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PATRICIA ANN DORE AND THE FLORIDA ADMINISTRATIVE PROCEDURE ACT*

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PAT Dore's untimely death has left those who knew her surprised and upset. Many wonderful things can and should be said about her and her contribution to Florida law.¹ She was a highly acclaimed teacher who taught hundreds of students about Florida law. She was a scholar who left us with an important body of work. She was a friend and advisor to many people throughout the state.

I first met Pat Dore in the 1970s when I was a legal services lawyer. Because our clients were often dependent on state agencies for food, health care, and other essentials, legal services lawyers needed to understand the Florida Administrative Procedure Act (APA).² Pat Dore was, of course, the person to teach us. I remember attending a legal services training event where Pat Dore spoke and distributed copies of *State ex rel. Department of General Services v. Willis*.³ The theme of her talk was that we practicing lawyers had better learn about the "varied and abundant remedies"⁴ of the Florida APA if we intended to protect our clients' substantial interests. That advice was taken to heart.

I think that Pat Dore will be most remembered, and most sorely missed, for her important work with the Florida APA. Her influence on the development of Florida administrative law is immeasurable because she touched so many people in so many ways. She taught a course on Florida administrative law each year since the earliest days of the Act, and many of her former students are now practitioners and policymakers in that field. She also taught many practicing law-

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1. Much was said in a memorial service held to honor Professor Dore, the first ceremony of its kind to be held at the Florida Supreme Court. Chief Justice Leander J. Shaw, Jr. noted: "she contributed immensely to the law of Florida." *Memorial Service at Court Honors Prof. Pat Dore*, FLA. B. NEWS, February 1, 1992, at 4 [hereinafter *Memorial Service*]. Florida State University Law School Dean Donald J. Weidner echoed that sentiment: "Pat Dore was deeply devoted to Florida law and to the people who make Florida law." *Id.*

2. FLA. STAT. § 120.50-.73 (1991).

3. 344 So. 2d 580 (Fla. 1st DCA 1977).

4. *Id.* at 590.

yers about the Act, through informal contacts with those who sought her advice and counsel, as well as through continuing legal education activities. She was a regular participant in The Florida Bar Administrative Law Section's Administrative Law Conference. She was also regularly consulted by legislators and other policymakers who knew that her knowledge of the Act was unparalleled. She even explained the Act, and its importance, to nonlawyers.⁵ Because of her years of study, she had much to say; because she was not shy, she did not hesitate to tell anyone exactly what she thought.

Pat Dore's writing on the Act was also directed to many different audiences. She compiled excellent teaching materials on the Act and shared them with others around the state. She contributed to continuing legal education publications,⁶ and she authored much of the law review commentary that has been written on the Act.⁷ In short, she was widely recognized as the leading authority on the Florida APA. This was acknowledged at a recent Administrative Law Conference where she was introduced "[b]y virtue of her sex and constant nurturing of the statute" as the "mother of the Florida APA."⁸

The Florida APA has greatly benefited from Pat Dore's work. In order to understand the importance of her contribution, the Florida

5. See, e.g., Patricia A. Dore, *The Florida APA or Is This Really the End of Phantom Government?*, 2 FLA. ENVTL. & URB. ISSUES 3 (April 1975) [hereinafter Dore, *Phantom Government*]. She wrote:

As its title suggests, the APA is concerned with a way of doing things, not with the substance of things. Whatever the substantive nature of the issue—preserving the environment, managing the land, chartering banks, conserving soil or permitting dredge and fill operations—the APA controls the procedures by which government acts. Thus, an understanding of the APA is as important for people regulated by government or interested in a subject regulated by government as it is for those who are doing the regulating.

Id.

6. Patricia A. Dore, *Overview of the Administrative Procedure Act and Procedure for the Adoption of Rules*, in FLORIDA ADMINISTRATIVE PRACTICE 2-1, 3-1 (3d ed. 1990); Patricia A. Dore, *Overview of the Administrative Procedure Act*, in FLORIDA ADMINISTRATIVE PRACTICE 2-1 (2d ed. 1981).

7. Patricia A. Dore, *Florida Limits Policy Development Through Administrative Adjudication and Requires Indexing and Availability of Agency Orders*, 19 FLA. ST. U. L. REV. 437 (1991) [hereinafter Dore, *Limits*]; Patricia A. Dore, *Seventh Administrative Law Conference Agenda and Report*, 18 FLA. ST. U. L. REV. 703 (1991) [hereinafter Dore, *Agenda*]; Patricia A. Dore, *The Drawout in Administrative Rulemaking*, FLA. B.J., Jan. 1991, at 94 [hereinafter Dore, *Drawout*]; Patricia A. Dore, *Access to Florida Administrative Proceedings*, 13 FLA. ST. U. L. REV. 965 (1986) [hereinafter Dore, *Access*]; Patricia A. Dore, *Rulemaking Innovations Under the New Administrative Procedure Act*, 3 FLA. ST. U. L. REV. 97 (1975).

8. Stephen T. Maher, *The Seventh Administrative Law Conference Chairman's Introduction to the Symposium Issue*, 18 FLA. ST. U. L. REV. 607, 610 n.6 (quoting Drucilla Bell, then Chair of the Administrative Law Section of The Florida Bar). Gary Stephens, the present Chair of the Administrative Law Section of The Florida Bar and a former student, said: "[s]he was, truly, the dean of Florida administrative law." *Memorial service, supra* note 1, at 4.

APA itself must be viewed in context. Those familiar with the Act know that it is like no other administrative procedure act. The Federal APA⁹ was a product of the 1940s, the 1961 Model State Act¹⁰ of the 1950s, the Florida APA¹¹ of the 1960s and early 1970s, the 1981 Model State Administrative Procedure Act¹² [1981 MSAPA] of the late 1970s. Each Act reflected its times and each took a somewhat different approach to the difficult task of ordering the interactions between the regulators and the regulated. There are those who believe that each Act was an improvement on its predecessors. Others, like Professor Dore, have found particular merit in the approach taken in the Florida APA.

The Florida APA and the 1981 MSAPA both give modern-day answers to the traditional questions of administrative procedure, but their answers are quite different. The Florida APA reflects a reform spirit and is a reaction to the abuses that made a wholesale revision of administrative procedure necessary in Florida. The Florida APA evidences a distrust of administrative government in its incorporation of limitations on agency power that are not included in other administrative procedure acts. In contrast, the 1981 MSAPA is less concerned with limiting agency power and protecting private interests and is more interested in promoting efficiency in government. The 1981 MSAPA's rulemaking and adjudication procedures both evidence this emphasis on efficiency. Those procedures tend to provide regulated persons with significantly less procedural protection than the Florida APA. The more interesting and innovative provisions of the Florida APA have not been incorporated in the 1981 MSAPA or adopted in other states.

Pat Dore's contribution to Florida administrative law is even more important because of the differences in the acts. In Florida, we usually cannot look to commentary in administrative law treatises, to law review commentary on other acts, or to court decisions and law review articles from other jurisdictions for accurate guidance in the interpretation of the Florida APA. In many respects, our Act is just too different to make those sources very useful. Pat Dore recognized this and provided a wealth of commentary on the Act so that those who attempt to stay true to the Act's intent are better able to find their way. She carefully examined the legislative history of our Act. She engaged

9. Administrative Procedure Act, 5 U.S.C. §§ 551-59 (1988).

10. REVISED MODEL STATE ADMINISTRATIVE PROCEDURE ACT OF 1961, 15 U.L.A. 137 (1990).

11. FLA. STAT. § 120.50-.73 (1991).

12. REVISED MODEL STATE ADMINISTRATIVE PROCEDURE ACT OF 1981, 15 U.L.A. 1 (1990).

in spirited debates concerning the meaning of the Act.¹³ She carefully catalogued differences between the Florida APA and other administrative procedure acts. Because of this contribution, we are better able to understand the Act's often unique approach.

Pat Dore was not a passive observer. When she saw that the Act was not operating as it should, she became a participant in attempts to correct the problems that she identified. She authored commentary that allowed people to better understand the need for change, and she served in an advisory capacity to policymakers. Two examples of this stand out.

The first is a recent example chronicled in this *Law Review*.¹⁴ Pat Dore was one of the most articulate and persistent critics of the Florida agencies' failure to adopt their policies as rules and to index their orders. One of the principal purposes for the adoption of a wholly revised statute was to broaden public access to the precedents and activities of agencies.¹⁵ The drafters of the new Act predicted: "The proposed act will cut down on the private knowledge of the policies which shape agency decisions which is now possessed only by small groups of specialists and the agencies' staffs."¹⁶

Two trends emerged after the adoption of the Act that threatened to frustrate this purpose and prediction. The first was judicial interpretation of the Act to give agencies the discretion to "choose whether to adopt policy through rulemaking or proceed to develop policy—whether incipient or fully emerged—through adjudication without apparent limit."¹⁷ The second was the failure of agencies to preserve and index their orders so that those who were not agency staff or agency practice specialists could have meaningful access to agency precedents.¹⁸ Pat Dore not only spoke and wrote about these problems, she participated in efforts to develop statutory reforms by advising the drafters,¹⁹ critiquing the drafts,²⁰ and educating others about the progress of reform efforts.²¹

13. See, e.g., Dore, *Drawout*, *supra* note 7, at 94 (arguing that while "Maher's vision of how the drawout could and should work is not without merit[,] it would complicate rulemaking and is not supported by the language of the statute).

14. See generally Dore, *Limits*, *supra* note 7.

15. Reporter's Comments on Proposed Administrative Procedure Act for the State of Florida, March 9, 1974, Appendix C at 3 reprinted in ARTHUR J. ENGLAND & L. HAROLD LEVINSON, *FLORIDA ADMINISTRATIVE PRACTICE MANUAL* (1979).

16. *Id.* at 6.

17. Dore, *Agenda*, *supra* note 7, at 710-11.

18. *Id.* at 715-22. Dore's conclusion, after reviewing the situation, was that "[l]eft to their own devices, agencies simply have not done the job." *Id.* at 721.

19. *Id.* at 711 n.42.

20. *Id.* at 707-22.

21. *Id.*

Pat Dore's efforts to require rulemaking and ensure access to agency orders contributed to the passage of the Act's 1991 amendments, which were designed to address problems that she identified in these areas.²² She not only was instrumental in securing changes that put us back on course toward the achievement of the original purposes of the Act,²³ she also carefully catalogued the legislative efforts that culminated in the adoption of these new provisions.²⁴ This careful scholarship will assist practitioners, agencies, and courts in implementing these important improvements to current practice.

A second example of Pat Dore's involvement in reform efforts was her attempt improve access to administrative remedies. The Florida APA's administrative remedies are, in theory, varied and abundant. Whether those remedies are in fact even available, however, depends upon the level of interest that a person seeking access can demonstrate. It is clear that different levels of interest are required to invoke different remedies under the Act. For example, "affected persons" can participate in rulemaking hearings,²⁵ while only "substantially affected persons" can file challenges to proposed rules.²⁶ However, the Act itself does not define these terms. Pat Dore identified this early on as a significant weakness in the Act.²⁷ From the early days of the Act, courts have narrowly interpreted these access requirements.²⁸ Professor Dore criticized this case law because it denies access to administrative proceedings and because it relies, for its rationale, on federal standing law. That law is grounded on federal constitutional limitations on federal judicial power, not the considerations one would expect to govern access to state administrative proceedings.

In what is probably her most impressive article, Pat Dore rejected the use of any judicial standing test to determine the right of access to

22. See generally Dore, *Limits*, *supra* note 7.

23. Dore believed that court decisions permitting agencies to decide whether or not to adopt their policies as rules were not consistent with the original intent of the Act because "it is simply not credible to believe the Legislature did not intend agencies to avail themselves of [the Act's] difficult [rulemaking procedure] when formulating policy." Dore, *Agenda*, *supra* note 7, at 708-09. Providing access to agency precedents was another important original purpose of the Act. *Id.* at 715-22.

24. See generally Dore, *Limits*, *supra* note 7.

25. FLA. STAT. § 120.54(3) (1991).

26. FLA. STAT. § 120.54(4) (1991).

27. She stated:

To the chagrin of many, the APA deliberately leaves some critical questions unanswered. What is a substantial interest? Who is an affected person? What is the difference between an affected person and a substantially affected person? Those questions will ultimately be resolved by the courts.

Dore, *Phantom Government*, *supra* note 5, at 17.

28. See generally Dore, *Access*, *supra* note 7.

administrative proceedings. She also suggested that we go beyond that and "banish the word 'standing' from the discussion of the right to initiate any executive branch proceeding."²⁹ Her critique of the case law in this area makes a strong case for reform. To assist that effort, she proposed access criteria for each administrative remedy that she found to be consistent with the language and legislative history of the Act and the function and purpose of each proceeding. Her proposed approach to access to agency proceedings merits careful consideration by policymakers who are interested in continuing to improve the Act.

Pat Dore died too young. Much of her potential remained unrealized. Her major legacy is the generation of students and practitioners who learned Florida law from her. However, her scholarship will also continue to make a contribution. Few have had the patience to discover and preserve the small details about the law and lawmaking in Florida that were characteristic of Pat Dore's scholarship.³⁰ Her careful exploration of legislative history demonstrated a facility with legislative materials, a complete understanding of the legislative process, and a willingness to listen to hours of tapes. Few academics devote their time to such an enterprise at the state level. This aspect of Pat Dore's work further emphasized her respect for the law she catalogued and critiqued. By treating these materials as significant, she made a statement about the importance of Florida law. If we see our states as laboratories of democracy, if we believe in the importance of developing the full potential of Florida law, then we respect her contribution. Her work has given us a sound foundation upon which to build.

29. *Id.* at 967.

30. *See, e.g., Dore, Limits, supra* note 7. This was also true of her work outside the area of administrative law. *See Patricia A. Dore, Of Rights Lost and Gained*, 6 FLA. ST. U. L. REV. 610 (1978).