

Rebecca Taylor
Law and Literature
Professor Michael Richmond
April 21, 2003

Florida Land Through Law, Literature and Experience

INTRODUCTION

Within the wilds of Florida lie enchantment, danger, and beguiling beauty. It has been home to homesteaders who ensured their survival through hunting, fishing and garden-plot farming, as well as vast, unfenced cattle ranges profiting from trade with Cuba, sawgrass marshes creating a niche for outcasts, hunters, hermits, and Indians, and brigands and fugitives that roam the desolate areas, creating a homegrown folklore of crime stories. MARK DERR, *SOME KIND OF PARADISE* 25 (William Morrow & Company, Inc. 1989). One brigand who wreaked terror upon the southern coastal city of Chokoloskee in the 1890s was Ed Watson, which oral tradition describes as having fled the Florida/Georgia border after having murdered three men. *Id.* at 101. He captured black and white fugitives fleeing to the coast to escape punishment for their own crimes, and forced them to work his sugarcane plantation. *Id.* After Watson had committed mass murder, which claimed lives of his expired workers, residents of the city of Key West, and an elderly couple by the hands of his foreman, Chokoloskee dwellers organized a posse and exacted their own justice upon Watson. *Id.*

Although it may be dangerous to venture into the lush recesses of Señorita Floridita, the voyage may yield the resolution to desires and passions that may go otherwise unrequited. When Henry Flagler opened the lines of rail travel to Florida, Northerners flocked in, some to escape from illness, some to celebrate health and life; as one wanderer said, “[t]o the rough, practical Northern mind, [] Florida is a land of dreams, a strange country full of surprises, an intangible sort of place, where at first nothing is believed to be real and where finally everything is considered possible.” *Id.* at 63.

THE LANDSCAPE

The grandeur of the Florida landscape is richly explored in Marjorie Kinnan Rawlings’ novel The Yearling, which describes a twelve-year-old boy, Jody Baxter’s coming of age in the northern

Florida scrub. Judith G. Poucher, Marjorie Kinnan Rawlings: A Study in Romantic Realism 122 (published Ph.D dissertation, Univ. Microfilms Int'l 1984). His father, Penny, had grown a disliking for town and village life and had moved his wife and son into the wilds of Florida:

Folk who lived along the deep and placid river, alive with craft, with dugouts and scows, lumber rafts and freight and passenger vessels, side-wheel steamers that almost filled the stream, in places, from bank to bank, had said that Penny Baxter was either a brave man or a crazy one to leave the common way of life and take his bride into the very heart of the wild Florida scrub,¹ populous with bears and wolves and panthers.

MARJORIE KINNAN RAWLINGS, *THE YEARLING* 33 (Simon & Schuster 2002) (1938).

Penny had found solace in the scrub, and escape from the people who had caused him pain over the years. Id.

The peace of the vast aloof scrub had drawn him with the beneficence of its silence. Something in him was raw and tender. The touch of men was hurtful upon it, but the touch of pines was healing...The wild animals seemed less predatory to him than people he had known. The forays of bear and wolf and wild-cat and panther on stock were understandable, which was more than he could say of human cruelties.

Id.

In the Florida wilderness, Penny found a home where he could live on his own terms, and not be subject to the dictates of urban or village chaos. The land also strengthens Jody's relationship with his father, when his father introduces amazing sights to him that change both their lives. One evening, Penny and Jody creep silently up to a marsh in their travels through the Florida scrub and witness a magical sight:

¹ The Florida scrub is now a rare and endangered habitat that is unique to this state. This habitat is defined by low growing evergreen shrubs that are drought resistant, and open patches of sand free of any vegetation. Scrub soil is conducive to drainage, which makes these habitats prime targets for development. Katrina Locke, Florida Scrub Habitat, Volusia County Government Environmental Management, at http://volusia.org/environmental/natural_resources/scrub/flascrubhab.htm.

Penny whispered, “Foller me. We’ll ease up as clost as we dare.”

He pointed. “The whoopin’ cranes² is dancin’.”

...The cranes were dancing a cotillion³ as surely as it was danced at Volusia. Two stood apart, erect and white, making a strange music that was part cry and part singing. The rhythm was irregular, like the dance. The other birds were in a circle. In the heart of the circle, several moved counter-clock-wise. The musicians made their music. The dancers raised their wings and lifted their feet, first one and then the other. They sunk their heads deep in their snowy breasts, lifted them and sunk again. They moved soundlessly, part awkwardness, part grace. The dance was solemn. Wings fluttered, rising and falling like outstretched arms. The outer circle shuffled around and around. The group in the center attained a slow frenzy.

Suddenly all motion ceased. Jody thought the dance was over, or that the intruders had been discovered. Then the two musicians joined the circle. Two others took their places. There was a pause. The dance was resumed. The birds were reflected in the clear marsh water. Sixteen white shadows reflected the motions. The evening breeze moved across the sawgrass. It bowed and fluttered. The water rippled. The setting sun lay rosy on the white bodies. Magic birds were dancing in a mystic marsh. The grass swayed with them, and the shallow waters, and the earth fluttered under them. The earth was dancing with the cranes, and the low sun, and the wind and sky.

Jody found his own arms lifting and falling with his breath, as the cranes’ wings lifted. The sun was sinking into the sawgrass. The marsh was golden. The whooping cranes were washed with gold. The far hammocks were black. Darkness came to the lily pads⁴, and the

² The chance to witness this spectacular dance that Jody and Penny witnessed is much scarcer now; the whooping crane, the tallest American bird, is officially listed as an endangered species and is on the verge of extinction. These birds are white, with black-tipped wings, black legs, and bare red faces and crowns. Their highly gregarious nature (which is seen in their whimsical, surreal dance) and high infant mortality rate increase their vulnerability, as well as human hunting and land cultivation. “Whooping Crane,” ENCYCLOPEDIA BRITANNICA, at <http://www.britannica.com/eb/article?eu=78947> (2003).

³ The cotillion originated in the late 18th century and 19th century as a French court dance, which was also popular in England. This dance was a predecessor of the quadrille, and consisted of four couples dancing in a square set. The couples would perform gentle geometric movements, the first and third couple performing together, then likewise, the second and fourth. “Cotillion,” ENCYCLOPEDIA BRITANNICA, at <http://www.britannica.com/eb/article?eu=26936>, (2003).

⁴ Water lilies have rounded, floating, waxy-covered leaves on long stalks, which arise from thick, fleshy underwater stems that are rooted in mud. The attractive flowers, which are white in the North American variety, may open only in the morning or in the evening. These plants provide food for fish and other wildlife but may cause

water blackened. The cranes were whiter than any clouds, or any white bloom of oleander⁵ or of lily. Without warning, they took flight. Whether the hour-long dance was, simply, done, or whether the long nose of an alligator⁶ had lifted above the water to alarm them, Jody could not tell, but they were gone. They made a great circle against the sunset, whooping their strange rusty cry that sounded only in their flight. Then they flew a long line into the west, and vanished.

MARJORIE KINNAN RAWLINGS, *THE YEARLING* 113-114 (1938).

Later, after Penny and Jody have returned home and they are eating dinner with Ma Baxter. Id. at 115. They eat a delicious dinner of crisp golden fish fried in meal, but they eat in silence. Id. Ma demands, “What ails you fellers?” Id. Penny and Jody are so overwhelmed by their witnessing of the cranes’ dance that

They did not answer. They had no thought for what they ate nor for the woman. They were no more than conscious that she spoke to them. They had seen a thing that was unearthly. They were in a trance from the strong spell of its beauty.

Id.

This passage illustrates the surreal beauty of the whooping cranes, and what amazing

drainage problems because of their rapid growth. “Water Lily,” *ENCYCLOPEDIA BRITANNICA*, at <http://www.britannica.com/eb/article?eu=78230>, (2003).

⁵ Best known is the common oleander, which is a native of the Mediterranean region and has a poisonous milky juice. The flowers grow in clusters and are usually rose-colored, and rarely white or yellow. Its poisonous qualities, which make it extremely toxic for consumption, were examined by Pliny the Elder. “Oleander,” *ENCYCLOPEDIA BRITANNICA*, at <http://www.britannica.com/eb/article?eu=58425>, (2003).

⁶ Alligators are not endangered but they are legally protected, due to their striking resemblance to the American Crocodile, which is an endangered species. Alligators represent remnants of the dinosaur species, and were named by Spanish explorers, calling them “los lagartos” (the lizards). The American alligator became the official state animal of Florida in 1987. They have long been hunted for their meat and skin, and the Florida Game and Fresh Water Fish Commission allows trappers to harvest a limited number of alligators each year. Despite an alligator’s predisposition to feed on almost anything (including humans), humans still enjoy feeding them. The American Alligator, at <http://agrigator.ifas.ufl.edu/gators/> (2002).

spectacles Jody and Penny witness together while venturing deep into the Florida wilderness. The sight they have seen cannot be explained to curious Ma Baxter—it is a secret between the two of them, which has given their lives new meaning. It is shocking to realize how few whooping cranes remain in the wild today, and how unlikely it is that we could witness such a sight now as Penny and Jody witnessed. Even though federal and state endangered species acts endeavor to curtail the declining population of wading and perching birds, such as the whooping crane, alligator, manatee,⁷ southern bald eagle,⁸ and various birds of prey, snakes, and turtles, decades of overhunting and rampant development gravely jeopardize the survival of many species. MARK DERR, *SOME KIND OF PARADISE* 142 (1989)

Even though today, the likelihood of encountering wild whooping cranes is much scarcer, and the land is more populous and developed than it was during the Depression, the era in which The Yearling was born, Florida holds a wealth of nature to discover and appreciate in day-to-day life. Courts have recognized that the beauty of the unique Florida landscape is worth preserving. In a Fourth District Court of Appeal case, Florida Power & Light Company (“FPL”) sought the condemnation of a route in Okeechobee County for a perpetual power line easement. Fla. Power & Light Co. v. Berman, 429 So.2d 79, 80 (Fla. 4th DCA 1983). However, the trial court had denied FPL’s petition for an order of taking, finding that the route sought, Sherman Road, ran through three

⁷ Manatees can be found along tropical and subtropical Atlantic coasts and nearby inland waters. They are large, slow aquatic mammals of dull gray, blackish, or brown colors, with stout, tapered bodies ending in a flat, rounded tail used for forward propulsion. “Manatee,” *ENCYCLOPEDIA BRITANNICA*, at <http://www.britannica.com/eb/article?eu=51681>, (2003).

⁸ The southern bald eagle is a subspecies of the American bald eagle, which is found in most portions of the continental U.S. with the largest populations residing in Florida. “Bald Eagle,” *ENCYCLOPEDIA BRITANNICA*, at <http://www.britannica.com/eb/article?eu=12078>, (2003).

unique plant zones: the dry zone, the transition zone, and the wet zone. Id. at 80. Many plants and over five hundred trees abounded along Sherman Road. Id. The trial court noted that

[Sherman Road] is characterized as a unique ecological niche. It is the only road in the Okeechobee area with a canopy of trees over the top of the road; and it is the only area in the Okeechobee area with this composite variety of zones and plants. If the transmission lines go along Old Sherman Road, there will be substantial destruction of this unique ecological niche because of the removal of trees and the intrusion of sunlight, which will allow many weeds to grow which do not grow in that area at this time. It will then cause a change in the ecological character of the road area.

Id.

The particular beauty of the habitat along Sherman Road, as noted by the trial court, became a compelling reason for the appellate court to decide that FPL should find an alternative route for its power line easement. Id. at 82. Under Florida law, a condemning authority must consider several factors in deciding which route to select and which land to condemn; first: the availability of an alternative route, second: costs, third: environmental factors, fourth: long range area planning, and fifth: safety considerations. Id., citing to Fla. Power Corp. v. Gulf Ridge Council, 385 So.2d 1155. As noted by the late Judge Spector, when a route selected for an interstate highway wastes hundreds of acres better suited for natural homesites, that is convincing evidence that “an engineer’s transit has no social conscience.” Id. at 82-83, citing to Chipola Nurseries, Inc. v. Div. of Admin., Dep’t of Transp., 294 So.2d 357 (Fla. 1st DCA 1974).

The Berman court found that the FPL manager for the project in issue had no training in ecology or environmental planning, and that FPL had not made any sincere ecological consideration to the project. Id. at 83. FPL’s omissions were sorely contrasted with the wealth of detailed evidence provided by the owners of property surrounding Sherman Road of the road’s ecological uniqueness.

Id. The court ultimately found that FPL had abused its discretion in choosing Sherman Road as a route. Id.

Trees

Besides creating lush green beauty, Florida's kindred trees serve practical purposes to all life around them - such as providing roosts for birds, squirrels and the occasional cat, hiding nooks for ground creatures, and the much needed shade, particularly here in South Florida, to which many heat-weary humans will flock, sometimes enjoying the treat of a picnic. In one case, property owners waged battle against employees of Pinellas county for their removal of various "large trees, shrubs, and other vegetation," which the agents argued was done pursuant to a planned program of highway improvement. White v. Pinellas County, 185 So.2d 468, 469 (Fla. 1966). The petitioners argued that this foliage and brush was "valuable as a windbreak in resisting heavy wind damage, frost, and freezing of valuable vegetation and crops produced on the property, and in serving as a necessary element in securing privacy in the home on the property."⁹ Id. at 469. The court reversed the trial court's entry of summary judgment for the county and remanded the case for a trial on the merits. Id. at 471.

Despite the prevalent urban character of downtown Fort Lauderdale and its surrounding suburban sprawl, the value of Florida's trees is not overlooked in our community. In a dispute involving FPL once again, occurring less than a month ago as of this writing, Fort Lauderdale

⁹ If one takes a drive around the South Florida, many homes can be seen which enjoy the luxury of being encased in lush tropical growth. Not only does this foliage lend uncommon beauty to the neighborhoods (which certainly surpass the appearance of many of the most posh northern neighborhoods), but these proliferations of the tropic heat provide pristine veils of privacy, which the less privileged or enterprising might obtain with a clapboard wall.

residents succeeded in preventing FPL from cutting a historic oak tree canopy in the Victoria Park and Colee Hammock neighborhoods, which consists of trees dating back to the earliest days of the city's history. Brittany Wallman, Fort Lauderdale Residents Sound Off So Trees Don't Fall; City Officials Tell FPL to Get New Plan for Power Lines, SOUTH FLORIDA SUN-SENTINEL, April 4, 2003.

The homeowners each implored city commissioners to protect this unique hammock¹⁰ from destruction, and the commissioners responded by ordering FPL to stay away from the heavily-forested road in the wealthy, almost-downtown area.¹¹ Id. FPL had planned to install higher power lines in that area, with some underground lines, but the commissioners forced FPL to refine the plan to require that all lines be placed underground or on another road, where the hammock will not be disturbed. Id.

Sinkholes

A scarcity of water was the only drawback to the location. The water level lay so deep that wells were priceless...The sinkhole was a phenomenon common to the Florida limestone¹² regions. Underground rivers ran through such sections. The bubbling of springs that turned

¹⁰ The characteristics of a hammock differ according to its location. Generally speaking, a hammock is a fertile area in the southern United States, Florida in particular, which is typically higher than its surroundings and is habitat for hardwood vegetation and deep, rich humus soil. In coastal Georgia, a hammock is a small island in the salt marsh on which red cedar, small live oaks, and saltbush grow. In the Florida Everglades, the hammocks host small broad-leaf trees, many West Indian species, in the sawgrass, maidencane marsh, or limestone pine lands. Rhonda M. Brewer, Florida Museum of Natural History, at http://www.flmnh.ufl.edu/natsci/vertpaleo/auquilla10_1/hammock.htm.

¹¹ Pursuant to FLA. STAT. ch. 286.0115(c) (2002), any person not prohibited by law is permitted to approach any local public official to discuss any matter to discuss the merits of any matter on which that official's board or commission may take action.

¹² In the limestone regions, porous limestone bedrock is submerged beneath the soil, which was originally formed from ancient coral reefs and shell deposits. Rain and groundwater dissolve the limestone in some regions, forming sinkholes, swales and underground caverns. Jessica and Jason McQueen, Leon Sinks Geographical Area, Florida State University, <http://www.fsus.fsu.edu/Departments/socialscience/researchjournals/wodvilekrst.asp>.

at once into creeks and runs were outbreaks of these. Sometimes a thin shell of surface soil caved in and a great cavern was revealed, with or without a flow of water.

MARJORIE KINNAN RAWLINGS, *THE YEARLING* 34 (1938).

Varying in area and depth, sinkholes may be of enormous size. "Sinkhole," *ENCYCLOPEDIA BRITANNICA*, at <http://www.britannica.com/eb/article?eu=69702>, (2003). They may be created by either a cavern roof's collapse, or the gradual dissolving of rock under a soil mantle. *Id.* A sinkhole formed by a collapse has steep rock sides and receives stream of water that then flow underground, while a soil-mantled sinkhole is generally shallower. *Id.* Sinkholes have posed a hazard to some Florida residents. One couple in Escambia County claimed coverage under their sinkhole collapse provision of their all-risk homeowner's policy, when portions of pavement near their home collapsed. *Cincinnati Ins. Co. v. Wiltshire*, 472 So.2d 1276, 1277 (Fla. 1st DCA 1985).

The two parties each introduced expert witnesses at trial, with the couples' expert testifying that sinkholes existed and the opposing expert contending that they did not. *Id.* at 1277-1278. The appellee couples' expert stated that sinkholes are caused by carbon dioxide in water dissolving calcium carbonate in limestone, and as the limestone is dissolved the earth above it collapses. *Id.* at 1277. The appellee's expert stated that the only sinkhole existing in Escambia County lay 1,100 feet below the surface, and that while there were other rock formations that dissolve in the same way limestone does, there were no such formations near the ground surface in the county. *Id.* at 1278.

The court found that both experts essentially agreed on the issue of causation, saying that the holes in the pavement had been caused by water displacing sand, and that sinkholes are formed by a different process. *Id.* As a result, the appellees did not receive coverage under the sinkhole provision of their insurance policy. *Id.*

Despite the trouble that a would-be sinkhole caused the Wiltshires, a sinkhole pool is a source of wonder and joy for Jody Baxter as he makes his usual rounds through the forest:

A spring as clear as well water bubbled up from nowhere in the sand. It was as though the banks cupped green leafy hands to hold it. There was a whirlpool where the water rose from the earth. Grains of sand boiled in it. Beyond the bank, the parent spring bubbled up at a higher level, cut itself a channel through white limestone and began to run rapidly down-hill to make a creek. The creek joined Lake George,¹³ Lake George was part of the St. John's River,¹⁴ the great river flowed northward and into the sea. It excited Jody to watch the beginning of the ocean. There were other beginnings, true, but this one was his own. He liked to think that no one came here but himself and the wild animals and the thirsty birds.

He was warm from his jaunt. The dusky glen laid cool hands on him. He rolled up the hems of his blue denim breeches and stepped with bare dirty feet into the shallow spring. His toes sunk into the sand. It oozed softly between them and over his bony ankles. The water was so cold that for a moment it burned his skin. Then it made a rippling sound, flowing past his pipe stem legs, and was entirely delicious.

MARJORIE KINNAN RAWLINGS, *THE YEARLING* 18 (1938).

The sinkhole to Jody is a world belonging only to him and the forest animals he loves. It is not a nuisance or a legal hazard to him - his world is too simple for those annoyances that pester the members of our modern Floridian society. The wonders of our natural environment are now reduced to mere commodities, hazards that must be obliterated, or obstructions in the gluttonous pursuit of profits. It is hard to quantify in superficial values the value of natural occurrences such as the sinkhole, a garden of tropical foliage, or oak hammocks—but one might shudder to imagine what the character of our native landscape would look like without these natural wonders. Such a vision

¹³ Lake George is the second largest lake in Florida, after Lake Okeechobee, and is located in northwestern Volusia County. It is surrounded by the Lake George State Forest, which mostly consists of slash pine, longleaf pine, bottomland hardwoods, and interspersed cypress and bay depressions. The forest was previously used for timber management, naval stores production, grazing and hunting, but today is reserved for recreation. Florida Division of Forestry, [at http://www.fl-dof.com/state_forests/Lake_George.htm](http://www.fl-dof.com/state_forests/Lake_George.htm).

¹⁴ These waters consist the longest river in Florida, which originates in swamps south of Melbourne in Brevard County, and then flows north parallel to the Atlantic coast to turn east at Jacksonville, emptying into the ocean, extending three hundred miles. The river was called San Juan by the Spanish in the late 16th century, but was later translated to its current name by the British in the late 18th century. "Saint John's River," *ENCYCLOPEDIA BRITANNICA*, [at http://www.britannica.com/eb/article?eu=66568](http://www.britannica.com/eb/article?eu=66568), (2003).

of what spring would be without the birds, flowers and other beauty we long for after the dead of winter (in colder climates, anyway) helped to shock the nation into action to protect the environment, after all.¹⁵

THE EVERGLADES

The pines were becoming scattering. There was suddenly a strip of hammock land, and a place of live oaks and scrub palmettos. The undergrowth was thick, laced with cat briars¹⁶. Then hammock, too, ended, and to the south and west lay a broad open expanse that looked at first sight to be a meadow. This was the saw-grass¹⁷. It grew knee-deep in water, its harsh saw-edged blades rising so thickly that it seemed a compact vegetation. Old Julia splashed into it. The rippling of water showed the pond. A gust of air passed the open area, the saw-grass waved and parted, and the shallow water of a dozen ponds showed clearly... The treeless expanse seemed to Jody more stirring than the shadowy forest.

MARJORIE KINNAN RAWLINGS, *THE YEARLING* 48 (1938).

The sawgrass that Jody, his father, Penny, and the hunting hound Old Julia witness lay in north central Florida, in Marion County, near the town of Grahamsville. *Id.* at 16. However, this sight might well describe the river of grass known as the Everglades, which covers about 4,000 square miles in southern Florida. "Everglades," *ENCYCLOPEDIA BRITANNICA*, at <http://www.britannica.com/eb/article?eu=33950>, (2003). Water moving slowly south from the lip of Lake Okeechobee to mangrove colonies bordering the Gulf of Mexico and the Florida Bay feed

¹⁵ RACHEL CARSON, *SILENT SPRING* (Houghton Mifflin 2002) (1962).

¹⁶ The cat briar is a woody vine, tough and spiny, with heart-shaped green leaves, numerous small greenish flowers and black fruits. Oklahoma Biological Survey, at http://www.biosurvey.ou.edu/shrub/smb_o2.htm.

¹⁷ This plant has spiny, serrated leaf blades that resemble a saw, hence its name of "saw-grass." Sawgrass was the inspiration for the name "river of grass" by which the Everglades is sometimes known. The coarse texture and sharp-toothed leaf blades of saw-grass make it hazardous to be near, but many wildlife species depend on the saw-grass for habitat and food. Migratory ducks and geese feed on saw-grass seeds, and the saw-grass gives cover and nesting sites to many birds, reptiles and amphibians. School of Forest Resources and Conservation, University of Florida, at <http://www.sfrc.ufl.edu/4h/Sawgrass/sawgrass.htm>.

the Everglades. Id. As the water flows southward, water evaporates to form rain clouds, some of which drift north to continue the cycle. MARY JOY BRETON, *WOMEN PIONEERS FOR THE ENVIRONMENT* 238 (Northeastern University Press 1998). The drinking water supply of South Florida depends on the continuous flow of the Everglades. Id.

The Everglades' value was not always recognized to the extent that it now is (whatever extent that may be); until the 1960s, the general public usually thought of wetlands as mosquito and snake-infested swamps that were valueless until they could be drained. Id. In fact, when Florida first became a state in 1845, its legislature urged Congress to allow for the reclamation of these wetlands by drainage. Id. Not long afterwards, the Army Corps of Engineers began ditching, channelizing, diking, and other efforts to "correct" the flood plain system in the name of promoting flood control and farmland for sugarcane growers and cattle ranchers. Id. at 240.

One of the earliest protectors of the Everglades was Marjory Stoneman Douglas, born in 1890. Id. at 237. Her father had been the founder and editor of the Miami Herald, and had opposed Governor Broward's proposition in 1905 to drain the Everglades for one dollar per acre. Id. at 240. In 1927, Marjory became a member of a citizen's committee, part of the national parks system, to protect the Everglades. Id. at 241. After twenty years of educating the public and lobbying before elected officials, Douglas's committee succeeded in forming the Everglades National Park in 1947, which has been called the "crown jewel of the national system." Id. at 242. In the late sixties, Douglas realized that the Everglades were "a central force in her existence," and in 1969 she organized and became the first president of the citizens' action group, Friends of the Everglades ("Friends"). Id. She led the Friends in such triumphs as defeating refineries and jetports and increasing water flow into the Everglades by having culverts installed under the Tamiami Trail¹⁸ and

¹⁸ This road was completed in April of 1928, and subjected the Everglades to a greater rate of development and population. The trail cuts through fifty miles of what would otherwise be Everglades wilderness on the southeastern coast of Florida. National Scenic Byways Program, at http://www.byways.org/travel/byway.html?CX_BYWAY=12130.

filling in old canals. Id.

However, the Everglades suffered heavily by the Army Corps of Engineers' admitted mistake of straightening the Kissimmee River,¹⁹ which caused the disappearance of wildlife and a ceasing of the river's natural cleaning function. Id. at 243. In 1985, the Everglades Commission, which was comprised of twenty-five nonprofit groups, collaborated with state and federal government agencies to restore the river's original oxbow configuration, which will revive wetlands, promote the return of wildlife, and increase drinking water quality. Id.

Douglas's Friends now consist of over six thousand members as of 1998. Id. at 244. She was awarded the Presidential Medal of Freedom by President Clinton in 1993, and lived to the astounding age of 108. Id. at 244-245. She lent these following enlightened words to environmental activists:

Join a local environmental society, but see to it that it does not waste time on superficial purposes...Don't think it is enough to attend meetings and sit there like a lump...It is better to address envelopes than to attend foolish meetings...Speak up. Learn to talk clearly and forcefully in public. Speak simply and not too long at a time, without over-emotion, always from sound preparation and knowledge. Be a nuisance where it counts, but don't be a bore at any time...Do your part to inform and stimulate the public to join your action...Be depressed, discouraged and disappointed at failure and the disheartening effects of ignorance, greed, corruption and bad politics - but never give up.

Id. at 244 (alterations in original).

Douglas wrote six books about Florida, after her initial success with The Everglades. Id. at 241. In the following short story, she focuses on ibis, birds which were heavily targeted by plume

¹⁹ This river is located in central Florida, and flows from between the Kissimmee (on the north) and Okeechobee (on the south) lakes. Originally it stretched for over one hundred miles, but the flood control canalization reduced its length to about fifty-six miles. A portion of the Florida National Scenic Trail roughly parallels the river's course. The origin of "Kissimmee" is uncertain, but it is possibly derived from a Calusa Indian word meaning "'long water.'" "Kissimmee River," *ENCYCLOPEDIA BRITANNICA*, at <http://www.britannica.com/eb/article?eu=99634>, (2003).

hunters in the 19th and early 20th centuries, before laws were passed to ban the hunting of these birds. Kevin McCarthy, ed., *MORE FLORIDA STORIES* 59 (University Press of Florida 1996). Among Marjory's many accomplishments was deterring the efforts of plume hunters in the Everglades. MARY JOY BRETON, *WOMEN PIONEERS FOR THE ENVIRONMENT* 244 (1998).

He had found the hidden stronghold of the ibis at last. A long way off, through a break in the rampart of the mangroves²⁰, beyond the saw-grass country and the country of dwarfed and ghostly cypress²¹ through which he had struggled all day, he had caught sight of a few white bodies already resting on the treetops. Now he clung to an arched mangrove root and peered out across the small lake, where, in the last shafts of sunset, the ibis in white hundreds came planing down to the branches from their far, serene courses in the sky. Exultation lifted his heart above fatigue and the dulled failure of these last years...The tiny eye of his fire was lost in the enormous dark and silence of the Everglades.

Marjory Stoneman Douglas, *A Flight of Ibis*, in *MORE FLORIDA STORIES* 61 (Kevin McCarthy, ed., 1996) (1935).

The protagonist in Douglas's story had been enthralled by the ibis in the mangroves, and his purpose in life was renewed. *Id.* If one takes time to witness the beauty of natural surroundings, the effects may be of a transcendental unexpectedness.²² The writer of this paper experienced some of the magic within the Everglades while traveling on a canoeing trip amongst the mangrove islands

²⁰ These are shrubs and trees that grow in dense thickets and forests along tidal estuaries, salt marshes, and muddy coasts. A common feature of such greenery is respiratory or knee roots, which project above the mud and have small openings through which the plant breathes. "Mangrove," *ENCYCLOPEDIA BRITANNICA*, at <http://www.britannica.com/eb/article?eu=51765>, (2003).

²¹ These trees are Evergreen conifers which are distributed throughout warm-temperate and subtropical regions of Asia, Europe, and North America. These trees are pyramidal in shape and can grow to be eighty feet tall. Their bark usually separates into thin plates or strips that can be easily separated from the tree, and their leaves are aromatic. The Mourning and Italian cypresses have been used as symbols of death and immortality in some cultures. "Cypress," *ENCYCLOPEDIA BRITANNICA*, at <http://www.britannica.com/eb/article?eu=28869>, (2003).

²² Poet Mary Oliver conveys an illuminating account of the spiritual invigoration she experiences simply by watching mockingbirds whirl through the air one spring morning: "...two mockingbirds were spinning and tossing/the white ribbons of their songs into the air. I had nothing/better to do than listen. I mean this seriously./...Wherever it was I was supposed to be this morning—whatever it was I said/I would be doing—I was standing at the edge of the field—I was hurrying/through my own soul, opening its dark doors—I was leaning out; I was listening." Mary Oliver, "Mockingbirds," available at http://www.vasudevaserver.com/home/sites/poetseers.org/html/contemporarypoets/mary_oliver/mockingbirds.

in the Gulf of Mexico, and understanding the sensation of being dwarfed and humbled by the magnificent presence of the Everglades:

The eleven of us set out for Camp Lulu from the dock at Everglades National Park. Warm weather had returned to us through the icy night chills that we had recently suffered over in Fort Lauderdale. It was a brilliant blue day in the Everglades, with a bit of a morning nip that prevails in the South Floridian winter.

...The daunting nature of our task was relieved, however, by the beauty of our surroundings. It wasn't long before we encountered our first osprey's nest. White egrets abounded in the trees, as well as brown pelicans floating on the water, their trawl-like bills sagging over the water.

...The maze of islands seemed a bit more familiar as we wound back through the waters the way we had come. I was relieved to spot the beginning of the boat markers at the mouth of one waterway, signifying the path back the park. We paddled past an osprey's nest once again, this time having a clear view of the gaping little beaks inside, appealing for more tidbits they would receive from their swooping mother.

...But little by little, the shore drew nearer, until the canoes came to rest against the concrete of the dock. We had done it - borne ourselves nine miles and back through the mighty ocean on our own power. We were down on water's level - we could feel the many currents, moods and intricacies of the tropical waters. Instead of jetting idly on a motor or engine, we had slowly wound through the brilliant green of the mangroves and motley waters, and glimpsed the mysterious congregation of creatures for which the Everglades is home. With the beauty of all that I had seen there in my mind, I got in my car with my husband and headed for home. I had joked while I was out there about what the sight of our entire law school (about 1000 students strong) bumbling through the Everglades in a big fleet of canoes would have looked like. To picture it seemed like an exercise in chaos to me. But now I think that what we as the ELS did is something that everyone can do, and should. Especially those who desire to even comprehend the beauty that blooms in the civilizations of the oceans and mangrove islands.

Becky Taylor, Environmental Law Society's Enchantment in the Everglades: Camp Lulu Everglades Story 8 BROADLY SPEAKING: THE STUDENT VOICE OF THE SHEPARD BROAD LAW CENTER AT NOVA SOUTHEASTERN UNIVERSITY 20-22 (March 2003).

Luckily, the precious nature of the Everglades has been recognized by the legislature. The Everglades are protected today by the Florida Statutes, which provide that

the Everglades ecological system not only contributes to South Florida's water supply, flood control, and recreation, but serves as the habitat for diverse species of wildlife and plant life. The system is unique in the world and one of Florida's great treasures. The Everglades ecological system is endangered as a result of adverse changes in water quality, and in the quantity, distribution, and timing of flows, and, therefore, must be restored and protected.

FLA. STAT. ch. 373.4592(1) (2002).

Among the many laws in Florida that protect the Everglades, this statute authorizes the South Florida Water Management District to expeditiously implement the Everglades Program to aid in the restoration of this ecosystem. § 373.4592(1)(b). Goals of the statute include reducing the levels of phosphorus in Everglades waters, improving the quality of water before it reaches the Everglades, deter the invasion of exotic species, and other objectives. § 373.4592(1)(c)-(f). The statute also provides that certain lands may be acquired to treat or store water before it is released into the Everglades. § 373.4592(b). Since the acquisition of real property for these endeavors qualifies as a public purpose, public funds may be used for the purchase of such lands. Id.

**IT'S NOT ALL EVERGLADES AND SUNSETS -
NATURE'S "BAD AND UGLIES" LURK WITHIN THE "GOOD"**

Buzzards

Then a buzzard rose in front of him and flapped into the air. He came into the clearing under the oaks. Buzzards sat in a circle around the carcass of the doe. They turned their heads on their long scrawny necks and hissed at him. He threw his bough at them and they flew into an adjacent tree. Their wings creaked and whistled like rusty pump-handles...The buzzards clacked their wings, impatient to return to their business.

MARJORIE KINNAN RAWLINGS, *THE YEARLING* 194-195 (1938).

Even though buzzards seem content to join their Floridian winged friends in the air and in our neighborhoods, their reception in the Fort Lauderdale community has been less than gracious. Robert Nolin, Condo Wants Buzzards to Buzz Off; Federal Agents Set to Do Battle vs. Aggressive Visitor Vultures, SOUTH FLORIDA SUN-SENTINEL, September 2, 2002. On their positive side, they are seen as “the clean-up crew of nature.” Id. They derive sustenance from carrion (dead flesh). Id. With their bald heads, they can delve deeply into rotting carcasses without danger of germs infecting their feathers. Id. Some of their nauseating habits include vomiting up pellets of bone and hair, urinating on their legs to kill bacteria from their buffets of carcasses, and ejaculating projectiles of vomit at people or things that scare them. Id. In spite of buzzards’ atrociousness to the squeamish, they are revered by residents of Hinkley, Ohio, who honor the birds’ homecoming each spring with

a welcome-back festival. Id.

Recent offenses of buzzards in a Coconut Creek condominium attracted the attention of federal agents from the United States Department of Agriculture's Wildlife Service. Id. Black vultures made their home in the Applewood Village I community, and roosted on the condo roofs most nights before dark. Id. In the aftermath of their evening roosts, they left torn screens and shingles, chewn windshield wipers and rubber stripping around car windows, and heavy defecation on cars and rooftops. Id.

As of September, 2002, the federal agents were set to patrol the Applewood properties with "bird bangers," "bird screamers," and laser "avian dissuaders," in attempts to repel the birds from their roosts with loud booms, screeching rockets, and laser beams disturbing to the birds. Id. The Animal Rights Foundation of Florida supported these efforts to dislodge the buzzard population in the Applewood community, stating that the Wildlife Services buzzard repellent methods were "relatively humane." Id.

THROUGH OUR LANDSCAPE AND ITS CREATURES
THE UGLINESS OF RACISM IS REFLECTED

Out in the swamp they made great ceremony over the mule. They mocked everything human in death. Starks led off with a great eulogy on our departed citizen, our most distinguished citizen and the grief he left behind him, and the people loved the speech...[Sam] spoke of the joys of mule-heaven to which the dear brother had departed this valley of sorrow; the mule angels flying around; the miles of green corn and cool water, a pasture of pure bran with a river of molasses running through it...Up there, mule angels would have people to ride on and from his place beside the glittering throne, the dear departed brother would look down into hell and see the devil plowing Matt Bonner all day long in a hell-hot sun and laying the rawhide to his back.
...[F]inally the mule was left to the already impatient buzzards. They were holding a great flying-meet way up over the heads of the mourners and some of the nearby trees were already peopled with the stoop-shouldered forms.

Zora Neale Hurston, *Their Eyes Were Watching God*, in *NOVELS AND STORIES* 223 (Cheryl A. Wall, ed. 1995).

This passage is a powerful example of the way Hurston used animals native to Florida to symbolize the struggle of blacks in her society. Ann R. Morris, *Flora and Fauna in Hurston's*

Florida Novels, in ZORA IN FLORIDA 7 (Steve Glassman, ed., 1991). The mule's owner, Matt Bonner, had abused and overworked him, but the mule had been set free by the local mayor. *Id.* During the funeral, the mule's passage to a glorious place is celebrated, where he will bask in royalty, amongst some of treasures found back on Florida's earth, such as green pastures, corn, cool water, pure bran, and molasses. *Id.* However, the ensuing descent of the hungry vultures includes a ceremony of their own, presided over by Parson Buzzard. *Id.* In this cruelly ironic precursor to the vultures' devouring of the fallen mule, a mockery of the reverent homage paid earlier to the beast slaps the reader in the face. *Id.* Morris and her co-author point out that the vultures' ceremony is a clear satire of "the so-called freeing of the slaves and the pretense that they are treated as equals by society; then the satire itself is ridiculed by having the buzzards mimic the actions of the townspeople." *Id.* Here, the mule, a Floridian beast of burden, is cast in a benevolent light, while the buzzard, a thorn in the side of some Floridian communities, takes on the role of the societal oppressor. See *infra* pp. 8-9.

As much as it would be pleasant to believe that the state of racial equality, both in society and in the law, is far removed from its condition in Hurston's time, the irony and hypocrisy still exist in the pretenses of African-Americans receiving equal treatment, but still being oppressed under the laws of our country. Martin Luther King spoke of the United States Constitution as being tantamount to a check returned for insufficient funds, and that he and his comrades were still awaiting the redemption of that check.²³ The same can be said of an African-American community here in the Fort Lauderdale community, who are waiting for the redemption of a similar check - for the laws of Florida to free them from the oppression of their own neighborhood, where they have long been tyrannized by the old Wingate landfill and incinerator. Brittany Wallman, [Cleanup Fails to Cap Wingate Worries; County Looks Into Testing Soil; State](#)

²³ Martin Luther King, Jr., Speech, "I Have A Dream," [available at](http://www.usconstitution.net/dream.html) <http://www.usconstitution.net/dream.html> (August 28, 1963).

Reviews Cancer Rate, SOUTH FLORIDA SUN-SENTINEL, August 19, 2002.

The Wingate incinerator and landfill were operated on Martin Luther King Jr. Boulevard in Fort Lauderdale from 1954 to 1978. Id. In 2002, a cap was placed over the toxins at the Wingate site, and a sign on the fence surrounding the area merely states “Dangerous Material May Be Present Below Ground Surface.” Id. Forty-year resident of the Wingate area, Leola McCoy, spend years traveling to Tallahassee and Washington, D.C., to alert the state and federal officials of the numerous deaths of her neighbors, her husband’s cancer, and her own immune system ailment. Id. A Miami lawyer, J.B. Harris, has enlisted the help of famed attorney Jan Schlichtmann in the Wingate matter, whose environmental class action lawsuit was the basis for the book and movie A Civil Action. Id. City commissioners have said that if a link is shown between Wingate and the surrounding community’s current mortalities (high among infants as well) and diseases, both the city and companies that contributed toxins to the landfill will have to pay damages to the victims. Id. In the ongoing Wingate disaster, both the environment and a human community suffer.

If a lawsuit is filed on behalf of the Wingate residents, it will not be the first. In November of 2002, Sharon Bourassa of Legal Aid Broward went before the Eleventh Circuit Court of Appeals, whose demands included that the *de jure* segregation of Broward Gardens (the neighborhood adjacent to the landfill) be immediately abolished and that Broward Gardens’ exposure to contamination cease. Broward Gardens Tenants Ass’n v. United States Env’tl. Prot. Agency, 311 F.3d 1066, 1070 (11th Cir. 2002). The district court had dismissed the Wingate resident’s complaint for lack of subject matter jurisdiction, stating that section 113(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) prohibited federal judicial review of challenges to CERCLA cleanups except when necessary to decide a claim that fell within statutory exceptions. Id. at 1068. The Wingate area had been declared a Superfund Site in 1989, and was added to a national list of hazardous waste sites for

which cleanup is high priority. Id. A cleanup plan of Wingate was implemented, which endeavored, *inter alia*, to cover the landfill with a synthetic or clay cap, excavate contaminated soil and incinerator ash, and drain water from a contaminated lake. Id. at 1069.

However, the Wingate residents filed an action after the cleanup of Wingate began, urging that the cleanup plan was inadequate, and that Broward Gardens was established to harbor racism, with knowledge that African-American tenants would be exposed to hazardous substances. Id. at 1070. The federal court did not even reach the merits of the resident's complaint, concluding just as the district court did, that it lacked subject matter jurisdiction to review the complaint because it did not accept the resident's arguments that their claim was not subject to the restrictions of section 113(h) of CERCLA. Id. at 1068. The Wingate residents are still waiting for relief which will free them from what they are convinced are toxic, deadly living conditions, and compensation for their injuries and the lives they have lost. Hopefully relief will yet be forthcoming to the residents of Wingate, with the aid of Mr. Schlichtmann and his team.

ENDING THOUGHTS

Inland and north from tropical Florida are the springs that continue to defy the imagination with their pellucid, cooling waters, their boils from the depths. To go to a place like Silver Springs and look forty feet through water so clear one has to touch it to make certain it is there is an experience to remember for a lifetime. To dive into liquid crystal on a hot summer day, to stare into the face of a fish, is to look into life itself. And a slow canoe ride down one of the clear spring runs or larger rivers overhung with oak and cypress full of moss, with a pair of pileated woodpeckers²⁴ marking your passage, ospreys crossing the river above, and a swallow-tailed kite²⁵ cruising back of the river

²⁴ The pileated woodpecker is usually about fifteen to eighteen inches in size and dwells in mature forests over much of temperate North America. Woodpeckers spend the majority of their time in trees, scurrying up the trunks seeking insects, and sometimes sap, fruits and berries. The few ground-feeding forms of woodpeckers are the only varieties capable of perching on horizontal branches. Woodpeckers' loud calls accompanied by their drumming on hollow wood or metal can be heard in the spring, signifying the sounds of males holding territories; at other seasons woodpeckers are usually silent. Most are not social, tending rather to be solitary or to travel in pairs "Woodpecker," ENCYCLOPEDIA BRITANNICA, at <http://www.britannica.com/eb/article?eu=79494>, (2003).

²⁵ Striking in its black and white colors, the swallow-tailed kite is about sixty centimeters long, including its long forked tail. It is most common in tropical eastern South America but also occurs from Central America to the United States. "Kite," ENCYCLOPEDIA BRITANNICA, at <http://www.britannica.com/eb/article?eu=46749>, (2003).

swamp brings peace that is seldom found in the crash of car culture. When people who knew of these places speak of their loss to development and overuse, they do so with sadness.

MARK DERR, *SOME KIND OF PARADISE* 388 (1989).

To hear of the beauty of Florida that lucky ones have experienced, and to realize that not all of the magic is gone, that Florida still holds many treasures for us is luxury. Could the people who suffer near Wingate possibly believe that the land could be kind to them, that luxuries exist here for them as well? The Wingate tragedy suggests that there may be some who believe beautiful surroundings are a luxury that only the privileged deserve. The greedy often pounce upon beautiful expanses of land, hoarding them for selfish purposes and desecrate the nature that is left behind, when citizens who cherish those lands lack the money, power, or resources to save them.

These pages do no more than to take cursory steps towards revealing the beauty, danger, and horror which lies within Señorita Floridita's realm, which has often been illuminated and reborn into our senses by the might of literature. To see the rest, try a taste of sawgrass, dive into crystalline waters, adore the sun, bicycle along A1A, hike into the scrub. What lies around us is not all beautiful and serene, even if the follies of mankind have not touched it. Florida is a volatile, restless domain, wracked by hurricanes, fierce insects, alligator jaws, buzzards, and of course, the disrepair of humankind. The law that governs us here must be concerned not only with maintaining the decorum of society, but with protecting the unique treasures of this land, both within its shores and beyond.

CITATIONS

Novels and Published Literature

MARJORIE KINNAN RAWLINGS, THE YEARLING 33 (Simon & Schuster 2002) (1938)

RACHEL CARSON, SILENT SPRING (Houghton Mifflin 2002) (1962)

Judith G. Poucher, Marjorie Kinnan Rawlings: A Study in Romantic Realism (published Ph.D dissertation, Univ. Microfilms Int'l 1984)

MARK DERR, SOME KIND OF PARADISE (William Morrow & Company, Inc. 1989)

Ann R. Morris, Flora and Fauna in Hurston's Florida Novels, in ZORA IN FLORIDA 7 (Steve Glassman, ed., 1991)

Zora Neale Hurston, Their Eyes Were Watching God, in NOVELS AND STORIES 223 (Cheryl A. Wall, ed. 1995)

Kevin McCarthy, ed., MORE FLORIDA STORIES 59 (University Press of Florida 1996)

MARY JOY BRETON, WOMEN PIONEERS FOR THE ENVIRONMENT (Northeastern University Press 1998)

Statutes

FLA. STAT. ch. 286.0115(c) (2002)

FLA. STAT. ch. 373.4592 (2002)

Cases

Broward Gardens Tenants Ass'n v. United States Env'tl. Prot. Agency, 311 F.3d 1066, 1070 (11th Cir. 2002)

White v. Pinellas County, 185 So.2d 468 (Fla. 1966)

Fla. Power & Light Co. v. Berman, 429 So.2d 79 (Fla. 4th DCA 1983)

Cincinnati Ins. Co. v. Wiltshire, 472 So.2d 1276 (Fla. 1st DCA 1985)

Newspaper Articles

Brittany Wallman, Cleanup Fails to Cap Wingate Worries; County Looks Into Testing Soil; State Reviews Cancer Rate, SOUTH FLORIDA SUN-SENTINEL, August 19, 2002

Robert Nolin, Condo Wants Buzzards to Buzz Off; Federal Agents Set to Do Battle vs. Aggressive Visitor Vultures, SOUTH FLORIDA SUN-SENTINEL, September 2, 2002

Becky Taylor, Environmental Law Society's Enchantment in the Everglades: Camp Lulu Everglades Story 8 BROADLY SPEAKING: THE STUDENT VOICE OF THE SHEPARD BROAD LAW CENTER AT NOVA SOUTHEASTERN UNIVERSITY 20-22 (March 2003)

Brittany Wallman, Fort Lauderdale Residents Sound Off So Trees Don't Fall; City Officials Tell FPL to Get New Plan for Power Lines, SOUTH FLORIDA SUN-SENTINEL, April 4, 2003

World Wide Web sites

ENCYCLOPEDIA BRITANNICA, at <http://www.britannica.com/> (2003)

Florida Division of Forestry, at http://www.fl-dof.com/state_forests/Lake_George.htm

Jessica and Jason McQueen, Leon Sinks Geographical Area, Florida State University, <http://www.fsus.fsu.edu/Departments/socialscience/researchjournals/wodvilekrst.asp>

Katrina Locke, *Florida Scrub Habitat*, Volusia County Government Environmental Management, at http://volusia.org/environmental/natural_resources/scrub/flascrubhab.htm

Martin Luther King, Jr., Speech, "I Have A Dream," available at <http://www.usconstitution.net/dream.html> (August 28, 1963)

Mary Oliver, "Mockingbirds," available at http://www.vasudevaserver.com/home/sites/poetseers.org/html/contemporarypoets/mary_oliver/mockingbirds

National Scenic Byways Program, at http://www.byways.org/travel/byway.html?CX_BYWAY=12130.

Oklahoma Biological Survey, at <http://www.biosurvey.ou.edu/shrub/smbo2.htm>

Rhonda M. Brewer, Florida Museum of Natural History, at http://www.flmnh.ufl.edu/natsci/vertpaleo/auquilla10_1/hammock.htm

School of Forest Resources and Conservation, University of Florida, at <http://www.sfrc.ufl.edu/4h/Sawgrass/sawgrass.htm>