



# *Passages* Friendly

Supporting Equal Access to Law in Florida

Winter 2017

A Publication of The Friends of the

Rupert J. Smith Law Library of St. Lucie County Florida

## New Library Hours

Monday – Thursday, 9:00 a.m. to 6:00 p.m.

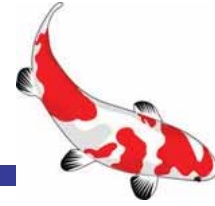
Friday, 9:00 a.m. to 4:30 p.m.

Saturday, 9:00 a.m. to 1:00 p.m.

Rupert J. Smith Law Library is located at 221 So. Indian River Dr. Ft. Pierce, Florida

Winter 2017

# Table of Contents



*Published since September 2011 for the purpose of promoting intelligent education of the Bar and general public about law as a basis for growth of justice and the common welfare, while combating the indifference which might hinder such growth.*

**On Behalf of the Publisher**

*By James T. Walker Page 3*

**The True Story of Legal Research for Practicing Lawyers at the Beginning of the 21st Century**

*By Dennis Wall Page 6*

**ABLE Accounts**

*By Heather Smith Page 9*

**The Sacco and Vanzetti Case**

*By Richard Wires Page 10*

**Fixing the Game of Monopoly**

*By Charles Hamilton Page 14*

**U.S. Law Schools Facing New Challenges**

*By Leonard Pertnoy Page 19*

Celebrate Law Day, May 1st 2017 at 5:00 pm. Community Awards & Student Art Contest, Bailey Auditorium at Indian River State College

**Friendly Passages** Supporting Equal Access to Law in Florida  
 November/December 2016  
 A Publication of The Friends of the Rupert J. Smith Law Library of St. Lucie County Florida

President of the Friends and General Manager  
 James T. Walker 772-461-2310  
 Editor: Nora J. Everlove 727-644-7407  
 Graphic Design: Paul Nucci  
 Assistant Editor: Katie Everlove-Stone  
 Assistant Editor: Kim A. Cunzo 772-409-4353  
 Assistant Editor: Kathryn Nucci

By email, you can reach the editor at:  
 nora@rjsslwlibrary.org  
 We wish to thank our authors and other contributors for making this issue a success!

## On The Cover

“Carp Diem”  
 Pastel on sanded paper  
 by Paul Nucci  
 To see more artwork, visit:  
 www.paulnucci.com

## Officers of the Friends of the Rupert J. Smith Law Library of St. Lucie County

James T. Walker, President  
 Andrew Blum, Vice President  
 Rene Arteaga, Treasurer  
 Nora Everlove, Secretary  
 Kim Cunzo, Chair, Art Contest

*“When men have realized that time has upset many fighting faiths, they may come to believe... that the ultimate good desired is better realized by free trade in ideas-- that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment. As all life is an experiment. Every year if not every day we wager our salvation upon some prophesy based upon imperfect knowledge.”*

- Oliver Wendell Holmes

## On Behalf of the Publisher

*By James T. Walker President,  
Friends of the Rupert J. Smith  
Law Library*



In a letter from “Silence Dogood”, Benjamin Franklin wrote on July 9, 1722, that “Without Freedom of Thought, there can be no such Thing as Wisdom; and no such Thing as publick Liberty, without Freedom of Speech.” Freedom of speech, as secured by the First Amendment of the United States Constitution, is thus commonly viewed as the headwater from which all other rights flow. And “Wisdom”, of course, is what law libraries are about. Their mission is to facilitate universal awareness in the general population of the rights, remedies and obligations applicable to all as heirs of our society, regardless of life’s station, so that each may enjoy equally the blessings conferred by law. Free speech is intertwined in a very real sense with what the Rupert J. Smith Law Library seeks to accomplish.

Attention is therefore given by the Publisher, in this issue of **Friendly Passages**, to Freedom of Speech. Legal practitioners know, beginning with their exposure to the subject in the first year of law school, that it is a large, complex topic. Many books and treatises are devoted to specific applications of free speech principles. It is a subject too vast and ambitious for broad treatment here. Instead, there may be illustration of its workings by studying how it might be narrowly applied to, say, Fla. Stat. sec. 104.271 (“False or malicious charges against, or false statements about, opposing candidates; penalty--”). By examining related court decisions and arguments, and testing them against the language of the statute, there may be acquired a greater sense and appreciation for the importance of this First Amendment liberty.

The statute in question provides as follows:

104.271 False or malicious charges against, or false statements about, opposing candidates; penalty (1) Any candidate who, in a primary election or other election, willfully charges an opposing candidate participating in such election with a violation of any provision of this code, which charge is known by the candidate making such charge to be false or malicious, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083 and, in addition, after conviction shall be disqualified to hold office.

104.271 **False or malicious charges against, or false statements about, opposing candidates; penalty** (1) Any candidate who, in a primary election or other election, willfully charges an opposing candidate participating in such election with a violation of any provision of this code, which charge is known by the candidate making such charge to be false or malicious, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083 and, in addition, after conviction shall be disqualified to hold office.

That finds interest as a member of a group of statutes from fifteen to maybe twenty states-- compilations vary-- which have laws on the books criminalizing statements made in the

## On Behalf of the Publisher

course of an election campaign, statements made either by members of the public, or by the candidates themselves. Such statutes made it into the national news from time to time during the course of the most recent electoral campaign. Two US Supreme Court decisions bear on the matter, and have subsequently been followed in a number of jurisdictions thereafter when addressing the constitutionality of this group of laws on free speech grounds.

Florida's statute applies by definition to public figures, individuals who put themselves in the public limelight by running for public office, where their statements and speech are subject to public scrutiny. It applies to, and criminalizes, the intentional utterance of a specific kind of speech, relating to Chapter 104 of Florida Statutes, the Election Code. Any discussion of such speech must therefore begin with *New York Times Co. v. Sullivan*, 376 US 254, 84 S Ct 710, 11 L Ed 2d 686 (1964), well-known for establishing the permissible standard of liability governing defamatory speech involving public officials.

It will be recalled that, in *Sullivan*, an Alabama jury found the newspaper liable for defaming a local official, by publication of an advertisement, which included certain statements that were false. The judgment of the trial court was affirmed by the Alabama Supreme Court, before then going on to the United States Supreme Court, which reversed. Writing for the Court, Justice Brennan framed the issue thusly: "The question before us is whether this rule of liability (i.e. defendant automatically liable for statements defamatory "per se," unless defendant able to prove the truth of the matter), as applied to an action brought by a public official against critics of his official conduct, abridges the freedom of speech and of the press that is guaranteed by the First and Fourteenth Amendments." *supra* at 268. Such issue was to be considered "... against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *Supra* at 270.

In support of the jury's verdict, Alabama argued, among other things, that its standard of liability was saved by the defense of truth. The defendant need prove only that the statement was true. Brennan was unimpressed: "A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions-- and to do so on pain of libel judgments virtually unlimited in amount-- leads to a comparable 'self-censorship'. Allowance of the defense of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred. Even courts accepting this defense as an adequate safeguard have recognized the difficulties of adducing legal proofs that the alleged libel was true in all its factual particulars."

*Supra* at 279. The Court drew upon this language from *Coleman v. MacLennan*, 78 Kan. 711, 98 P. 281(1908), "It is of the utmost consequence that the people should discuss the character and qualifications of candidates for their suffrages. The importance to the state and to society of such discussions is so vast, and the advantages derived are so great, that they more than counterbalance the inconvenience of private persons whose conduct may be involved, and occasional injury to the reputations of individuals must yield to the public welfare, although at times such injury may be great. The public benefit from publicity is so great, and the chance of injury to private character so small, that such discussion must be privileged." *Supra* at 282. The Court's opinion then concluded by stating what is now the general rule relating to actions aimed at public officials arising out of speech alleged to be defamatory, "We hold today that the Constitution delimits a State's power to award damages for libel in actions brought by public officials against critics of their official conduct. Since this is such an action, the rule requiring proof of actual malice is applicable... (to be) a matter for proof by the plaintiff." *supra* at 284.

The second decision issuing from the Supreme Court believed to be of particularly dispositive significance here is *United States v. Alvarez*, 132 S.Ct. 2537, 183 L.Ed.2d 574 (2012). There, the falsity of defendant's representations was egregious. At issue was defendant's criminal conviction under the Stolen Valor Act, 18 U.S.C.S. sec. 704(b). During the public meeting of a California Water Board, defendant falsely told attendees he had been awarded the Congressional Medal of Honor. He was indicted and pled guilty, reserving only the right to contest the constitutionality of the statute under which he was convicted. The Ninth Circuit reversed his conviction on appeal, based upon the First Amendment. The Supreme Court upheld the reversal, upon a 6-3 plurality decision.

Justice Kennedy, joined by three others, began by noting that content-based restrictions on speech are permissible in only a few historically recognized exceptions, including incitement, obscenity, defamation, speech integral to criminal conduct, "fighting words," child pornography, fraud, true threats, and speech presenting some grave and imminent threat. See pg. 2544. But there was no categorical exception for "false" statements as such, those statements not being sufficient in themselves to lose protection by the First Amendment. See *id.* Indeed, the Court noted, "... the common understanding that some false statements are inevitable if there is to be an open and vigorous expression of views in public and private conversation, expression the First Amendment seeks to guarantee." *Id.* The government argued, that, as in defamation cases, falsity was sufficient basis for liability if made with intent, or malice. But Justice Kennedy wrote that this in effect turned the rule governing defamation on its head, "That inverts the rationale for the

## On Behalf of the Publisher

exception (of malice). The requirements of a knowing falsehood or reckless disregard for the truth as the condition for recovery in certain defamation cases exists to allow more speech, not less. A rule designed to tolerate certain speech ought not blossom to become a rationale for a rule restricting it.” *Supra* at 2545.

There was judicial recognition that not all falsity may seek safe harbor under the protective cover of the First Amendment. Perjury, for example, was identified as one such exception. *See* pg. 2546. But the problem with the statute there under review was that it applied “... to a false statement made at any time, in any place, to any person. It can be assumed that it would not apply to, say, a theatrical performance. (op cit). Still, the sweeping, quite unprecedented reach of the statute puts it in conflict with the First Amendment. Here the lie was made in a public meeting, but the statute would apply with equal force to personal, whispered conversations within a home. The statute seeks to control and suppress all false statements on this one subject in almost limitless times and settings. And it does so entirely without regard to whether the lie was made for the purpose of material gain.” *Supra* at 2547.

There was recognition of the importance of the goals underlying the statute’s purpose, described by the Government as serving “the important public function of recognizing and expressing gratitude for acts of heroism and sacrifice in military service... and also foster morale, mission accomplishment and esprit de corps among service members.” *Supra* at 2548. False claims of military honor were asserted to imperil these salutary objectives “by demeaning the high purpose of the award, diminishing the honor it confirms, and creating the appearance that the Medal is awarded more often than is true. Furthermore, the lie may offend the true holders of the Medal. From one perspective, it insults their bravery and high principles when falsehood puts them in the unworthy company of a pretender.” *Id.*

However, that argument was also rejected. Such interest was insufficiently compelling absent a record demonstrating that the Government’s chosen means of restricting speech was “‘actually necessary’ to achieve its interest.” *Supra* at 2549. In other words, the Court said, “There must be a direct causal link between the restriction imposed and the injury to be prevented. The link between the Government’s interest in protecting the integrity of the military honors system and the Act’s restriction on the false claims of liars like respondent has not been shown.” *id.* There was “no evidence that supports its claim that the public’s general perception of military awards is diluted by false claims such as those made by Alvarez.” *Id.* That is, nothing that charlatans like defendant might do could stain the medal’s honor, and that would be true whether or not medal holders might experience anger and frustration.

*See id.* The Court opined that a far better remedy for such a lie was the simple truth, “It is a fair assumption that any true holder of the Medal who had heard of Alvarez’s false claims would have been fully vindicated by the community’s expression of outrage, showing as it did the Nation’s high regard for the Medal. The same can be said for the Government’s interest. The American people do not need the assistance of a government prosecution to express their high regard for the special place that military heroes hold in our tradition. Only a weak society needs government protection or intervention before it pursues its resolve to preserve the truth. Truth needs neither handcuffs nor a badge for its vindication.” The Court finished its analysis by suggesting creation of a Governmental database of medal holders, easily accessed by the internet, which might quickly verify the truth or falsity of an individual’s claim to be a medal holder. *See* pg. 2550.

Left unresolved by the *Alvarez* Court was the level of scrutiny to be given in review of the statute. The plurality opinion by Justice Brennan joined by three others, employed “strict scrutiny,” a standard requiring that a statute is both “necessary to serve a compelling state interest and ... narrowly drawn to achieve that end.” *Opinion of the Justices*, 436 Mass. At 1206, quoting *Simon & Schuster, Inc. v. New York Crime Victims Bd.*, 502 US 105, 118, 112 S.Ct. 501, 116 L.Ed.2d 476 (1991). But two concurring judges invoked a less exacting standard of “intermediate scrutiny” described as a kind of balancing test between the harm to be prevented versus the availability of other, less restrictive means of achieving the aims of the statute. *See Alvarez*, pg. 2551.

This is addressed by other Courts upon observation that *Alvarez* did not actually involve *political* speech, a specific kind of speech lying at the very core of the First Amendment. This distinction is critical, for the “campaign speech” statute above, as addressed in this issue of Passages, does indeed involve political speech, and such speech is accorded the highest standard of strict review. *See ex. 281 Care Comm. v. Arneson*, 766 F.3d 774, 784 (8<sup>th</sup> Cir Minn 2014); *Commonwealth v. Lucas*, 34 N.E.3rd 1242, 1251 (Mass 2015); *Susan B. Anthony List v. Driehaus*, 814 F.3d 466, 473 (6<sup>th</sup> Cir Ohio 2016).

As a result, this class of “campaign speech” statutes fares poorly when challenged on First Amendment grounds, for statutes receiving such scrutiny are presumptively unconstitutional. *See Reed v. Town of Gilbert*, 135 S.Ct. 2218, 2226, 192 L.Ed.2d 236 (2015). A recent example

continued on page 16

**Come Visit Us**

At 221 So. Indian River Drive  
Fort Pierce, Florida 34950



By Dennis J. Wall, Esquire

# The True Story Of Legal Research For Practicing Lawyers At The Beginning Of The 21st Century

Endnotes for this article can be found on page 27 of the online edition of Friendly Passages.

## I. INTRODUCTION.

The subject of this article is set out in its title: legal research for practicing lawyers at the beginning of the 21st Century.

This article is written from the viewpoint of a practitioner as opposed to a viewpoint shared by academics. Within the rather large universe of practitioners, the focus of this article breaks down even further: The focus is from the viewpoint of lawyers in smaller to mid-sized law firms who practice in Florida State Court and occasionally in Federal Court, as opposed to the class of practitioners who regularly appear in cases pending in the U.S. Supreme Court.

In short, this article is presented for use in actual litigation by lawyers who more or less appear in court to represent parties suing, or being sued, over actual disputes that come out of their lives, their work, and their incomes.

## II. “CRUNCHING THE NUMBERS: “SUPPORTING TRADITIONAL LEGAL RESEARCH WITH ELECTRONICS.

### *“Deeper Dives” Into Majority and Minority Rules Using the Empirical Method or Quantitative Method of Legal Research.*

The pre twenty-first century approach to legal research has been called the “traditional qualitative approach.” It embodies “the craft of discovering the DNA of the law through experienced reading of persuasive sources.”<sup>1</sup>

Other methods and tools of legal research developed in the last century have been greatly enhanced by the electronic resources that are available now, at the beginning of the twenty-first century. All of these methods involve how the courts line up on a given issue.

Now, as then, the use of these additional research tools raise the question: Who can afford the time? The answers remain the same: large clients, very large cases, academics. I can assure you, however, not insurance companies.

These methods can collectively be termed “*the empirical method*” or “*quantitative analysis*” method of legal research. These collective descriptions conceal a large number of alternative ways of looking at the same research question. Whatever the particular angle of approach, this method *always* involves starting with cases decided in four (4) kinds of courts: state supreme courts, state DCA’s (intermediate appellate courts), federal circuit courts of appeal, and federal district courts.

The cases are found in published decisions in so-called “official” reporters (if there still are such things as “official reporters” in the 21st Century) or perhaps on their websites, and in “unpublished decisions” available through subscription services such as Lexis-Nexis and

continued on page 7

*continued from page 6*

## **The True Story Of Legal Research For Practicing Lawyers At The Beginning Of The 21st Century**

Westlaw. This starting point assumes that the “official reporters” and the subscription services providing unpublished decisions all “report” the ways in which cases are actually decided in trial courts.

This is a pretty good assumption as these outlets are generally very comprehensive in their reporting; however, this is not always the case. They are necessarily and profoundly incomplete. Part III of this article will contain a survey of forensic examination of original documents in electronic court files, which has the potential to fill many of the gaps in reporting.

### **“Case counting.”**

Case counting is one useful result of “quantitative analysis” or the “empirical method” of legal research. Case counting presents lineups of court decisions like reporting scores of baseball or football games. The Restatement of Consumer Contracts, Third Council Draft released on December 21, 2016, follows this approach in addressing a “good-faith requirement” for modification of standard consumer contract terms.

This good-faith requirement is reminiscent of the court-implied covenant of good faith and fair dealing found in most liability and many first-party insurance contracts.<sup>2</sup> In the context of modifying standard consumer contract terms, the Reporters supported their draft recommendation of embedding a good-faith requirement with an example of “case counting”:



In 23 cases, courts have explicitly discussed the requirement of good faith. Courts enforced the modification in 15 of 16 cases where the requirement was found to be satisfied, and denied the modification in all seven cases where it was found to be violated.<sup>3</sup>

### **“Measuring the dominant precedent.”**

There are several ways to enlist the assistance of electronic resources to advise a judge which cases represent the majority view or are “the dominant precedent.” One

way is by the “total number of out-of-state citations” and “out-of-circuit cases.” This measure is significant because these citations concern cases that are not binding but are persuasive authorities. The purpose, after all, is to persuade the judge and measuring the dominant precedent is a good tool to accomplish that result.

Another way to enlist the aid of electronic resources is to measure the “citation rate,” meaning the average number of citations per year.

Both of these measures can be persuasively presented in a graph. As the Reporters of the Restatement of Consumer Contracts found when they graphed the total number of out-of-state citations and the citation rate over time, the use of a graph can also illustrate the “*evolution*” of the courts on a given issue over time.<sup>4</sup> These measures can all be illustrated with a graph showing “Cumulative Number of Cases” with one axis of the graph tracking the number of cases, and the other axis showing the years in question. The Reporters’ graph, for example, illustrates their empirical approach to how the courts have addressed the notion of “privacy-policies-are-contracts.”<sup>5</sup>

Even without a graph, “[c]onsidering time trends” can be a useful way to advocate by displaying research results, as the Reporters did when they addressed the issue of “pay now terms later contracts,” for example: “A closer look at the evolution of the doctrine over time reveals a clear trend towards increased enforcement of PNTL contracts and an increased influence of the landmark cases, (citations omitted), that pioneered their enforcement.”<sup>6</sup>

In whatever way the results are presented or broken out, measuring the dominant precedent, or what might be called more colloquially “measuring the most popular cases among other judges,” allows the advocate to say in an appropriate situation that a certain percentage supports a given position. To be able to state a position like this, the breakdown must be focused not on the influencer courts, but on all courts that addressed the issue in question, broken out by the percentage of states and the percentage of federal circuits to rule one way or another.

To illustrate, the Consumer Contract Reporters noted in their Restatement treatment of “clickwrap” enforcement, meaning judicial enforcement of terms assented online by a consumer clicking an “I Agree” box, by noting that 0% of courts rejected enforcement of clickwrap: “There is not a single reported case in which clickwrap was deemed ineffective as a mode for adoption of terms.”<sup>7</sup>

A final example of measuring the dominant precedent on a given issue involves breaking down the lineup of decisions into published vs. unpublished<sup>8</sup> opinions.<sup>9</sup> It is worth noting that this use of measuring the dominant precedent tool has not so far been extended to forensic investigation of actual court files for any ruling, so far as is known.

continued from page 7

## **The True Story Of Legal Research For Practicing Lawyers At The Beginning Of The 21st Century**

### **“Measuring the relative influence of the decisions.”**

This involves a measure on all cases on a given issue, in a given class, so to speak. For example, the Reporters writing the draft Restatement of Consumer Contracts confronted the judicial treatment of so-called “pay now terms later contracts” in which the consumer purchases a product or a service now and receives the contract terms later. The Reporters analyzed the judicial lineups on this issue by describing how often a given case was cited for one proposition as a measure of its relative influence.<sup>10</sup> The Reporters employed this tool again, for example, when they wrote a requirement into the Restatement of “good faith” in the modification of consumer contracts. “The good-faith doctrine was applied,” they wrote, in a California case called *Badie v. Bank of America*. The Reporters described *Badie* as “one of the leading cases in this area,” and illustrated this description of the decision’s relative influence by noting that it has “been highly influential in the Ninth Circuit and California courts as well as having been favorably cited in 92 subsequent cases by out-of-state courts ... Specifically, the third most frequent source of citation stems from its articulation of the good-faith doctrine in the context of consumer modifications.”<sup>11</sup>

### **Breaking the cases out into the salient facts.**

This measure involves lining up the cases in terms of facts analogous or similar to the facts of the case at hand. This is an ‘electrified’ version of a standard technique of legal practitioners to offer favorable comparisons of the salient, determinative facts involved in their cases of the moment, with the same sorts of facts revealed in judicial opinions in past cases. In the 21st Century, this technique has been amplified by the availability of so many more decisions discovered on a given issue in a short time thanks to the availability of electronic research. For example, the draft Restatement of Consumer Contracts confronts the issue of whether merger clauses (which are provisions in the contract reciting that all representations made before the contract was executed are “merged” into the written document) are enforceable in consumer contracts and, if so, when and under what circumstances. The Reporters’ notes addressed this issue in part by breaking out cases in which judges admitted parol or extrinsic evidence on the issue of whether a “precontractual representation conflicted with a term in the contract.” The Reporters then broke those cases down further by aligning the results in terms of only the cases in which parol evidence was admitted.<sup>12</sup>

### **III. MY FORENSIC INVESTIGATION INTO ORIGINAL DOCUMENTS IN ELECTRONIC COURT FILES.**

Forensic investigation of court files requires access to the original documents filed in court files. Thankfully, court files in the 21st Century have increasingly become available electronically, minimizing the necessities and expenses of travel and making the expense and the time devoted to this research much more manageable.

In the case of the current article, more was involved than usual. I first used this research technique while writing my book on *LENDER FORCE-PLACED INSURANCE PRACTICES* published by the American Bar Association in 2015. I used it again in writing *INSURANCE CLAIMS AND PRACTICES* (Thomson Reuters West 2016), and I have used it more recently in writing several articles.

It is important to keep in mind that forensic investigation of original documents in actual court files is a complementary research technique, not the only one. Nonetheless, it brings documents to life in ways that words alone sometimes fail to capture. You can see things in a court file that you cannot “see” in the reports of decided cases.

For example, while researching *LENDER FORCE-PLACED INSURANCE PRACTICES*, I came across many depositions with a lot of testimony blacked out. This was my first extensive experience with blacked out or “redacted” testimony and other materials. Using forensic investigation of original documents in actual court files allowed me, and can allow you, to learn things that neither of us could know unless we conducted a forensic investigation of actual court files.

Here is how it is done, or at least how I do it. First, look at the docket. Depending on what issue you are interested in researching, identify likely motions and orders that will, or could, relate to it.

Remember that this is an investigation. Given the nature of motions, exhibits, and orders on a Clerk’s docket, descriptions are more or less likely to be cryptic. Some descriptions are better than others. This is particularly true of exhibits.

Some exhibits, for example, are depositions or deposition excerpts. If you are interested in *testimony*, as I was in my recent investigations, you would be confronted with many Clerk’s dockets on which such exhibits are simply labeled “Exhibit.” Take a chance and choose some or all of the exhibits and check them out, depending on how much time and money you have available. Money and time are factors because of the cost involved in viewing each and every item you select.

I chose to review exhibits most likely to contain testimony including interrogatories, declarations, and affidavits besides depositions, such as exhibits to motions for summary judgment.



# ABLE Accounts

*By Heather Lueke Smith*



For people with disabilities, or the parents of a child with disabilities, it can seem impossible to save for the future without either compromising government benefits or setting up a cumbersome Special Needs Trust. The new ABLE accounts may offer a better way.

An ABLE account, named for the federal statute, “Achieving a Better Life Experience Act of 2014,” is an IRS tax-advantaged savings plan for people with disabilities. Typically, adults with disabilities are ineligible for Medicaid and Supplemental Security Income (SSI) benefits if they have assets greater than \$2000. ABLE accounts allow people with disabilities to save up to \$14,000 a year without having that amount count against their \$2000 asset limit.

To qualify for an ABLE account, a person must have a disabling condition that began before the age of 26. You do not have to be receiving SSI benefits to qualify for an ABLE account. However, the IRS uses the Social Security Administration definition of “disabled” to determine eligibility:

“A medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations, and that can be expected to cause death or that has lasted or can be expected to last for a continuous period of not less than 12 months.”

Any person can contribute to an ABLE account, including the person with disabilities herself, or a trust, estate, partnership, association, company or corporation. If there is already a Special Needs Trust for the benefit of the person with disabilities, that trustee can also make contributions to the ABLE account.

Modeled after the 529 college savings plans, the earnings on contributions to an ABLE account grow tax-free. Contributions made to an ABLE account are gift-tax free and, when contributions are made by anyone other than the account holder, contributions are non-taxable gifts.

Withdrawals used for qualified disability expenses are tax-free. “Qualified Disability Expenses” include, but are not necessarily limited to the following types of expenses: basic living expenses, medical, education, housing, transportation, employment training, assistive technology and support, financial management, legal fees, ABLE account expenses, funeral and burial.

One huge advantage of an ABLE account over a Special Needs Trust is the ability to use the funds to pay basic living expenses such as rent, mortgage, property taxes, electricity, water and sewer bills. Under SSI rules, if the recipient receives any assistance with these expenses, even from her own Special Needs Trust, her SSI benefit is reduced as a penalty for receiving “in kind support and maintenance.” If the funds to pay these expenses come from an ABLE account, however, there is no penalty.

Another advantage of an ABLE account is how much independence it gives to the account holder. Unlike a Special Needs Trust, an ABLE account holder can access her money without going through a trustee. Some ABLE Accounts, like the ones in Ohio, even come with a debit card.

*continued on page 17*

# The Sacco and Vanzetti Case

By Richard Wires

Americans during the 1920s were fascinated and deeply divided by Massachusetts' trial and then execution of Nicolo Sacco and Bartolomeo Vanzetti. It is probably the most divisive criminal case in our history. The immediate controversy went on for eight years, 1920-1927, with debate and repercussions that lasted much longer. Though they had been arrested and tried for the commission of criminal acts, two murders during a payroll robbery, their supporters claimed the real issues were anti-immigrant feelings and political oppression. In consequence the country was swept by widespread protests and acts of violence. Soon the situation attracted attention around the world, in Europe, South America, and Asia, with well-organized mass protests in many cities. Socialists and radical leftist groups used the case for anti-capitalist propaganda. Many people felt the case called into question the country's image as a land of freedom and justice.

Many factors contributed to the long and bitter controversy: fear of anti-democratic movements like anarchism and communism, reactions to how immigrants were changing New England's character, belief that the prosecution and trial had been unfair, failure of the legal system to correct its errors, efforts by radicals to attack both America and capitalism, portrayal of the defendants as political heroes and martyrs.

Both men were immigrants from Italy and supported the anarchist movement. Vanzetti was born in 1888, arrived in 1908 at twenty, and sold fish for a living; Sacco was born in 1891, came in 1908 when seventeen, and worked in a shoe factory. They met in



*Nicolo Sacco*

*Bartolomeo Vanzetti*

1917 and became friends. Little is known about their activities during the next few years. It was believed they had some connection to the Italian-American anarchist Luigi Galleani, however, whose radical followers known as Galleanists were angered by his deportation in 1919. They opposed all authority and believed in using violence, especially bombs and assassinations, to carry on anti-capitalist and even class warfare.

The case arose during the "Red scare" of 1919-1920 that deeply rocked the country. Galleanists mailed about 36 package bombs to officials and prominent Americans in April-June 1919. They were intended to mark the new international leftist holiday, May Day or 1 May, to promote the cause of more militant socialism and communism.

*continued on page 11*

continued from page 10

## The Sacco and Vanzetti Case

The first bombs, containing a stick of dynamite, were somewhat weaker. Many were identified and destroyed. In early June a stronger bomb at the home of U.S. Attorney General A. Mitchell Palmer caused major damage and cost the Gallenist bomber his life. The bombings strengthened the crackdown on anarchists and other radicals and greatly affected the mood and resolve of the country. A year later Sacco and Vanzetti got into trouble.

In April, 1920 during an armed robbery of the Slater-Morrill Shoe Company's payroll two guards were killed and Sacco and Vanzetti were arrested and charged in early May. Lies they told the police at the time, apparently fearing deportation, would later hurt their defense and cause. There had been similar robberies in the area and one in December, 1919 at another shoe factory now played a further important role. Many thought the crimes were committed by Italian-American anarchist groups to raise money for their movement. Suspicion fell on a gang headed by Joe Morelli that was known for the robbery of payrolls. Vanzetti was arrested and charged with the December robbery but his time-card at work protected Sacco. On 1 July Vanzetti was convicted in the courtroom of Judge Webster Thayer. The trial of both men for the Slater-Morrill robbery and murders, also in Thayer's court at Dedham, ended 14 July, 1921 with both defendants being convicted. It took the jury just three hours to reach its verdict. Finding them guilty meant the possibility of death sentences.

Evidence and testimony in the case was questionable and confusing. One problem was conflicting evidence about the .32-caliber gun and bullets used in the killings. Although the defendants had possessed such weapons, proof that one was used in the crime was weak, the guns carelessly handled by the police. It was even claimed that the barrel was switched. Another difficulty was the prosecution's witnesses. Positive identifications of the defendants at the crime scene were shown to be unlikely and unreliable. The defense was also hampered in its efforts. Testimony on behalf of the defendants was not taken seriously. And included in the defense team was a political radical, Fred H. Moore, with the judge's attitude toward him openly hostile and antagonistic. There appeared to be many grounds for doubting the proof of the charges.

The defects and shortcomings of the trial have been widely recognized and Thayer has rightly been held responsible given his clear bias throughout the proceedings. He was an opinionated and self-important man who let his prejudices and stubbornness control his conduct. Many have called him incompetent as a jurist. His courtroom comments and partisan rulings are part of the trial record and cannot be denied; people also filed reports and

affidavits calling attention to private remarks revealing bias against the defendants. He rejected both challenges to his rulings and defense efforts to obtain a new trial. His answer to critics was that the jury had found the men guilty. That his demeanor influenced the jury to reach that decision was never acknowledged. Yet despite his behavior and errors the convictions stood. Blame must also rest with the appeals structure of the Massachusetts court system for not allowing full review of criminal trials.

Reactions to the trial and convictions took several forms. There were acts of violence by leftist radicals, public protests, and open criticism by many prominent people. There was a widespread belief that the justice system had failed.

Anarchists and their sympathizers staged a number of violent outrages to demonstrate their anger. By far the most serious incident occurred on 16 September, 1920 on Wall Street when a bomb caused many hundreds of casualties. A horse-drawn wagon stopped at mid-day opposite the J.P. Morgan Bank when the street was crowded with people at lunch time. The bomb consisted of dynamite with iron window-sash weights to cause maximum harm. A total of 38 people died instantly or of injuries; the seriously hurt numbered nearly 150 and more had lesser injuries; damage to buildings was about \$24 million in today's money. Trading was halted on the stock exchange. Though the crime was never solved the Gallenists were blamed because of their other bombings.



From the outset the principal issue for many people was not innocence or guilt but the unfairness of the trial. One example is the article by Felix Frankfurter, future Supreme Court justice, that appeared that autumn in the *Atlantic Monthly*. As the case lingered on and more people became aware of the issues the roster of famous people who raised concerns and made appeals grew quickly. Among them were Americans like John Dos Passos, Edna St. Vincent Millay, and Dorothy Parker, and Europeans like Albert Einstein, Anatole France, Bertrand Russell, George Bernard Shaw, and H.G. Wells. Yet many foreigners did not understand the American

*continued from page 11*

## **The Sacco and Vanzetti Case**

federal system and that federal officials and courts at the time would not interfere in Massachusetts' handling of a criminal prosecution and outcome.

Meanwhile defense lawyers filed motions and appeals. The convictions were appealed to the Supreme Judicial Court (SJC), the state's highest, with funding by the Sacco and Vanzetti Defense Committee. Issues included the handling of the physical evidence, testimony by witnesses that had later been recanted, bias shown by the jury foreman before the trial, and especially the judge's prejudicial conduct and rulings. The SJC heard the appeal in January, 1926 and gave its decision in May. Taking a narrow view of its powers of judicial review it found unanimously that despite the judge's actions the outcome should stand. The jury had decided what to believe. Therefore there would be no new trial.

A further issue arose in November, 1925 when Celestino Madeiros, then under arrest on a murder charge, confessed that he had committed the Slater-Morrill payroll robbery. Many felt his confession was credible and warranted a new trial. Thayer held that the new evidence did not justify a retrial, however, and an appeal of his ruling was filed with the SJC. It heard arguments in late January, 1927 and on 5 April denied this appeal as well. On 9 April Thayer sentenced both men to death with execution to take place during the week of 10 July. There were postponements, however, to await developments.

Governor Alvan Fuller responded to public criticism by creating in early June a three-person panel known as the Advisory Committee. It consisted of a probate judge and the presidents of Harvard and MIT who undertook to review the case and advise on clemency. Panel members had no experience in matters of criminal law and had no judicial power. After hearing information from many people over a two-week period, during which the judge's bias was noted, the group found no reason to recommend the governor show clemency. Critics of the process dismissed the committee's work as just one more evidence of the establishment's control of justice.

On 23 August triple executions began with Madeiros. His execution for another conviction had been held up in case his testimony was needed in a possible new trial. Following his death Sacco and then Vanzetti were electrocuted. Both remained calm and proclaimed their innocence to the end. On the Sunday before their execution over 20,000 people protested on the Boston Common; then more than 10,000 viewed the bodies; an estimated 200,000 people watched the big funeral procession on 28 August. When police prevented the funeral from passing the State House there were some confrontations with the waiting crowd. Ashes of both Sacco and Vanzetti were sent to Italy for their families.

To many people they became martyrs. A wave of sometimes violent demonstrations and retaliations, including bombings in Philadelphia, New York, and Baltimore in particular, followed the announcement that the executions had taken place. There were near riots in Britain, France, and Germany plus protests in other countries. Dismay and often hostile criticism of America and the Massachusetts judicial system were widespread. As H.G. Wells wrote more sadly that October, the case had revealed and tested "the soul of a people," and the American system had shown its failings. Upton Sinclair used the unfair trial as the focus of his novel *Boston* (1928). When a collection of personal letters written by Sacco and Vanzetti was published that year many people like Walter Lippmann believed they expressed the thoughts of innocent men. Efforts by attorneys to reform the Massachusetts legal system began in 1927 and were achieved twelve years later. Changes allowed full review by the SJC of alleged errors in a trial.

Some later claims and developments have affected perceptions of the trial and convictions. Statements eventually made by members of the Morelli gang admitted its responsibility for the robberies. Ballistic tests with better equipment supposedly showed that Sacco's gun had indeed been used in the killings. But the police handling of both the weapons and bullets was so careless that the ballistic evidence still presents big problems. Perhaps most significant is the assertion that Sacco was the major figure in the men's relationship and that he but not Vanzetti has been involved in the crimes. There is considerable belief that such was probably the case.

Major anniversaries of the executions were marked in various ways. Five years later a package bomb in September, 1932 destroyed Thayer's house and injured his wife and housekeeper. He then lived under guard at his club until his death the next spring. For the tenth anniversary in 1937 Mt. Rushmore sculptor Gutzon

*continued on page 17*

### **Upcoming CLE Programs**

Live CLE Programs w/ lunch sponsored by Mike Fowler. Thank you Mike!

April 28 - John Stewart; Cyber Security and Data Privacy for Lawyers in the Digital Age

May 26 – Bruce Abernethy, Esq.; 2017 Federal and Transfer Tax Reform—Where Are We Headed?

June 30 - TBA

July 28 – Erin Grall, Legislative Update 2017

August 25 – Steven Hoskins, Esq.; TBA

These programs are free and will begin at noon. Call the Law Library at 772-462-2370 to reserve your spot today!

# The True Story Of Legal Research For Practicing Lawyers At The Beginning Of The 21st Century

For example, I came across two filed deposition transcripts of a corporate representative of two of the defendants in the case, a defendant bank and its putative insurance "agency." In the first-filed version of the corporate representative's testimony, out of 172 pages of deposition transcript, some 125 pages had been blacked out or "redacted."<sup>13</sup> Less than one month later, the same testimony was open to the public by Court Order, i.e., the transcript was to be filed without any testimony blacked out or redacted.<sup>14</sup>

A picture is worth a thousand words, as the saying goes. Illustration 1 shows the cover page and a few of the redacted pages of this deposition, juxtaposed with the same pages, no longer redacted. In one quadrant of Illustration 1, the reader will find four pages of totally blacked out testimony. These four redacted pages are

an example, of course, as it would have taken 125 pages of blackouts to reproduce the redacted version of the deposition for this article.

In another quadrant of Illustration 1, the testimony on the blacked out pages becomes visible. Illustration 1 includes the corporate representative's answers to questions about any "insurance agency" functions by one of the defendants, and the millions of dollars the defendants made by charging "commissions" for force-placing insurance.

Illustration 2 shows two condensed pages of the deposition transcript, one totally blacked out and the other completely open to view. The redactions on the sample pages used here were also included in the 125 total pages, more or less, that were blacked out in this 172 page transcript. The other set of condensed pages show the same testimony, no longer blacked out. On those pages, the witness testified to such issues in the case as market share and that the lender force-placed insurance program is not designed to be competitive.

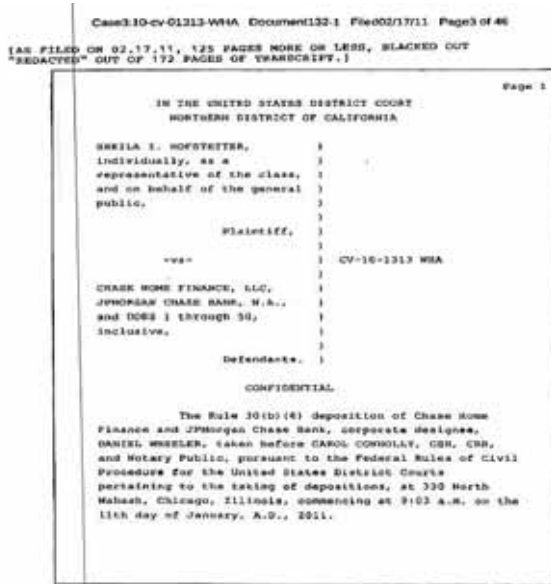


Illustration 1.

# Fixing the Game of Monopoly



Endnotes for this article can be found on page 25 of the online edition of Friendly Passages.

By Charles Hamilton

## INTRODUCTION

“A bankrupt player must immediately retire from the game. The last player left in the game wins.”<sup>1</sup> This sentiment seemingly summarizes the popular view of bankruptcy in America, as it is the stigma and fear that attaches to the word “bankruptcy”. Stigma is the negative perception or treatment of another who deviates from the normal or popular viewpoint.<sup>2</sup> Although this stigma has been around for ages, one of the earliest manifestations arose from the first codification of bankruptcy law in England in 1542.<sup>3</sup> Bankruptcy laws have certainly changed since the early English era; however, the stigma attached to bankruptcy has typically not.<sup>4</sup>

In modern America, there is still a stigma attached to bankruptcy that, while much less intense than being considered criminal or quasi-criminal, is very real and stems mostly from the misunderstanding of what bankruptcy is—a tool.<sup>5</sup> Regardless of the growing frequency of bankruptcy cases in the past century,<sup>6</sup> many people still think of bankruptcy as something that is ugly, unnecessary, and unforgiveable. In short, the stigma attached to bankruptcy directly flows from the misconception that American bankruptcy, as found in the Bankruptcy Code,<sup>7</sup> mirrors bankruptcy in the game of Monopoly.<sup>8</sup>

The first section of this paper will discuss the history and development of the stigma surrounding bankruptcy. The second section will compare and contrast bankruptcy under the rules of Monopoly and the Bankruptcy Code. The final section will conclude by discussing how the rules of Monopoly should change in order to present a more realistic view of bankruptcy and how that change could minimize the stigma in America.

## SECTION ONE: HISTORY AND DEVELOPMENT OF THE BANKRUPTCY STIGMA

Bankruptcy, as defined by Black’s Law Dictionary, is “[t]he quality, state, or condition of being without enough money to pay back what one owes; insolvency.—Also termed *failure to meet obligations* . . . .”<sup>9</sup> The definition itself seems to have a negative connotation, by use of the words “failure” and “being without enough money.” The term “bankrupt” is also defined by Black’s as “someone who cannot meet current financial obligations,” which then goes on to explain that the Bankruptcy Code changed the term to “debtor” in 1979.<sup>10</sup> Both of these terms are defined in a way that shows the stigma that is almost inherently attached to bankruptcy. Even an objective source such as a dictionary highlights the sense of dishonor that comes along with bankruptcy. To understand why a twenty-first century dictionary is using stigmatized definitions of something that is much more commonplace than it once was,<sup>11</sup> there must be an analysis of the stigmatization of bankruptcy through the years.

The history of bankruptcy is filled with numerous practices and punishments that facilitated and perpetuated the stigma. For example, in ancient India, creditors would sit on the doorstep of a debtor, fasting until the debtor paid his debts.<sup>12</sup> Depending on the length of time that this took, the rest of the community would join in to support the weakening creditor who had not eaten, further shaming the unpaying debtor.<sup>13</sup> Similar bankruptcy embarrassment in Ancient Greece required a debtor to sit in the market place with a basket on his head.<sup>14</sup> Other earlier bankruptcy laws required a debtor to wear distinct clothing,<sup>15</sup> or more informally allowed creditors to physically mark their debtors<sup>16</sup>—a painful version of a scarlet letter.

*continued on page 15*

## Fixing the Game of Monopoly

All of these examples point to and illustrate the deep-seated sense of shame and disdain that accompany a bankruptcy. Now it is important to note that the bankruptcy stigma is a behavioral stigma, and not an identity stigma.<sup>17</sup> Since the stigma is based on behaviors, it is quite possibly (and evidently) more difficult to combat, due to the fact that social norms shift over time; and it is the deviation from social norms that lead to the stigmatization.<sup>18</sup> Although the stigma is probably outdated, the origination of the stigma seems to make logical sense. This is because bankruptcy arises when a debtor cannot pay his creditor. This requires the creditor to have sold a good or service to the debtor on credit, which is necessarily based on some level of trust.<sup>19</sup>

It is this broken trust that must be the underlying consideration for the bankruptcy stigma. This would explain the idea that somehow the stigma stems from religious beliefs.<sup>20</sup> If credit is based on trust in some regard, then it would make sense to attach a sense of morality to one's inability to live up to one's promises.<sup>21</sup> All of these create the "ideology," for lack of a better term, behind the bankruptcy stigma. This ideology can be summarized as: the idea that a failure to pay one's debts is in some sense a failure to be trustworthy and honest, which has justified many societies in their shaming and disgracing of debtors. This ideology provides the framework and background as to where the stigma originated. Next, the institutionalization of this ideology must be examined to see the role that it has played in American bankruptcy.

The history of bankruptcy in America directly flowed from this ideology. However, the stigma was even more serious because debtors were considered criminals.<sup>22</sup> Debtors' prisons were widespread even in the American Colonies;<sup>23</sup> and remained prevalent even into the 1820s, when they then began to decline.<sup>24</sup> In spite of the decline of debtors' prisons in the early 1800s, most states did not eliminate debtors' prisons in America until nearly one hundred years later.<sup>25</sup>

The criminalization and stigmatization of bankruptcy was not limited to the treatment of debtors. Rather the stigma, into the 1900s, was also attached to bankruptcy courts.<sup>26</sup> On this matter, Congress has had the opportunity to review and elevate the power and status of Bankruptcy Courts, yet they remain an inferior unit of the District Courts.<sup>27</sup> One of the most illustrative examples of the bankruptcy stigma as it is perceived in the judiciary comes from former Chief Justice Warren Burger who yelled to former Senator DeConcini: "I'm going to go to the President and get him to veto this."<sup>28</sup> This exclamation, made in response to a 1978 Bill that was a precursor to the 1978 Bankruptcy Reform Act,<sup>29</sup> shows the zealous opposition to viewing Bankruptcy Courts as equals to Article III Courts—which is still prevalent today, even if with less intensity.

All of these considerations affect the current social, behavioral stigma attached to bankruptcy. Specifically, in the early 1900s, consumer spending was increasing,<sup>30</sup> but there were conflicting views on bankruptcy: on one hand those who filed for bankruptcy were still labeled as dishonest,<sup>31</sup> while on the other hand there was a decreasing stigma for wage-earning debtors that manifested in changed legislation.<sup>32</sup> It was at this time, 1935 to be specific, that the game of Monopoly was created.<sup>33</sup> Necessarily, since the rules of the game involved a section on bankruptcy,<sup>34</sup> all of the abovementioned stigma would be attached to the game, at least in part. Looking forward from 1935, to the years just before passing of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), bankruptcy filings were on the rise.<sup>35</sup> However, with BAPCPA now in place, the stigma has once again been solidified,<sup>36</sup> and the rules of Monopoly have not changed. Thus, the bankruptcy stigma is perpetuated by one of America's most famous board games.<sup>37</sup>

### SECTION TWO: COMPARING AND CONTRASTING THE BANKRUPTCY CODE WITH MONOPOLY<sup>38</sup>

The second to last section in the rules of Monopoly begins by explaining: "You are declared bankrupt if you owe more than you can pay either to another player or to the Bank."<sup>39</sup> While it is understandable that the rules to a board game would not be as complex as the Bankruptcy Code,<sup>40</sup> this introduction is grossly simplified and does not come close to the actual requirements of the Bankruptcy code. This clause negates two important aspects of bankruptcy: eligibility and the petition.

*Eligibility.* The Bankruptcy Code limits who may qualify as a debtor.<sup>41</sup> Although chapter 7, as an introductory matter, requires a debtor to be a person, there is no requirement that said person owe more than he or she can pay.<sup>42</sup> Similarly, chapter 13's eligibility requirement is more restrictive by only allowing individuals to file<sup>43</sup> and setting a cap on the amount of debt that is allowed under this type of bankruptcy.<sup>44</sup> Monopoly, however, just applies bankruptcy to all players,<sup>45</sup> regardless of the amount of debt owed or whether a player has received counseling.<sup>46</sup> By negating the eligibility requirements in the game,<sup>47</sup> bankruptcy becomes something that eerily looms over the heads of all players, thus making it something that is feared and is to be avoided.

*The Petition.* The Monopoly rules are devoid of anything that could be considered a petition. Under the Bankruptcy Code, 11 U.S.C. § 301 (2015) explains that the bankruptcy process is initiated by the filing of a petition.<sup>48</sup> Monopoly instead summarily concludes that a player is bankrupt upon the occurrence of a certain circumstance.<sup>49</sup> Even without the extensive list of forms and schedules that must be filed under the code,<sup>50</sup> Monopoly fails to show the initiation of a process that begins "relief" of the debtor.<sup>51</sup> Again,

## On Behalf of the Publisher

is *Susan B. Anthony List v. Driehaus*, supra. There, an Ohio statute prohibited persons from distributing false information about a political candidate in campaign materials during campaign season “knowing the same to be false or with reckless disregard of whether it was false or not, if the statement is designed to promote the election, nomination, or defeat of the candidate.” supra at 470. A District Court found the statute constitutionally invalid and entered summary judgment for Plaintiff, which was suing the Ohio Elections Commission. The trial court’s decision was affirmed on appeal. The Sixth Circuit determined that the law was a content-based restriction that burdened core protected political speech and was not narrowly tailored to achieve the state’s interest in promoting fair elections.

*Driehaus* explained that the statute was not narrowly tailored in (1) its timing, (2) lack of provision for a process to screen out frivolous complaints, (3) application to non-material statements, (4) application to commercial intermediaries, and (5) it suffered from over-inclusiveness and under-inclusiveness. First, the *Driehaus* Court reasoned that timing was deficient where the statute did not necessarily promote fair elections, “there is no guarantee the administrative or criminal proceedings will conclude before the election or within time for the candidate’s campaign to recover from any false information that was disseminated.” supra at 474. Second, “because the universe of potential complainants is not restricted to state officials who are constrained by explicit guidelines or ethical obligations, there is a real risk of complaints from, for example, political opponents.” supra. Third, the law applied to all false statements, including non-material statements. A candidate could as easily be charged with lying about an opponent’s shoe size as about such candidate’s party affiliation. supra. Fourth, the law didn’t merely apply to the speaker of the false words. It was so broad that it could equally be invoked against an innocent intermediary of the words, such as a company erecting a billboard containing the improper language. Fifth, the statute was deemed under/over inclusive where its invocation, through a preliminary probable cause ruling, would not necessarily preserve the integrity of elections and might indeed undermine the state’s interest in promoting fair elections, if used as an ambush mechanism against opponents through the bringing of charges too late in the game to allow the opponent opportunity to overcome any misimpressions thereby created in the minds of voters. See pg. 475.

Turning now to Fla. Stat. sec. 104.271, it is perceived that Florida’s “campaign speech” law has thus far never been subjected to constitutional review. Only one reported decision treats this section, *Sharkey v. Fla. Elections*

*Comm’n*, 90 So.3d 937 (Fla 2<sup>nd</sup> DCA 2012) and *Sharkey* does not go beyond statutory construction so as to then have ability to entertain necessity for addressing issues of constitutionality. A court will not, as in *Sharkey*, undertake constitutional review if there exist other, non-constitutional means for resolving the case. In *Sharkey*, a former fire commissioner appealed an order by the Division of Administrative Hearings that he violated s. 104.271(2) by making false statements about his opponent during the election campaign. The issue he raised before the District Court was whether the administrative law judge erred in finding that he spoke with “actual malice.” He contended that he was merely repeating information from another source, which turned out to be erroneous, and was unaware of its falsity. The Court agreed that the record failed to support a finding of actual malice. While there might have been a failure to investigate, such failure does not in and of itself equate to “actual malice.” See pg. 940.

But had *Sharkey* gone on to strictly scrutinize the statute for First Amendment compliance, there appear grounds for thinking that the law might have gotten into difficulty, for some of the very reasons that so troubled the *Driehaus* Court as described above. First, timing presents a question. There is nothing that prevents invocation of the statute during the closing days of a campaign, too late to afford time for effective refutation of charges, if improvidently brought by a malicious opponent, when the mind of the electorate may be poisoned by the mere fact that the candidate was charged with a crime. Such potential for abuse undercuts any claim that the statute protects the integrity of the electoral process. Second, at least in the case of s. 104.271(1) there is no limitation on who might bring charges. Anyone may do so, “... unconstrained by explicit guidelines or ethical obligations....” The potential for mischief and collusion is unlimited. Third, **any** falsity uttered within the parameters of the two subsections triggers criminal or civil sanction, without regard to gravity or materiality. A slight exaggeration or an impulsive statement made in the heat of rancorous debate, all of that is grist for this mill regardless of triviality, where there is no nexus between the character or severity of the misstatement and the cause that the statute seeks to protect. This statute, too, appears to suffer from overbreadth and over/under inclusiveness. Moreover, as in *Alvarez*, one thinks truth itself is the weapon best suited to combat any falsities arising in the course of the campaign, the solution needing neither “handcuffs nor a badge,” but only some means, perhaps an online internet resource, capable of rapid fact-checking that will quickly dispel the evil miasma of a false accusation. Lacking such a device, the statute may be accused of failing to narrowly tailor a remedy serving the state’s interest in protecting electoral integrity. For all these reasons, constitutionality of Fla. Stat. sec. 104.271 under the First Amendment protection of free speech is questionable.



continued from page 16

## On Behalf of the Publisher

In conclusion, to paraphrase Mr. Franklin, wisdom requires freedom of thought, and freedom of thought requires that there be freedom of speech, without which the remaining freedoms treasured as the essence of our democratic society are an impossibility. People must be able to access resources such as law libraries, like the Rupert J. Smith Law Library, so that they may find the wisdom that comes from knowing of their rights, remedies and obligations under the law, to then be able to freely exercise the wisdom thus acquired in the course of speaking freely and without fear of inhibition on behalf of themselves and others, thus protecting and advancing the liberties that serve all within a society that proudly declares its commitment to democracy and justice for all. The connection among these ideals is well illustrated by examining some of the judicial decisions that illuminate the Constitution's protection of free speech, and how the principles applied in those decisions might likewise be applied to statutes that would criminalize or otherwise penalize political speech uttered within the most sacred forum known to our democracy, the election campaign.

continued from page 12

## The Sacco and Vanzetti Case

Borglum created a plaster work dealing with injustice. But the Boston Public Library waited seventy years before displaying Borglum's piece in 1997. Meanwhile on the fiftieth anniversary in 1977 Governor Michael Dukakis publicly acknowledged the trial's unfairness. But he did not claim they were innocent, or issue a pardon, which would mean saying they had been guilty.

Today the consensus among historians is that Sacco and Vanzetti had some involvement with the Galleanists and also with the robbery and the killings. But the extent is not clear. They also believe that in too many ways the trial had been unfair, however, and that a new trial with a different judge should have been ordered. Permitting a retrial with an unbiased judge and sound procedures would probably have clarified some points of evidence and reduced the degree of contention. Remaining uncertainties might then have warranted clemency and avoided the men's executions. As Americans again face terrorism and trials it is important to appreciate the

*Richard Wires holds a doctorate in European History and a law degree. He served in the Counter Intelligence Corps in Germany and is Professor Emeritus of History at Ball State University, where he chaired the department and later became Executive Director of the University's London Centre. His research interests include both early spy fiction and actual intelligence operations. His books include "The Cicero Spy Affair: German Access to British Secrets in World War II."*

continued from page 9

## ABLE Accounts

There are a few drawbacks to an ABLE account. Just as with a self-settled or pooled Special Needs Trust, any balance remaining in an ABLE account after the death of the account holder is subject to a claim for reimbursement from the state Medicaid agency before it can be given to the beneficiary's heirs.

Additionally, if the account balance ever exceeds \$100,000, the account holder loses her eligibility for SSI and Medicaid benefits until such time as the balance falls back below \$100,000. In contrast, Special Needs Trusts can hold an unlimited amount.

The biggest drawback may be the age limit. ABLE accounts can only be used by people whose disabling condition began before age 26. There is legislation in Congress to increase or eliminate this age limit. Until those changes are made, however, ABLE accounts will not be replacing Special Needs Trusts in long-term care planning for the elderly.

Similar to the 529 plans, ABLE accounts are run by the individual states. Also similar to 529 plans, ABLE accounts do not have to be opened in the account holder's state of residence. Only four states currently have ABLE accounts: Ohio, Nebraska, Tennessee and Florida. To compare their plans, you can visit their websites:

Ohio: [www.stableaccount.com](http://www.stableaccount.com)  
Nebraska: [www.enablesavings.com](http://www.enablesavings.com)  
Tennessee: [www.abletn.gov](http://www.abletn.gov)

*Heather Lueke Smith practices Estates, Probate, Elder Law & Special Needs Planning at the Law Office of Heather L. Smith. She obtained her B.A. from Boston College and her J.D. from the College of William and Mary. Heather can be found at [www.heathersmith.law](http://www.heathersmith.law).*



## Last Issue's Cryptoquote Answer

QKRNTETW XLF RWT, CT R BLLU LMT.  
- RCWRKRV PZMOLPM  
WHATEVER YOU ARE, BE A GOOD ONE.  
- ABRAHAM LINCOLN

See page 22 for this month's puzzle

## Fixing the Game of Monopoly

the lack of process involved in the game of Monopoly perpetuates the idea that bankruptcy is something to fear as it would require that player to “immediately retire from the game.”<sup>52</sup> This stance is contradictory to the two main goals of bankruptcy: “resolving the competing claims of multiple creditors, and freeing the debtor from its financial past.”<sup>53</sup> Additionally, without the initiation of a process to provide relief for the debtor, Monopoly removes one of the most powerful tools under Bankruptcy Code (and all sections of law in general)—the automatic stay.<sup>54</sup> The automatic stay could easily be incorporated into Monopoly in order to provide relief to the debtor, and ensure fairness to the creditor.<sup>55</sup> In the first sentence alone, the bankruptcy section of the Monopoly rules eliminates three major parts of the Bankruptcy Code and provides an unfair view of what bankruptcy is.

The next section of the Monopoly rules similarly perpetuates the stigma. The rules explain two situations, one of which will arise upon being declared bankrupt.<sup>56</sup> The first is the “settlement” that occurs when the bankrupt player’s debt is owed to another player.<sup>57</sup> The second is when the bankrupt player’s debt is owed to the bank.<sup>58</sup> Neither of these follow the Bankruptcy Code, but rather both emphasize the stigmatized fear of what people who are uneducated in the area of bankruptcy, probably believe happens in bankruptcy.

*Debt owed to another player.* Under this situation, the bankrupt player turns over “all that [he/she has] of value” to the creditor player, but not before removing and selling any developments on the property.<sup>59</sup> The money is then given to the creditor player.<sup>60</sup> The rules refer to this process as a “settlement” somewhat ironically, because settlements are usually voluntary and agreed upon by both sides; however, here the “settlement” is obligatory and mandated by the rules without any room for negotiation.<sup>61</sup>

Most disturbing about this section is the failure to account for the numerous exemptions that are provided under both the Bankruptcy Code and State law.<sup>62</sup> The bankrupt player loses everything of value, and retains nothing.<sup>63</sup> After being stripped of everything of value,<sup>64</sup> the player has no other option than to retire from the game.

*Debt owed to the Bank.* This situation is much more simple because it only requires a player to “turn over all assets to the Bank” without making any calculations or symbolically selling one’s plastic pieces.<sup>65</sup> Again under this section, there are no exemptions for the debtor, nor is there property retained by the debtor. This perpetuates the stigma by playing on the very real fear that people have about indebtedness—that once a person becomes too far in debt, they must surrender all that they have to the bank.

The final section of the rules explains the only thing left for the bankrupt player: to retire from the game.<sup>66</sup> The entirety of the Monopoly rules on bankruptcy leave out important aspects of the Bankruptcy Code that further the goals of bankruptcy: payment of creditors and a fresh start for debtors. The elements of Title 11 that are missing from the Monopoly rules perpetuate the stigma of bankruptcy, and in such a popular game, are a powerful tool in sculpting how the American culture views bankruptcy.<sup>67</sup>

### SECTION THREE: CHANGING THE GAME OF MONOPOLY

Despite all of the abovementioned stigma that is attached to bankruptcy,<sup>68</sup> and the perpetuation of such by the game of Monopoly,<sup>69</sup> a few simple changes to the rules could begin to reverse the societal view of bankruptcy. By turning the Bankruptcy provision of the Monopoly Rules into a more relevant portion of the game,<sup>70</sup> many people’s views about bankruptcy could be molded and destigmatized.



The first step would be to move the bankruptcy process to an earlier stage in the game. In real life, declaring bankruptcy is not the end, but rather a tool to continue one’s life with the ability to rebound.<sup>71</sup> This could be facilitated by incorporating some sort of means test or other eligibility requirement that does not necessarily suggest that there are no other financial options. By setting a formulaic calculation for when it would be appropriate to declare bankruptcy, the Monopoly Rules would eliminate the “impending fear” of loss that accompanies the idea of bankruptcy within the game.<sup>72</sup> Additionally,

# U.S. LAW SCHOOLS FACING NEW CHALLENGES

BY: *LEONARD PERTNOY*<sup>1</sup>

Endnotes for this article can be found on page 28 of the online edition of Friendly



## 1. Introduction

In 2008 Anna Alaburda graduated from the Thomas Jefferson School of Law in San Diego, California with honors.<sup>2</sup> She passed the California Bar exam and sent her résumé to over 150 law firms but had no success in obtaining a full time legal career.<sup>3</sup> She worked doing temporary document review and other part time jobs and in 2011, after reading about the predatory marketing and misleading employment statistics law schools use to drive up application numbers, she filed suit against Thomas Jefferson for fraud.<sup>4</sup> She wasn't the only law school graduate to file such a suit, but she was the first to get to trial without being dismissed, and she was the first to lose.<sup>5</sup>

According to her testimony, when applying to schools Alaburda relied on statistics appearing in the 2004 edition of the U.S. News and World Report which ranks American Bar Association (ABA) accredited law schools.<sup>6</sup> The report documented that over 80% of Thomas Jefferson School of Law graduates were employed at full time positions nine months after graduation.<sup>7</sup> Acknowledging that the school wasn't as competitive as top tier schools, Alaburda said to the jury "it still had pretty decent statistics and was A.B.A. accredited. So I thought it was a pretty decent school to apply to."<sup>8</sup>

At trial, Alaburda invoked California's state fraud protections, citing that the statistics of the school did not reveal that its employment figures included such work as a pool cleaner, waitress or sales clerk, and that they were based on a small sample of graduates.<sup>9</sup> She further alleged that the misinformation was intentionally presented to increase the prestige and ranking of the school and to induce potential students to enroll.<sup>10</sup> A former employee of the school admitted pressure to inflate employment numbers, backing Alaburda's claims.<sup>11</sup> In a 9-3 ruling, however, the jury disagreed, finding that the misrepresentation was not intentional and that harm to Alaburda was difficult to ascertain.<sup>12</sup>

Thomas Jefferson School of Law may not be legally culpable but looking at the numbers, it is clear that there is something wrong. In 2011 the school reported that 92.1% of its graduates were employed in full time positions, up from 83% in 2006 and 2007 despite the fall off in hiring which occurred due to the recession.<sup>13</sup> However, Law School Transparency, a non-profit founded in 2009 for the purpose of promoting honesty in law school statistics reporting<sup>14</sup>, found that in 2013 Thomas Jefferson's legal employment score was 23.8%.<sup>15</sup> The school's current score is 20.7%.<sup>16</sup> Contrary to the school's self-reported numbers, the employment score is "the percentage of graduates who have successfully started a career in the practice of law, though it does not judge the quality of that start. We count only Bar Passage Required jobs while excluding Short-term and Part-time jobs, as well as self-employed Solo Practitioners."<sup>17</sup> It is telling that less than 50% of Thomas Jefferson graduates even pass the bar, lower than the California average, while the average debt of the students at the time of Alaburda's matriculation was \$137,000 – a figure higher than that of Stanford students.<sup>18</sup> In 2013 Thomas Jefferson admitted a whopping 73% of all applicants.<sup>19</sup> The school does not stand alone though, it is an egregious example of a wide spread calamity in the legal education system.

As a steady stream of articles and opinion pieces remind us: law schools are in crisis. This is no secret from the legal community or from the public at large. Admissions are down; jobs are down; debt is up. From the start of the recession of 2008 through 2011 an estimated 15,000 legal jobs were lost.<sup>20</sup> In 2014 only 60% of law school graduates were employed at long term, full time jobs which required them to have passed the bar exam.<sup>21</sup> Dismal post -graduation prospects leave many potential students skeptical about the value of a law degree, especially

*continued on page 20*

## U.S. LAW SCHOOLS FACING NEW CHALLENGES

as tuitions continue to rise despite the plunging legal job market.<sup>22</sup> To date 15 lawsuits have been brought by former students against their law schools alleging that trumped up and misleading employment figures in law schools' marketing materials induced them to attend.<sup>23</sup> It is a crisis for law students and graduates indeed, and according to some, a 'precursor to institutional disaster for law schools as they struggle with their own economic realities.'<sup>24</sup>

Rising student loan debt and a deficiency in the job market have contributed to a drastic drop in law school applications in recent years.<sup>25</sup> To remain competitive with a decreasing pool of applicants law schools incur high fixed costs and need new ways to draw the revenue to sustain them.<sup>26</sup> To keep up schools have employed a variety of strategies including lowering admissions standards, aggressive transfer student recruitment, decreasing overall class size and increasing foreign admissions. However, each of these methods suffers from



practical, and in some cases, ethical limitations. This article conjectures that the most feasible and principled option is to responsibly globalize admissions – increasing the number of foreign students in a way that benefits the students, the schools and the global legal economy.

### II. Sustaining Revenue through Creative Admissions Strategies

In order to maintain sufficient revenue to keep the doors open, American law schools need an average of about 40,000 new students annually to cover operating expenses.<sup>27</sup> At the start of the recession, the drop in admissions was apparent mostly in lower tiered schools, but since 2011 the number of applicants even to the upper echelon of law schools have dropped by a median of 18%.<sup>28</sup> Harvard saw a decline of 18% while Yale's applicants are down by 13%.<sup>29</sup>

A growing number of highly regarded law schools are simply cutting class sizes<sup>30</sup>. The top 20 law schools, as ranked by U.S. News and World Report (a long trusted, but not unproblematic, gauge for applicants), have decreased class sizes by a median of 5% over the last 5 years.<sup>31</sup> By shrinking class sizes these schools are doing what they feel is in the best interest of the students, keeping the admissions standards high even though they see a cut in revenue.<sup>32</sup>

“We made a conscious decision in order to maintain the caliber of the student body, the quality of the education, and frankly, to keep our ranking high,” said David Wippman, dean of the University of Minnesota Law School.<sup>33</sup> The University of Minnesota has made the most aggressive cuts, dropping class size by a significant 29%.<sup>34</sup>

However, weathering the storm by paring back class size and thus revenue is not a luxury which every law school can afford. The contraction in applicants has led some schools, like Northwestern, to spend more on Financial Aid in order to draw top applicants and avoid diluting their student bodies.<sup>35</sup> Still others are pursuing an aggressive transfer student recruitment programs.<sup>36</sup> Professor Jerry Organ of the University of St. Thomas Law School has spent years compiling law school transfer data and found that Harvard, Emory and Georgetown all ranked within the top 5 law schools accepting transfer students in 2015.<sup>37</sup> For Harvard, in particular, this represents a large jump from previous years.<sup>38</sup> Top tier schools are able to draw students who have already proven their academic success at another law school, lowering their risk and skipping the application process while lesser ranked schools suffer the losses.<sup>39</sup>

Significantly, most law schools are contending with dropping application rates by increasing admission rates.<sup>40</sup> In 2005 the overall admission rate to American law schools was 59% compared to the rate of almost 80% in 2014.<sup>41</sup> To put it another way, the number of applicants in this time span dropped by 40,000 while the admissions dropped by only 12,000.<sup>42</sup> The steep competition for promising students leads even elite schools to open their doors a little wider.<sup>43</sup> Top tier schools in 2015 let in 7% more people than they did in 2011.

Emory University School of Law has made adjustments across the board. Since 2011 the school has cut its student body by 5%,<sup>44</sup> has implemented an aggressive transfer recruitment program,<sup>45</sup> and has admittedly let in students with lower LSAT scores.<sup>46</sup>

“There is a little bit of a trade-off as to what extent are you committed to maintaining revenue vs. maintaining a median LSAT and median GPA” said vice dean Robert Ahdieh.<sup>47</sup> Meanwhile, Emory graduates' bar-passing rate has slipped from 95 percent to 89 percent.<sup>48</sup>

continued from page 20

## U.S. LAW SCHOOLS FACING NEW CHALLENGES

In fact, this is the crux of the problem. As schools struggle to maintain revenue by becoming more lax in admissions criteria they are turning out students who aren't very likely to find success after graduation.<sup>49</sup> In 2014 the average score on the national portion of the bar exam fell to the lowest rate in over 25 years.<sup>50</sup>

Compounding the predicament, even as admissions decline, bar passage rates plummet and the job market shrinks, law school tuitions continue to rise, outpacing the rate of inflation.<sup>51</sup> Partially, this can be traced to Congress's 2006 expansion of the Direct PLUS Loan Program.<sup>52</sup> Under this program students are eligible to borrow the full cost of tuition plus living expenses no matter how high, and eligibility for receiving the money isn't directly linked to a student's qualifications.<sup>53</sup>

The most egregious offenders seem to be the For-Profit Law Schools, like Florida Coastal, who thrive by accepting students who may be entirely ill-equipped for law school and charging exorbitant tuitions, mostly funded by federal loans.<sup>54</sup> The median LSAT score for Florida Coastal in 2013 was in the bottom 25% of all test takers<sup>55</sup>, the bar passage rate on the February 2016 test was 32.7%<sup>56</sup> and the average student debt is close to \$163,000 – the fourth highest in the country.<sup>57</sup> The employment prospects for graduates of Florida Coastal are minimal while the students are shouldering enormous debts not easily discharged even by bankruptcy.<sup>58</sup> It's not only For-Profit institutions who are taking advantage of this 'free money' to compensate for lackluster application rates however; these tactics are being utilized across the board.<sup>59</sup>

From the wealth of information readily accessible about the law school crisis, it would be easy to assume that schools would be taking steps to alleviate the consequences.<sup>60</sup> The truth is far from it. To keep the ball rolling and the money coming in law schools have tinkered with statistics to paint a picture of near guaranteed post-graduate success.<sup>61</sup> Law schools of all levels have been guilty of "Enron-type accounting" when reporting their post-graduation employment rates and average salaries.<sup>62</sup> The fiscal solvency of a law school is dependent upon enrollment, and to a degree, enrollment is dependent upon rankings.<sup>63</sup> For some schools, the vague reporting guidelines provided the opportunity to proffer manipulated data.<sup>64</sup> When accounting for employment rates these schools didn't distinguish a job which required bar passage from a job waiting tables.<sup>65</sup> Moreover, a few schools even created temporary positions for recent graduates in order to be able to artificially inflate their percentages.<sup>6</sup>

Since the widespread exposure of the questionable school data and dismal prospects of graduating law students, the A.B.A. has revamped its reporting requirements so that law schools must reveal more precise information about their graduates.<sup>67</sup> But another problem remains: too many incoming law school students still believe they will be among the lucky few who get decent jobs.<sup>68</sup> This belief persists despite a contraction of the job market, partially due to the more lenient acceptance criteria which provides an illusion of potential success. Once enrolled it's easy to obtain the funding through Federal Loans and since no risk accrues to the law school if a graduate fails to pay their debt there is little incentive from within to overhaul the system.<sup>69</sup> In January of 2016 in fact, Kellye Testy, the new president of the Association of American Law Schools announced that the law school crisis was over, prompting a barrage of new articles debunking that claim.<sup>70</sup>

If law schools are unwilling to police themselves there are outside forces which may intervene. The Higher Education Act of 1965 is due for reauthorization by Congress and lending policies may be revised in consideration of the changing higher education economics.<sup>71</sup> In 2015, the Obama administration extended the gainful employment rule which ties for-profit schools' eligibility for federal student loans to its success in preparing graduates to obtain jobs which will allow them to repay their debts.<sup>72</sup> If this policy is extended to nonprofit schools as well some estimates predict that as many as 50 law schools would be forced to shut their doors.<sup>73</sup> Clearly, the current measures are g to abate the crisis not only for law schools but also for law students and the legal profession as a whole.

End of part one. Part two of this article will appear in the next edition of Friendly Passages.

Endnotes for this article can be found on page 28 of the online edition of Friendly Passages

*Leonard D. Pertnoy is a Professor of Law at St. Thomas University School of Law in Florida Practice, Professional Responsibility, and Real Estate Transactions. A.B., 1964, University of Vienna, Austria; J.D., 1969, University of Miami, B.A., 1966, University of Louisville.*



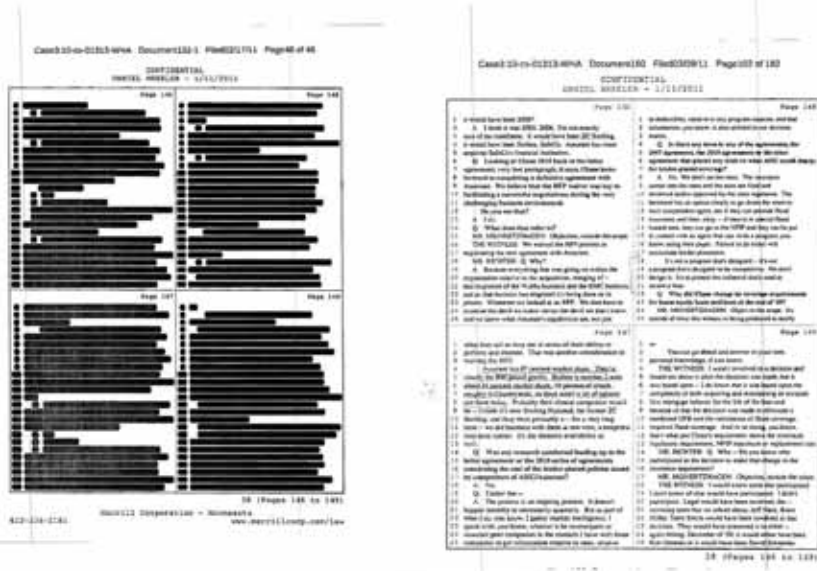
**Do You Have a Quick Question?**

Call us at: 772-462-2370  
or email [lucielaw@bellsouth.net](mailto:lucielaw@bellsouth.net)

continued from page 13

### The True Story Of Legal Research For Practicing Lawyers At The Beginning Of The 21st Century

After enough court files are reviewed, patterns can emerge. While researching my recent articles on secrecy, for example,<sup>15</sup> I came across several patterns. When orders are entered to seal all or parts of any court file, usually by stipulated, proposed orders, subsequently filed pleadings are customarily sealed even when they are not ordered to be sealed. For instance, I calculated that out of 366 pleadings and orders filed after a sealing order was entered, 242 were filed under seal or related to filing other materials under seal.<sup>16</sup> Parenthetically, I also learned that in another case even the first amended complaint was filed under seal although the docket does not list any order entered requiring it to be filed under seal.<sup>17</sup>



Another trend I identified from reviewing court files was that secrecy works so long as the party or parties coveting secrecy has enough resources to keep the discovery or testimony or other evidence concealed. One case can serve as an example in which both the plaintiff and the defendant met this description. In less than eleven (11) months from the date the case was filed (November 15, 2012) until the case was terminated (October 8, 2013), the attorneys who made appearances as lawyers could have fielded the exact equivalent of two football teams if they were so inclined.<sup>18</sup>

These are facts which mere words in a reported decision would be inadequate to convey. They could only be learned through actually looking at original documents in court files. These are things that you cannot know, let alone could “report” or otherwise even

Illustration 2.

continued on page 23

**PERSONAL INJURY / AUTO ACCIDENTS**  
**SOCIAL SECURITY DISABILITY**  
**BANKRUPTCY**  
**WORKERS' COMPENSATION**

**Ft. Pierce 464-4600**  
**Port St. Lucie 344-7770**  
**Toll free 866-460-1990**  
**HoskinsTurco.com**

Personally serving client needs in the 19th Judicial Circuit

LAW FIRM OF  
**Hoskins Turco Lloyd & Lloyd**

We are a debt relief agency and attorneys. We help people file for bankruptcy relief under the Bankruptcy code. The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.

continued from page 18

## Fixing the Game of Monopoly

this would allow for protection of the player by invoking some sort of automatic stay provision.<sup>73</sup>

The second step would be to incorporate exemptions for the player declaring bankruptcy. These exemptions would allow a player to stay in the game with a certain amount of assets, while allocating the nonexempt assets to pay the creditor player(s).<sup>74</sup>

The final step would be to mark the end of the game with something other than bankruptcy. This could be done any number of ways, and in doing so would emphasize the winning party's prevailing based on a free-market system, without negatively associating bankruptcy as the mark for loss. The easiest way to do this would be to set a number of goals for a party to reach (i.e. properties to obtain, money goal to reach, etc.) in order for a player to win.

### CONCLUSION

The stigma attached to bankruptcy is a behavioral one that is caused by centuries of beliefs that assume that a person who declares bankruptcy does so out of bad motive and lack of trustworthiness. The board game, Monopoly, is one of the most popular games in America and includes a rule section on bankruptcy. The rules of the game, however, misconstrue what bankruptcy actually is—a fresh start—by using a definition of what it is not—the end of the road. This is done by omitting key portions of the Bankruptcy Code that are in place for fairness principles. However, by changing the rules of Monopoly to more accurately reflect the Bankruptcy Code, the stigma could be minimized, which would be beneficial based on the popularity of the board game.

Endnotes for this article can be found on page 25 of the online edition of Friendly Passages

Charles wrote this as a law student at the Dwayne O. Andreas Law School, Barry University. He is the honorary mention winner in the 2016 Alto Adams Legal Writing Competition sponsored by the Adams Family and the Friends of the Rupert J. Smith Law Library.

## Library Holiday Schedule

We will Close for Easter:  
Saturday April 15 through Monday  
April 17  
We will reopen April 18

continued from page 22

## The True Story Of Legal Research For Practicing Lawyers At The Beginning Of The 21st Century

cite with any evidentiary authority, unless you or another researcher conducts a forensic investigation of original documents contained in actual court files.

### IV. CONCLUSION.

*"If you must indulge in conclusions, let them have the taste of a wide knowledge."*

Henry James

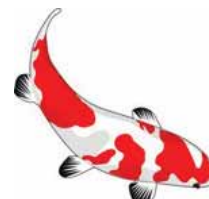
Henry James directed these words at novelists writing fiction two centuries ago, but they apply to lawyers in this century. As lawyers, our business is to indulge in conclusions. The files and cases we handle on behalf of clients demand it.

It is incumbent on lawyers to come to conclusions based on the best research techniques available to fit the job at issue, mostly determined by the size of the case and the amount of the resources of time and expense that are also available. In the 21st Century, the best research techniques available include electronic resources that were not available to earlier lawyers researching their clients' matters. In many if not all cases, the best research techniques available in the 21st Century include the forensic investigation of original documents in actual court files.

©2017 by Dennis J. Wall. All rights reserved; permission is hereby expressly given to RJS Friendly Passages publication for first-publication of this article, and to make reasonable edits to it before publication with the involvement and consent of the author.

Dennis Wall's book on "Lender Force-Placed Insurance Practices" was published by the American Bar Association, in April, 2015. He is an experienced litigator and Expert Witness, an "A.V." rated attorney and an elected member of the American Law Institute. Dennis Wall can be contacted by e-mail at DJW@dennisjwall.com or DJW@lenderforceplacedinsurance.com, or by telephone at 407.699.1060 or by U.S. Mail sent to him at Dennis J. Wall, Attorney at Law, A Professional Association, P.O. Box 195220, Winter Springs, FL 32719-5220.

Endnotes for this article can be found on page 27 of the online edition of Friendly



# Florida Bar CLE Programs At The Law Library

CONTINUING LEGAL EDUCATION PROGRAM – FREE LENDING AND FREE SHIPPING TO YOU.

TITLE	EXPIRATION	GENERAL	ETHICS
1996 Estate & Trust Planning / Asset Protection: Tricks, Treats and Really Scary Things	4/23/2017	7.5	1
1991 How to Be an Estate Planning Wizard	4/9/2017	0	9
2104 Same-Sex Marriage and Estate Planning: Nope It's Not Over Yet!	4/17/2017	1	0
1984 "2015 Case Law Update: Stay up to Date and Learn about Recent Developments and Notable Decisions in Family Law that Will Impact Your Practice"	4/22/2017	2	0.5
1997 Bankruptcy Law & Practice: View From the Bench 2015	5/5/2017	4.5	0
2084 Basic Personal Injury 2015	5/13/2017	7	0
2015 Top Mistakes Attorneys Make in Family Law	6/16/2017	2	0
2020 Advanced Federal Practice 2016	7/15/2017	5	0
2021 Elder Law Annual Update and Hot Topics - 2016	7/15/2017	15	1
2022 Solo & Small Firm Conference – Wild, Wild Tech: Taming the Technology Beast	7/22/2017	10	2
2024 16th Annual Labor and Employment Certification Review	7/28/2017	17.5	0
2032 Advanced Real Estate Law & Certification Review	8/8/2017	17.5	0
2036 Litigation and Trust Law Symposium 2016	9/4/2017	7.5	1
1992 Times They Are A Changing: Family Law Trends	9/17/2017	7	1
2044 2016 Wills Trusts and Estates Certification Review	10/8/2017	18	1.5
2342 Don't Let Someone Take a Byte Out	11/3/2017	1	0
2248 Annual Ethics Update 2016	5/3/2018	5	5
2270 2016 Case Law Update: Stay Up To Date and learn about recent developments and notable Decisions in Family Law that will impact your practice	5/10/2018	2	.5
2264 Bankruptcy Law and Practice: View from the Bench	5/3/2018	5.5	0
2265 Criminal Law Update 2016	6/2/2018	7.0	2.0
2263 Probate Law 2016 Seminar	5/18/2018	8.0	1.0

## Cryptoquote

WBIOVUW RVR XDE VXFIXE QJBWX OVY-  
 QEZ. VX W FIOM OIWG ZIXZI QJBWX OVY-  
 QEZ VXFIXEIR WBIOVUW. - KVBBM UWOEIO

*For the impatient, e-mail your answer to nora@rjsslwlibrary.org for confirmation. For the patient, the decoded quote will appear in the next issue.*

## LAW FIRM

**Hayskar, Walker, Schwerer,  
 Dundas & McCain, P.A.,  
 (772) 461-2310**

- GENERAL CIVIL PRACTICE,
- COMMERCIAL TRANSACTIONS
- TRIAL PRACTICE ● DOMESTIC RELATIONS,
- AND WORKERS COMPENSATION



## Fixing the Game of Monopoly

(Endnotes)

1 Monopoly Rules, HASBRO, <http://www.hasbro.com/common/instruct/00009.pdf> (last visited Nov. 23, 2015).

2 Robert M. Page, Stigma: Concepts in Social Policy Two, 1 (1984).

3 Charles Jordan Tabb, The History of the Bankruptcy Laws in the United States, 3 Am. Bankr. Inst. L. Rev. 5, 7 (1995).

4 See id. (Under the first English laws, as was typical in the treatment of debtors in bankruptcy, the bankrupt was considered quasi-criminal).

5 See Rousey v. Jacoway, 544 U.S. 320, 325 (2005).

6 Thomas A. Garrett, 100 Years of Bankruptcy: Why More Americans Than Ever Are Filing, FED. RESERVE BANK OF ST. LOUIS, (Spring 2006), <https://www.stlouisfed.org/publications/bridges/spring-2006/100-years-of-bankruptcy-why-more-americans-than-ever-are-filing#fn1>; see BAPCPA Report-2014 (Dec. 2014), <http://www.uscourts.gov/statistics-reports/bapcpa-report-2014> (approximately 900,000 petition filings in 2014).

7 Title 11 Bankruptcy, United States Code (2015).

8 Monopoly Rules, supra note 1.

9 BLACK'S LAW DICTIONARY 174–75 (10th ed. 2014).

10 Id. at 174.

11 See supra note 6.

12 Rafael Efrat, The Evolution of Bankruptcy Stigma, 7 Theoretical Inq. L. 365, 370 (2006).

13 Id.

14 Id.

15 Id.

16 Yvana L.B.H. Mols, Bankruptcy Stigma and Vulnerability: Questioning Autonomy and Structuring Resilience, 29 Emory Bankr. Dev. J. 289, 298 (2012).

17 Id. at 293.

18 Id. at 293–94.

19 As Jeffery Yi-Lin Forrest explains in his book on financial systems:

Credit represents a promise to pay in the future for goods purchased or the debt owed. It is an agreement between claims and debts. It stands for the two sides of the activity of borrowing and lending . . . The creditor lends out goods or money known as providing credit the debtor receives the goods or money, known as fiduciary or receiving credit. If the debtor keeps his promise and returns the goods or money on time, he is then seen as trustworthy.

-JEFFERY YI-LIN FORREST, A SYSTEMS PERSPECTIVE ON FINANCIAL SYSTEMS 64 (2014).

20 Linda Coco, Stigma, Prestige and the Cultural Context of Debt: A Critical Analysis of the Bankruptcy Judge's Non-Article III Status, 16 Mich. J. Race & L. 181, 203 (2011).

21 See id. Although bankruptcy may be tied to “Puritan” or Judeo-Christian values, it is interesting to note that the Bible does not have a negative view of bankruptcy itself:

Count off seven sabbath years—seven times seven years—so that the seven sabbath years amount to a period of forty-nine years. Then have the trumpet sounded everywhere on the tenth day of the seventh month; on the Day of Atonement sound the trumpet throughout your land. Consecrate the fiftieth year and proclaim liberty throughout the land to all its inhabitants. It shall be a jubilee for you; each of you is to return to your family property and to your own clan. The fiftieth year shall be a jubilee for you;

do not sow and do not reap what grows of itself or harvest the untended vines. For it is a jubilee and is to be holy for you; eat only what is taken directly from the fields. -Leviticus 25:8–12 (NIV). And also:

At the end of every seven years you must cancel debts. This is how it is to be done: Every creditor shall cancel any loan they have made to a fellow Israelite. They shall not require payment from anyone among their own people, because the Lord's time for canceling debts has been proclaimed.

Deuteronomy 15:1–2 (NIV).

Both of these passages deal with bankruptcy, even if not specifically named that, in a positive light, even using the word “jubilee.” So while some religious groups may look unfavorably upon the failure to pay one's debts, the religious text does not explicitly reject the practice of bankruptcy.

22 Efrat, supra note 12, at 374.

23 Id. (citing Peter J. Coleman, Debtors and Creditors in America: Insolvency, Imprisonment for Debt, and Bankruptcy, 1607-1900, at 249 (1974)).

24 Efrat, supra note 12, at 375 (citing Edward J. Balleisen, Navigating Failure: Bankruptcy and Commercial Society in Antebellum America, 12 (2001) (“beginning in the 1820s, the use of the debtor's prison in the United States began to decline, with several states limiting imprisonment to instances of fraud”), Joseph A. Ranney, A Fool's Errand? Legal Legacies of Reconstruction in Two Southern States, 9 Tex. Wesleyan L. Rev. 1, 27–28 (2002) (states began altering their constitutions to “abolish imprisonment for debt” with the exception of cases involving fraud).

25 Efrat, supra note 12, at 376.

26 Coco, supra note 20, at 188–89 (explaining that bankruptcy judges lack the prestige and superiority of Article III judges).

27 28 U.S.C. §151 (2015); see In re Hanks, 182 B.R. 930, 933–35 (Bankr. N.D. Ga. 1995) (explaining the limited nature of matters that are within a bankruptcy court's jurisdiction).

28 Coco, supra note 20, at 182–83.

29 Id.

30 Mols, supra note 16, at 299.

31 Id.

32 Id. (citing David A. Moss & Gibbs A. Johnson, The Rise of Consumer Bankruptcy: Evolution, Revolution, or Both?, 73 Am. Bankr. L. J. 311, 316–17 (1999)) (U.S. Solicitor General Thomas D. Thatcher made recommendations which led to the passing of the Chandler Act in 1938, which “eventually evolved in chapter 13.”).

33 Mary Pilon, Monopoly Was Designed to Teach the 99% About Income Equality, SMITHSONIAN.COM, (January 2015), <http://www.smithsonianmag.com/arts-culture/monopoly-was-designed-teach-99-about-income-inequality-180953630/?no-ist>.

34 Although this paper does not suggest that the main purpose, or even one of the purposes, behind the game's creation was to further stigmatize bankruptcy, Monopoly's rules did have that effect.

35 Mols, supra note 16, at 302.

36 Id at 302–03 (noting that BAPCPA responded to “a perceived drop in bankruptcy stigma).

37 Pilon, supra note 33.

38 The rules of the game, as they pertain to bankruptcy, are as follows:

BANKRUPTCY: You are bankrupt if you owe more than you

## Fixing the Game of Monopoly

can pay either to another player or to the Bank. If your debt is to another player, you must turn over to that player all that you have of value and retire from the game. In making this settlement, if you own houses or hotels, you must return these to the Bank in exchange for money to the extent of one-half the amount paid for them; this cash is given to the creditor. If you have mortgaged property you also turn this property over to your creditor but the new owner must at once pay the Bank the amount of interest on the loan, which is 10% of the value of the property. The new owner who does this may then, at his/her option, pay the principal or hold the property until some later turn, then lift the mortgage. If he/she holds property in this way until a later turn, he/she must pay the interest again upon lifting the mortgage.

Should you owe the Bank, instead of another player, more than you can pay (because of taxes or penalties) even by selling off buildings and mortgaging property, you must turn over all assets to the Bank. In this case, the Bank immediately sells by auction all property so taken, except buildings. A bankrupt player must immediately retire from the game. The last player left in the game wins.

Monopoly Rules, supra note 1.

39 Id.

40 It is humorous to note that the Bankruptcy section of the Monopoly Rules are often skipped over completely, because regardless of how well they are followed, it always results in one player losing. Most often players do not go through the process and procedures of this rule section, but rather just stop playing the game. This conclusion is based on the author's vast experience (over twenty years) with the game of Monopoly.

41 11 U.S.C. § 109 (2015).

42 11 U.S.C. § 109(b).

43 The term "individual" is more restrictive than the term "person" under the code. 11 U.S.C. § 101 (2015).

44 11 U.S.C. § 109(e).

45 There is an argument to be made that Monopoly bankruptcy actually encapsulates a wider variety of entities as it applies to: top hats, thimbles, irons, shoes, battleships, cannons, racecars, purses, rocking horses, lanterns, Scottie dogs, wheelbarrows, horses and riders, sacks of money, and cats (all of the tokens a player may be in the game). See Mike Newman, The Story Behind MONOPOLY Pieces, <http://coolmaterial.com/feature/the-story-behind-monopoly-pieces/>. However, all of these pieces should be treated as individuals.

46 11 U.S.C. § 109(h) requires an individual to undergo a briefing that outlines the opportunities for counseling before filing for bankruptcy. In spite of the unnecessary complications surrounding this provision, the fact that there is "counseling" involved could actually have a positive effect on the attitudes surrounding bankruptcy. See *In re Hudson*, 352 B.R. 391 (Bankr. D. Md. 2006).

47 The rules also fail to include other important checks on the bankruptcy process that would help diminish the stigma if they were to become more common knowledge. Specifically, the rules leave out the means test of § 707(b)(1), which is in place to help prevent abuse according to the legislative history; as well as the three tests under chapter 13: the best interest of the creditor test, the feasibility test, and the best efforts test, all of

which supports of fairness and necessity. 11 U.S.C. § 1325.

48 Section 301(b) explains that this process "constitutes an order for relief," which is an important part of the Code that is missing from the Monopoly Rules.

49 Monopoly Rules, supra note 1.

50 See 11 U.S.C. §§ 521, 522 (2015).

51 11 U.S.C. § 301(b).

52 Monopoly Rules, supra note 1.

53 Charles Jordan Tabb, *THE LAW OF BANKRUPTCY*, § 1.1 (3d ed. 2014).

54 11 U.S.C. § 362 (2015). Professor Tabb quotes the legislative history to point out:

The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors . . . . The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors.

Tabb, supra note 53, at § 3.1 (quoting H.R. Rep. No. 95—595, 95th Cong., 1st Sess., at 340 (1977)). This intent shows that the underlying theme of the automatic stay is fairness, not the debtor being able to escape his responsibilities. The fairness is mostly for the creditors; to ensure they do not take advantage of each other. This purpose of fairness, if brought to light so that the general public knew more about it, would help to destigmatize bankruptcy.

55 There are already rules in place that isolate players from paying money that do not allow other players from gaining an unfair advantage. See Monopoly Rules, supra note 1.

56 Monopoly Rules, supra note 1.

57 Id.

58 Id.

59 Monopoly Rules, supra note 1. Going through the process of selling the actual houses and hotels only adds insult to injury, as it requires the "losing" player to return items for no gain of his/her own.

60 Id.

61 Id.; see *W. Mun. Constr. Co. of Wyo., Inc. v. Better Living, LLC.*, 234 P.3d 1223, 1227–28 (Wyo. 2010) (explaining elements of settlement are the same as a contract), *RESTATEMENT (SECOND) OF CONTRACTS* § 3 (1981) (agreement is essential part of a contract that requires mutual assent).

62 11 U.S.C. § 522; see 11 U.S.C. § 541 (explaining what goes into the bankruptcy estate, but allowing the debtor to exclude items that are should be kept by the debtor).

63 This cuts against the "fresh start" policy behind bankruptcy, that allows a debtor, under the Bankruptcy Code, to retain enough property to go about their normal lives and not become. Tabb, supra note 52, at § 9.1. See Alan N. Resnick, Prudent Planning or Fraudulent Transfer? The Use of Nonexempt Assets to Purchase or Improve Exempt Property on the Eve of Bankruptcy, 31 Rutgers L. Rev. 615, 621 (1978) (listing five social policies for exemptions in bankruptcy, importantly including the providing of the debtor with property that is necessary for survival).

64 See Fla. Const. art. 10, § 4; Iowa Code Ann. § 561.2; Kan. Stat. An. § 60—2301.

65 Monopoly Rules, supra note 1.

66 Id.

67 See Pilon, supra note 33 (showing the popularity of the game and that its original purpose was to teach).

68 See Section One, supra.

69 See Section Two, supra.

*continued from page 26*

## **Fixing the Game of Monopoly**

70 Supra note 40.

71 See Tabb, supra note 53, at § 1.1, Mols, supra note 16, at 290.

72 See Section Two, supra.

73 See supra notes 41–55. This could be done by incorporating rules that allow a certain number of rolls by the player that reduce income, but protect the player from having to pay other players.

74 See supra notes 63–64. Again, this would be an easy addition to the game rules by allowing the player to keep things such as their first property purchased (or perhaps their most cherished) as a sort of homestead exemption. The rules could also allow a player to keep certain beneficial cards from Chance or Community Chest.



*continued from page 23*

## **The True Story Of Legal Research For Practicing Lawyers At The Beginning Of The 21st Century**

(Endnotes)

1 RESTATEMENT OF CONSUMER CONTRACTS (Council Draft No. 3, Dec. 20, 2016), “Reporters’ Introduction,” at 6.

2 Duties of good faith and fair dealing are now also embedded in most insurance contracts by statutes, as well as implied by courts, in many jurisdictions. See generally 1 DENNIS J. WALL, LITIGATION AND PREVENTION OF INSURER BAD FAITH §§ 3:28-3:30 (settlement under liability or third-party insurance policy), 3:63 (refusal to defend under third-party policy), & 3:92 (conduct of third-party insured’s defense) (THOMSON REUTERS WEST 3D ED. & 2017 SUPPLEMENTS IN PROCESS), & 2 id. §§ 9:14-9:16 (first-party insurer bad faith).

3 RESTATEMENT OF CONSUMER CONTRACTS § 3, Reporters’ Notes, at 44 (Council Draft No. 3, Dec. 20, 2016).

4 Id.

5 See id., § 1, Reporters’ Notes, at 14 fig.1.

6 Id., § 2, Reporters’ Notes, at 35.

7 Id., § 2, Reporters’ Notes, at 31.

8 But still available on Westlaw and Lexis-Nexis or some other subscription service, as noted earlier, even though the prevailing description of decisions published only by these subscription services is that such cases are “unpublished.”

9 RESTATEMENT OF CONSUMER CONTRACTS § 2, Reporters’ Notes, at 32-33 (Council Draft No. 3, Dec. 20, 2016).

10 Id., § 3, Reporters’ Notes, at 36.

11 Id., § 3, Reporters’ Notes, at 43.

12 Id., § 8, Reporters’ Notes, at 91.

13 Deposition of Chase Home Finance and JPMorgan Chase Bank, corporate designee, taken January 11, 2001 in Hofstetter v. Chase Home Finance, LLC, Doc. 132-1, filed on February 17, 2011 (N.D. Cal. No. CV-10-1313 WHA).

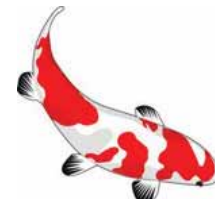
14 Deposition of Chase Home Finance and JPMorgan Chase Bank, corporate designee, taken January 11, 2001 in Hofstetter v. Chase Home Finance, LLC, Doc. 160, filed on March 9, 2011 (N.D. Cal. No. CV-10-1313 WHA).

15 “Secrecy in Insurance Cases,” in process as a chapter article in Lexis-Nexis New Appleman on Insurance (forthcoming in 2017), and “Secret Evidence and Sealed Court Files: Illustrated in Insurance Cases Opened to the Sunshine” for Insurance Litigation Reporter (also forthcoming in 2017).

16 The case is Ford Mtr. Co. v. National Indem. Co., (E.D. Va. No. 3:12-cv-839). I started counting the number of documents that were filed under seal or were concerned with sealing documents, after an Agreed Protective Order was filed in this case. I stopped when it became clear to me that there were too many to count. So, I identified 52 documents out of the next 79 documents on the clerk’s docket as filed under seal or related to sealing documents, and I extrapolated these numbers across the remainder of the docket. I came up with a total of 242 documents, more or less, filed under seal or relating to sealing, out of a total of 366 documents filed by the parties after they filed their Agreed Protective Order in this case.

17 The entire operative complaint in federal court, shown as a first amended complaint on the clerk’s docket, is sealed. No motion for protective order, nor to seal the first amended complaint, is listed on the clerk’s docket. The case is Liberty Life Ins. Co. v. Onebeacon Ins. Co., Notice of Removal to federal court filed 12.12.08 (W.D. Mo. Case No. 4:08-DV-00955-REL).

18 There are 22 lawyers listed on the clerk’s docket accessible on PACER in the case of Ford Mtr. Co. v. National Indem. Co., (E.D. Va. No. 3:12-cv-839).



### **Do You Have a Quick Question?**

*Call us at: 772-462-2370*

*or email [lucielaw@bellsouth.net](mailto:lucielaw@bellsouth.net)*

## U.S. LAW SCHOOLS FACING NEW CHALLENGES

### (Endnotes)

1 Professor of Law, St. Thomas University School of Law, A.B. 1964, University of Vienna; B.A. 1966, University of Louisville; J.D. 1969, University of Miami School of Law. I would like to extend special thanks to my research assistants, Jessica Brodsky and Luis Victoria, for all of their excellent work in preparing this article.

2 Staci Zaretsky, Verdict Reached In The Alaburda v. Thomas Jefferson Law Landmark Case Over Fraudulent Employment Statistics, Ave the Law, March 24, 2016 available at <http://abovethelaw.com/2016/03/a-verdict-has-been-reached-in-the-alaburda-v-thomas-jefferson-school-of-law-landmark-case-over-fraudulent-employment-statistics/>

3 Elizabeth Olson, Law Graduate Gets Her Day in Court, Suing Law School, The New York Times, March 6, 2016 available at <http://www.nytimes.com/2016/03/07/business/dealbook/court-to-hear-suit-accusing-law-school-of-inflating-job-data.html>

4 Id.

5 Id.

6 See generally id.

7 Elizabeth Olson, Law Graduate Who Sued Her School Loses at Trial, The New York Times, March 24, 2016 available at [http://www.nytimes.com/2016/03/25/business/dealbook/law-graduate-ur-school-loses-at-trial.html?action=click&contentCollection=DealBook&module=RelatedCoverage&region=EndOfArticle&pgtype=article&\\_r=0](http://www.nytimes.com/2016/03/25/business/dealbook/law-graduate-ur-school-loses-at-trial.html?action=click&contentCollection=DealBook&module=RelatedCoverage&region=EndOfArticle&pgtype=article&_r=0)

8 Id.

9 Id.

10 Id.

11 Supra note 3.

12 Jeff Bennion, Understanding The Alaburda v. Thomas Jefferson Law Verdict: A Conversation With A Juror, Above the Law, March 25, 2016 available at <http://abovethelaw.com/2016/03/understanding-the-alaburda-v-thomas-jefferson-law-verdict-a-conversation-with-one-of-the-jurors/> The juror also considered that Alaburda had been offered a legal position and turned it down and that she was aware that she was attending a low ranked school.

13 Supra note 3

14 [http://www.lawschooltransparency.com/who\\_we\\_are/](http://www.lawschooltransparency.com/who_we_are/)

15 Elie Mystal, Thomas Jefferson Law School Almost Accepts Responsibility... Almost, Above the Law, December 17, 2013 available at <http://abovethelaw.com/2013/12/thomas-jefferson-law-school-almost-accepts-responsibility-almost/>

16 <http://www.lstscorereports.com/?school=thomasjefferson> Law School Transparency

17 <http://www.lstscorereports.com/guides/LST-Metrics/>

18 Supra note 3

19 Supra note 15

20 David Segal, Is Law School a Losing Game? The New York Times January 8, 2011 available at <http://www.nytimes.com/2011/01/09/business/09law.html>

21 Steven J. Harper, Too Many Law Students, Too Few Legal Jobs, The New York Times August 25, 2015 available at [http://www.nytimes.com/2015/08/25/opinion/too-many-law-students-too-few-legal-jobs.html?\\_r=0](http://www.nytimes.com/2015/08/25/opinion/too-many-law-students-too-few-legal-jobs.html?_r=0)

22 [http://www.lawschooltransparency.com/who\\_we\\_are/issues/](http://www.lawschooltransparency.com/who_we_are/issues/)

23<sup>s</sup> supra note 3

24 See, supra, note 4.

25 The Law School Debt Crisis, The Editorial Board, The New York Times October 24, 2015 available at [http://www.nytimes.com/2015/10/25/opinion/sunday/the-law-school-debt-crisis.html?\\_r=3](http://www.nytimes.com/2015/10/25/opinion/sunday/the-law-school-debt-crisis.html?_r=3)

26 See, supra, note 4.

27 David Barnhizer, Redesigning The American Law School, MICH. ST. L. REV. 249, 250 (2010)

28 Natalie Kitroeff, The Best Law Schools Are Attracting Fewer Students, Bloomberg January 26, 2016 available at <http://www.bloomberg.com/news/articles/2016-01-26/the-best-law-schools-are-attracting-fewer-students>

29 Id.

30 Paul Caron, The Law School Crisis is Spreading, TaxProf Blog, January 26, 2016 available at [http://taxprof.typepad.com/taxprof\\_blog/2016/01/the-law-school-crisis-is-spreading.html](http://taxprof.typepad.com/taxprof_blog/2016/01/the-law-school-crisis-is-spreading.html)

31 Id.

32 Id.

33 Id.

34 Id.

35 See Kitroeff supra note 10.

36 Jonathan R. Tung, Esq. Is Harvard Law Suffering From the Admissions Crisis? Hardly., Greedy Associates: The Find-Law Legal Life Style & Career Blog, January 15, 2016, available at [http://blogs.findlaw.com/greedy\\_associates/2016/01/is-harvard-law-suffering-from-the-admissions-crisis-hardly.html#sthash.4DwqmSkr.PaxnCGBP.dpuf](http://blogs.findlaw.com/greedy_associates/2016/01/is-harvard-law-suffering-from-the-admissions-crisis-hardly.html#sthash.4DwqmSkr.PaxnCGBP.dpuf)

37 Staci Zaretsky, Which Law Schools Accepted And Lost The Most Students As Transfers?, Above the Law, January 8, 2016 available at <http://abovethelaw.com/2016/01/which-law-schools-accepted-lost-the-most-students-as-transfers/>

38 See Tung supra note 18 “In 2015 Harvard Law accepted 55 transfer students from other schools according to the ABA and Bloomberg Business. According to those sources, the school never took in more than 35 transfer students over the last four years.”

39 Id.

40 Steven J. Harper, The Crisis in Legal Education Is Over! The American Lawyer, January 15, 2016 available at <http://www.americanlawyer.com/id=1202747237041/The-Crisis-in-Legal-Education-Is-Over?slreturn=20160514140759>

41 Id.

42 Id.

43 Kitroeff supra note 10.

44 Id.

45 See Zaretsky supra note 19 Emory ranked number 5 overall for highest number of transfer students in 2015.

46 Kitroeff supra note 10

47 Id.

48 Id.

49 See supra note 7

50 Id.

51 Supra note 2.

52 See Supra note 7

53 See supra note 27.

54 Supra note 7.

55 Id.

56 Florida Bar Admissions - FLA. BAR EXAM RESULTS available at <http://www.sunethics.com/ba---fla-bar-exam-results.html>

57 See Supra note 7

58 Supra note 20

*continued from page 28*

## **U.S. LAW SCHOOLS FACING NEW CHALLENGES**

59 Id.

60 See generally Id; supra note 2; supra note 10, supra note 22.

61 See supra note 2.

62 Id.

63 Id.

64 Id.

65 Id.

66 Id.

67 Supra note 3

68 Supra note 21

69 Supra note 22

70 Supra note 40

71 Supra note 22

72 Supra note 25

73 Id.

74 See the ABA's list of Post-J.D. Programs available at <http://www.abanet.org/legaled/postJ.D. programs/postJ.D.-school.html>.

