truly grateful for that.

That Hodge could inspire major works in such diverse fields so far removed from his own speaks volumes about the quality of his mind. And he shared his gift. Hodge was the ultimate mentor.

That is from the serious side of Hodge's life. There were, of course, other important dimensions. Hodge had as much zest for life as anyone I have ever known. That was often manifested in his love of travel and his love of ballroom dancing. Sometimes on the way to lunch his feet would fairly dance on the pavement as he quietly hummed to himself. The humming was never tuneful, but it was always alive with rhythm.

Hodge loved to tell stories—stories about himself, stories about improbable colleagues both present and past. Some of his most colorful tales came from his years as dean at Mercer University—tales about a colleague who incessantly zipped and unzipped his zipper as he taught his classes; about an economics professor who whenever he saw a red car, made a beeline for it and then walked in circles around it until his colleagues pulled him away; about Dr. Dowell, then the President of Mercer University, and his futile effort to have Hodge baptized. Although the preacher nearly drowned, Hodge staunchly kept *his* head above water. Hodge was a consummate raconteur. Hodge was funny and witty. He loved laughter, especially when it came at the expense of his colleagues. At lunch when you saw that familiar twinkle in his eye, you knew he was ready to unleash yet another outrageous barb. You could tell by the direction in which he was *not* looking who its intended beneficiary was likely to be.

It is impossible to capture Hodge in mere words—Hodge the splendid scholar, Hodge the genial colleague. But of course, if anyone was capable of coming close to capturing his essence with words, it was Hodge himself. So I want to share with you some excerpts from the biographical sketch he wrote for inclusion in the 1990-91 student handbook. This is how Hodge described himself:

I am a native of Louisiana. Thus my students have always had the problem

of overcoming my thick Irish tongue, my deep southern accent and my Louisiana Cajun idiom. In spite of this problem, which conceivably makes class attendance pointless, I retain the ancient, universally repudiated and completely unreasonable view that students should attend class, and even be prepared.

It took a long time to educate me, as is indicated by three doctorates . . .

My writings include two treatises . . . and over 50 law review articles. The treatises and articles are written in very simple language, as my mind is uncomplicated and not capable of understanding or preparing material on a high level of abstraction.

I retired and became emeritus three years ago. The only good part of retiring is that one draws a pension.

After reciting the litany of the permanent and visiting teaching positions both before and after his retirement, Hodge then observed:

Obviously, I am completely worn out and am no longer capable of doing a decent job of teaching.

On three different occasions at three different institutions . . . I served as a law school dean. Although a number of years have past since my last deanship, I fear that I am not yet thoroughly cleansed from serving in those dirty jobs.

My principal hobby and only exercise is ballroom dancing. I have recently bought a villa in Sarasota, Florida and intend to establish my official residence there. Publishing this latter bit of information is not intended as the equivalent of a blanket invitation to visit.

That is quintessential Hodge O'Neal.

Hodge's presence among us had and will continue to have a lasting impact. We are privileged to have been his friends.

#### ROBERT B. THOMPSON\*

Hodge was an avid story teller and his stories almost always contained a bit of humor. He began each class with a joke or a humorous story and one of his books was about politicians' humor. Thus, it is appropriate that these remarks not just begin with a story, but will be nothing but stories. They tell us something about Hodge's life, much about his approach to life, and they are an important part of his legacy. I have al-

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ways assumed that Hodge's affection for storytelling reflected the oral tradition of his southern roots. The excerpt that Professor Brickey quoted from his autobiographical note is typical Hodge, starting with his Louisiana origins. It may be that I appreciated his stories more because I had no trouble with his accent. But the genius of those stories is that they crossed over barriers arising from diverse backgrounds, whether in the classroom, the faculty conference room, administrative corridors, or in lawyers' offices or courtrooms around this country.

The talents that were to take Hodge to the pinnacle of his chosen profession were visible early in his career. At Louisiana State University Law School they fondly referred to him as "Sitting Bull" for his ability to stay glued to his library seat for long periods of time; that dedication earned him the number one position in his class. During World War II his ability to work with many diverse groups, a characteristic which was to serve him so well in his three law school deanships, was illustrated when he commanded a group of eight signal corps sailors, who were stationed at Point Eades at the mouth of the Mississippi. The sailors lived in houses constructed on stilts, accessible only by water. The sailors shared this isolated community with the river pilots who had not welcomed outsiders into their midst for generations before the military authorities forced them to do so.

Hodge always had the ability to engage people of different views without enraging them, but he never shrank from the occasional tweeking of his colleagues, and he could always carry this off with good humor. For example, a few years ago when he gave a speech at the Mercer University Law School, where he had been the dean between 1947 and 1956, he began by noting his pride in returning to Mercer and stating that the best student that he ever had in all of his teaching was at Mercer. He then added that he would not mention that student's name because, as Hodge said, he was confident that nine-tenths of those in the audience believed that they were that student.

During his first teaching job at the University of Mississippi, the post-war housing shortage led Hodge to rent a room from a widow, Mrs. Lyles, who was distrustful of law professors because of their reputation in the community at that time. It took some time, but Hodge was able to win over the landlady and convince her to allow him to bring, as he described it, "his only real possession" into the house. It probably will not surprise Hodge's friends to know that one prized possession was a phonograph. Indeed, dancing was an important part of Hodge's ap-

proach to life. His children spoke of how their home had one room with the only pieces of furniture stuck at one end so that the room was otherwise bare, except for curtains that could be opened to permit the windows to serve as large mirrors for evening dancing. I always wondered how Hodge survived at Mercer, a southern Baptist school that prohibited dancing on campus. Hodge noted with a twinkle that the University banned dancing, but there were courses called "Rhythmic Movement I" and "Rhythmic Movement II."

Over the years Hodge related several survival skills that he developed at Mercer. The dean's office was located at the corner of the first floor of the law building and had long windows that extended down close to the floor. From time to time Hodge would exit the office through those windows, such as the time he noticed the impending arrival of a preacher whose son had failed out of school. The preacher, who had previously given Hodge "a piece of his mind" over the telephone, arrived to find the dean surprisingly gone.

Hodge always had a practical side and also a vision of how to make things happen. When the president of Mercer complained that there were no Baptists on the law faculty, Hodge volunteered to be baptized. As is the custom with that denomination, that sacrament is performed by total immersion in water. As the baptism was occurring, the preacher slipped, and both the minister and the subject were flailing about in the water. But as Hodge told the story later, the preacher's failure to immerse Hodge totally, left him with an "Achilles's heel" on the top of his head.

Most probably know of Hodge's reputation as the nation's leading authority on close corporations. During the course of working with him on new editions of his two treatises, I had occasion to check the number of times Hodge's work has been cited in American courts. The references ran to the many hundreds. Hodge's pioneering work in preventive law, to which Dean Ellis referred earlier, may not be as familiar. His articles and books were landmarks in developing the lawyer's role as a planner in a transactional setting. This role was obvious to me from the almost weekly phone calls from lawyers around the country seeking Hodge's counsel.

It would take an even closer familiarity with his work to appreciate the clarity of his writing. My favorite part of the autobiographical note that Professor Brickey read was the sentence in which Hodge said the treatises and articles were "written in very simple language as my mind is

uncomplicated and not capable of understanding or preparing material on a high level of abstraction." His three law degrees and scholarly achievements belie, of course, the second part of that sentence. But the first part contains considerable truth. Hodge possessed an ability to express complicated ideas with a clarity that I have not seen matched in other legal writing.

In working with Hodge on his books, I have witnessed his prodigious work habits and his unparalleled commitment to careful expression. During that time, I often heard him speak of those who positively influenced his own development as a scholar. For example, he spoke of his junior college teacher in Louisiana, a teacher of English who helped him as a writer. He spoke of Jack Latty, the dean who persuaded Hodge to forego a teaching offer from New York University and come to Duke Law School. Because I view myself as having greatly benefited from the opportunity to pick Hodge's brain and to have him critique my own work, I listened with interest to these stories of those who influenced his own work. Hodge understood that as teachers and as writers, more than anything else, we take the learning from the past and pass it along to the future, enriched by the teacher's own contribution. Hodge did that better than the rest of us adding a truly distinctive contribution that we cannot match. Just as I have had an opportunity to see some of the antecedent sources for Hodge's work, I have also been privileged to see his legacy. Indeed, I cannot help but reflect on Hodge's impact on so many people—his family, his colleagues, the dancers of this community, the graduates from this law school, and lawyers across the country. He will be missed, but he has also left much of himself that will be reflected in all of us and in the law for years to come.

FAYE L. KATT\*

I will always remember Professor O'Neal, not just for his stories or for the greatness that he achieved in his profession, but for the kindness that he displayed to his fellow human beings. From the first time that I met him, and at all times thereafter, he always impressed me by what I can only call his humanness. It always amazed me that for a person who had

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achieved such things in his professional life, I never saw him feel the need to impress his importance upon anyone; indeed, I always admired his ability to be so down to earth.

My first meeting with Professor O'Neal was during the spring semester of my first year of law school. My legal research and writing teaching assistant informed me that Professor O'Neal was looking for a research assistant for the upcoming summer. Before going to speak with him I decided that it might be prudent to find out some information about him, so I asked a third year student, "Who is this F. Hodge O'Neal?" The reply I received went something like: "F. Hodge O'Neal? The father of close corporations law? *The Oppression of Minority Shareholders? O'Neal's Close Corporations?* Editor of *Corporate Practice Commentator*?" Needless to say, I felt very new to the legal profession at that point in time. Before walking into his office I can remember wondering, exactly what does a father of some body of law look like or sound like? I imagined a person who is very scholarly and incredibly Socratic. Not long after I had entered the room I remember noting in my mind that the father of the body of law of closely held corporations was very down to earth and told great jokes. He gave me the job and that summer began my friendship with Professor O'Neal. That summer was also the beginning of a wonderful working relationship.

I was asked to provide the student's perspective of Professor F. Hodge O'Neal. However, my experience as his student may not be typical because of our working relationship. That relationship gave me a very unique perspective on Professor O'Neal. I did, however, have a class with him during my third year of law school. One thing that I will always remember is the tone that he set in the classroom. He started each class with a joke, and they were usually good jokes. I can remember one day we had a lot of material to cover and Professor O'Neal thought he would get by without telling a joke, but our class just would not have it. After some persuading he complied with a short joke, but once again a good joke.

Most of my memories of Professor O'Neal relate to my relationship to him as his research assistant. I assisted Professors O'Neal and Thompson in preparing supplements to their treatises on close corporations and the oppression of minority shareholders. I spent many hours of my Christmas vacations during law school sitting downstairs in the library across from Professors O'Neal and Thompson working to get out the *Oppression* supplement. I never will forget one year, true to his nature,

Professor O'Neal looked up and jokingly referred to the supplement as the "Oppression of Faye."

In my years of working I have known people that I have admired because they had great ability, were very professional, and carried themselves well. And then I have known people who not only had great ability and carried themselves well, but were just wonderful people. To me Professor O'Neal was one of those wonderful people. Because he was such a good person, he could get me to jump through hoops backwards, even at research assistant wages. I must admit that I went through those hoops willingly, even happily. I will always perceive Professor O'Neal as someone who genuinely cared about people. He took time for people, time to help them, time to listen to them. There was never a time that I went to his office with a question or comment or just to visit that he said he was too busy. As many of you know, he was always busy, but still he made time. Another thing that made Professor O'Neal very special was that he appreciated the things that people did for him. I felt that he always appreciated the things that I did for him, or maybe he was just smart enough to know that if he appreciated me I would jump through all those hoops I mentioned.

I suppose that in the final analysis all that matters is what people can say about us when we have gone. Although today as I speak these words, I am saddened because I will miss him in many ways. I know that with time this sadness will pass and that when I think of him I will remember the scholar, the father of the body of law of closely held corporations, and most of all I will remember my friend who first and foremost was a southern gentleman with a beautiful southern accent, a marvelous sense of humor, and a heart that has touched my heart with a touch that I will never forget.

