Friendly Passages

Supporting Equal Access to Law in Florida

March/April 2015

A Publication of The Friends of the Rupert J. Smith Law Library of St. Lucie County Florida

You are cordially invited...

To Join Us for the 2015 Law Day Reception and Art Contest On Monday, May 4 at 5:00 p.m.

Reception in the Jury Assembly Room
Fort Pierce Courthouse – 218 2nd Street South

Jim Walker, President of Friends, Trustee of the Rupert J. Smith Law Library and Master of Ceremonies will make opening remarks.

Pledge of Allegiance lead by **Hon. Burton Conner**, District Court Judge, Fourth District Court of Appeals and former head of the RJS Law Library Trustees.

The **Hon. Charles Schwab**, Circuit Court Judge, 19th Judicial Circuit and head of the Board of Trustees for the RJS Law Library will introduce our Keynote speaker:

The Hon. Robin L. Rosenberg, Federal District Court Judge, Southern District, State of Florida.

Carlos Wells, President of SLCBA, will give thanks and recognition to

Carolyn Fabrizio, Coordinator of Florida Rural Legal Services.

The Hon. Mark W. Klingensmith, District Court Judge, Fourth District Court of Appeals will give thanks and recognition to

Dr. Edwin Massey, President, Indian River State College.

Kim Cunzo, Esq., Chair of the Annual Student Art Contest, will introduce the Art Contest portion of the program.

Paula Lewis, Chair Board of the County Commissioners for St. Lucie County and Trustee of the RJS Law Library will introduce

Genelle Yost, Superintendent for St. Lucie County Public Schools will make remarks.

Kim Cunzo will make the presentation to award Prizes to the winning poster board entries.

We want to thank our sponsors:

The Trustees of the RJS Law Library - The St. Lucie County Bar Association - Gordon & Doner - Kim Cunzo - Everlove & Associates

March/April 2015

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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.

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A Publication of The Friends of the Rupert J. Smith Law Library of St. Lucie County Florida

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On The Cover

"*Daisies*" Pastel on Paper. *By Paul Nucci*

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

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Rene Artaega, Treasurer
Nora Everlove, Secretary
Kim Cunzo, Chair, Art Contest

On Behalf of the Publisher

Email this article to a friend...

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

We must never confuse law and justice. What is legal is often not just. And what is just is often not at all legal.

Consider what was perfectly legal 100 years ago: Children as young as six were employed in dangerous industries. Bosses could pay workers whatever they wanted. If injured on the job—no compensation, you went home and need not return when you recovered. Women and African Americans could not vote. Any business could discriminate against anyone else on the basis of gender, race, age, disability or any other reason. Industrialists grew rich by using police and private mercenaries to break up unions, beat and kill strikers and evict families from their homes.

One hundred years ago, lawyers and judges and legislators worked in a very professional manner enforcing laws that we know now were terribly unjust."

-- Quigley, "Letter to a Law Student Interested in Social Justice", DePaul Journal for Social Justice (Fall 2007), pg. 16.

Those seeking inspiration on law as a means for improving the human condition in this world are encouraged to read William Quigley's essay, "Letter to a Law Student Interested in Social Justice". As the title suggests, it is a letter to a law student named Bridgett. It appeals to all who ever dreamed of taking up a career in service to the law so as to make a difference for the better in other people's lives. It sounds a theme very similar to what was once described by Woodrow Wilson: "You are not here merely to make a living. You are here in order to enable the world to live more amply, with greater vision, with a finer spirit of hope and achievement. You are here to enrich the world, and you impoverish yourself if you forget the errand."

Mr. Quigley encourages his reader to use law as a tool for bringing about social justice, which he defines as "… the commitment to act with and on behalf of those who are suffering because of social neglect, social decisions or social structures and institutions." Pg. 13-14. In so doing, he is but responding to the highest and best imperatives that lie at the foundations of American law. Such law exists for the protection and advancement of social welfare. Benjamin Cardozo explained in **The Nature of the Judicial Process**, Yale University Press (1921), pgs. 66-67: "The final cause of law is the welfare of society. The rule that misses its aim cannot permanently justify its existence. 'Ethical considerations can no more be excluded from the administration of justice which is the end and purpose of all civil laws than one can exclude the vital air from his room and live.' Logic and history and custom have their place. We will shape the law to conform to them when we may; but only within bounds. The end which the law serves will dominate them all. There is an old legend that on one occasion God prayed, and his prayer was 'Be it my will that my justice be ruled by my mercy.' That is a prayer which we all need to utter at times when the demon of formalism tempts the intellect with the lure of scientific order. I do not mean, of course, that judges are commissioned to set aside existing rules at pleasure in favor of any other set of rules which they may hold to be expedient or wise. I mean that when they are called upon to say how far existing rules are to be extended or restricted, they let the welfare of society fix the path, its direction and its distance."

This well expresses the law as an ideal. It is a bright vision, enabler of the social welfare, of a framework for living within which all may seek out life, liberty and happiness according to the potential conferred by those natural gifts with which each is endowed. Measured by this standard, there is little difference between law and justice. Each well serves the other. Where the law falls short is in the implementation of it. Toward the end of his term, Justice William J. Brennan gave a speech where he pointed out a divergence of aspiration from reality: "We do not yet have justice, equal and practical, for the poor, for the members of minority groups, for the criminally accused, for the displaced persons of the technological revolution, for alienated youth, for the urban masses. … Ugly inequities continue to mar the face of the nation. We are surely nearer the beginning than the end of the struggle."

It has become out of reach and unaffordable for most Floridians. Jorge Labarga, Chief Justice of the Florida Supreme Court, and Gregory Coleman, President of The Florida Bar, wrote the following: "Think of the civil legal matters that could threaten to tear apart your life: divorce, child custody, foreclosure, a landlord-tenant dispute. Then realize that many people are thrown into these life-changing events without legal representation. …Legal aid has only been able to address about 20 percent of the needs

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On Behalf of the Publisher

of low-income citizens, and with recent funding cuts even fewer will be served. Many more Floridians—those who earn too much to qualify for legal aid and yet can't afford an attorney—are caught in a legal services gap." LaBarga, Jorge and Coleman, Gregory (Jan 16, 2015), "New commission will try to fill legal aid gap", **Palm Beach Post.** So, for example, Judge Shield McManus, circuit court judge for the Nineteenth Judicial Circuit, Family Law Division, notes: "From the bench, I observe that… a substantial portion of family litigants are unrepresented for part or all of their litigation. Most people say the reason for this is their inability to pay attorney's fees." This leaves "… unrepresented parties who will not present necessary evidence and make well informed requests for relief. …As a result, I may not be able to render a final judgment that provides the best possible parenting plan, the proper calculation of support, or an equitable division of assets." McManus, Shields (Nov/Dec. 2014), "Reflections on Changes in Family Practice: Can family law practice change for the better?", **Friendly Passages**, pg. 6. Floridians are increasingly shut out. When a lawyer is unaffordable, when they don't qualify for legal aid, when there is no law library available to serve their needs, no one to walk them through the intricacies of the legal system, they are without any effective remedy.

In an effort to address this, the Florida Supreme Court and The Florida Bar are now collaborating in establishment of the Florida Commission on Access to Civil Justice, chaired by Chief Justice LaBarga. It's mission is to "Consider and evaluate components of a continuum of services for the unrepresented, taking into account consumer needs and preferences. Such components might include interactive forms, unbundled legal services, the involvement of *court, law, and public libraries;* and other innovations and alternatives." (e.s.) Administrative Order, Florida Supreme Court (Nov. 24, 2014). It will render an interim report to the Court on October 1, 2015, and a final report with recommendations, on June 30, 2016.

In view of explicit recognition given to the role of libraries by the Court's Order above, it may fairly be anticipated that the Commission will undertake a study to assess the fiscal and structural health of Florida's system of county law libraries, particularly where no such report of their current status is known to presently exist. The importance of county law libraries as an element in the delivery of legal services is recognized by the Supreme Court in **Farabee v. Board of Trustees, Lee County Law Library,** 254 So.2d 1, 5 (Fla 1971) ("Few courts could operate without an adequate law library. *More importantly, a public law library is open to and serves the needs of all persons throughout the county rich and poor alike. ...* It is essential to the administration of justice today.") In addition to pulling together raw data from within the state, there is a plethora of material the Commission may draw upon from around the country in gauging the appropriate role of county law libraries, and recommending measures to assure that these libraries are equipped with the means to carry out their appointed responsibilities. See ex. Zorza, Richard; "The Sustainable 21st Century Law Library: Vision, Deployment and Assessment for Access to Justice" (April, 2012); see also, ex. California County Law Library Task Force (2004) (mandated by Calif. Gov. Code. Sec. 70394); finally, see also ex., more generally, American Association of Law Libraries (AALL).

In sum, one wishes the Commission well. It has embarked upon the important task of closing the gap between law and justice for Florida's citizens. Ideally there should be little difference between the two. Presently there is a disconnect, as ordinary citizens are left without the ability to avail themselves of the law's protection. For the next year and a half the Florida Commission on Access to Civil Justice will be determining what should be done to restore law as an everyday tool for building lives and a sense of community. Recommendations to the Court and legislature will follow. Those recommendations should include measures to make sure that Florida's county law libraries continue to remain open to serve "the needs of all persons throughout the county rich and poor alike". Thank you for your support. /JimW

Free Two Hour CLE Program

Friday, March 27, 2015 at 12:00

Potpourri of Elder Law or Senior Health Care Law, Recent Developments

Presented by Michael Fowler

2.0 hours of accreditation granted by The Florida Bar

This presentation is sponsored by the Rupert J. Smith Law Library, and it will take place in the main conference room of the Library at 221, S. Indian R. Drive., Fort Pierce, Fla.

Space is limited, so please call ahead to reserve a seat, at 772-462-2370. Lunch is kindly sponsored by The Estate, Trust & Elder Law Firm, P.L. For more information about the Rupert J. Smith Law Library, visit our website: http://www.rjslawlibrary.org

By The Hon. F. Shields McManus, Circuit Judge

World of the Local Court

Email this article to a friend...

The courts of our community are a world apart from the daily life of most people and even many lawyers. Courtrooms are open to the public but few ever go in to one unless they are involved in a case or called to jury duty. And much of what goes on at the courthouse does not happen in a courtroom at all.

When I practiced law, I was focused on my clients' matters and oblivious to what was going on daily in the courts. Civil lawsuits made up most of my practice and I was only concerned with getting my cases settled or tried by a jury. Like many civil law practitioners I was unaware of the many other types of legal matters passing through the local courthouse. In my legal provincialism, I wondered why there were so many judges, but only one or two assigned to the kind of cases I handled. To me, these were the most important kind of cases. When I became a circuit court judge, I encountered not only areas of law formerly unknown to me, but populations of litigants with which I was unacquainted. Also I was introduced to people other than lawyers and judges engaged in helping these people.

A Brief Civics Lesson

In any American community, there are state courts and federal courts which have jurisdiction. In the state courts of Florida, there are two kinds of trial courts: "County Courts" and "Circuit Courts." County Courts primarily handle criminal misdemeanor and traffic cases, evictions, and legal claims for money less than $15,000. Circuit Courts handle everything else. This includes criminal felony cases, family law court for cases such as divorce and paternity; juvenile delinquency court; juvenile dependency court, which is for protection of abused, abandoned, or neglected children; probate and guardianship court; mental health and substance abuse courts; and civil lawsuits including personal injury claims, contract disputes, debt collection and mortgage foreclosures.

It is apparent that there are many kinds of matters heard in our local courts; there are also a large number of cases.

The Numbers[1]

For the fiscal year 2012-2013, the most recent data available, in the Nineteenth Circuit of Florida (Indian River, Martin, Okeechobee, and St. Lucie Counties) case filings and reopenings were:

Circuit Court	Filings	Reopenings
Felony	5,171	6,380
Family	6,583	6,184
Juvenile Delinquency	1966	4,099
Juvenile Dependency	438	2,026
Probate/ Guardianship	2,593	1,478
Mental Health/Drugs	1,548	N/A[2]
Civil Lawsuits	2,901	3,564[3]
Foreclosures	6,216	

County Court	Filings	Reopenings
Misdemeanor	19,486	3,808
Evictions	3,249	2,808[4]
Traffic	34,689	
County Civil	5,249	

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World of the Local Court

Foreclosures, as we all are aware, increased immensely during the Great Recession. As of June 2012, in all of Florida, there were 377,707 pending foreclosure cases. In the Treasure Coast and Okeechobee there were 13,699 cases pending. With the assistance of retired judges and additional magistrates and case managers, the numbers of pending cases as of September 2014 were reduced to 134,824 and 3,715 respectively. Nevertheless, these cases will continue to take up a lot of the civil court judges' time. The civil court judges' responsibility will increase in June 2015, when the extra funding for senior judges, magistrates, case managers, and deputy clerks ends.

The People

As the above statistics show, the local courtrooms are occupied primarily with persons accused of committing crimes, and by adults and children experiencing significant life dysfunctions. Most of them are poor. The courts provide some intervention when these people have crises, but their daily existence depends on help from family and friends, as well as government, non-profit agencies, and volunteers.

What becomes real to anyone serving in the court system is how many people live on the edge of existence. For example, the young woman who serves our meal at a restaurant or waits on us at a super store is likely to be a parent of minor children. She is often divorced or unmarried. She may not live with the child's father. Often, he has not reliably paid child support. She has no insurance for herself but her children have Medicaid. Her children are in extended day care at the school or the Boys and Girls Club at a reduced cost to her.

The taxpayers, extended family and friends, donors, and volunteers make it possible for her to survive on her modest earnings. In effect, they are underwriting the cost of labor for a business paying her low wages. She is also a taxpayer. She pays sales tax and gasoline taxes. Her rent pays the real estate taxes on the rental unit. If she has cable TV or a cell phone, she pays use taxes. Social Security and Medicare taxes are taken out of her pay. She has no savings for emergencies. Any unexpected expense becomes a crisis. She already has bills she cannot pay. She may be late on her rent and could be sued for eviction at any time.

If she needs to go to family court or civil court, she cannot afford a lawyer. If she is unable to get assistance from her family or a volunteer lawyer, she will have to go without a lawyer.

This woman may become emotionally unstable or fall into substance abuse. She may become a candidate for mental health or drug court. Her children may become abused by her boyfriend. The Department of Children and Families may be notified and file a petition in Dependency Court. If her child gets into some illegal behavior he or she will be arrested and charged in juvenile court. It is apparent why so much of the work of the local courts is with families.

Another kind of population is very dependent on the civil law courts for their ongoing needs. These are the small business persons as well as the large corporations. For example, the local businessman needs to collect payment for his services and products. He may file a small claim in County Court or foreclose a mechanic's lien in Circuit Court. The individual real estate investor may need the court to resolve a dispute over a real estate transaction. Disputes among small business partners and stockholder derivative actions must be resolved in the Circuit Courts. The banks and other lenders also depend on the courts to collect payment on loans in default and to foreclose on mortgages or financing agreements. As noted above, these cases compose a major portion of the civil case filings. Even the state agencies and local governments are dependent on the local courts to complete their duties. All of these litigants are competing with the personal injury litigant for the court's time.

The Courts

Our local courts are busy daily responding to the needs of the people. Hearings and trials are scheduled every week. However, not all of this work takes place in the courtroom. The judges spend much of their time writing orders, managing their calendar, and reviewing the pleadings, briefs, reports, evidence submitted, and statutory and case law. Different types of cases have different work patterns. Family law and criminal law judges will typically spend more time in trials and evidentiary hearings, while civil law and probate judges will spend more time reviewing files and hearing legal motions.

Each judge is provided with one staff person called a "Judicial Assistant" who answers the phone, handles the mail and email, prepares orders and correspondence, and keeps the judge's calendar up to date. Staff lawyers are available for special assignments such as reviewing and responding to convicted persons' petitions for post-conviction relief, of which there are many. Individual judges, however, are not assigned a "law clerk" to assist in the daily case work. Case managers are available in some courts such as family court.

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Come To The Next Friend's Meeting

Please come join your Friends at the next meeting at the Rupert J. Smith Law Library. For the date and time of the next meeting, call the library at 772-462-2370.

Teaching Legal Research: Past, Present, and Future

By Louis Rosen

Email this article to a friend...

None of us will ever forget our 1L year, no matter how hard we may try to block it out. My most vivid memories of being a first-year law student were in Legal Research and Writing classes. I attended the University of Florida Levin College of Law in Gainesville, back before it was called that. Back then, we spent the majority of our time with the LRW professor, focusing on legal writing, Bluebooking skills, and working toward our first open memo during the first semester and the appellate brief during the second semester.

However, we would break out into small groups of four or five students led by a Teaching Assistant (almost all 2L students), to venture into the library and learn about doing legal research the old-school way: using the books. We slowly got acquainted with case reporters and digests, statutes annotated and legal encyclopedias, Shepard's citators and those easy-to-forget pocket parts. On our own time, outside of class, we would meet briefly with Lexis and Westlaw reps in a tiny room filled with computers for additional training on those exciting new research databases. Unfortunately, we had very few official interactions with the law librarians back then, but I got to know some of them individually, and there were always willing to help however they could.

From the first day of 1L Orientation, I knew I never wanted to be a practicing lawyer. I had no idea what I *wanted* to do, but the most valuable thing I learned during my 1L year was that I had a knack for research, and I actually kind of liked it. Sometimes, on days when we dealt with the statute of frauds and the Rule in Shelley's Case in my other classes, legal research was the only thing that made sense to me. I did well enough in Legal Research and Writing that I was invited to become a Teaching Assistant during my 2L year, and that's when I got even more comfortable navigating my way through a law library and showing others the ins and outs of legal research.

Flash forward a few years. I have been a Reference Librarian at Barry University Dwayne O. Andreas School of Law in Orlando since July 2008, and I have finally found my calling. Finding a job in the legal field that I would actually enjoy and actually *be good at* seemed like an impossible dream to the terrified 1L I was back in 2001, and I never would have dreamed I'd end up working in law school environment. But I love helping students feel more comfortable in our law library, familiarizing them with legal research tools and techniques, and empowering them to become the best possible attorneys they can be. At Barry, our students still take two semesters of Legal Research and Writing, and they still work toward an open memo during their first semester and an appellate brief during the second. But here, the LRW faculty invites the reference librarians into their classrooms to teach the research component of the class. My colleagues and I always look forward to this face time with the students, which is our chance to lay out the basic essentials of conducting legal research in the library. The LRW faculty also invites our enthusiastic Lexis, Westlaw, and now Bloomberg Law reps to their classes, so we focus more on print research during the first semester of LRW during the one or two sessions we get, and return during the second semester for a crash course in free and low-cost online research alternatives.

Obviously, as a law librarian, I feel that legal research is one of the most important skill sets that law students can learn, and we just wish we had more opportunities to teach students the research skills they will rely on throughout their careers. That's why at Barry, due to overwhelming student demand, we will be offering two Advanced Legal Research classes during the Spring 2015 semester. My colleague and immediate supervisor, our Interim Associate Director and Head of Public Services, Diana Botluk, and I will be co-teaching both sections, so we can focus on our specialties and favorite aspects of legal research.

This will be the second time Diana and I will have co-taught Advanced Legal Research. We offered one section over a year ago with a third reference librarian, Patricia Brown, who retired in May 2014. Never content to do things the easy way, we structured our class like a law firm, with us as the senior partners and the students as the new associates. During each "firm" (class) meeting (which we sometimes taught individually and sometimes with two or even all three of us), we lectured on new concepts and sources in the beginning, then set the class loose to work together in small groups with exercises and activities we wrote, based on realistic practice-like scenarios they could encounter. We were always available to help them, and then we would reconvene for the last third of the class to go over their answers and how they got them. We feel this led to greater camaraderie among the students, and it demonstrated the collaborative aspects of legal practice many of them would soon encounter.

This "flipped classroom" model is the new standard in teaching legal research, particularly in Advanced Legal Research classes taught by librarians. The actual lecturing is taken care of early in the class meeting, or sometimes in pre-recorded videos the students watch before class, like assigned reading. Then the class session is devoted to working through research problems designed to simulate real-life legal practice, with the librarian-professors always on hand to help throughout the process. Obviously,

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Teaching Legal Research: Past, Present, and Future

the focus is now on online legal research databases, but I still feel it is important to get students comfortable using the books – if only to appreciate how great they have it nowadays with conducting their research online.

We are thrilled to have so many students signed up for our upcoming Advanced Legal Research classes this spring, and we intend to prepare them for any kind of research scenarios they might encounter in the "real world," whether they join big or small firms or hang up their own shingles. We will bring our Lexis, Westlaw, and Bloomberg Law reps in for more in-depth lessons on subjects they didn't learn as 1Ls, and I have also invited my former boss, Nora Everlove, to guest-lecture about the realities, necessities, pitfalls, and costs of legal research in law firm settings. Nora gave me my start in law libraries, overseeing me as a law firm librarian as I worked my way through library school, and she was the biggest hit of the semester last time we offered our class.

Diana and I are grateful to our Library Director, Associate Dean of Information Services Roberta "Bobbie" Studwell, as well as Senior Associate Dean for Academic Affairs Ruth Witherspoon and our Dean, Leticia Diaz, for giving us another opportunity to teach Advanced Legal Research and structure it this way. I am nervously excited, but looking forward to another great semester.

Meanwhile, at UF's Levin College of Law, the reference librarians (all brilliant colleagues) now teach their own 1L Legal Research classes, separate from Legal Writing. I'm glad to see that librarians are gaining more of a front-and-center teaching role everywhere, as the concept of sending practice-ready JDs out into the world, with legal research skills up to firm standards, has gained prominence. We keep hearing it is only a matter of time before legal research starts to be tested on the Florida Bar Exam, so hopefully we can reach even more students in the future. No matter what specialty areas our graduates end up practicing, or where, they will always need to be competent legal researchers, who can work efficiently and effectively with the resources at their disposal. I am thrilled to play my role in making this happen, to demystify the law library and legal research in general however I can, and to help create lawyers who will make our school, their colleagues, supervisors, and clients, and the legal profession proud.

Louis Rosen is a Reference Librarian and Assistant Professor of Law Library at Barry University School of Law in Orlando, Florida. He is a graduate of the University of Florida (B.S. 2000), University of Florida Levin College of Law (J.D. 2003), and the University of South Florida School of Information (M.A. 2008).

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World of the Local Court

The office staff of the elected Clerk of the Court assists the judges by keeping the files in the Clerk's office. These files are now becoming digital as Florida has begun e-filing in most kinds of cases. The Clerk's staff, known as Deputy Clerk's, also create some records and prepare form orders in certain courts such as criminal and juvenile courts. Whenever a judge is in the courtroom there is a Deputy Clerk keeping minutes about whatever is transpiring and taking care of any evidence and other papers presented to the court. The Clerk's office, however, is a separate constitutional office and does not work for the judge outside of court. The Deputy Clerk is not the judge's assistant. People are often unaware of this and they try to communicate with the judge through the Clerk's office.

Conclusion

The world of the local courts is far more complex and diverse than people realize. I have tried to give some insight into what the judges are routinely doing. This may be helpful when you have occasion to interact with the court.

(Endnotes)

[1] Office of State Courts Administrator, Florida Supreme Court, flcourts.org

[2] Not Available

[3] All civil cases including foreclosures. The percentage of civil cases disposed of by jury trial is only 0.3%.

[4] All civil cases

Judge F. Shields McManus is a Nineteenth Judicial Circuit Court Judge appointed in 2007 and elected in 2010. Since then he has been assigned to many divisions and has a broad judicial experience. Judge McManus is a graduate of FSU and FSU College of Law. He is active in the legal community and has sat on several boards and served as president. Additionally, Judge McManus is active in educational, charitable and civic organizations in Stuart and Martin Counties.

Cryptoquote

R XWZG CRKG RIN'V H QRE MWSG, QGAHLIG R JWN'V EGV RV. -MHAS XHNJGD

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

The Theory of Everything: Intellectual Property, Part 2

By Adrienne Naumann

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Previously, I addressed the definition of intellectual property and generic categories of intellectual property, as well as patents and trade secrets in more detail. In this second article, I address U.S. trademark and copyright law with examples from recent judicial decisions. As a caveat, this article addresses those topics which surface most often with clients. However, there are other trademark related issues, such as trade dress, that arise depending upon a client's vocation or business.

Trademarks

Trademarks and service marks include logos, designs and devices [hereinafter 'terms'] that (i) identify the source of a product or service (ii) distinguish these products or services from those of others and (iii) symbolize the good will of a business based upon these products and services. Most marks are visual although a mark can be a fragrance, sound or other subject matter. For example, a term associated with a clothing source is designated as a trademark because it is associated with a product or goods. With services, such as those for dentists, these terms are known as service marks. 15 U.S.C. 1053. Service marks must meet most of the legal requirements as trademarks with differences explained below.

Mark Categories

The first category of legally cognizable marks consists of fanciful marks. Fanciful marks comprise written terms (with or without numerals) not previously existing, and they do not describe the products and/or services with which they are associated. Fanciful marks require a greater financial investment to create an association among it, the source and the product and/or service. Nevertheless, once established, fanciful marks are the strongest and most distinctive. Examples of fanciful marks include Xerox ® for photocopy machines, Kleenex® for tissues, and Starbucks® for coffee related beverages.

Arbitrary marks, such as Apple® for computer related products, consist of pre-existing words and/or designs which do not describe or suggest the associated products or service. For example, Enterprise® for rented vehicles does not create an image of rental car services without a significant investment to build the mental association between this term and the company in the consumer's memory source. Nevertheless, once established, the arbitrary mark is legally characterized as strong and distinctive.

A suggestive mark does not designate an associated product or service, but it does convey a connotation related to the product after some thought by the consumer. Examples of a suggestive mark include:

1. Naturally beautiful Results® for skin cream; 2. Athleta® for sports apparel; and

3. Ocean Spray® for fruit related beverages.

The last mark category is the descriptive term. An example of this category would be "Softlips® for lip balm. Descriptive marks approach the boundary of terms which the public uses in everyday language to designate the actual product or service. Consequently, for federal registration of marks, see below, the applicant must establish that the public actually recognizes the descriptive mark as a brand for a particular product or service. Even if registered, a descriptive mark is not considered as strong or distinctive as the arbitrary or fanciful categories.
Generic terms for goods and services in and of themselves do not qualify as marks. For example, the word "Apples" cannot be used as a trademark for the fruit known as apples, because the public requires this word in everyday language to designate this particular fruit.

Use of Marks

As described above, the one requirement for trademark status is a characterization within the appropriate category. A term must also be continuously used as a mark by someone who purports to own the mark (or otherwise is entitled to display the mark). Without this affirmative use, the mark status is either considered abandoned or never arises in the first instance.

To appropriately use a qualification as a mark, a term must also be displayed in a commercially reasonable volume and at reasonable timed intervals. The appropriate continuous use for mark status depends primarily upon the particular industry or trade in which the mark is displayed. An excellent example of the use of a logo as a mark, as well as a broad interpretation of such use is, Kelly-Brown et al v. Winfrey et al., 717 F.3d 295, 106 U.S.P.Q.2d (2d

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Last Issue's Cryptoquote Answer

CHBRMVE TMNN XJR WE BEUOED HXRMN RGJBE TGJ IUE HXIQQEVRED IUE IB JHRUIKED IB RGJBE TGJ IUE." - WEXCIPMX QUIXSNMX

Justice will not be served until those who are unaffected are as outraged as those who are."

— Benjamin Franklin

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The Theory of Everything: Intellectual Property, Part 2

Cir.2013)**.** The plaintiff owned a motivational services business organized around her federally registered logo "own your power®." When Winfrey displayed the same logo across her multi-media empire, the plaintiff filed a lawsuit for, among other issues, trademark infringement. The district court dismissed the complaint for trademark infringement based upon Winfrey's defense of fair use. Trademark fair use means in large part that a logo is not being used as a mark to designate a source of services and/or goods, but instead, only in a descriptive or nominative manner. However, the appellate court concluded that Winfrey's repeated display of Kelly-Brown's logo in exhibits, media events and a magazine, was intended to create an association with Winfrey's media services in the minds of consumers, and such displays therefore comprised use as a mark. Based upon this conclusion, as well as other findings for fair use, the appellate court reinstated the plaintiff's complaint for trademark infringement.

Nevertheless, not all continuous display of a term in business or commerce automatically qualifies as appropriate mark use. For example, a design upon on a t-shirt may not qualify as a protectable mark, depending upon how it is positioned and formatted on the shirt. If not correctly configured, then the design may only function exclusively as ornamentation. Similarly, a logo on a business card may not function as a service mark if the service mark is not properly positioned and formatted upon the card.

Trademarks can be displayed upon the product itself, such as a toy or a pack of gum, as a stamp, label or other affixing means. The containers or packaging in which the products are placed can also be labeled or otherwise display the trademark. Websites must bear the trademark or service mark in a prominent position, properly formatted and visually associated with the goods. There must also be point of sale information clearly displayed so consumers may order directly from the site. Service marks can be placed upon, although not exclusively, stationary invoices, envelopes, résumés and business cards. Service mark placement upon websites should follow the same formatting and point of purchase information requirements as trademarks. Moreover, unlike trademark, service marks are legally compliant by display upon advertising materials.

Whether company names or trade names actually function as marks in use also depends upon how they are displayed upon products and /or items such as a website, containers, envelopes, stationary or even sides of a vehicle. Company names or trade names must also satisfy the statutory categories described above.

Common law marks and federally registered marks

Appropriate display and use of terms create certain rights even without federal registration. These terms are known as common law marks and rights thereto arise automatically upon (i) appropriate continuous use in business and (ii) use prior to other purported mark owners. For common law rights, the mark need only be used locally in an appropriate manner. As a result, when infringement litigants are all common law mark owners, the litigant who used the mark earliest in a common geographic area will generally prevail.

For federal registration there must be (i) continuous use of the mark in commerce by a business (ii) outside the state from which the mark originated (iii) while associated with specific products and/or services. However, federal registration provides more substantive rights than common law use, such as priority to use the term in geographic areas where it has not yet been used as a mark. In contrast, the common law mark owner only has rights in geographic areas in which the term has been actually used as a mark for specific goods and services. Owners of federal registered marks must sidestep certain geographic regions if a mark was properly in actual use prior to federal registration.

Federally registered marks may display the registration symbol ® as a superscript or subscript, as may the trade name or company name if federally registered. A mark owner may also display a "TM" superscript or subscript that indicates that a logo and/or design functions as a mark. However, if the logo and/or design is not properly used or within the appropriate category, "TM" will not provide authentic trademark or service mark status. A qualified exception to the 'use it or lose it' requirement for mark ownership is the federal register intent to use application. With intent to use, an applicant can temporarily reserve a filing date if the mark is appropriately used by a statutory deadline.

Marks may maintain federal registration status indefinitely if the owners file the appropriate documents and fees with the trademark office. 15 U.S.C. 1058, 1059. Common law marks are also enforceable indefinitely if they are properly displayed (i) upon or in relation with appropriate products and /or services, and (ii) in a reasonable continuous manner in business. Just because a mark is no longer on the federal register does not necessarily mean that this mark is no longer enforceable. Instead, the mark may have accrued common law rights. Another important practice point is that transfers of common law marks, as well as federally registered marks, should always include the good will associated with that mark.

Business entities generally seek federal registration for the most expansive substantive trademark and service mark rights, although state registers may provide procedural litigation advantages.

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Copyright

U.S. copyright law is exclusively federal and protects subject matter known as 'works of authorship.' Copyright only exists in tangible works with sufficient creativity and originality, and copyright does not exist for (i) intangible ideas, process or concepts or (ii) short words and phrases. With some time-related exceptions, copyright arises after a work is created fixed form.

The term 'copyright 'designates property ownership of a work with entitlements to:

a. reproduce a work;

b. distribute a work;

c. perform a work publicly;

d. display a work publicly;

e. prepare derivative works; and

f. for sound recordings, perform publicly by digital audio transmission.

Some rights, such as reproduction, distribution and derivative works, are always part of this bundle, while others, such as public performance and public display, depend upon the type of work. In particular, preparation of derivative works is the right to modify that owner's previously existing work.

The statutory categories of works eligible for copyright are:

1. Literary works;
2. Musical works (and accompanying words);
3. Dramatic works;
4. Pictorial, graphic and sculptural works;
5. Audio visual works;
6. Sound recordings;
7. Architectural works;
8. Choreographic works; and
9. Computer programs.

Authorship and ownership

Authorship is not the same legal concept as ownership under U.S. copyright law. An author is generally the person who has created the work, while the copyright owner holds the property entitlements. Examples of persons who can simultaneously be both author and copyright owner are portrait painters and photographers. Copyright ownership can be transferred by operation of law, such as by inheritance, as well as by contract. For transfer of copyright exclusively to another party, the agreement should be written with the transferee's signature.

Employment is an exception to the general rule that the author is also the copyright owner of a work. Unless there is a contrary agreement, an employer is both the author and the owner of any work that the employee creates within the scope of employment. Copyright ownership and authorship are automatically transferred to the employer as a matter of law in the employment relationship, and so no agreement is necessary. The law is more complicated if the author (i) is not an employee and (ii) creates certain statutory categories of works (iii) pursuant to contract. Under these circumstances the party commissioning the work should require that the author sign a work for hire agreement. This agreement must (i) be signed by both parties prior to beginning the work and (ii) include specific language.

Without a transfer agreement or work for hire agreement, copyright ownership remains in the author even if the commissioning party has paid for creation of the work! The unique advantage of a work for hire agreement is that it transfers authorship as well as copyright ownership. Transfer of authorship prevents a reversionary copyright ownership from arising, and so this agreement prevents the original author(s) or the authors' legal successors from reacquiring the copyright to the work.

Copyright may be unbundled so only certain entitlements are transferred or perhaps infringed. For example, in American Broadcasting Cos., Inc. et al. v. Aereo, Inc. et al., 2013 Lexis 4496(June 25, 2014) the plaintiffs contended that Aereo was infringing their right to public performance because Aereo streamed their copyrighted works without payment of a licensing fee. Aereo contended that there was no public performance right because it streamed a unique copy of a program to each purchaser. However, the Supreme Court held that the cumulative transmissions of the underlying works was key, and each single transmission in and of itself was not determinative. As there were cumulative transmissions to more than one person, there was public performance of these works by Aereo.

Duration of copyright

For works created on or after January 1, 1978, copyright generally expires in a work after the natural lifetime of the author plus seventy years. Duration of copyright in works for hire is either (a) 120 years from the creation of the work or (b) ninety-five years from publication, whichever is shorter. There are other rules for copyright duration for works created and/or published prior to 1978.

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The Theory of Everything: Intellectual Property, Part 2

Fair Use

Copyright fair use is a very important exception for activities which would otherwise comprise copyright infringement. According to its most generic definition copyright fair use is a defense to copyright infringement whenever a third person (i) incorporates a copyright owner's work or otherwise modifies it (ii) for non-commercial purposes and (iii) without commercial injury to the copyright owner. 17 U.S.C. 107.

A common question in litigation is how much of a work can be copied or modified without the copyright owner's permission. Since there are numerous factors to balance, the judicial results vary. In Authors Guild et al. v. Google, Inc., 954 F. Supp. 2d 282, 2013 Dist. Lexis 102198, 108 U.S.P.Q.2d 1074(S.D.N.Y. 2013) the district court held that Google could copy entire written works ,without permission of the copyright owners, for research and academic purposes.

However, in Cariou v. Prince et al., 714 F.3d 694, 106 U.S.P.Q.2d 1497 (2d Cir.) *cert. denied* 143 S. Ct. 618, 187 L.Ed2 411 (2013) the defendant constructed several collages upon the plaintiff's copyrighted photographs which the defendant thereafter displayed and sold. The plaintiff filed a copyright infringement lawsuit and appealed the summary judgment based upon copyright fair use in favor of the defendant. The appellate court concluded that several collages of the defendant completely obliterated the original photographs and thus were fair use. The appellate court also noted that there was no significant commercial injury to the plaintiff because he had not sold numerous photographs. Nevertheless, the court also concluded that other collages predominantly displayed exposed photographs, so the appellate court vacated the summary judgment for these collages.

Overlap with marks and patentable subject matter

A design that qualifies for copyright registration may also function as a trademark or service mark. Consequently, a transfer of copyright ownership to a third person may not necessarily transfer the right to use the design as a mark. Similarly, an affirmative defense of copyright fair use does not address the same requirements as trademark fair use, so businessmen and artists should proceed cautiously to prevent inadvertent infringement under either law.

Copyright may also protect patentable subject matter. For example, visual art as ornamentation on a mirror may also qualify for a design patent because the definition of design patent subject matter is ornamentation on an article of manufacture. An interesting challenge occurs whenever a client presents subject matter which may qualify for protection under more than one of these laws. Since a particular subject matter may qualify for protection under more than one statute, this is a great opportunity for creative strategizing with a client!

Adrienne B. Naumann has practiced intellectual property for almost twenty years in the Chicago. She graduated from Chicago-Kent College of Law with high honors. She attended the University of Chicago where she received her bachelor's degree and the University of Illinois where she received her master's degree. Ms. Naumann provides trademark, copyright and patent applications as well as supporting areas of law. http://home.comcast.net/~adrienne.b.naumann/IP,

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The Struggles over Daylight Time

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By Richard Wires

For many thousands of years humans regulated their daily lives by the sun. Of course countless millions still do. People neither knew nor cared that the earth's position in relation to the sun differed in even nearby places. But eventually inquisitive people sought to understand their world, studying the stars and solar system, inventing calendars and mechanical clocks, exploring and mapping the unknown areas, and trying to discover or impose some natural order. One such uncertainty was time. The early nineteenth-century advances in transportation and communication technology, including the railroad and telegraph, made uniform measurement and consistent organizing of time a necessity. Conditions were chaotic both internationally and even within large countries like the United States where every community had autonomy in setting local clocks and watches. Ironically the most heated debates in the establishment of times and zones came rather late over proposals for annual one-hour shifts to summer or daylight time. The battle over so-called Daylight Saving Time (DTS, sometimes wrongly called "Savings") has been a curious story. But it was the last chapter of a much longer one.

Our system of measuring time evolved slowly. People in ancient Mesopotamia and Egypt used well-placed dials and obelisks to track sun time, dividing each day into two twelve-hour periods, with hour units varying by time of year, but in the thirteenth century Abul-Hassan al-Marrakushi of Cairo introduced hours of equal length. Mechanical clocks appeared about the same time but were not very accurate. Installed over time in town and church towers, so all could see them, or hear their bells ring, they were set at what locals thought noon. Astronomical observatories were soon able to calculate "mean time" or the average length of every day. Clocks became more accurate once set daily. Britain's Royal Observatory at Greenwich first dropped a time ball in 1833 to tell ships and people of exact noon; later it sent out time messages by telegraph; before long there was a wide acceptance of Greenwich Mean Time or GMT both across the kingdom and beyond. All British trains operated on GMT beginning in 1847.

Devising means to measure distances and possible time zones around the world was another problem. In ancient Greece the astronomer Hipparchus imagined 360 north-south lines around the earth's sphere and 180 east-west lines running parallel to the Equator. The idea would become longitude and latitude. In time longitude lines were also called meridians (from Latin *meridies* or mid-day) but each country chose its own prime meridian. President Arthur invited nations to an International Meridian Conference in Washington in October 1884 which set a common prime meridian at Greenwich. Over the next thirty years countries slowly came to adopt that line. Time zones were created starting with it.

Most smaller countries lie within a single time zone. In large nations extending east-west, like the United States, Canada, Russia, China and Brazil, setting internal zones was also needed. Doing so in America was not always easy. The number of locally observed times made a confusing patchwork. Problems had been managed until the coming of long-distance train travel when individual railroads, especially for east-west services, needed a consistent basis for their schedules and timetables and introduced so-called railroad time. But by the early 1870s there were more than 70 different railroad time zones. Then Charles F. Dowd proposed they use longitude lines to create four zones an hour apart stretching across the United States and Canada: Eastern, Central, Mountain, Pacific Zones. An Atlantic Zone was added for easternmost Canada and still later another one called Alaska Time. He lobbied the railroads for years until at their Chicago conference in October 1883 they adopted the General Time Convention to take effect the following month. As the idea caught on people everywhere changed clocks and watches to bolster the sensible solution. Many communities still objected, however, so compliance was uneven. Because not everyone liked where the zone lines were drawn such issues continued to rankle. The zones were not sanctioned by national law until much later.

The purpose of shifting clocks back for summer, "spring forward, fall back," was to make best use of daylight. But there is no adding or "saving" of daylight in the normal sense. Adjusting clocks just allows longer natural light in the evenings while making mornings darker. It provides daylight at both ends of the day during the height of summer. The idea was first proposed by Benjamin Franklin when he was living in Paris in 1784,

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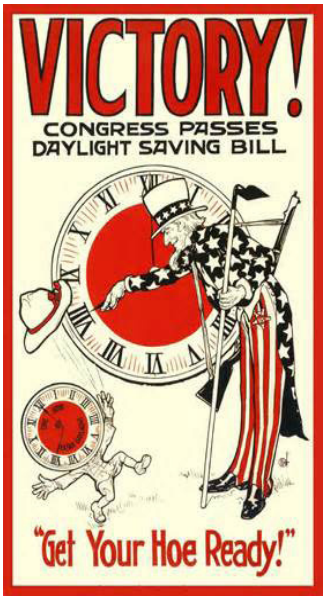

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The Struggles over Daylight Time

but the movement began with William Willett in the early twentieth century, the wealthy English builder arguing in *The Waste of Daylight* (1907) for the change's social benefits. Willet's concept soon had influential supporters, like Arthur Conan Coyle, Winston Churchill, even King Edward VII, but bills failed repeatedly in Parliament.

Initial arguments for summer or daylight time stressed giving people longer evenings for leisure and outdoor activities. Conserving fuel for electric lighting became an additional aim during both World Wars and in other similar crises straining a nation's vital energy resources. Asserted also is that evening daylight reduces auto accidents and street crime. Many believe summer time is simply good sense. Studies in various countries have generally supported such points. Daylight time has proven widely popular for summer months, especially in urban communities, but using it year-round has been strongly opposed. The major opponents of daylight time have always been farmers whose animals and therefore their own activities follow the sun. Having local businesses and markets on a different time complicates their lives. Parents too often object because during parts of spring and fall children may be going to school in darkness. Still others believe their traditional time is "God's time" or the natural order of the universe. And some just think shifting clocks twice a year is confusing or resist any sort of change in their routines.

World War I changed arguments for DST. Cutting back use of evening electricity and the coal needed to produce it became an aim of all the powers. Germany was first to adopt summer time in April 1916; opposition delayed adoption in Britain until the following month; France started using summer time in mid-June 1916. Smaller countries also joined the conservation movement but neutral Scandinavia soon shifted back because summer evenings were too long. Summer time was called patriotic, but proved popular as well, and lasted throughout the conflict. Fuel savings in France during just 1916 were typical: 400,000 tons of coal worth today over $125 million.

In America advocates of DST had made only slow progress, but greater Cleveland, part of the Central Time Zone at that time, achieved DST early, deciding to adopt Eastern Time in April 1914. Detroit in much the same situation took similar action a year later; the Tigers' Ty Cobb argued for DST to stop games being halted for darkness. But railroads fought any national change to DST because 1.7 million clocks and watches would need adjusting. Again the war changed thinking. In March 1918 Congress passed the Act to Save Daylight and to Provide Standard Time (Public Law 65-106). One part of the act finally made railroad time and zones official nationally. The law's other part established DST through October or for seven months annually. Although the law affected only foreign and interstate commerce, under the Interstate Commerce Commission's oversight, this change quickly produced a widespread conformity. Canada then switched to DST as well as April.

While people everywhere had accepted DST as a wartime necessity, peace brought renewed debate over the change, with Germany very quickly rejecting it for the postwar period. France kept summer time except in 1922 throughout the interwar years, however, and Britain extended it annually until making it permanent in 1925. The Soviet Union adopted it year-round in 1930.

In the United States the issue caused heated conflict in summer 1919. It was largely a struggle between city and rural interests. When wording repealing DST was attached to the Department of Agriculture's appropriations bill, President Wilson for that reason vetoed the bill on 12 July, and the House voting immediately 247-135 barely failed to override the veto. When separate DST repeal measures then passed both houses, that bill was vetoed as well, but on 19-20 August both houses overrode the veto. The enactment of Public Law 66-40 left much bitterness. Confusion reigned as state and local governments took action. New York repealed its state DST law but New York City retained DST. Massachusetts under Governor Calvin Coolidge kept DST, confirmed in 1924 by public vote, but the Massachusetts State Grange fought it. Having lost in a federal court, it went to the U.S. Supreme Court where Oliver Wendell Holmes delivered the decision, that the state law was constitutional. When President Harding in spring 1922 asked federal offices to start an hour early both Congress and the Supreme Court refused. So despite the capital's oppressive heat the plan failed. The film industry helped defeat DST in California in 1930 to keep people attending movies. In North Carolina the city of Raleigh adopted DST in 1932 but North Carolina state offices and institutions ignored Raleigh's law. Yet support for DST grew steadily in America over the years.

At the beginning of World War II the use of DST was implemented at once. Britain extended the summer time period in autumn 1939 and the next year began it in late February. For summer 1941 the country had a two-hour change or "double" summer time. Germany adopted DST in spring 1940. When America entered the war Congress passed Public Law 77-403 on 20 January 1942 to make DST effective on 9 February. But to please farmers and other opponents it was to be terminated six months after the war's end. In fact so-called "War Time" was cancelled just three weeks after World War II fighting stopped.

Once again states and cities acted on their own. In the early postwar years about 50 million Americans or 40 percent used DST but in a patchwork of forms. New Englanders like summer time the most; it was least

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popular in the South. In 1953 eleven states followed DST and Congress made it annual for Washington. Yet there were so many anomalies and problems in transportation and communication that something had to be done. Part of the confusion was that places with DST used different dates for starting and ending it. On 13 April 1966 President Johnson signed the Uniform Time Act or UTA (Public Law 89-387): DST would begin on the last Sunday of April and end the last Sunday in October. Because a state could exempt itself entirely, but not just part of it, four states passed laws doing so: Indiana, Michigan, Arizona, and Hawaii. But eleven states were in two time zones. Indiana in the Eastern Time Zone had the hottest debates since its northwest and southwest regions near Chicago and around Evansville respectively were in the Central Time Zone. And areas around Cincinnati wanted daylight time which Ohio had adopted. Given such situations Congress amended the UTA by Public Law 92-267 in 1972 to let dual time-zone states exempt areas. After further contentious debate Indiana adopted DST but many people remained unhappy.

When the October War of 1973 produced an embargo on oil deliveries to the United States, the country faced an energy crisis not unlike wartime, and Washington took quick action to deal with America's sudden shortages of heating oil and gasoline. The Emergency Daylight Saving Time Energy Conservation Act was signed by President Nixon in late 1973 (Public Law 93-182). DST would be used year-round until October 1975. There were mixed reactions to the law. Over a half-dozen children's deaths on dark mornings in Florida caused many people to oppose using daylight savings time in winter. Nor were the country's energy savings that great. The oil embargo ended in mid-March 1974, the act was amended that October to have DST start in late February 1975 instead of running all winter, and the 1973 DST law expired that autumn. America returned to six-month daylight time under the UTA.

In the mid-1980s there was a new push to make DST somewhat longer, adding three weeks in spring and one in fall, from the first Sunday in April to the first Sunday in November. A powerful business coalition urged Congressional approval but opponents stalled action. Then without the week's extension into November the change was included in the 1986 Federal Fire Prevention and Control Appropriations Act (Public Law 99-359) and use of DST with three more weeks in spring became law.

And there things now stand. The century-long debate at the national level seems finally over. But history clearly shows that events like war or oil crises could again bring demands for extending daylight time.

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. "

Poet's Corner

THE CLOSING OF THE OPENING
By Paige M. Simkins

Dusk has fallen upon us,
the sun has become the moon,
the darkness exchanged with light.

I once kissed your forehead, your eyes,
and treaded on the air you breathed
on past nights long gone away from us.

We hold distant memories of standing
on that old historic bridge where white
and bright colored orange Koi filled
the pond, giving us their blessings.

Now I sit here and reason, making
an argument with the moon, I ask and am
not told but told the stars are aligning.

The stars are aligning for me, for me.

Paige Simkins is a poet who lives with her dog, Sir Simon, in Tampa, Florida. She holds a Bachelor degree in English (CRW) and a Master's degree in Library and Information Science. She works as a Librarian and is very passionate about poetry, libraries, VW Beetles, and visual art.

Compassionate Immigration, Terrorism, and Gender

How Women and Girls Are Disproportionately Harmed By Terrorism-Related Bars to Asylum Part 1 of 2

Endnotes for this article can be found in the online edition of Friendly Passages

By Ashley Walker

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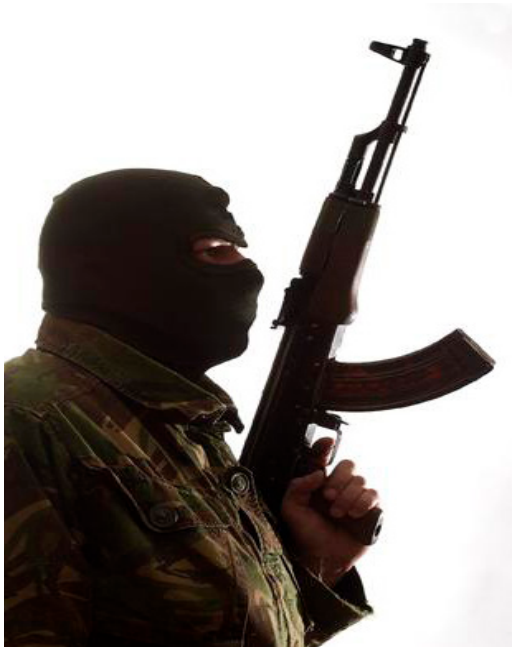
Since the terrorist attacks of September 11, 2001, the federal government of the United States has done its utmost to demonstrate that it takes the threat of terrorism very seriously.[1] The Bush administration is well-known for its counterterrorism and national security measures, from the Patriot Act of 2001[2] to the detention facilities in Guantanamo Bay and Abu Ghraib.[3] The Obama administration is no slacker when it comes to counterterrorism policy, however, from its heavy reliance upon drone strikes and targeted killings[4] to the continuation and scaling up of the National Security Administration's surveillance programs.[5] Immigration laws and policies are naturally not immune to these developments in national security policy. After September 11, Congress passed several pieces of legislation that are designed to keep terrorists and enemy belligerents from gaining immigration benefits in the United States.[6] However, though they may have had some success in this regard, they have frequently led to a variety of injustices for foreign victims of terrorist attacks.[7] Eternally prescient are the words of Justice Jackson in his dissent in *Knauff v. Shaughnessy*; "Security is like liberty, in that many are the crimes committed in its name."[8]



Before proceeding into more in-depth analysis, it may be helpful to provide a few brief examples of issues that have arisen for victims of terrorism. One example is the way in which asylum applicants who are deemed to have provided material support for terrorism are barred from receiving asylum status, even if they were subject to physical violence or other forms of coercion.[9] For instance, being held hostage in one's home by members of a rebel group could trigger the bar, as could paying a ransom to avoid the assassination of a family member.[10] The statutory language regarding the material support for terrorism bar, as one BIA Board member observed in 2006, is "breathtaking in its scope."[11]

In 2008, a Department of Homeland Security official denied an Afghan refugee's application for permanent residence because he had "testified in [his] interview for Asylum that [he was] a member of one of the political factions fighting the Taliban in Afghanistan."[12] This was not the first time that the terrorism-related bars to asylum resulted in the denial of an application by a refugee who had actually fought on the side of the United States against a group like the Taliban. The laws and policies as they currently stand have resulted in a number of backward and unjust consequences, and until the law is changed, it is sadly unlikely that refugees will be able to find the respite that they seek.

A. WHAT ARE THE TERRORISM-RELATED BARS TO ASYLUM, AND HOW WERE THEY IMPLEMENTED?

Terrorism-related provisions were added to the Immigration and Nationality Act (INA) as part of the USA Patriot Act in 2001 and the REAL ID Act of 2005, ostensibly in order to serve two very legitimate purposes.[13] First, the provisions were supposed to exclude those individuals who may pose threats to our national security from entering the United States. Second, they were intended to impose a penalty upon those who have engaged in or supported acts of violence that are unlawful and condemned by both United States and international law.[14] However, as will be seen, these policies have frequently resulted in tragic and unintended consequences. While the proper function of the terrorism bar should be to protect refugees while excluding those who may cause harm to our nation, it has in fact caused many refugees lasting harm by lumping them into the same category as the terrorists who once persecuted them.[15]

Under the INA Section 212(a)(3)(b), aliens who provide material support for the commission of a terrorist activity, or to a terrorist organization or individual that has committed, or plans to commit, a terrorist act, are inadmissible or deportable for having engaged in terrorist activity.[16] They are also ineligible for most immigration benefits, including asylum relief.[17] This statute and other laws relating to immigration and counter-terrorism have been interpreted in a wide-ranging and over-expansive manner that has led to many victims being declared inadmissible or deportable themselves.[18] In fact, a key problem with the

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Compassionate Immigration, Terrorism, and Gender

current law and policy regarding terrorist bars to asylum is that the Department of Homeland Security's definition of what constitutes terrorism is extremely broad. Ironically, the very facts that would have once bolstered a potential applicant's claim for asylum are those that can now bar him or her from gaining asylum status.[19]

To seek asylum, one must demonstrate a well-founded fear of persecution on the basis of one of five factors: specifically, one's race, religion, nationality, political opinion, or membership in a particular social group.[20] An applicant must establish that the government is either involved in the persecution or unable to control the conduct of private actors.[21] Additionally, if they are a "member of a particular social group," they must show "social visibility" in order to determine whether the group is recognized by society and may be sought out for persecution as a result.[22] This can be especially difficult to demonstrate when an applicant's claim is based on gender or sexual orientation, since the victim's persecution is generally hidden in the private sphere, and furthermore, "the group members themselves may be veiled from sight."[23]

Since many victims of terrorism may be targeted because of one or more of these five factors, these victims would seem to be ideal candidates for asylum relief.[24] They can easily demonstrate past persecution if they have already been victimized, and many can also show that they were persecuted on the basis of their race, religion, nationality, political opinion, or membership in a particular social group. If a terrorist organization is controlling their government, they can additionally demonstrate that the government is involved in the persecution or unable to control the terrorists' conduct. However, if they are deemed to have provided any sort of material support to an individual or group that is determined to have engaged in terrorist activity, they generally will not be able to gain asylum in the United States.[25] There is currently no exception for acts resulting from physical violence or coercion, nor is there a statutory exception for *de minimus* support.[26] [27] Furthermore, what constitutes as material support may include almost anything from small amounts of money to food or shelter, as will be later discussed.[28]

Before moving any further, it would first be helpful to take a closer look at the two pieces of enacting legislation that brought about these changes to immigration law and policy by adding the terrorism bars to asylum, known as the USA Patriot Act of 2001 and the REAL ID Act of 2005. The USA Patriot Act had a wide-ranging spectrum of goals, but among them was to create a three-part definition of "terrorist organization" for the purposes of immigration law.[29] Tier I and Tier II groups are defined by the Secretary of State and are publicly available on the State Department's website.[30] However, Tier III groups are simply called "undesignated terrorist organizations" defined as "any group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, terrorist activities."[31] Any government adjudicator, such as a DHS officer or an immigration judge, can make a determination of whether a group is a Tier III organization on a case-by-case basis.[32] The nebulous nature of the Tier III category has led to one of the central problems with the law as it currently stands, which is that groups may be designated as "terrorist organizations" without any clear legal justification for this status. In fact, it has resulted in many groups being labeled 'terrorist organizations "where the U.S. supports the goals of the group and non-combatants are not targeted."[33] KC REVIEWED

The REAL ID Act of 2005 was designed for several main purposes: to "establish and rapidly implement regulations for State driver's license and identification document security standards," "to prevent terrorists from abusing the asylum laws of the United States," and "to unify terrorism-related grounds for inadmissibility and removal."[34] The law has not been a sweeping success in terms of state participation with its requirements; as of January 2014, 21 states have met the drivers' license requirements of the REAL ID Act, 20 states and territories have been granted renewable extensions, and 15 states and territories are noncompliant (but are eligible for extensions).[35]

On a first reading, it may seem odd that terrorism-related grounds for inadmissibility and removal were grouped with a law that established regulations for drivers' licenses. However, insight may be gained from the testimony of Congressman Lee Hamilton, who appeared before Congress in 2011 regarding the need for swifter implementation of the REAL ID Act's requirements.[36] At that time, Congressman Hamilton was Co-Chair of the Bipartisan Policy Center's National Security Preparedness Group (NSPG), a successor to the 9/11 Commission.[37] In his testimony, Mr. Hamilton stated, "Eighteen of the nineteen 9/11 hijackers obtained 30 state-issued IDs amongst them that enabled them to more easily board planes on the morning of 9/11."[38]
He went on to note that, "[d]ue to the ease with which fraud was used to obtain legitimate IDs that helped the hijackers embed and assimilate in the U.S. for the purpose of carrying out a terrorist act, the 9/11 Commission

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recommended that '[t]he federal government should set standards for the issuance of birth certificates and sources of identification, such as driver's licenses.'"[39] The REAL ID Act was designed to establish these standards via legislation, in order to prevent terrorists from applying for IDs and to preclude them from misusing United States immigration laws to seek benefits or legal status.[40]

However, the REAL ID Act has also resulted in many of the injustices previously cited, often because the law allows for an overly expansive application of its definitions to victims of terrorist attacks. It has barred from admission and refugee protection anyone "who is a member of a terrorist organization," including Tier III terrorist organizations that are designated on a case-by-case basis. In a particularly frustrating decision, it has also barred the spouses and children of individuals who are judged to be inadmissible, based on terrorism-related activities that occurred within the past five years.[41]

As Cardinal Theodore McCarrick, the Archbishop Emeritus of Washington and a leading advocate for compassionate immigration reform[42], stated in his testimony before the Senate Subcommittee on Immigration, Refugees, and Border Security on October 8, 2009,

> *"We also believe that the definitions of terrorist activity, terrorist organization, and what constitutes material support to a terrorist organization in the Immigration and Nationality Act (INA) were written so broadly and applied so expansively that thousands of refugees are being unjustly labeled as supporters of terrorist organizations or participants in terrorist activities. . . We urge the committee to re-examine these definitions and to consider altering them in a manner which preserves their intent to prevent actual terrorists from entering our country without harming those who are themselves victims of terror—refugees and asylum seekers."*[43]

It is difficult to know exactly how many people have been affected by these provisions, since the United States government does not provide public records of the reasons for denying an asylum application. However, according to a 2009 report from Human Rights First, "over 18,000 refugees and asylum seekers have been directly affected by these provisions to date."[44] As of that year, over 7,500 cases pending before the Department of Homeland Security were on hold based on an issue relating to the terrorist-activity bars to asylum.[45] The report indicates that "the overwhelming majority of these cases are applications for permanent residence or family reunification filed by people who were granted asylum or refugee status several years ago and have been living and working in the United States since then."[46] It is unlikely that many of them pose a threat to national security, since in order to keep an applicant's case on hold, the Department of Homeland Security must actually believe that the individual does not pose a danger to the United States.[47]

There was an attempt in 2007 to assuage the burden on some refugees, when Congress passed a small number of statutes and expanded the discretion of the Department of Homeland Security and the Secretary of State to grant waivers for individuals who meet certain criteria.[48] However, the process for seeking a waiver is long and difficult, and in the end, it still comes down to one officer's decision about whether or not an applicant is worthy for relief.[49] Instead, the policy should be based upon on legal principles that render and interpret the material support for terrorism bar to asylum as narrowly as possible, in order to exclude terrorists but include victims of terrorist attacks who may have been coerced into contributing aid of some kind. A few members of Congress have proposed changes to immigration law to address these concerns. For example, in 2010, Senator Patrick Leahy of Vermont introduced a bill called the Refugee Protection Act, which would have narrowed the definition of terrorist activity and terrorist organizations in the INA and crucially, would have excluded coerced actions from evidence of terrorist activity.[50] However, the bill was not passed and has not been reintroduced since then.[51]

The overly broad definitions and interpretations of the

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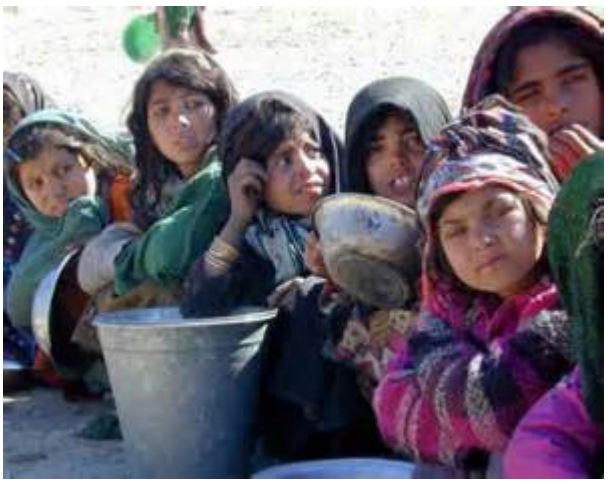

Functions And Liabilities Of Ocean Transportation Intermediaries

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By Daniel W. Raab, Esq.

This article is designed to provide some basic information regarding ocean freight forwarders which follows Non-Vessel Operating Common Carriers. They are an important element of the ocean transportation industry. They are also referred to as Ocean Transportation Intermediaries which can also be referred to as OTIs. The regulations governing them can be found at 46 CFR Part 515.

A license by the Federal Maritime Commission is required to operate as an ocean freight forwarder. The ocean freight forwarder must post a bond of $50,000.00 and essentially acts as a travel agent for cargo. The ocean freight forwarder prepares the documentation on outgoing cargo including information for bills of lading, preparing invoices, the SED Export form, consular documents. Most ocean freight forwarders sell ocean cargo insurance. This can be purchased pursuant to an open cargo policy. The ocean freight forwarder handles shipments from the United States to other countries. It is not an ocean carrier.

The ocean freight forwarder can attempt to limit its exposure to $50.00 per shipment if it utilizes the proper language on an invoice and/or its contract with the shipper. The National Custom Brokers and Freight Forwarders Association does have a form with standard terminology that is utilized by many ocean freight forwarders.

Ocean freight forwarders are often in associations with custom brokers. There is an organization called the National Custom Brokers and Freight Forwarders Association as well as a state organization, the Florida Customs Brokers and Freight Forwarders Association. These organizations have an educational component as well as acting as advocates for the industry. They offer extensive seminars on topics that are important to their memberships.

One of the theories that try to make an ocean freight forwarder liable to a shipper would be negligent selection of a carrier. *Chicago, M., S. P. & P. R. Co. v. Acme Fast Freight, Inc.*, 336 U.S. 465 (U.S. 1949). Another theory could be if the documentation was prepared improperly by the ocean freight forwarder. *Distribuidora Internacional Alimentos v. Amcar Forwarding, Inc.*, 2011 U.S. Dist. LEXIS 25138 (D. Fla. 2011).

The Non-Vessel Operating Common Carrier is a marine carrier that is not actually operating the ocean vessel and is also licensed by the Federal Maritime Commission. It typically consolidates cargo; that is, it combines more than one shipper's cargo in the same trailer or container. The reason why one would utilize a Non-Vessel Operating Common Carrier is that it usually can provide better shipping rates than what the shipper might be able to obtain on its own. A Non-Vessel Operating Common Carrier is also licensed by the Federal Maritime Commission. A corporation can be both an Ocean Freight Forwarder and a Non-Vessel Operating Common Carrier. This has become more and more common in recent years.

The Non-Vessel Operating Common Carrier does issue its own bill of lading. It is however a shipper to the actual ocean carrier that transports the cargo. Its bill of lading looks similar to that of an ocean carrier. Like an ocean carrier, it can be held liable to the cargo interests for lost or damaged cargo. It can however assert limitations such as the $500.00 per package limitation, the one year statute of limitations, and other defenses allowable under the Carriage of Goods by Sea Act. The Non-Vessel Operating Common Carrier must post a bond of $75,000.00. It can also carry liability insurance, although that is not a requirement for a license. The Non-Vessel Operating Common Carrier (NVOCC) must file a tariff with an authorized service which includes its freight charges, although it can enter into service contracts with particular shippers for a set rate of a specific type of shipment. Some NVOCCs also sell insurance to cargo interests. The Non-Vessel Operating Carrier is licensed with regard to shipments that go between the United States and a foreign country.

Both NVOCCs and ocean freight forwarders can have sales agents that book cargo. These sales agents however cannot act and/or hold themselves out as ocean freight forwarders of NVOCCs.

Many large ocean carriers now operate NVOCCs and ocean freight forwarders. Still, there are many independent OTIs in the business.

Hopefully, you now have an idea as to the how a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder fits into the transportation industry. They both play an important role in the movement of cargo.

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material support bar are the real root of this problem, and until the law is changed or a new policy is implemented, many refugees will be left in limbo.[52] There is a rapidly expanding backlog of individuals waiting for a decision about whether or not they may be allowed to stay in the United States, or whether they will be labeled as terrorists and removed to their countries of origin, where they may face further persecution. Changing the scope and the application of the law would not increase threats to national security. Rather, it would allow the attention of agents in the Department of Homeland Security and other counterterrorism officials to be focused more closely on the individuals that Congress intended the laws to target.[53]

Part 2 of this article will appear in the next edition of Friendly Passages

Ashley Walker is a second-year law student at Duke University. Before coming to law school, she was a legal assistant with the firm Lichtman and Elliot, PC, in Washington, D.C., specializing in immigration and asylum law. She graduated from Dartmouth College in 2010 after studying English Literature and Arabic. While in college, she participated in Arabic language study abroad programs and held internships in Fez, Morocco, Cairo, Egypt, and Jerusalem, Israel. Subsequently, she was a paralegal with Cleary Gottlieb Steen & Hamilton, LLP, working primarily on antitrust litigation and securities.

Free Two Hour CLE Program

Friday, April 24, 2015 at 12:00

"Building Flexibility into Estate Plans."

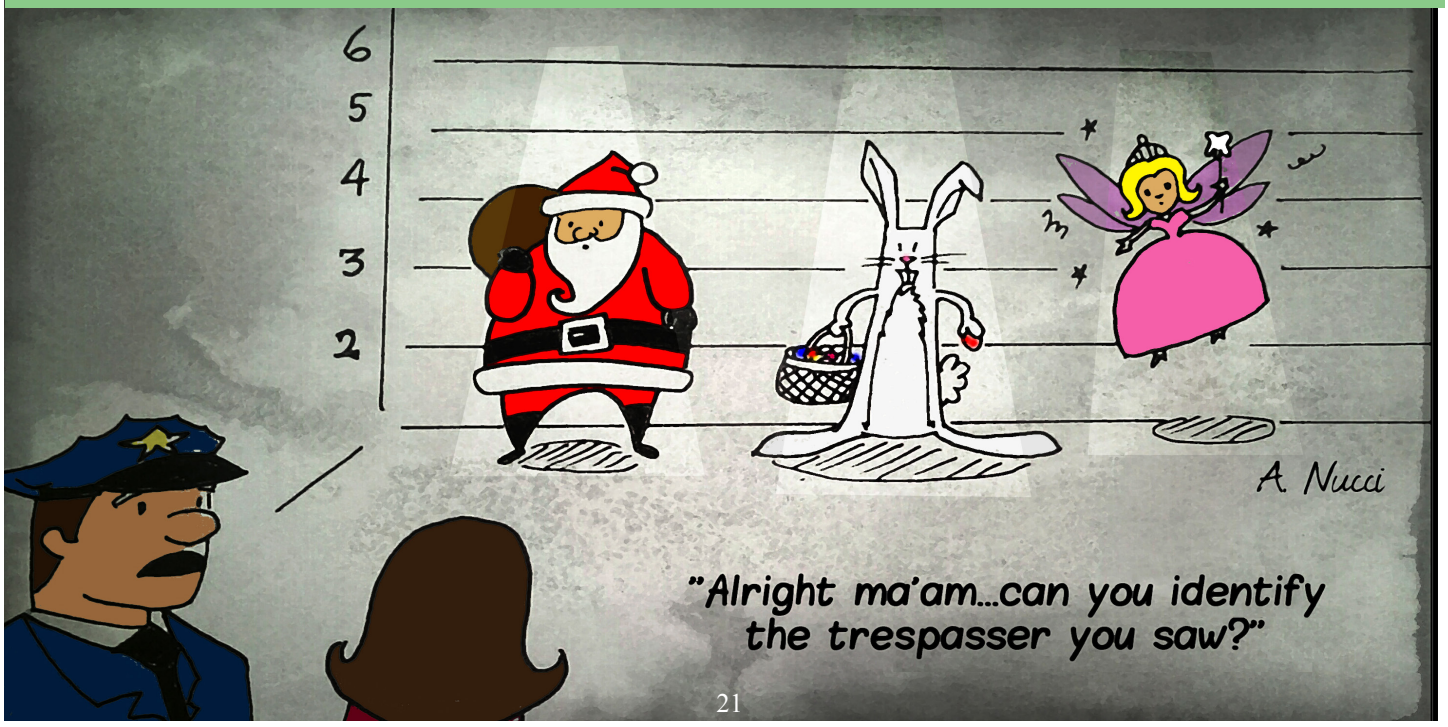
Presented by Bruce Abernathy

1.0 hour of accreditation granted by The Florida Bar

This presentation is sponsored by the Rupert J. Smith Law Library, and it will take place in the main conference room of the Library at 221, S. Indian R. Drive., Fort Pierce, Fla.

Space is limited, so please call ahead to reserve a seat, at 772-462-2370. Lunch is kindly sponsored by Mr. Abernathy. For more information about the Rupert J. Smith Law Library, visit our website: http://www.rjslawlibrary.org

The Lighter Side of the Law



What's New at the Law Library *By Nora J. Everlove*

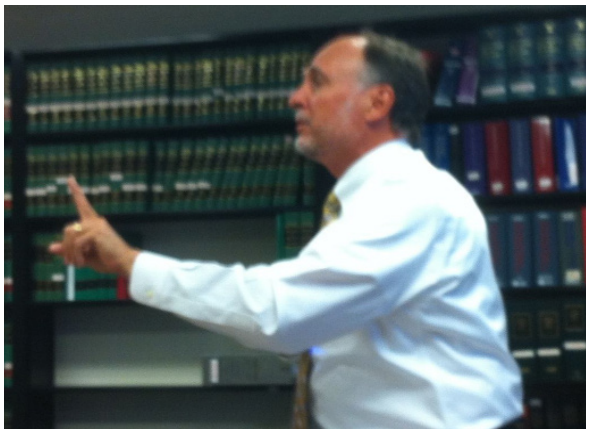
We started our 2015 CLE Lecture Series with Carlos Wells' program, "Juvenile Delinquency Law – From Cradle to City Jail" on February 27. It was very well received with two hours of CLE credit, no cost and a lunch sponsored by attorney Mike Fowler. Next on our schedule is Mike Fowler and "Potpourri of Elder Law or Senior Health Care Law, Recent Developments" for two credit hours approved by the Florida Bar. This will be given on March 27 at noon in the library and Mr. Fowler will sponsor the lunch. Our final spring offering this year is on April 24, when Bruce Abernathy will present, "Building Flexibility into Estate Plans." Mr. Abernathy will sponsor this lunch. Both upcoming programs have no registration fee. Please come join us! Call the library at 772-462-2370 to RSVP. The CLE program will resume again in the fall.

Our Trustees have approved a library remodeling that will provide more seating and add a second small conference room. We will remove the rolling stacks that currently house the National Reporter System and use that space for a new "quiet area" for patrons as well as the small conference room that will seat two. The seating area will have four over-sized work stations, 30" by 50" each that will provide enough room for patrons doing serious legal research. It is away from the bank of computers near the circulation/reference desk as well as the photocopiers. The small conference room will provide study space or an area for attorneys to meet clients. We hope to start construction in May.

Trustee, Jim Wilder, and law librarian, Carmela Gallese, are hard at work on a grant proposal that will provide funding for the library to produce six short videos covering commonly asked questions at our law library. The topics include an introduction on *How to Use the Law Library, End of Life Issues, Early Termination of Probation, Marital Dissolution Questions, How to Seal & Expunge Criminal Records,* and *How to Evict and How to Combat the Eviction Process.* The short videos will be available in the library, at the library website and YouTube. We want to thank the attorneys who have already volunteered to work on this project with us! If you are interested in writing a script and/or appearing in one of the videos, please let us know.

We are getting ready for our annual Law Day Reception and Art Contest on May 4. We are delighted that so many representatives of the Judiciary are participating in this year's program including our keynote speaker, Hon. Robin L. Rosenberg, Federal District Court Judge, Southern District. And, we are proud to be honoring Carolyn Fabrizio, Coordinator of Florida Rural Legal Services, and Dr. Thomas Edwin Massey, President, Indian River State College. We have received over 225 pieces of art created by St. Lucie County School students competing for more than $2000 in prize money. Please see the invitation on the inside cover of this issue for all of the details.

The Friends of the Rupert J. Smith Law Library have created a writing competition in honor of St. Lucie Florida Supreme Court Justice, Alto Adams. Any Florida Law School student may participate and the winning student receives $500. If you know anyone in law school, please bring this to their attention. Please look for more details in a separate announcement in this issue or go to the library web site: www.rjslawlibrary.org.



Bruce Abernathy will present, "Building Flexibility into Estate Plans." April 24th.

Florida Bar CLE Programs At The Law Library

CONTINUING LEGAL EDUCATION - New Acquisitions are at the Bottom of the List

The Rupert J. Smith Law Library of St. Lucie County will lend CLE disks to all Florida Bar Members. Please call us or email us if you would like to borrow one of our programs. If you are at a distance, we will mail them to you. You are responsible for mailing them back after having them a week. If you keep them longer, the overdue fine is $1 per day. Only one program at a time, please. We want to fulfill as many requests as soon as possible. We hope you are able to take advantage of this opportunity.

Recorded CLE Programs - Sorted by Expiration Date

Course #	Title	Expiration Date	General Hours	Ethics Hours
1637	Bankruptcy Law & Practice: View From the Bench 2013	5/7/2015	4.5	0
1639	Agricultural Law Update	5/22/2015	5	1
1672	Probate Law Essential Issues and Development	6/6/2015	8	1
1540	Electronic Discovery in Florida State Court Navigating New Rules for New Issues	7/25/2015	3	1
1686	Advanced Administrative and Government Practice Seminar 2014	10/10/2015	7	1
1678	Art of Objecting: A Trial Lawyer's Guide to Preserving Error for Appeal	9/14/2015	7.5	1
1760	Professional Fiduciary: Responsibilities and Duties	11/2/2015	7	2
1883	Ethics for Public Officers and Public Employees 2014	8/7/2015	4	1
1682	Hot Topics in Evidence 2014	9/21/2015	7.5	1
1670	Masters of DUI 2014	8/21/2015	8.5	2
1666	Divorce over 60	11/14/2015	2	0
1665	Guardian Ad Litem or Attorney Ad Litem: Making Informed Decisions About the Lives of Children	8/19/2015	2.5	0
1667	Representing the Military Service Member in Marital & Family Law Matters	12/4/2015	2	0
1898	Top 10 Things You Need to Know About Florida's New LLC Act	10/25/2015	1	0
1902	Maintaining a TRUSTworthy Trust Account: TRUST ME, IT'S NOT YOUR MONEY	11/4/2015	1.5	0
1375	Managing Business Risk in the Law Firm	12/25/2015	2	0.5
1539	Working in the Cloud: It's the Latest; It's the Greatest, or Is it?	9/5/2015	2.5	0
1702	Bursting Through the Technology Barrier - the RPPTL Edition	11/30/2015	3	2
1899	Drafting a Better Commercial Real Estate Contract - Standard Provisions and Pitfalls	11/15/2015	4	0
1687	The Ins and Outs of Community Association Law 2014	10/4/2015	8	1
1716	IRS: We got What it Takes to Take What You Got (Round 2)	10/25/2015	9	1
1700	Medical malpractice Seminar 2014	9/14/2015	6	1
1903	Survey of Florida Law 2014 (2 copies)	11/9/2015	12	3.5

The Annual Justice Alto Adams Writing Competition

Attention all Florida Law School Students

The Friends of the Rupert J. Smith Law Library invite all students currently enrolled in an accredited Florida Law School to compete in the first Annual Justice Alto Adams Writing Competition.

Papers should be a scholarly endeavor and must have a legal theme on a topic of your choice. The papers will be judged on legal reasoning, the difficulty or novelty of the legal issue addressed, general standards expected of serious work, and include a reference to a recognized citation system as well as the Fla.R.App.Pro. Rule 9.800. The paper must be long enough to accommodate a well-treated topic but not exceed 5000 words. A student may submit a work that has been written as a school assignment but nothing that has been previously published.

Your papers should be double spaced and submitted electronically by email to lucielaw@bellsouth.net with the subject line "Justice Alto Adams Writing Competition 2015" no later than September 15th, 2015. The winner will be awarded $500 and published in "Friendly Passages" magazine which is electronically circulated to most members of the Florida Bar.

Please email Jim Walker at JimW@jimwalkerlaw.com with any questions.

We look forward to receiving your participation!

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(Endnotes)

[1] See, e.g, "Testimony from Dale L. Watson, Executive Assistant Director, Counterterrorism/Counterintelligence Division, Federal Bureau of Investigation", Before the Senate Select Committee on Intelligence, Washington, DC, February 06, 2002, http://www.fbi.gov/news/testimony/the-terrorist-threat-confronting-the-united-states

[2] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

[3] Josh White, "Abu Ghraib Tactics were First Used at Guantanamo", The Washington Post, July 14, 2005, http://www.washingtonpost.com/wp-dyn/content/article/2005/07/13/AR2005071302380.html

[4] Jonathan Masters, "Targeted Killings", Council on Foreign Relations, May 23, 2013, http://www.cfr.org/counterterrorism/targeted-killings/p9627

[5] Michael Boyle, "President Obama's disastrous counterterrorism legacy", The Guardian, August 5, 2013, http://www.theguardian.com/commentisfree/2013/aug/05/obama-legacy-shadow-wars;

[6] Human Rights First, "Denial and Delay: The Impact of the Immigration Law's "Terrorism Bars" on Asylum Seekers and Refugees in the United States", 1, October 31, 2009, http://www.humanrightsfirst.org/wp-content/uploads/pdf/RPP-Denialand-Delay-FULL-111009-web.pdf

[7] Id.

[8] *Knauff v. Shaughnessy*, 338 U.S. 537, 551 (1950)

[9] The National Immigrant Justice Center website, "The Terrorism Bars to Asylum", http://immigrantjustice.org/terrorism-bars-asylum

[10] Id.

[11] *Matter of S-K-*, 23 I&N Dec. 935, 948 (BIA 2006) (Osuna, J., concurring).

[12] "Denial and Delay: The Impact of the Immigration Law's "Terrorism Bars" on Asylum Seekers and Refugees in the United States"

[13] Id.

[14] Id.

[15] Id.

[16] 8 U.S. Code § 1182 (a)(3)(b) [INA Section 212(a)(3)(b)]; Anwen Hughes, Thomas K. Ragland, & David Garfield, "Combating the Terrorism Bars Before DHS and the Courts", American Immigration Lawyers Association, 450, 2010.

[17] "Combating the Terrorism Bars Before DHS and the Courts", 451.

[18] Id at 1.

[19] Id.

[20] 8 U.S.C. § 1101(a)(42)(A); *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (B.I.A. 1985); *Gao v. Ashcroft*, 299 F.3d 266, 272 (3d Cir. 2002); and *Navas v. INS*, 217 F.3d 646, 655–56 (9th Cir. 2000).

[21] Immigration Equality, "Asylum Basics: Elements of Asylum Law", http://immigrationequality.org/get-legal-help/our-legal-resources/immigration-equality-asylum-manual/3-asylum-basics-elements-of-asylum-law/

[22] A-M-E-, 24 I. & N. Dec. 69 (B.I.A. 2007); C-A-, 23 I. & N. Dec. 951, 961 (B.I.A. 2006).

[23] Fatma E. Marouf, "The Emerging Importance of "Social Visibility" in Defining a "Particular Social Group" and Its Potential Impact on Asylum Claims Related to Sexual Orientation and Gender", 27 Yale L. & Pol'y Rev. 47 (2008).

[24] "Combating the Terrorism Bars Before DHS and the Courts," 450.

[25] Id.

[26] "Combating the Terrorism Bars Before DHS and the Courts." 453-454.

[27] Interestingly, however, in the unpublished decision of *Matter of L-H-*, (July 10, 2009), the Board of Immigration Appeals held that a *de minimus* contribution of "one packed lunch and the equivalent of about $4 U.S. dollars" did not qualify as "material support." See "Combating the Terrorism Bars Before DHS and the Courts", 453.

[28] "Combating the Terrorism Bars Before DHS and the Courts", 453.

[29] Id at 452.

[30] See http://www.state.gov/j/ct/rls/other/des/123085.htm for Tier One groups, and http://www.state.gov/j/ct/rls/other/des/123086.htm for Tier Two groups.

[31] U.S. Citizenship and Immigration Services website, "Terrorism-Related Inadmissibility Grounds (TRIG)", Accessed on November 21, 2014, http://www.uscis.gov/laws/terrorism-related-inadmissability-grounds/terrorism-related-inadmissibility-grounds-trig

[32] Id.

[33] "Combating the Terrorism Bars Before DHS and the Courts", 452.

[34] REAL ID Act of 2005 (REAL ID), Pub. L. No. 109-13, div. B, 119 Stat. 231, 302–23

[35] National Conference of State Legislatures, "Countdown to REAL ID", October 29, 2014, http://www.ncsl.org/research/transportation/count-down-to-real-id.aspx

[36] Testimony of Congressman Lee Hamilton, Co-Chair of the National Security Preparedness Group at the Bipartisan Policy Center Hearing before the U.S. House Committee on Homeland Security "The Attacks of September 11th: Where We Are Today", September 8, 2011, http://homeland.house.gov/sites/homeland.house.gov/files/Testimony%20Hamilton_0.pdf

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[37] Id.

[38] Id at 5.

[39] Id.

[40] Id.

[41] "Denial and Delay: The Impact of the Immigration Law's "Terrorism Bars" on Asylum Seekers and Refugees in the United States", 38.

[42] Theodore McCarrick, "Bring Undocumented Workers Out of the Shadows", The Washington Post, September 1, 2013, http://www.washingtonpost.com/opinions/bring-undocumented-workers-out-of-the-shadows/2013/09/01/fac0ef2e-0e92-11e3-bdf6-e4fc677d94a1_story.html

[43] Id at 3.

[44] Id at 1.

[45] Id.

[46] Id.

[47] Id.

[48] Id at 2.

[49] Id.

[50] Center for Human Rights and Global Justice, *A Decade Lost: Locating Gender in U.S. Counter-Terrorism* (New York: NYU School of Law, 2011), 100.

[51] Id.

[52] "Denial and Delay: The Impact of the Immigration Law's "Terrorism Bars" on Asylum Seekers and Refugees in the United States" at 2.

[53] Id at 3.