Jonathan L. Entin†

Sidney Picker: Legal Architect

Sidney Picker and I were suitemates for nearly twenty years. Although our primary areas—International Law for Sidney, Constitutional Law and Administrative Law for me—overlapped only slightly, we got to be quite close. Maybe we connected about Secretary of State Christian Herter, with whom Sidney worked during the Kennedy Round of international trade negotiations and whom I remembered as governor of my home state of Massachusetts.

Or perhaps it was Ruth Bader Ginsburg. I had recently clerked for her when I arrived at the law school; the Pickers consulted with then-Professor Ginsburg when they launched the Women's Law Fund. Jane led the Fund as it supported *Cleveland Board of Education v. LaFleur*,[1] which struck down a school board rule that required pregnant teachers to stop working by the end of their fourth month.[2] Sidney filed amicus briefs in the district court and the court of appeals on behalf of the Women's Equity Action League; they coauthored the brief in the Supreme Court, where Jane successfully argued the case.[3]

But we also had some overlapping substantive interests. Sidney regularly taught a course on Future Interests, and I used to teach Property. On his wall hung a whimsical map of Future Interests Land, a creation of one of his favorite classes. The map contained stops for contingent remainders and vested remainders subject to partial or complete divestment, as well as for shifting and springing interests. And

---

† David L. Brennan Professor Emeritus of Law, Case Western Reserve University.

1. 414 U.S. 632 (1974).

2. *See id.* at 648. *See generally* Tracy A. Thomas, *The Struggle for Gender Equality in the Northern District of Ohio*, *in* Justice and Legal Change on the Shores of Lake Erie: A History of the United States District Court for the Northern District of Ohio 165, 166–74 (Paul Finkelman & Roberta Sue Alexander eds., 2012).

3. *See* La Fleur [sic] v. Cleveland Bd. of Educ., 326 F. Supp. 1208, 1208 (N.D. Ohio 1971); LaFleur v. Cleveland Bd. of Educ., 465 F.2d 1184, 1185 (6th Cir. 1972); *LaFleur*, 414 U.S. at 633.

   The case had other connections to this law school. One of the plaintiffs, Ann Nelson, was married to a CWRU law student. Sidney's dear friend Lew Katz, who has contributed his own tribute to these proceedings, was co-counsel at trial and in the court of appeals. And not long after Sidney retired, one of my students told me after I taught *LaFleur* to his class that he was the son of Ann Nelson but not the child at issue in the case.

there was, of course, an enormous trap involving the Rule Against Perpetuities, a subject to which he devoted considerable class time.

Talking with Sidney and gazing at his map fortified my wavering resolve to cover perpetuities, including lives in being and fertile octogenarians, despite my initial hesitation.[4] In particular, I would teach a case involving a racial restriction on housing. The court butchered the analysis, insisting that the provision was an unenforce–able restrictive covenant when in fact it was an invalid executory interest that violated the Rule Against Perpetuities.[5] And thanks to Sidney, I would feel confident about urging students to learn such doctrinal arcana so that they could slay dragons someday.

I also appreciated that Sidney founded the Canada-United States Law Institute (CUSLI), a joint venture with the University of Western Ontario. Of particular appeal was a conference comparing the roles of the Supreme Court in both countries.[6] That program featured eminent scholars, such as Professors Laurence Tribe of Harvard, Peter Hogg of Osgoode Hall, and Eugene Gressman of the University of North Carolina,[7] as well as leading jurists, such as Justices Potter Stewart of the Supreme Court of the United States, Brian Dickson of the Supreme Court of Canada, and Stanley Mosk of the Supreme Court of California. Even after Sidney handed off day-to-day leadership to our late colleague Henry King, he continued to play a leading role as chair of the Institute's advisory committee and helped to produce years of stimulating conferences on a wide range of binational and international issues.

In addition to his vital role in creating and maintaining CUSLI, Sidney played a vital role in two other initiatives. He was the founding

4. I took no solace from the notorious California decision rejecting a legal malpractice claim because the Rule Against Perpetuities was too compli–cated for a reasonable attorney to understand. *See* Lucas v. Hamm, 364 P.2d 685, 689–90 (Cal. 1962).

5. *See* Capitol Fed. Sav. & Loan Ass'n v. Smith, 316 P.2d 252 (Colo. 1957) (en banc). For a detailed explanation of the infirmities of the court's analysis, see Jonathan L. Entin, *Defeasible Fees, State Action, and the Legacy of Massive Resistance*, 34 Wm. & Mary L. Rev. 769, 788–89, 789 n.86 (1993).

6. *See* Symposium, *Comparison of the Role of the Supreme Court in Canada and the United States*, 3 Can.-U.S. L.J. 1 (1980).

7. Tribe had recently published the first edition of his treatise. *See* Laurence H. Tribe, American Constitutional Law (1st ed. 1978). Hogg, the most cited scholar in the history of the Supreme Court of Canada, had just published the first edition of his treatise. *See* Peter W. Hogg, Constitutional Law of Canada (1st ed. 1977). Gressman was coauthor of the classic work for lawyers with cases in the U.S. Supreme Court, as much an academic trove as a practitioner's manual. *See* Robert L. Stern & Eugene Gressman, Supreme Court Practice (1st ed. 1950); *see also* Stephen M. Shapiro, Kenneth S. Geller, Timothy S. Bishop, Edward A. Hartnett & Dan Himmelfarb, Supreme Court Practice (11th ed. 2019) (maintaining and updating the work since the death of the original authors).

director of the law school's Frederick K. Cox International Law Center. That leading center in its field would not have become what it is today without Sidney's enormously important work. And he was a driving force behind the Russia-United States Legal Education Foundation, which has brought many international students to American law schools.

If Sidney had not become a lawyer, he would have made a wonderful architect. I mean someone who designs buildings, not just institutions. You could tell that simply by looking at the elegant townhouse where he and Jane lived. Sidney designed the striking interior, with a cathedral ceiling and carefully designed windows that made for magnificent lighting patterns. As a result of his architectural inclinations, Sidney chaired our building and grounds committee forever. And he made a difference, especially when we were planning the addition to our classroom wing in the early 1990s. The original plan submitted by a prestigious architectural firm proposed a roofline that clashed with the existing building's profile. Sidney's perceptive objections got that problem resolved.

Sidney's leadership of the building and grounds committee also afforded him a marvelous teaching moment. Long before Ohio adopted statewide smoking regulations, the City of Cleveland enacted a work–place smoking ordinance.[8] As a result, the law school administration banned smoking inside the building. At the time, many students, staff, and faculty were smokers, and they were understandably unenthusiastic about limits on their tobacco use. Sidney convened an open forum. After numerous objectors had their say, he asked whether anyone had read the ordinance. No one had. Gently noting the irony of lawyers denouncing a law they had not read, he presented the provisions showing that no space in the building qualified as a permissible smoking area. The forum ended abruptly if not entirely happily.[9]

More on his teaching: To every registrar's perennial dismay, Sidney was oblivious to deadlines for submitting exams. This was not because he was dilatory, but rather because he was a perfectionist. He once submitted an exam just minutes before the starting time—the test featured an article from that morning's newspaper illustrating an important issue he wanted the students to address.

I also have alluded to Jane Picker, and it is only fitting to conclude by noting that Sidney and Jane were always people of great principle. This commitment went beyond their work on *LaFleur*. Early in their

8. Act of Feb. 9, 1987, Ord. No. 279–A–86, 74 Cleveland City Rec. 214, *repealed and replaced by* Act of Apr. 25, 2011, Ord. No. 473–11, 98 Cleveland City Rec. 634 (current version codified at Cleveland Code ch. 235 (2020)); *see also* Ohio Rev. Code Ann. ch. 3794 (West 2018) (enacted 2006).

9. After Sidney retired, the university banned smoking everywhere on campus, a more stringent rule than anything required by local or state law.

time in Cleveland, then as now highly segregated residentially,[10] they wanted to live in an integrated neighborhood. The president of the university had to intercede at the highest levels of a leading financial institution before they could obtain a mortgage.

Even after his retirement, Sidney remained engaged with the law school. He was a regular participant in the annual CUSLI conferences, and he faithfully stopped by the law school when he was in town for other reasons. When he did, he always made a point of seeking me out. It is hard to accept that I never again can catch up with him and his many adventures. But thank you, Sidney, for all the great memories.

10. In 1970, when the Pickers were looking for a house, the most common measure of residential segregation had Cleveland at 89.0 on a scale where 100 represents complete racial separation and 0 represents complete integration; in 2010, the same segregation index was 79.5. *See* Douglas S. Massey & Nancy A. Denton, American Apartheid: Segregation and the Making of the Underclass 47 (1993); Richard H. Sander, Yana A. Kucheva & Jonathan M. Zasloff, Moving toward Integration: The Past and Future of Fair Housing 405 (2018). Despite the decline in the absolute level of segregation, Cleveland remained noticeably more segregated than other metropolitan areas in 2010. *See id.* at 10.