Friendly Passages

Supporting Equal Access to Law in Florida

July/August
2015

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

May/June 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.

Friendly Passages — Supporting Equal Access to Law in Florida — July/August 2015

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

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We wish to thank our authors and other contributors for making this issue a success!
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On The Cover

"*Silent Cannons*" Pastel.
By Maj. Owen Nucci USMC

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On Behalf of the Publisher

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

Our prison population, in fact, is now the biggest in the history of human civilization. There are more people in the United States either on parole or in jail (around 6 million total) than there ever were at any time in Stalin's gulags. For what it's worth there are also more black men in jail right now than there were in slavery at its peak. See if this syllogism works, then. Poverty goes up; Crime goes down; Prison population doubles. – Matt Taibbi, **The Divide: American Injustice in the Age of the Wealth Gap**

The term "equal justice under law" is originally credited to Chief Justice Fuller in an 1891 opinion in ***Caldwell v. Texas,*** where, as to the Fourteenth Amendment, he wrote: "the powers of the States in dealing with crime within their borders are not limited, but no State can deprive particular persons or classes of persons of equal and impartial justice under law." It is now part of the bedrock of American law. Equality of justice is included among the basic rights of all Floridians by Art. 1, Sec. 2 of the Florida Constitution: "No person shall be deprived of any right because of race, religion, national origin, or physical disability." This finds expression also in the criminal law where, for instance, Fla. Stat. sec. 921.001(4)(a)1 states that, "Sentencing is neutral with respect to race, gender, and social and economic status." It is a wonderful ideal and principle of law.

But to judge the reality, we must look to our prisons: "The Columbia professor Herbert Schneider told the following story about John Dewey. One day, in an ethics course, Dewey was trying to develop a theme about the criteria by which you should judge a culture. After having some trouble saying what he was trying to say, he stopped, looked out the window, paused for a long time and then said, 'What I mean to say is that the best way to judge a culture is to see what kind of people are in the jails.'" The New York Times, "Is the United States a 'Racial Democracy'?" (Jan. 12, 2014). Our prisons give a different account of equality under law. At the national level, African-Americans, who comprise 13% of the American population, are 40% of the incarcerated population, imprisoned at a rate 5.6 times greater than white prisoners. See ex. Prison Policy Initiative, "Breaking down Mass Incarceration in the 2010 Census: State-by-State Incarceration Rates by Race and Ethnicity" (May 28, 2014).

Here in Florida, of the total state population of 19,600,311, 16.7% are African-American. See US Census Bureau. But 48% of all Florida prison inmates are African-American. Of the 33,295 persons newly entering prison in 2013, 43.3% were African-American. See Florida Department of Corrections, Annual Report (2012-2013).

Unfortunately the same racial disparity shows up in every aspect of our state's criminal justice system, from arrest to sentencing. "Police assigned to routine duties arrest blacks in Florida at a rate 2.9 times higher than their representation in the general population. But police assigned to targeted programs arrested blacks at a rate 9 to 13 times higher than represented in respective county populations." Brennan Center for Justice: "Racial Bias in Florida's Electoral System" (2006). For example, there was recent documentation in Palm Beach County of African-American arrests for marijuana at a rate five times greater than for whites. Palm Beach Post, "Pot Arrest Rate for Minorities Questioned" (February 10, 2014). And "after controlling for different arrest rates between whites and blacks, blacks are still 35% more likely to be convicted of a felony or misdemeanor than whites who have similar socioeconomic status, live in areas with similar crime rates, and have similar criminal records. Blacks are 11% more likely to be convicted of a felony than whites with these similar characteristics." Brennan Center for Justice, supra. White criminal defendants are nearly 50% more likely than African-Americans to get a withhold of adjudication, a plea deal that blocks their felony convictions even though they plead to the crime. Bradenton Herald, "Race May Affect Sentence Options" (Jan 26, 2004). No better description of the situation comes than from the words of George Orwell, who famously wrote in **Animal Farm** that, "All animals are equal, but some animals are more equal than others."

The result is terrible. "Among African-Americans who have grown up during the era of mass incarceration, one in four has had a parent locked up at some time during childhood. For black men in their 20s and early 30s without a high school diploma, the incarceration rate is so high—nearly 40% nationwide—that they're more likely to be behind bars than to have a job." The New York Times, "Prison and the Poverty Trap" (February 18, 2013). In Florida, it means that 23% of the entire voting population of the state's African Americans is disqualified from voting by a felony conviction. The Sentencing Project (2010). Moreover, the effects of such mass incarceration ripple outward as minority "… communities where incarceration is concentrated suffer damage at the hands of the penal system. These destructive effects are felt in the lives of children, as well as in family functioning, mental and physical health, labor markets, and the economic and political infrastructures of these places." Clear, Todd, "The Effects of High Imprisonment Rates on Communities", **Crime and Justice,** vol. 37, no. 1 (2008), Univ. of Chicago Press.

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On Behalf of the Publisher

The end result is perpetuation and creation of poverty: "People who enter the criminal justice system are overwhelmingly poor. Two-thirds detained in jail report annual incomes under $12,000 prior to arrest. Incarceration contributes to poverty by creating employment barriers, reducing earnings and decreasing economic security through criminal debt, fees and fines; making access to public benefits difficult or impossible, and disrupting communities where formerly incarcerated people reside." Center for Community Change, "The Relationship Between Poverty and Mass Incarceration".

Such poverty is particularly endemic in St. Lucie County and the City of Fort Pierce, home to the Rupert J. Smith Law Library. In St. Lucie County, poverty increased by 116% in the last eleven years, leaving it 37th lowest in per capita income among Florida's counties. In Fort Pierce, 35.7% are poor while 2010 census statistics show that 45% of those under 18 in Fort Pierce live below the poverty line. Even the per capita income of neighboring Port St. Lucie is lower than what it is in the surrounding counties. See Ten Year Plan, Rupert J. Smith Law Library, 2015-2025 (draft).

All this dysfunction washes up on the shores of our law library. It shows in the library's client base. The percentage of use by members of the public, not lawyers, has been edging up from 73% so that, most recently, the percentage now approaches 80%. These are people who haven't the means of hiring a lawyer. They must make do. A law library may be the only way they can find out about the law, protect their rights, and learn about their legal obligations. They do it with the aid of books, manuals, computers, sophisticated databases, and forms, assisted by a librarian trained in the use of legal resources. Patron concerns involve both civil and criminal law. It could be anything, a divorce, custody issue, foreclosure, eviction, or procuring a restraining order. It could be an issue with a driver's license, a criminal issue such as seeking a fine reduction, sealing a record, wanting to get an answer to a search and seizure question. These aren't merely the poor and disadvantaged. In the words of Chief Justice Jorge LaBarga, they also include "… hardworking Floridians trying to raise a family on a salary of $50,000. These are your schoolteachers, fire fighters, police officers. The list goes on and on… ." The Florida Bar News, "Lawyers can't solve this problem alone" (Dec. 15, 2014). The library is there for them, seven days a week.

In a letter to one W.T. Barry in 1822, James Madison gave this warning: "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives." Friends is proud of our Rupert J. Smith Law Library for its contributions to popular awareness of the law. So long as there remains equal access to the law by each within the community, so will there remain the bright hope of equal justice for all. It is doubtful that so long as good people have free access to such information will they ever permit the rights secured to them as citizens of this country of ours to be lost to invidious tyranny. Thank you for your support.

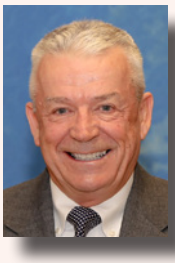
Upcoming CLE Programs

NOT JUST FREE CLE! IT'S A FREE LUNCH!

Cross-examination Techniques for Witnesses and Experts October 9 – Steve Hoskins

Writing a Persuasive Brief November 13 - Mark Miller

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



The Rupert J. Smith Law Library would like to thank Mike Fowler for underwriting the lunches for the live CLE programs during the 2015 series. We appreciate his contribution as a speaker as well. His participation has made our lecture series more informative as well as more enjoyable.

Responses to the Mortgage Foreclosure Crisis in Florida

Opening a New Chapter in 2015

By The Hon. F. Shields McManus, Circuit Judge, and The Hon. Cynthia L. Cox

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

As we write this, Florida is turning the page on the recent foreclosure initiative and opening a new chapter in the judicial response to the mortgage foreclosure crisis in Florida. It remains to be seen if this will be the last chapter or merely an interlude before the next crisis.

In the first chapter, liberalized credit, inflated real estate appraisals, unsustainable repayment terms, securitization of mortgage loans, and sloppy lending practices gave rise to the Great Recession. In the second chapter, the Florida courts experienced an explosion of mortgage foreclosure lawsuits. The number of new case filings increased exponentially from 2007, reaching a peak in 2009. In 2005, before the housing market crash, there were only 57,106 foreclosure filings statewide. By 2009, the number of filings exploded to 399,118.[1] Some law firms specialized in filing foreclosure suits and expanded rapidly. This resulted in many mistakes. They also engaged in unethical practices taking shortcuts in establishing the necessary proofs. There was massive fraud in preparing affidavits. Their clients also engaged in sloppy record keeping which caused an inability to produce original notes, proof of ownership, and authentic records of payments.

In the third chapter, the Circuit Courts around Florida took local action initially to accommodate the increased case load such as special assignments of judges and magistrates, and new administrative procedures. To improve efficiency in the Clerk's offices, electronic sales procedures were authorized and adopted.[2] The judges formed work groups to seek responses to the crisis. In 2010, the Florida Supreme Court ordered mandatory mediation of all residential mortgage foreclosure cases, and local rules were adopted to facilitate mediation of mortgage foreclosure cases.[3] The plaintiffs were required to pay the costs of mediation and the borrowers were required to provide financial disclosure. The Federal Government was also encouraging settlements through the "HAMP" program. Unfortunately, this proved to be futile as lenders were unable to offer significant concessions which the borrowers could accept. In December, 2011, the Florida Supreme Court terminated the managed mediation program for residential mortgage foreclosures.[4]

While the number of new filings gradually decreased, a large backlog of pending cases accumulated. Thus, by June, 2012, there were 377,707 pending active mortgage foreclosure cases in Florida Circuit Courts, according to the Office of State Courts Administrator ("OSCA"), an agency of the Florida Supreme Court.[5]

In the fourth chapter, the courts became more active in managing cases. This was called the "Foreclosure Initiative." The Florida Legislature modified foreclosure laws. The Statute of Limitations for deficiency judgments was shortened from five years to one year as of July 1, 2013, through the Florida Fair Foreclosure Act.[6] Additionally, the Act:

- Requires the plaintiff in a foreclosure action to provide information to the court upon filing of the case regarding a lost, destroyed or stolen promissory note.
- Provides finality of a mortgage foreclosure judgment for certain purchasers of a property at a foreclosure sale while allowing for monetary damages.

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- Allows any lienholder, instead of just the mortgagee, to utilize the statutory expedited procedure; reduces the number of hearings from 2 to 1; and prohibits service by publication when using the expedited procedure unless the property is abandoned.
- Defines adequate protections where there is a lost, destroyed or stolen note. [7]

The Legislature increased funding to enable the Clerks of Court and the Circuit Courts to increase the number of cases processed. This provided additional Clerk staff to handle increased paper work, case managers to review case files, and special magistrates and senior judges to hear cases. A state database to track residential mortgage foreclosure activity was established by OSCA and the Clerks of Court. Plaintiffs were required to make reports on pending cases. Because holders of notes, servicing companies, and plaintiffs' counsel were frequently changing, the courts required declarations of case status and service addresses. Plaintiffs were also required to report each time a case became inactive or active again.[8]

However, a countervailing pressure also increased. The firms filing the mortgage foreclosure lawsuits caused complications by mistakes committed in an effort to expedite an overwhelming number of new cases. Some law firms became victims of their own success and abruptly ceased operation, causing a delay or dismissal of cases. Holders of mortgage notes halted collection while they reviewed their records and practices. Members of the bar developed a sophisticated practice of foreclosure defense. Deficiencies in business practices were discovered to exist throughout the mortgage lending industry. As a result, litigation became more complicated and drawn out. Completing full discovery procedures extended the pre-trial time by a year or more. Many more foreclosure cases required a trial rather than a more expedient summary jury hearing. In 2009, a judge had been able to schedule 80 summary judgment hearings and sign 75 judgments in one day. By 2012, more trials were required. Trials lasted an average of thirty minutes; occasionally, they would last a day or longer.

Some cases have languished for five years or more. Lenders have been required by lawsuit settlements and federal rule changes to offer borrowers modifications and to delay foreclosures. Parties may agree to vacate a final judgment and reinstate the mortgage loan, no matter how old, if they can show "compelling reasons" to do so.[9] Some cases were settled or stayed for modification, but eventually became in default again causing new lawsuits or the reopening of old cases. A federal law was passed to provide tenants rights to notice and delayed their eviction after foreclosure sale. This expired in 2014, but a similar Florida Statute, section 83.561, had just been enacted. Thus, while the courts were trying to increase efficiency in disposing of cases, it became more difficult to do so.

The number of pending cases in Florida reduced dramatically by these efforts. They gradually declined from 377,707 in June 2012, to 329,171 in June 2013, to 159,491 in June 2014, and to 94,419 in March 2015. In the Nineteenth Judicial Circuit (Indian River, Martin, Okeechobee, and St. Lucie Counties), the pending cases declined from 13,699 in 2012, to 10,791 in 2013, to 4,370 in 2014, to 2,628 in March 2015. The increased effort and resources disposed of cases about twice as fast as new cases were filed.

In March 2015, the new cases filed in Florida were 5,964 and the dispositions were 12,001. In the Nineteenth Circuit, the new filings were 221 in March, and the dispositions were 577. Even so, the backlog has not been eliminated. Furthermore, some of the remaining cases are quite old. Of the 94,419 cases pending in Florida, 28% are older than two years.

The New Chapter

Florida is now entering a new chapter in the mortgage foreclosure crisis - the fifth in this modern history of mortgage foreclosures.

The extra funding for staff and adjudicators ended as of June 30, 2015. Around the state, circuit courts have shut down special divisions and discontinued some special administrative procedures. In the Nineteenth Circuit, several case managers, who were tracking foreclosure cases, scheduling hearings, and preparing routine orders to move the cases toward conclusion, were terminated, as was the special magistrate. Also, the funding for extra days of service by senior judges ended. The pending cases will be processed by the same level of judicial resources

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which existed at the start of the Great Recession. As a result, not only will there be limited help with case tracking, there will be less time available for hearings and trials. It does appear to us, however, that attorneys are doing much better at moving their cases and know what to do when they are set for trial. In other words, the case status process established in 2013 has served its purpose.

While it is hoped that the number of new cases continue to decline, there remain many issues which cause concern. Although it is too early to establish a trend, it is noted that filings increased in February and March, 2015. Additionally, we are seeing cases where owners have defaulted after achieving a reinstatement of their mortgage loan.

There continues to be delays caused by mismanagement of cases by law firms handling large volumes of foreclosures. There is constant turnover of lawyers who don't have knowledge of the case law and procedures. As a result, hearings are scheduled and rescheduled to get the necessary documents and verifications of facts. There are missed hearings or trials which cause cases to be dismissed. Then there are delays in moving to vacate dismissals. Faulty or untimely publication of notice of sales necessitates new orders for sales.

When the court does grant a motion to set aside a dismissal, final judgment or sale, the Clerk will reopen the files. There are many cases like this that are not included in the above statistics.

There are cases which cause additional litigation such as when the homeowner is trying to get mitigation but the sale is not canceled in time and the property is unintentionally sold to a third party bidder. The new owner may engage in litigation to confirm the sale. There are instances of the wrong legal description having been used and not discovered for many years. Since Rule 1.540 (b) only allows correction of an error if the motion is made in one year, a new lawsuit will be necessary. There is litigation over competing claims regarding surplus funds that remain when the foreclosure sale results in payment in excess of the first mortgage. Sometimes after the case is closed, inferior liens or necessary parties are discovered. The note holder or buyer will have to reforeclose in order to establish good title to the real estate. There are various methods depending upon the circumstances. A new lawsuit may be necessary. Likewise, new suits at law for deficiency judgments may be filed if the foreclosure action did not contain a prayer for deficiency judgment.[10]

The Response

Under Florida Rule of Judicial Administration 2.545, judges are charged with the duty to diligently prosecute cases. Civil cases such as mortgage foreclosures are to be closed within a year. Attorneys also have a duty to litigate their cases without undue delay. "A lawyer's workload must be controlled so that each matter can be handled competently." Procrastination is unacceptable. *Comments to Florida Rules of Professional Conduct*, Rule 4-1.3 Diligence. Yet, we can't rush these cases as discovery lingers on in some of them. Additionally, many homeowners have entered into loan modification agreements or other loss mitigation programs. The lender's lawyer often requests to cancel hearings or sales in order to allow time to consider the homeowners' applications. As noted above, there are motions to set aside final judgments because a mortgage loan has been reinstated. Judges understand and will continue to try to serve the needs of all parties while resolving cases in a timely manner.

The new procedures are posted on the Nineteenth Judicial Circuit's website at www.circuit19.org. Each circuit judge who is assigned to hear residential foreclosure cases has posted his/her procedures on that website.

As this article is written, a new Administrative Order is being drafted. The Order will provide:

- The prior Administrative Orders are replaced. Status reports will no longer be required.
- A revised form of Final Judgments in Exhibit "A" which must be used.
- That upon entry of the Final Judgment, the Plaintiff shall submit to the Court three (3) sets of envelopes addressed to the parties and a sale package containing the sale fee, Certificate of Sale, Certificate of Title and Certificate of Disbursements and prepare a notice of sale for submission to a newspaper of general circulation for publication pursuant to Section 45.031(2). Sales will continue to be conducted on the internet.
- That a court order shall be required to cancel any scheduled foreclosure sale, except where a bankruptcy petition has been filed. Any party seeking to cancel and/or reschedule a sale shall file a timely written motion (which shall include the number of times the sale has been cancelled), pay the reopen fee and provide the respective Judge a proposed Order as prescribed in his/her procedures.
- That the Clerk shall issue writ of possession only upon order of the Court.

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Responses to the Mortgage Foreclosure Crisis in Florida

We cannot predict whether this will be the last chapter in the residential mortgage foreclosures crisis. Much depends on the economy. In any event, the courts will continue to adjust to the circumstances as necessary in order to provide all interested parties equal access to justice.

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

Judge Cynthia Cox is graduate of Vero Beach High School, IRCC, FSU and FSU Law School. She was elected to the bench in 1996 and has served her community through many organizations, including legal and non-legal organizations. She is the recipient of many honors and lectures frequently.

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.

What's New at the Library

CONSTRUCTION

Workstations. Our biggest news of 2015 is in the making. We are building four oversized workstations in the library. Each one will accommodate a laptop, several open books, a legal pad, and your ipad or other handhelds. These are made for big projects. They are being built away from the reception desk in hopes of giving those who desire it, peace and quiet for concentration and study. They are near the large conference room. Please peak around the corner the next time you are in the library and watch our progress.

Another Small Conference Room.
We are not done with just a new study area! We are also building a second small conference room. This small conference room is, indeed, just that – small, designed to hold a 30" table and two or three chairs for a quick meeting.

FINANCIAL SUPPORT THROUGH DONATIONS

Student Art. Do you enjoy our Annual Student Art Contest? Was there a favorite poster at this year's Law Day Reception? The library will be happy to give it to you although we ask for a donation. The money raised will be earmarked for next year's prize money. Last week two attorneys came to the library and selected several pieces they intend to hang in their new offices. You might think about doing the same! They make a very colorful and meaningful statement. Please support the young artists of St. Lucie County while supporting your law library.

Florida Bar CLE Audio Programs. We want to thank our "distance learners" who have contributed over $1000 so far this year toward our Florida Bar CLE audio programs. We are happy to mail our CLE programs to any Florida Bar member and even attorneys in St. Lucie County often find it more convenient to borrow by mail rather than drive into Fort Pierce. Their generous contributions have underwritten all of the postage and more. It is an expensive program to manage and maintain but when we see such enthusiastic support, it is very gratifying.

LARGE SCREEN DISPLAY IN THE MAIN CONFERENCE ROOM

As many of you know, we have a large screen TV in our conference room. It is linked to a computer and can be linked to any laptop or ipad. For the last two months, we've had a PowerPoint presentation highlighting what is new at the library – new programs being offered, project updates, acknowledging donations, training programs and featured publications and databases held at the library. Designed to play in a continuous loop, please look and see what is new at the law library.

If you wish to use the screen either as a monitor or to catch up on the news, please ask one of the librarians to help you hook up. We want to encourage use.

Lender Force-Placed Insurance Practices: A Revelation, Part 2 of 2

By Dennis J. Wall

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

No lender force-placed insurance case has been found which went to trial. Much of the available evidence surrounding lender force-placed insurance claims and defenses has been introduced in the first part of this article and will be introduced in this, the second part. However, the evidence of LFPI practices has, so far, never seen the light of even a single day of trial in any courtroom.

WHAT LENDER FORCE-PLACED INSURANCE ("LFPI") CLAIMS ARE ALL ABOUT.

It bears repeating from the beginning that LFPI ordinarily protects lenders and not borrowers, and that LFPI is paid by borrowers although it is placed by lenders. LFPI lawsuits uniformly involve complaints which allege "add-ons" not authorized by the loan contract. LFPI complaints that survive motions to dismiss do not present allegations seeking damages on account of, or otherwise challenging, lenders' contractual rights to place insurance on borrowers by force, at the borrowers' expense. The complaints in these cases which survive motions to dismiss seek damages for the ***increase*** in LFPI premiums allegedly added to the plaintiff borrower's-homeowner's monthly mortgage payment.

THE RESEARCH BEHIND THIS ARTICLE.

The facts presented here were learned in a forensic investigation into publicly available information over the course of 3 years. What I mean by "forensic investigation" refers to my examination of the evidence of LFPI practices, which I largely found in Court files. I concentrated on what the parties testified and what the documents displayed. I did not put much emphasis on what the attorneys argued in those cases.

TORTIOUS INTERFERENCE CLAIMS, LFPI CASES, AND THE SOUTHERN DISTRICT OF FLORIDA.

This report on the treatment of tortious interference claims in LFPI cases in the Southern District of Florida, begins with a case named *Persaud*[1] although precedent had already established that tortious interference claims in LFPI cases survived motions to dismiss in the Southern District of Florida. In it, the Court held that ***insurance companies*** participating in an alleged LFPI practices scheme are exposed to tort liability for tortious interference with the preexisting mortgage contract relationship of mortgagees/investors on the one hand, and mortgagors/homeowners on the other hand.

The plaintiffs alleged that the defendants' collective scheme of insurance forced-placement involved the insurance company defendant allegedly providing "compensation" to the plaintiffs' lenders "in exchange for exclusivity, and purposefully and knowingly charged Plaintiff exorbitant premiums in contravention of his rights under the Mortgage." These allegations were sufficient in the eyes of the Court to allege that the insurance company "acted in bad faith" to tortiously interfere with the plaintiffs' preexisting business relationship with their lenders.[2]

In a later case, the Southern District of Florida again confronted claims of tortious interference. This time, in a case named *Novell*,[3] the Southern District saw perhaps two torts with the same or similar names under what the Court described as "murky" Florida law. One cause of action may be recognized in Florida for tortious interference with a contract, and another for tortious interference with a preexisting business relationship. Following *Persaud* and other Southern District of Florida case law, the Court held in *Novell* that under the second of the two possible causes of action, the plaintiffs' allegations of tortious interference were legally sufficient to state claims as against all of the defendants in that case, including an alleged mortgage servicer and insurance companies which offered force-placed insurance policies for sale to lenders.[4]

In its most recent iteration, the Southern District of Florida is adhering to its refusal to require plaintiffs alleging tortious interference claims in LFPI cases, to choose between the sort of interference which concentrates on a contract versus the sort which concentrates on a business relationship. In addition, the Court in that LFPI case held that claims of ***conspiracy*** to commit tortious interference survive motions to dismiss.[5]

ADDITIONAL CLAIMS AND CAUSES OF ACTION ALLEGED IN LFPI CASES.

Many other claims have been alleged in LFPI cases, with varying degrees of success. These include alleged breaches of the mortgage contract, of the implied covenant of good faith and fair dealing, and of fiduciary duties, in addition to alleged claims of unjust enrichment and various statutory violations.[6]

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Time Passages

By Amy Burns

Well I'm not the kind to live in the past
The years run too short and the days too fast
The things you lean on, are the things that don't last
Well it's just now and then, my line gets cast into these
Time passages
There's something back here that you left behind
Oh, time passages ……
Al Stewart

When asked about his career as a Florida Rural Legal Services (FRLS) paralegal, Ernesto Urbina says given the chance he would do it all over again. Ernesto has been advocating for the poor for over 46 years. He understands what it is like to be poor and to be a migrant farmworker. When asked why he has done this work for so many years, he smiled and replies "I love helping people and as long as the people I help feel good, I feel like I have done something right."

Ernesto and his family were migrant farmworkers. He comes from a family with 15 children, only 5 of whom survived beyond childhood. Ernesto was born at home in 1946, two months premature. His incubator was a pot belly stove and his bed was a shoebox. His mother, Julia, called him her miracle baby. His father, Ernesto Sr., was a sharecropper in Arkansas and also worked on other farms. When he was six years old, Ernesto started picking cotton to help his family. He began his farm labor by filling a flour sack with the cotton; as he grew older he then moved on to a burlap sack, six foot sack, nine foot sack and eventually a 12 foot sack that held 100 pounds of cotton. He was paid $1 per hundred-pound sack. On a good day, he could pick two bags.

His family would move from state to state, following the work as the different crops were ready for harvest. When he was in second grade, they moved to Texas but the crops froze and the family had to return to Arkansas. The family moved to Okeechobee when he was ten years old but continued to migrate every year. In the summer they would pick tomatoes in Immokalee and Homestead, getting paid 10 cents per large bucket of tomatoes. When he was 15, they started migrating from June through September out of state. They would pick green tomatoes in Georgia, strawberries and cherries in Michigan and tomatoes in Ohio and Indiana. When the family returned to Okeechobee, the children were usually six weeks behind in school. Despite the handicap of the late start and working each day after school in the fields sometimes until midnight, Ernesto graduated high school with honors. He was the first in his family to graduate high school and the only Latino in his graduating class of 1967 at Okeechobee High School.

Despite the poverty and grinding physical labor in tough conditions, Ernesto remembers it as a happy time. The family always stuck together. As migrant farmworkers they couldn't travel with furniture, so they made chairs and tables out of tomato crates. As teenagers in the labor camps, Ernesto and his siblings would attend make shift drive-in movies, where they gathered around the only speaker and watched the film projected onto painted plywood in a car he and his friend called the "Hotel of Love". There were visits to nearby migrant camps to meet girls for dances and dating. When relating some of these stories from his past, Ernesto laughs so hard he can barely finish the story. Like when he tells about the time his mom had to hang a clothes line in the labor camp, and the only thing to which she could tie it was the port-a-potty. When his mom hung her sheets, the wind picked up and blew the port-a-potty over with his sister in it. His grandmother was crying thinking his sister was hurt and Ernesto said his little sister was just smiling waving out the window.

Ernesto began his legal career in October of 1969, when Florida Rural Legal Services was called South Florida Migrant Legal Services (SFMLS). SFMLS started in 1967 when it received funding from the Office of Equal Opportunity (OEO).

The funding was for a two-year demonstration and research project to provide legal assistance to migrant farmworkers in Broward, Dade, Collier, Hendry, Lee

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Ernesto Urbina

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Time Passages

and Palm Beach Counties with its first office in Miami. Offices were soon established in Belle Glade, Delray and Fort Myers. SFMLS was committed to reforming unjust laws, community development and providing legal assistance to individuals. Its mandate was to change the basic conditions of migrant farm work , not to simply apply a temporary bandage so the poor wouldn't bleed too badly. In those first two years, SFMLS attorneys handled several thousand individual cases, worked with community organizers and engaged in aggressive and often controversial advocacy. SFMLS assisted a national public interest group in conducting hearings regarding the malnutrition of farmworkers, which ultimately helped bring about the national food stamp program. They filed lawsuits against major agricultural growers to stop abuses of migrant farmworkers, alleging the workers were being held under conditions amounting to peonage. As a result of the controversial advocacy, political pressure was put on the OEO not to renew the SFMLS funding. A compromise was reached in 1969 and the program was refunded and its name was changed to Florida Rural Legal Services (FRLS). Grower representatives were to be included on the board of directors, and the program was to serve all the poor, not just migrant farmworkers. Not surprisingly, the years that followed were rocky, as conflict between the board and staff grew. FRLS continued to lead in advocacy on behalf of the poor, serving thousands of clients in areas of employment conditions, civil rights, food and nutrition, welfare, housing and immigrant's rights.1

When Legal Services Corporation (LSC) was created in 1974, FRLS became a grantee and in 1977 expanded its service area to central Florida, including areas such as Lakeland and Ft. Pierce. In 1978, LSC mandated a restructuring of the board of directors to eliminate conflicts of interest. The program continued to gain national recognition for its legal work. FRLS brought cases to correct injustices for residents of public housing, jail inmates, students with low English proficiency, patients of G Pierce Woods State Mental Hospital, farmworkers, and families denied public benefits. In one case, FRLS represented black citizens of Arcadia against the city and city officials alleging a deprivation of equal municipal services. The court held that inequality in services and facilities with respect to paved streets, parks and water systems were the result of racial discrimination in violation of the plaintiffs' constitutional rights. Another case was brought against the city of Fort Myers establishing voting rights by district rather than an at-large system. Shortly after, the first black city councilman was elected. In another case, Barrett v. Adams Fruit, FRLS represented farmworkers who sued for injuries sustained in a motor vehicle accident in the course of their employment. The appellate court ruled that workers were not solely limited to damages under Workman's Compensation but could receive actual damages under the Agricultural Worker's Protection Act. This decision was upheld by the United State Supreme Court in 1990. 494 U.S. 638.

When Bill Clinton was elected president, the Legal Services community was optimistic of increased funding, mistakenly as it turned out. The 1994 "Contract with America" Congress came into office and began talking about defunding legal services over a period of three years. The first 33% cut came in 1996 and FRLS lost 50% of its lawyers. Congress intended to continue reducing the FRLS budget by a third each year until the organization was "glide pathed" out of existence. Fortunately members of the affected communities and the American Bar Association lobbied strongly for FRLS' continued existence and the glide path plan to extinction was never completed. Congress did enact plans to increase its oversight and control over the various legal programs, which resulted in a number of restrictions on FRLS operations in 1996. FRLS was prevented from filing class action lawsuits, and from representing prisoners or undocumented persons. The organization could no longer earn attorney fees (this restriction was lifted in 2010 and we are once again able to seek attorney fees). At the time FRLS had thirty pending class actions, which had to be taken up by other parties. Since community organizing was no longer permitted, Ernesto became a public benefit and immigration paralegal assisting clients who were denied public benefits or who needed to apply for citizenship or renew their green cards.

Today, we continue to advocate for migrant farmworkers throughout the state of Florida. Despite the passage of time, for many farmworkers and their families, not much has changed since Edward R. Murrow's 1960 documentary Harvest of Shame. Farmworkers continue to do the hardest, most hazardous work, for the least pay. Our migrant unit is based in our Fort Myers office but conducts extensive outreach visiting labor camps throughout the state raising awareness and educating workers regarding their rights. During outreach our staff members discover workers living and working in unsafe conditions. Many are victims of wage theft and intimidation. Some of these workers are victims of human trafficking. According to the Florida Coalition Against Human Trafficking, it is estimated that there are approximately 20.9 million people enslaved throughout the world, with 2.5 million located in the United States. When our advocates encounter victims they commence civil litigation for the victims to obtain their wages and damages under Agricultural Workers Protection Act. We also help them obtain T visas for themselves and their families. Many times the abusers use victim's immigration status as a form of intimidation. Several of these cases have resulted in the abusers being charged under federal and state human trafficking laws. Although

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LSC restricts the type of immigration work we do, we are permitted to assist victims of violence and human trafficking obtain legal status under 45 CFR 1626.

Today our basic or non-migrant work focuses on individual cases. Although we are prohibited from bring class actions, we still seek opportunities to work on high impact cases. FRLS represents indigent clients in the following areas of the law: family law, housing, public benefits, unemployment, individual rights, consumer law, certain immigration matters, elder law issues, and education rights. LSC requires that we conduct a needs assessment every three years to ensure that we are focusing our efforts on the most pressing needs of the low income community. We recently completed a needs assessment in which surveyed clients, community members, attorneys, members of the judiciary and social service agency workers.

In closing, Ernesto had what many of our clients today don't have, the support of a family. Many of our clients are what Judge F. Shields McManus aptly describes as "people living on the edge of existence." McManus, F. Shields (March/April 2015), World of Local Court, Friendly Passages, page 7. If you are living close to the edge, it doesn't take much of a push to fall off. I recently attended a fundraising training where we were all asked to develop a budget pretending we were a single parent with one child making minimum wage at a full time job. No one could successfully complete the exercise because it was impossible. The National Income Housing Coalition released its annual housing report earlier this month. They calculated that the hourly wage a person would need to rent a moderate two bedroom apartment in the United States is $19.35 per hour. That is more than double the federal minimum wage. It is therefore no surprise that FRLS constantly receive calls from people seeking assistance in housing matters. The fact that there are not enough jobs to go around doesn't help. According to Ernesto, who has spoken to thousands of clients, "A lot of people are not looking for handouts, they just want to work, but the jobs are not there."

Mohandas Gandhi once observed that the best way to find yourself is in the service of others. Those of us working at FRLS are fortunate enough to earn a living while getting to serve others. This is true of many private attorneys as well. We have the privilege of seeing, on a daily basis, the resilience of the human spirit. We encounter people who face constant struggle and adversity, yet they persevere in the hope that things will get better. As Alexander Pope said in his Essay on Man, "Hope springs eternal in the human breast; man never is, but always to be blessed." At FRLS, we try to nurture that hopefulness and demonstrate to our clients that hope is often rewarded. We believe that if we can assist our clients with their legal issues, clearing some of the obstacles they face, their lives may improve and they can build on that. We recognize that we cannot do this alone, but we are fortunate to have generous members of the private bar who are willing to share their talents to serve the legal needs of the poor. These attorneys have full time jobs yet still make time take pro bono cases.

As advocates, we also need to be resilient. We have to protect ourselves from giving up hope. There are days when we are exhausted from swimming "upstream while others are on the way down" as Quigley describes in his Letter to a Law Student Interested in Social Justice (which I read on the recommendation of Passages President Jim Walker). There are also many times when no matter how much we want to help a client, there is nothing we can do except explain the bad news. It is during these times that we get discouraged, commiserate with coworkers and in the process renew each other's spirits so that we can come in the next morning, believing once again, that we can make a difference.

If you have the opportunity to meet Ernesto it will be easy for you to understand why given the chance he would do it all over again. He is one most grateful people I know. He takes nothing for granted. Time passes and he continues to make the most of each day whether he is helping clients or enjoying himself outside of work playing in his mariachi band, painting, and spending time with his family. My hope is that FRLS can continue to recruit advocates with a similar compassion and understanding.

Amy Burns is the Deputy Director of Florida Rural Legal Services, Inc. Prior to that she was a managing attorney and before that a staff attorney. Amy received her degree from Widener University School of Law, in Delaware, in1992. She also was an assistant public defender for 7 years. She is married with three children, three dogs and three cats.

Cryptoquote

O AWCS ORLOQI HANRJQHS WI ORLOQI UONNQ. VUWI WI VUH VBMH IHEBHV, VUH KBOCS BHEWNH, GJB GHRWEWVQ. - VUJAOI YHGGHBIJC

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.

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Lender Force-Placed Insurance Practices: A Revelation

SECRECY STIPULATIONS PERMITTED IN THE COURTS: LAW vs. FACT.

The default presumption in Federal Courts, as in almost all Courts, is that court records are open to the public. A protective order to the contrary, imposing confidentiality in the face of this presumption, requires a showing of good cause, at least until recently.[7]

The proliferation of secrecy stipulations approved by Federal and other Courts is not unique to LFPI cases.[8] The stipulations approved in these cases do not reflect much of an effort to address, let alone resolve, the public policy sometimes embodied in statutes tending to prohibit public harm caused by secret agreements, such as Florida Statute Section 69.081.[9]

In any case, many Courts do not appear to have required anything like a showing of "good cause" to seal documents, testimony, or even allegations in recent cases. In one LFPI case, a U.S. Magistrate Judge granted a plaintiff's motion for leave to amend her complaint with an unusual proviso. The extraordinary proviso was that the plaintiff could "redact" the amended complaint on the "public docket" to conform to the parties' secrecy stipulations and their proposed Order previously entered by the Magistrate Judge, and file "an unredacted copy under seal."[10] In another LFPI case, the parties stipulated that discovery previously produced on the public record in two other named LFPI lawsuits would receive "confidentiality" protections when filed in that case.[11]

RES JUDICATA, CLAIM AND ISSUE PRECLUSION DEFENSES AVAILABLE BY SETTLEMENT AGREEMENT?

In other cases, the parties attempt to write secrecy, and more, into their settlement agreements. In a typical case filed in the Southern District of Florida, *Fladell*[12], the defendants raised many objections to class certification when they were against it and before they were for it.

Perhaps the most significant objection raised to class certification in *Fladell* was the defendants' objection to certification of ***any*** class in *Fladell* because of the inherent danger that after certification of a class in *Fladell* other Courts would or could preclude the potential claims of other people in other lawsuits:

> Plaintiffs seek national certification only on federal-law claims, which are, at best, highly dubious. If those claims are certified but fail on the merits, *res judicata* ***may prevent borrowers residing in 49 other states from bringing the more substantial state-law claims that Plaintiffs assert only for the proposed class of Florida borrowers.***[13]

Even before their settlement agreement was judicially approved, the *Fladell* defendants successfully raised the very fact of settlement negotiations as a bar to other LFPI claims against them in other States, or as a way to shift the burden of proof to the plaintiffs in those cases to prove that their cases are not included in the settlement in Florida.[14]

THE QUESTION OF FINAL APPROVAL OF A CLASS SETTLEMENT BEFORE THERE WAS A CLASS: THE Lee CASE IN THE SOUTHERN DISTRICT OF FLORIDA.

Returning explicitly to the question of what effect if any should be given to a request for approval when a class settlement is negotiated without a class certification, that question is about to be addressed in the Southern District of Florida and, eventually, in the Eleventh Circuit Court of Appeals. These issues are being addressed by the Court in an LFPI case pending in the Southern District of Florida as this article is written. In a case called *Lee*,[15] a U.S. Magistrate Judge is presiding by consent of all the parties.

A request for final approval of a settlement in a class action is ordinarily very much a formality. For one thing, a request for final approval comes only after a Court has given the settlement preliminary approval. So, in *Lee*, the parties and other observers could be forgiven if they assumed that Judge Jonathan Goodman would, as anticipated, give the same settlement his final approval, having previously given it his preliminary approval.[16]

Judge Goodman instead took the request for final approval "under consideration."[17] In several extraordinary rulings,[18] Judge Goodman has required the parties and their attorneys to provide the Court with further factual information and legal briefing before there is any final ruling on the request for final approval.

One of those rulings concerns what the Courts in other Circuits have termed a "clear sailing agreement," or what has been described in case law as meaning "an arrangement where defendant will not object to a certain fee request by class counsel."[19] The settlement agreement in *Lee* contains a "clear sailing agreement," i.e., an arrangement where the defendants will not object to a fee request up to $9.850 million by class counsel.[20]

Among the nine (9) numbered paragraphs of questions posed by the Court to the litigants and their counsel in Lee, the Court asked whether it "should … be concerned" that the Lee settlement agreement contains a "clear sailing" provision.[21]

In the final analysis, Judge Goodman asked the parties and their counsel to answer this question:

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Lender Force-Placed Insurance Practices: A Revelation

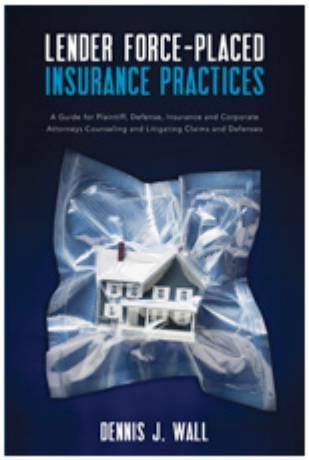
> Would the analysis of the percentage of the recovery for an attorney's fees award change significantly if the award were evaluated against the dollars actually paid, as opposed to the potential dollars if all claimants submitted claims and did not opt out?[22]

Judge Goodman has since required the parties and their counsel, and certain objectors, in *Lee* to provide statistics identifying the number of claimants, the amounts to be paid from the settlement to the class, detailed proposed orders, and the results of other LFPI cases known to the parties and their counsel, among other things, in addition to requesting, twice, that the plaintiffs take the deposition of a corporate representative of the defendant who can affirm under oath that the defendant "cannot timely and efficiently obtain the necessary information on a systematic basis" to identify the number of plaintiffs in the class and consequently to identify the amount of the possible payouts to them, so as to necessitate a "claims-made process" by which only persons making claims would be paid any part of the settlement amount.[23]

The issues appear to be joined over final approval of a class action settlement in the *Lee* LFPI case. Time will tell how these issues are resolved in the Southern District of Florida and, ultimately, in the Eleventh Circuit Court of Appeals.

CONCLUSION

Lender force-placed insurance practices have justifiably been described as "a bad game."[24] In this article, the names of the defendant players have not been published (although they are of course available in the Court file documents and in the reported decisions). The point is not so much "who" the players allegedly are and have been, as "what" they allegedly do. To date, the cost of doing business represented by settlement amounts paid out in LFPI cases is roughly 2% of the profits generated by LFPI practices.[25]



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

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

Poet's Corner

AWAKENINGS
By Paige Simkins

I see a dim reflection of you in my mirror,

the inside of your body is black, your soul

as is,

but you, you still have a tiny speck

of light in your right eye,

and now that the candle in your hand

has been blown out, I am sailing

towards the ocean of cracking memory

where I awaken.

Paige Simkins is a poet who lives with her dog, Sir Simon, in Panama City, 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.

Rogers for the Defense

By Richard Wires

Every generation or period seems to produce an attorney in criminal practice who by handling limelight cases with flair and unusual success gains widespread attention. A century ago such a figure was still a youthful lawyer, Earl Rogers (1869-1922), who brought notable legal and acting skills to high-profile cases. Born a minister's son near Buffalo but brought up in California, Rogers was admitted to the state bar in 1897, beginning a career that would reach its peak during 1909-1914. Some regarded him as too unconventional and thought his style flamboyant. There was more to his achievement than courtroom antics and publicity, however, one example being his acquisition and clever use of medical knowledge. He reportedly lost only three of over six dozen major cases and won acquittals in ninety percent of some two hundred court appearances. Defendants who could interest and afford him certainly felt more confident. A helpful way to understand his approach and methods in the courtroom is through his connection with a cultural icon: Rogers provided the inspiration and model for Erle Stanley Gardner when he created Los Angeles attorney Perry Mason in the popular books that began with *The Case of the Velvet Claws* (1933).

Two examples from his early career show Rogers' dramatic style and techniques in the courtroom. In the William Alford case (1899) he brought a shooting victim's intestines into court and confirmed the defendant's account through testimony tracing the bullet's path. When gambler William Yeagar ("the Louisville Sport") was killed during a card game in a Catalina Island hotel in 1902, and Alfred Boyd was framed by another player, Rogers won an acquittal by eliciting a confession from the accuser during an intense cross-examination. He especially enjoyed defending people in well publicized prosecutions. Among his prominent clients was real estate magnate Griffith J. Griffith, for whom Griffith Park is named, who got only a light sentence for murdering his wife after Rogers argued his diminished capacity. Yet still the attorney was depressed that his client had been convicted. Another well covered case was the 1909 trial of railroad developer Patrick Calhoun, grandson of early American leader John C. Calhoun, who was accused of bribing San Francisco officials to obtain a trolley franchise. In that instance Rogers gambled by presenting no defense, arguing that the charges were unproven, which caused the jury to deadlock, and in consequence Calhoun was released and not retried. The famous boxer Jess Willard faced charges in 1914 for the death of an opponent in the ring. Rogers won his acquittal and Willard went on to become heavyweight champion of the world, defeating Jack Johnson in the twenty-sixth round of a match in April 1915, and acquiring the label of being the "Great White Hope." In July 1919 he lost the title to Jack Dempsey. Some of the attorney's wins proved just temporary. After he defended the Los Angeles police chief against morals charges, the man was elected mayor, but he was soon forced from office amid further and similar charges.

One of Rogers' greatest challenges was defending the difficult Clarence Darrow in 1912-1913 against politically driven charges of trying to bribe a California juror. Darrow had been the defense attorney for brothers and labor leaders accused in the bombing of the *Las Angeles Times* building that had caused the deaths of twenty-one people in 1910. The newspaper was strongly anti-labor in its policies and the atmosphere in the city was tense. When Darrow was indicted he hired Rogers as Chief Counsel but objected to Rogers' plans. The pro-labor Darrow wanted to make the defense a political platform, focusing on the existence of a conspiracy to frame him, and even seeking to argue that violent acts could sometimes be justified. But Rogers insisted on emphasizing the lack of substance and credibility in the charges. The two men disputed the strategy, Rogers always trying to restrain Darrow, throughout the three months of trial. In summarizing the evidence Rogers was brief but effective and Darrow was exonerated by the court. But then he was indicted for attempted bribery of another juror in the bombing trial. This time he defended himself along the lines he had wanted by asserting labor rights and social justice. The result was a hung jury and its discharge. Darrow was in an awkward situation but saved from a retrial when he accepted a compromise and agreed never again to practice law in California.

The clever attorney was both criticized and admired. His record was impressive in part because he declined to take cases he probably could not win. It seems likely that many of his clients were guilty. Although he knew or suspected their guilt, he defended them vigorously, considering that to be an attorney's duty. But clearly he disliked some. In two significant areas Rogers' contributions must be respected. He was a pioneer and expert in forensic medicine, even teaching its importance to young lawyers, and sometimes appearing as a witness for the prosecution. His skillfulness in selecting and handling juries was acknowledged as well. Regardless of how observers felt about him or a particular case they admitted his effectiveness in the courtroom.

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Earl Rogers

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Rogers for the Defense

Heavy drinking had become an increasing problem for Rogers and it finally undermined and destroyed his career. In practical terms his professional life ended in 1918 when he no longer appeared able to function. His son and daughter had him placed in care in his final years. Though he often earned over $100,000 a year he saved nothing. Rogers died broke at age fifty-two in 1922. In 2011 he was inducted posthumously into the Trial Lawyers Hall of Fame.

Someone both as colorful and celebrated as Rogers was too impressive to be soon forgotten. Fortunately, approximations of Rogers' approach and courtroom techniques can still be found in Gardner's fictional character in its early appearances and in a Hollywood motion picture. Lionel Barrymore won an Oscar for playing an alcoholic attorney who defends gambler Clark Gable on a murder charge in *A Free Soul* (1931). Barrymore's climactic courtroom scene was designed to capture something of the commanding personality and persuasive power of Rogers. *A Free Soul*'s screenplay was in fact written by the attorney's daughter, Adela Rogers St. John (1894-1988), a writer and world famous journalist from the 1920s through the 1940s. She also produced a memoir-biography of her father, *The Final Verdict* (1962), an objective account of his personal and professional lives. To appreciate how Gardner's famed attorney drew upon Rogers one must read the Perry Mason books from the 1930s and not think of Hollywood's toned-down character. That Perry Mason is not the questionably ethical figure from Gardner's earliest books and is certainly still less the real-life Rogers.

Several works besides his daughter's informative and insightful book are worth consulting. The Los Angeles background and the Rogers-Darrow disagreements are examined in depth in Geoff Cowan's *The People v. Clarence Darrow* (1993). Also treating the situation is Glenn E. Bradford, "Who's Running the Show? Decision-Making in the Courtroom in Civil and Criminal Cases" (*Journal of the Missouri Bar*, May-June 2006). A good study of Rogers' whole career is Michael L. Trope, *Once Upon a Time in Los Angeles: The Trials of Earl Rogers* (2001).

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."

Congress.gov Update

By Robert Brammer

It has been several months since I last provided an overview of Congress.gov for *Friendly Passages*. Since that time, we have added many new features to Congress.gov. I want to take this opportunity to highlight a few of those features, focusing on alerts, treaties, executive nominations, and the search-by-speaker feature to locate members' remarks in the *Congressional Record*.

The latest release of Congress.gov realizes our longstanding goal of providing email alerts to allow our users to easily keep up with Congress. To subscribe to alerts, click on "Sign In" in the top, right-hand corner of Congress.gov. After you create an account, you are ready to sign up for alerts. There are currently three different types of alerts. On member profile pages, you can click "Get alerts" to receive an email whenever a particular member sponsors or co-sponsors legislation. From the *Congressional Record* page, you can click "Get alerts" to receive an email whenever a new issue of the *Congressional Record* is released. Email alerts also make it easy to keep up with the progress of particular bills as they go through the legislative process. On any bill page, you can click on "Get alerts" to receive an email whenever a new action is taken on that bill.

The new release now also contains treaty documents migrated from the Library of Congress's Thomas website, allowing the user to browse treaties using the Congress.gov system of facets. You will find a link to "Treaty Documents" underneath the "Senate" heading, which is located in the center column of the home page under "Current Legislative Activities." If you know the citation to the treaty, you can type it in at the top. If not, Congress.gov allows you to browse treaties using facets, such as Congress, status, and topic.

You can also keep track of executive nominations by clicking on "Nominations" under the "Senate" heading. If you know the nomination number, you can type it in at the top under "Find a Nomination by Number." Nominations can also be browsed using the Congress.gov system of facets. The facets available include the number of the Congress, nomination type, status of the nomination, and even the state or territory of origin associated with the nominee.

In the past, you had to carefully read through the *Congressional Record* if you wanted to find a speech by a particular member. But now, you can take advantage of Congress.gov's new search-by-speaker feature to locate members' remarks. To use this feature, go to the top of the page, and underneath the Congress.gov logo, click on "Members." Next, pull up a member profile page by using the drop-down menu underneath the heading "Current Members of the 114th Congress." On the right-

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The Mental Health Crisis In Florida: An Update

By Art Ciasca, Chief Executive Officer, Suncoast Mental Health Center

The mental health crisis in Florida and in the United States continues. An article I authored for Friendly Passages in the September/October 2014 Issue detailed some information and statistics on various mental health disorders. More recently, attempts to pass SB 7068, by Sen. Rene Garcia (R- Hialeah), and its House counterpart 7113, which were intended to address numerous mental health issues in the courts, failed. Judge Steve Leifman described the Bill as "the most comprehensive mental health bill since the Baker Act passed 41 years ago." Leifman added, "We should not give up, because almost 20% of people arrested in Florida have an acute mental illness." That translates to around 150,000 people every year, which has an enormous impact on the courts. The bill would have overhauled Florida's forensic mental health system. Each county would have possessed the ability to fund a treatment-based mental health court program. Defendants would have had the opportunity to enter into pre-trial or post-adjudicatory treatment programs. Unfortunately, the Bills got caught up at the end of the session in the impasse between the two Houses over other issues.

Studies from N.A.M.I. (The National Alliance on Mentally Illness) indicate that 50% of youth aged 14 and older who are challenged by mental health disorders will drop out of high school, and that 75% of them will be arrested within 5 years. The dropout rate is higher than for students with other disabilities. The arrests are mostly misdemeanors. These statistics underscore the need for prevention, early detection and identification, and treatment of mental health disorders. Another set of statistics through N.A.M.I. state that one in every five youth between the ages of 8 and 18 have a mental health disorder severe enough to cause significant impairment in their day-to-day lives. This includes in the learning environment. Children with mental health disorders fail more classes, earn a lower grade point average, miss more days of school, and are retained at grade level more than children from any other disability group. Accessing mental health counseling and/or psychiatric services, including medication management, is crucial in alleviating symptoms of a mental health disorder, as well as eliminating negative behaviors that may accompany a mental health disorder.

Statistics reveal that one in four adults will have a mental health disorder in the course of a year (typically anxiety or depression). One in seventeen adults are diagnosed as having a severe and persistent mental health disorder, (such as schizophrenia or bipolar disorder) for which there is no cure. Like diabetes, mental health disorders can be managed and people can live very healthy, happy, productive lives. These severe and persistent mental health disorders, when not properly diagnosed or treated, can result in homelessness, trespassing, shoplifting, or other minor charges, as well as suicide.

Suicide rates are increasing. In 2013 in the United States there were 41,149 suicides. In that year someone died by suicide every 12.8 minutes. The suicide rate in calendar year 2000 was 10.4 per 100,000; in calendar year 2013 it rose to 12.6. The highest rate was 19.1 per 100,000 among people in the 45-64 year old group. Of those who died by suicide in 2013, 77.9% were male and 22.1% were female. In 2013, the highest U.S. suicide rate (14.2) was among Whites and the second highest rate (11.7) was among American Indians and Alaska Natives. Much lower and roughly similar rates were found among Asians and Pacific Islanders (5.8), Blacks (5.4) and Hispanics (5.7). In 2013, firearms were the most common method of death by suicide, accounting for a little more than half (51.4%) of all suicide deaths. The next most common methods were suffocation (including hangings) at 24.5% and poisoning at 16.1%.

In 2013, the most recent year for which data is available, 494,169 people visited a hospital for injuries due to self-harm behavior, suggesting that approximately 12 people harm themselves (not necessarily intending to take their lives) for every reported death by suicide. Together, those harming themselves made an estimated total of more than 650,000 hospital visits related to injuries sustained in one or more separate incidents of self-harm behavior.

Because of the way these data are collected, we are not able to distinguish intentional suicide attempts from non-intentional self-harm behaviors. But we know that many suicide attempts go unreported or untreated, and surveys suggest that at least one million people in the U.S. each year engage in intentionally inflicted self-harm.

As an interesting anecdote, this writer has personally assisted and known hundreds, if not thousands, of

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The Theory of Everything: Intellectual Property, Part 3

By Adrienne Naumann

Introduction

In the past two articles of this series I surveyed the substantive law on patents, copyright, trademarks and trade secrets. In the final article of this series I address most commonly encountered procedures and pitfalls for obtaining intellectual property protection in the United States.

Utility patents

Filing requirements

Initially assume that a natural person or a business entity has the requisite prototype or other tangible representations, such as engineering drawings, to file a utility patent application. For mechanical, industrial or consumer products, there should be at least one drawing that discloses the features described in application text. There are also situations in which biological, chemical and software application requires drawings. Manual of Patent Examination Procedure sections 507; 608.02 (Ninth Ed. March 2014) [hereinafter MPEP].

There should also be at least one claim sentence in the application which defines the boundaries of the invention. Claim sentences notify the public of subject matter that cannot be copied during the patent's lifetime. Claim sentences are analogous to "summaries" of technical information, and the remainder of the application supports the scope and breath of these claim sentences. MPEP 608.01; 2111.01 and 2161.

Thereafter the applicant submits the application to the United States Patent & Trademark Office. This federal office handles both patent and trademark applications, but these two endeavors are separate administratively and substantively within the agency. In particular, the patent office and the trademark office completely different examiners, and each office operate under different laws. See uspto.gov.

The mandatory non–attorney patent office filing fee, as well as the non-attorney patent office search fee and examination fee, should be submitted when the application is filed. If patent office fees are submitted after initial filing, there is an additional non-attorney patent office surcharge. When appropriate a request for non-publication of the application should be submitted when the application is filed, because this request cannot be submitted thereafter. Without this request the application is automatically published on the patent office website approximately eighteen months after its submission. This publication occurs even if the application does not become a patent.
MPEP 1121 and 1122.

Several documents may be submitted to the patent office after the initial filing. These documents include the inventors' declarations (which may require a mandatory patent office late fee) and Application Data Sheets, as well as a chain title to the application and/or invention. The applicant should also file a document known as an information disclosure statement, along with a mandatory non-attorney patent office fee. The information disclosure statement lists documents disclosing prior existing devices which may affect the patentability of the invention(s) of the filed patent application. MPEP 201.06(d); 1406; 2001.04; 2001.05.

Reply to the patent office examiner's first letter on the merits

Between approximately eighteen months and two years after filing of the application the applicant will receive a first letter from the assigned patent office examiner. Among other concerns this letter addresses the merits of the invention as designated in the claim sentences. The examiner will also address whether there is insufficient information in the application. If this is the case, the application must be refiled with additional technical information, but only if relevant deadlines have not expired. MPEP 2161, 2163 and 2164.

The examiner generally relies upon issued patents or published patent applications to conclude that the invention is either identical, or too similar, to previously existing devices to merit to patent protection. This conclusion is the practitioner's signal to modify claim sentences or draft new claim sentences to avoid critical features of previously existing devices. The practitioner often must also add additional features from the application text to the claim sentences.

The practitioner should also persuade the examiner that these additional or original features are critical unpredictable improvements to the examiner's references. In re Dow Chemical Co., 837 F.2d 469, 473, 5 UJ.S.P.Q.2d 1529, 1532(Fed. Cir. 1988); Application of McKenna, 203 F.2d 717, 720, 97 U.S.P.Q. 348, 350-51(C.C.P.A. 1953). Whether this rebuttal is possible often depend upon the application's technical detail, as well as the inventor's declaration describing research and development. Evidence of commercial success, long-felt need and copying also add effectiveness to this first reply to the examiner. The examiner must consider this evidence, as well as modified claim sentences, new claim sentences and legal rebuttal.

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Reply to the examiner's second letter

Within approximately six months to a year after submission of the reply to the examiner's first letter, the applicant receives a second examiner's letter after evaluation of the applicant's proposed modified and new claim sentences, legal rebuttal and evidence. MPEP 706.07. In this second letter the examiner may reject some, all or none of the claim sentences. The applicant may proceed to a patent on the allowed claims. However, if only some claim sentences are accepted, the applicant may appeal the remainder of the rejected claims or consider other procedures within the patent office.

If all claim sentences remain rejected the applicant may file a continuation application, a continuation in part application (if possible), a request for continued examination, or precede directly to an appeal of the rejected claim sentences. A continuation in part application adds new technical information and new claim sentences to the application. In contrast, the continuing application exclusively provides claim sentences which differ from those of the previous application. With a request for continued examination the applicant may submit additional evidence of patentability as well as additional proposed claim sentences and legal rebuttal. MPEP 706.07.

Deadlines

All the above procedures have deadlines. For example, there are deadline for filing each of the following, just to name a few: revised patent drawings, patent office non-attorney, late filing surcharges, fees to correct patent office forms, and replies to the examiners' letters. There is also a deadline for payment of an allowance fee, that is, the non-attorney final patent office financial requirement in order to issue the patent. MPEP 1306. In additional to easily ascertainable deadlines, there are also application filing deadlines which are silently triggered by activities of the inventor or even third parties. 35 U.S.C. 102.

After a patent issues there are non-attorney payments known as maintenance fees to the patent office at predetermined intervals during the lifetime of the patent. MPEP1730, 2500. These payments are in the nature of taxes and must be paid to the patent office maintain patent enforceability.

Mandatory non–attorney patent office fees

Almost every patent office submission requires a non-attorney filing fee, as does reinstatement after some expired deadlines. These fees are generally non-refundable. The very good news is that the patent office has a tiered payment system: (i) undiscounted fees and (ii) discounted fees for small businesses, not for profit entities, and independent inventors. MPEP 509.02. There are also non-attorney patent office fees for persons designated as micro entities who (i) are associated with universities or (ii) establish a specified minimum annual gross income. Id. These fees are all posted on the patent office website at uspto.gov, and are all payable to the patent office.

Small entities generally pay one–half of the patent office fees of regular applicants and patent owners. Small businesses qualify if they employ fewer than five hundred employees of any kind. Micro entities generally pay one-quarter of the patent office fees of standard non –small entity applicants and patent owners. Micro entities must submit a certification statement that they qualify either as universities affiliates or the minimum gross income requirements. Many non-attorney patent office fees are also reduced as incentive for an applicant to file their documents electronically at uspto.gov.

Trademark and service mark federal registration

There are two primary federal registration applications in United States for trademarks and service marks which originate in the United States [hereinafter 'marks]: use and intent to use. Trademark Manual of Examination Procedure 806.01(a) and 1103 (January 2015) [Hereinafter "TMEP" and located at uspto.gov]. A use application is appropriate whenever a mark has been used outside the state of its origin, and prior to the filing date of the application. For intent to use application, a mark is initially used in commerce after the filing date of the registration application. For either use or intent to use application, if a mark is found legally sufficient by the trademark examiner with appropriate goods and services, it is displayed in the appropriate government publication for notification to third persons. TMEP 106; 1105 and 1502

If an intent to use application proceeds without incident the applicant will receive a notice of allowance for the mark. However the applicant must now submit evidence that a mark has been appropriately used by a mandatory six month deadline. If the applicant begins using the mark after the filing date of the application, but before public display of the mark, by the trademark office, then evidence of appropriate mark use can also be submitted during this time interval. TMEP 1106.03(b).

If the mark has not been implemented by the deadline, or the evidence submitted to the trademark examiner is insufficient, the applicant may request another six month period. This first extension is automatically granted. Thereafter a limited number of additional five six month extensions are possible at the trademark examiner's discretion, and with payment of additional trademark non-attorney office fees. TMEP 1103. If the applicant has not

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used the mark appropriately by expiration of the final time extension, then the application must be resubmitted and the original earlier filing date is forfeited. TMEP 1109.

There are different procedures for trademarks which are initially used and/or registered in other countries. TMEP 901, 1002, 1008 and1009.

The applicant must insure prior to filing the application that all the true trademark owners are listed on the applicant. If bona fide owners are omitted mistakenly listed, or the designation is inaccurate in a certain manner, than the application is fatally defective and cannot be amended. TMEP 803.06; 1201.02(b). Instead, the applicant must refile the application and forfeit the original filing date of the first application.

The best approach to avoid this unfortunate result is to obtain a signed release from every third party that may conceivably have rights to the mark prior to filing the application. The release should also include copyright entitlements as there may be copyright in trademark designs and logos. Parties who acquire rights to the mark after an application's submission should be recorded as transferees as provided by the trademark office. TMEP 503.04 through 503.07. If there is a sale of a business or business assets which includes marks, recording of the sale or licensing of the mark should also be recorded as provided by state law.

There are financial incentives to file trademark and service mark application documents electronically at uspto.gov. However, trademark registration electronic documents are not submitted through the same portal as the portal for patent documents. There is also no tiered non-attorney trademark office fee schedule for reduced fees according to applicant categories or income. TMEP 202.03, 810-810.02; 1401.04 and 1403.01. There are options to reduce fees by relying upon product and service terminology from other government trademark manuals. TMEP 201.03. The initial non-attorney trademark office filing fee also depends upon the number of services and/or products associated with the mark. These products and services are designated in the initial application and with numerous entries the trademark office filing fee increases accordingly.

Trademark registration must be renewed after five years after initial registration. In particular the trademark owner submits a document known as an affidavit of continued use. This affidavit requires evidence of the continuous use of the mark with the original goods and services as well as a non-attorney trademark office fee. TMEP 1603.03. Ten years after initial registration another affidavit of continued use and a request for renewal of registration must be submitted. The renewal request and trademark office non-attorney fee must be submitted every ten years thereafter to maintain the mark on the federal register with the originally designated goods and services. TMEP 1604.

Copyright registration

Copyright registration takes place in the United States Copyright Office within the Library of Congress. The applicant submits a copyright registration application by paper or electronically. https://eco.copyright.gov/eService_enu/. As with patents and marks, there are discounted fees as an incentive to file copyright registration applications electronically. Htpp://www.copyright.gov/docs/fees.html.The application requires a reproduction, copy or image of the subject matter or work proposed to be registered. For a written work such as a book, the submission could be a manuscript in electronic format or in paper. For a two-dimensional art work, the applicant could submit an electronic image of, for example a painting. For a three-dimensional work such as a sculpture, electronic images from several views that provide a complete three-dimensional representation should be satisfactory.

The applicant must also designate the author and owner of copyright in the application, as well as portions of the work which are not original to the applicant. The copyright examiner determines whether there is sufficiently creativity and originality in a work to merit copyright registration. Many works lie near the border of sufficient creativity and originality, such as logos with limited design elements. In these cases, after denial of registration the wisest and most cost-effective approach is addition of original design elements to the logo and resubmission of the augmented work.

The work may also be denied registration on the basis that the subject matter is functional and not strictly ornamental. Denials based upon functionality are more difficult to circumvent. For example, a hairbrush with an original new bristle design may be denied registration because the bristles are functional. Under this rationale, the examiner will conclude that new bristle design is a necessary useful feature, and therefore exclusively eligible for protection under patent law.

There are other legal bases on which a work may be denied registration, and the applicant may appeal a finding according to the federal Administrative Procedure Act.

For additional non-attorney fees, the copyright office conduct searches of its databases for identical or similar works. Although copyright arises automatically as a matter of law when a work is created, a work of United

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States origin cannot be protected in federal court unless and until it is registered. Copyright.gov/circs/circ01.pdf. However, once registered the protection lasts according to the duration of copyright under the law for works created after 1978. Longevity of copyright for works created and/or published prior to 1978 is governed by other timelines.

Trade Secrets

There is generally no agency for acquisition of trade secret registrations. The best protection is review of judicial decisions in appropriate state(s) and creation of guidelines for trade secrets according to industry standards and reasonable cost-effectiveness. In particular, a confidentiality agreement as part of trade secret preservation program may be interpreted according to an unforeseen state's trade secret law. The principal agency for enforcement of federal criminal misappropriation law is the Computer Crime and Intellectual Property Section of the United States Department of Justice. Http://www.justice.gov/criminal-ccips. For Florida the principle state criminal enforcement agency appears to be the Attorney General. See http://www.myflorida.com.

Protection of computer related trade secrets is currently a serious economic and financial concern, especially whenever electronic servers are controlled by third party service providers. Investment in an attorney who specializes in risk management of computer related trade secrets is the recommended approach. However, the business owner must thereafter affirmatively monitor the attorney's risk management program to maximize its effectiveness.

Adrienne B. Naumann has practiced intellectual property for almost twenty years in 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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Congress.gov Update

hand side of the member profile page, under "More on This Member," click on "See This Member's Remarks in the Congressional Record." The next screen will show you every instance in the *Congressional Record* where that member has spoken on the floor of Congress. You can narrow down your results by using the menu on the left-hand side. For example, you may want to limit your search by choosing a particular Congress, such as the current Congress—the 114th.

This is just a quick overview of the latest Congress.gov features. If there are any new features you would like to see included in Congress.gov, please use the "Give Feedback" link underneath the search box at the top to send feedback directly to our developers. If you have any questions about Congress.gov, click on "Contact Us" in the upper-right corner and select "Ask a Law Librarian."

Robert Brammer is a senior legal reference specialist at the Law Library of Congress. His views do not necessarily represent those of the Law Library of Congress.

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Library Holiday Schedule

September 5, 6, & 7. Labor Day
September 14. Rosh Hashanah
September 22. Yom Kippur
November 11. Veteran's Day
November 26, 27, 28, & 29. Thanksgiving
December 24, 25, 26, 27. Christmas
December 31 through January 3. New Year's

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The Mental Health Crisis In Florida: An Update

individuals with mental health disorders and severe and persistent mental illnesses, including individuals who were severely psychotic. I can personally attest from years of experience in working in this field that people with mental illnesses are much more often the ***victims*** of criminal acts as opposed to being the perpetrators of criminal acts and that the vast majority of crimes perpetrated by individuals with mental illness are misdemeanors.

It is encouraging to note that in January of 2015 through the collaborative efforts of The Indian River County Mental Health Collaborative, administered by Lisa Kahle, Sheriff Deryl Loar, and Judge Cynthia Cox, a Mental Health Court was established. Mentally ill defendants who are charged with misdemeanors are now diverted to receive services with a mental health provider, as opposed to utilizing resources in the legal system. Karleen Russ, a long time mental health worker, has the program up and running and to date Ms. Russ is working with 28 clients through the Mental Health Court, with many more in the "pipeline." Ms. Russ has worked with thousands of individuals with severe and persistent mental illnesses and understands the complexities of the illness.

Additionally, she has had numerous dealings with the Mental Health Court in St. Lucie County, which has been up and running for several years. Ms. Russ proudly reports they are about to "graduate" their first person from the Indian River County Mental Health Court.

It is this wonderful collaboration between mental health providers, law enforcement, the court system, and advocates that can truly make a difference in the lives of people afflicted with a true medical condition. Today, many people are realizing that mental health disorders and mental illness are real medical conditions, like diabetes or cancer. An individual suffering from cancer or diabetes cannot recover from it by being told,"Get over it" or by being asked, "Why do you have cancer?" or "You have everything going for you, a good job, a nice family, you live in a nice house." These are the kinds of ignorant comments many with mental illness hear during their struggles. As those with physical ailments do not wish to be defined by them, people with mental illness also do not want to be labeled as "a schizophrenic" or "a bipolar." Those with a mental illnesses are not the disease, they are people who are challenged by the disease.

Various factors inhibit the ability of citizens to receive mental health care, including the stigma of mental illness, lack of knowledge regarding mental health and the various disorders, the lack of insurance coverage for mental health and substance abuse, and the fear that employers will view employees unfavorably if they are recipients of mental health services.

Three out of four people with a mental illness report that they have experienced stigma. When a person is labeled by their illness they are seen as part of a stereotyped group. Negative attitudes create prejudice which leads to negative actions and discrimination. Stigma can bring experiences and feelings of shame, blame, hopelessness, distress, misrepresentation in the media, and reluctance to seek and/or accept necessary help. Families are also affected by stigma, leading to a lack of support. For mental health professionals, stigma means that they themselves are seen as abnormal, corrupt or evil, and psychiatric treatments are often viewed with suspicion and horror.

A recent study in Australia found that nearly 1 in 4 of people felt depression was a sign of personal weakness and would not employ a person with depression. The study also found that:

- Around a third would not vote for a politician with depression.
- 42% thought people with depression were unpredictable.
- 1 in 5 said that if they had depression they would not tell anyone.
- nearly 2 in 3 people surveyed thought people with schizophrenia were unpredictable and a quarter felt that they were dangerous.

How can we challenge stigma?

We all have a role in creating a mentally healthy community that supports recovery and social inclusion and reduces discrimination. Simple ways to help include:

- learn and share the facts about mental health and illness
- get to know people with personal experiences of mental illness
- speak up in protest when friends, family, colleagues or the media display false beliefs and negative stereotypes
- offer the same support to people when they are physically or mentally unwell
- don't label or judge people with a mental illness, treat them with respect and dignity as you would anyone else
- don't discriminate when it comes to participation, housing and employment
- talk openly of your own experience of mental illness. The more hidden mental illness remains, the more people continue to believe that it is shameful and needs to be concealed.

In June 2015, the Subcommittee on Health, chaired by Rep. Joe Pitts (R-PA), scheduled a hearing entitled, "Examining H.R. 2646, the Helping Families in Mental Health Crisis Act." Subcommittee members will review H.R. 2646, legislation authored by Oversight and

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The Mental Health Crisis In Florida: An Update

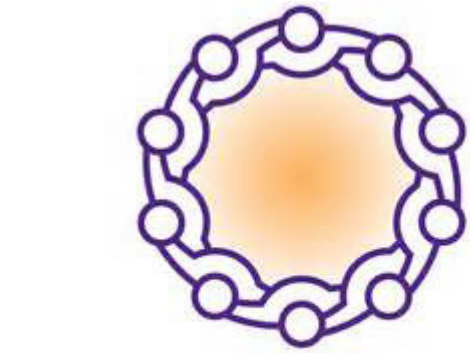
Investigations Subcommittee Chairman Tim Murphy (R-PA) and Rep. Eddie Bernice Johnson (D-TX), as well as legislation authored by Rep. Doris Matsui (D-CA). "This legislation is not just a new bill, but marks a new dawn for mental health care in America. We are moving mental health care from crisis response to recovery, and from tragedy to triumph. The work of this committee and its members have been critical in putting forth a foundation for all of the new and revamped provisions in H.R. 2646," said Chairman Murphy. "The Helping Families in Mental Health Crisis Act not only reflects the need for reform, but also provides the tools to provide comprehensive solutions to challenges – such as federal barriers and antiquated programs – we discovered when this committee began its top-to-bottom review of our nation's broken mental health system. H.R. 2646 helps change the paradigm of mental health care by bringing mental illness out of the shadows and I look forward to working with the committee to pass this legislation."

H.R. 2646, the Helping Families in Mental Health Crisis Act, addresses many of the issues identified by the Energy and Commerce Committee's review of the nation's mental health system. The bipartisan legislation aims to fix the nation's broken mental health system by refocusing programs, reforming grants, and removing barriers to care.

It is clear that there is much work to be done towards the treatment, care, and education regarding mental health and mental illnesses. While we have made strides in the advent of more effective psychotropic medications, there are the issues of side effects, denial, cost, and parity regarding insurance coverage. The lack of knowledge about mental health and mental illness creates fear, misconceptions, and the stigma associated with being a recipient of mental health services. Law enforcement and the judicial system are beginning to tackle the hard issue of mentally ill people over-utilizing scare resources in the jail and court systems. The human issue of locking up people for offenses that occur due to a medical condition cannot be overlooked, and forward thinking counties are scrutinizing all the consequences of the jails serving as places for the mentally ill with minor offenses. Every day citizens challenged with mental health disorders are not receiving much needed services until they are Stage 4 deep in mental despair. And the suicide rate continues to climb.

My sincere hope is that readers of Friendly Passages digest this information, and get involved in this issue. The mentally ill are often voiceless, for a variety of reasons. Readers of Friendly Passages have strong voices that are being heard across Florida. Speak with representatives of N.A.M.I., sit in one of their meetings. Visit a mental health center in your area. Talk to the staff about the life saving and life changing work that they do. Talk to law enforcement about the mentally ill in jails. Advocate to County Commissioners about a mental health court, if one does not exist in your county. Speak with legislators about the need to help the mentally ill, and legislation to increase access to mental health care.

Prior to serving as the Chief Executive Officer at Suncoast Mental Health Center, Art Ciasca worked for New Horizons of the Treasure Coast, Savannas Psychiatric Hospital, and The Wound Healing Center at Indian River Medical Center. He also taught and coached high school baseball and girls volleyball. Art holds a Masters Degree in Health Services Administration and Bachelors Degree in Health and Physical Education. Art Ciasca has resided in Vero Beach since 1986.



Last Issue's Cryptoquote Answer

K QMPMPAMQ IVM IKPM K TFD GKHLF-CCMH FLH IVMO DMLI F CKMSM XW PO WKLEMQ IX PO WFIVMQ. VM DFKH VM TFLIMH PXQM CQXXW. - QXHLMO HFLEMQWKMNH

I remember the time I was kidnapped and they sent a piece of my finger to my father. He said he wanted more proof.

Rodney Dangerfield

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Recorded CLE Programs

Course #	Title	Expiration Date	General Hours	Ethics Hours	
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	
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	
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	

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Responses to the Mortgage Foreclosure Crisis in Florida

(Endnotes)

1 House of Representatives Final Bill Analysis, Bill #: CS/CS/HB 87 (Tallahassee, Florida, June 12, 2013).

2 Administrative Order 2010-09, 19th Judicial Circuit, September 10, 2010.

3 Administrative Order 2010-03, 19th Judicial Circuit, February 26, 2010, amended by A.O. 2011-06, August 12, 2011.

4 Administrative Order 2012-01, 19th Judicial Circuit, January 5, 2012.

5 This and following statistics are from FY 2014/2015 Foreclosure Initiative State Report, March 2015, which OSCA compiled from data received from the Florida Clerks of Court. Reopened and inactive cases are not included.

6 Section 95.11(h), Florida Statutes (2013), Ch. 13-137, Laws of Florida.

7 House of Representatives Final Bill Analysis, Bill # CS/CS/HB 87 (Tallahassee, Florida, June 12, 2013).

8 Amended Administrative Order 2013-01, 19th Judicial Circuit, April 1, 2013, and Administrative Order 2013-13, 19th Judicial Circuit, November 4, 2013.

9 *Wells v. Giglio*, 123 So.3d 60 (Fla. 4th DCA 2013)

10 See, for example, *Reid v. Compass Bank*, 2015 Fla. App. Lexis 6497 (Fla. 1st DCA 2015) (Jurisdiction was retained in the foreclosure action to address the deficiency and the court has no jurisdiction to consider same in a common law action).

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Lender Force-Placed Insurance Practices: A Revelation

(Endnotes)

1 *Persaud,* No. 14-21819-CIV, 2014 WL 4260853 (S.D. Fla. August 28, 2014).

2 *Persaud*, No. 14-21819-CIV, 2014 WL 4260853, *15-*16 (S.D. Fla. August 28, 2014).

3 *Novell*, No. 14-CV-80672-RLR, 2014 WL 7564678 (S.D. Fla. December 3, 2014).

4 *Novell*, No. 14-CV-80672-RLR, 2014 WL 7564678, *6-*7 (S.D. Fla. December 3, 2014).

5 *Burdick*, ___ F. Supp. 3d ___, 2015 WL 1780982, *5 (S.D. Fla. April 14, 2015)

6 Dennis J. Wall, "Lender Force-Placed Insurance Practices" Ch. 5, *Claims Decided by the Courts and Statutes*, §§ 5.1-5.5 (American Bar Association 2015). Affirmative defenses typically alleged in LFPI cases, including preemption, the filed rate doctrine, voluntary payment doctrine, waivers, and immunity, are discussed in *id.*, Ch. 6, §§6.1 -6.5.

7 *See, e.g., Goebel v. Boley Int'l (H.K.) Ltd.*, 738 F.3d 831 (7th Cir. 2013)(Posner, J.); Robert Timothy Reagan, "Confidential Discovery: A Pocket Guide on Protective Orders," p. 6 (Federal Judicial Center 2012); Fed. R. Civ. P. 26(c).

8 Stipulations have recently taken over a lot of different kinds of litigation. Instead of contested discovery, agreements are reached which lower the costs of litigation, on the one hand, but also keep evidence secret.

9 *See generally* 1 Dennis J. Wall, Litigation and Prevention of Insurer Bad Faith *&s;* **§ 3:107, "Settlement of third-party bad faith claims: Confidentiality (protected) or concealment (void)"** (3d Edition and 2015 Supplement Thomson Reuters West); 2 *id.*, *&s;* **§ 9:28, "Settlement of first party bad faith claims: Confidentiality (protected) or concealment (void)"** (3d Edition and 2015 Supplement Thomson Reuters West).

10 *Lauren*, No. 2:14-cv-0230, 2014 WL 1884321, *4 (S.D. Ohio May 12, 2014).

11 *Fladell*, Dkt. No. 84, filed and dated October 23, 2014, "Joint Motion for Stipulated Protective Order," ¶ 11, p. 3 (S.D. Fla. Case No. 13-60271-Civ-Moreno/Otazo-Reyes).

12 *Fladell, et al., Plaintiffs v. Wells Fargo Bank, N.A., et al., Defendants* (S.D. Fla. Case No. 13-cv-60721).

13 *Fladell*, "THE WELLS FARGO DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION," Dkt. No. 108 at pages 2-3, filed December 9, 2013 (S.D. Fla. Case No. 13-cv-60721-FAM).

14 *See, e.g., Keller,* 2014 WL

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Lender Force-Placed Insurance Practices: A Revelation

6684895, *2-*3 (W.D. Wash. November 25, 2014)(granting "limited injunction" to prevent defendants foreclosing on plaintiffs' home, allowing the ***plaintiffs*** the opportunity to prove that their case is ***not*** included in the *Fladell* settlement); *Ali,* 2014 WL 819385, *2 (W.D. Okla. March 3, 2014)(granting defendants' motion to stay LFPI claims of plaintiffs who were not parties in the Florida case, unless the ***plaintiffs*** in the Oklahoma case could prove that their claims were ***not*** settled in *Fladell); Ursomano,* 2014 WL 644340, *1-*2 (N.D. Cal. February 19, 2014)(granting defendants' motion to stay LFPI claims alleged in California because the *Fladell* settlement in Florida might bar them).

15 *Lee,* (S.D. Fla. Case No. 0:14-cv-60649-GOODMAN). This is the current designation on the electronic docket.

16 *Lee*, 2015 WL 178220 (S.D. Fla. January 13, 2015)(Goodman, USMJ, Report and Recommendations), *adopted and aff'd*, 2015 WL 309441 (S.D. Fla. January 23, 2015)(Goodman, USMJ, sitting as presiding Judge in this case by consent).

17 *Lee*, "Post Fairness Hearing Order," Dkt. No. 159, filed June 11, 2015 (S.D. Fla. Case No. 0:14-cv-60649-GOODMAN).

18 *See, e.g., "*THE Lee FAIRNESS HEARING: NO SURRENDER. Part One," published on Insurance Claims and Bad Faith Law Blog on Tuesday, June 16, 2015, online at http://insuranceclaimsbadfaith.typepad.com/insurance_claims_badfh/2015/06/the-lee-fairness-hearing-no-surrender-part-one.html; "*Lee*: NO SURRENDER AT MIAMI COURTHOUSE. Part Two," published on Insurance Claims and Issues blog on Wednesday, June 17, 2015, online at *http://insuranceclaimsissues.typepad.com/insurance_claims_and_issu/2015/06/lee-no-surrender-at-miami-courthouse-part-two.html; and "Lee: NO SURRENDER AT MIAMI COURTHOUSE. Part Three," published on Insurance Claims and Bad Faith Law Blog on Thursday, June 18, 2015, online at http://insuranceclaimsbadfaith.typepad.m/insurance_claims_badfaith/2015/06/lee-no-surrender-at-miami-courthouse-part-threehtml.*

19 *Bedolla, Objector-Appellant, et al v. Allen, plaintiff-appellee, et al*, ___ F.3d ___, 2015 WL 3461537, *6 (9th Cir. June 2, 2015). In the District Court, the parties were aligned under the style of Allen v. Labor Ready Southwest, Inc. and although the style changed on appeal, some reports of the appellate decision still use the lower-court style of the case.

20 *Lee,* "Stipulation and Settlement Agreement," ¶ 15.2, p. 49, Dkt. No. 111-1, filed December 18, 2014 (S.D. Fla. Case No. 0:14-cv-60649-JG):

> Defendants agree not to oppose or otherwise object to an application by Class Counsel for the award of Attorneys' Fees and Expenses in this Action in an amount not to exceed $9,850,000. Class Counsel agree to [*sic*] not to seek an amount of Attorneys' Fees and Expenses in excess of $9,850,000.

21 *Lee*, "Order on Objections to Requested Final Approval of Class Action Settlement," Dkt. No. 149, ¶ 3, p. 3, filed May 13, 2015 (S.D. Fla. Case No. 0:14-cv-60649-GOODMAN).

22 *Lee*, "Order on Objections to Requested Final Approval of Class Action Settlement," Dkt. No. 149, ¶ 9, p. 4, filed May 13, 2015 (S.D. Fla. Case No. 0:14-cv-60649-GOODMAN).

23 *Lee*, "Post Fairness Hearing Order," Dkt. No. 159, filed June 11, 2015 (S.D. Fla. Case No. 0:14-cv-60649-GOODMAN); *Lee*, "ENDORSED ORDER re Supplement to Post Fairness Hearing Order," Dkt. No. 160, Supplemental Paperless Order entered only on the PACER docket, on June 12, 2015 (S.D. Fla. Case No. 0:14-cv-60649-GOODMAN).

24 "It's a bad game." Dennis Wall, quoted by Kenneth R. Harney, "Allegedly Abusive Property Insurance Deals Lead to Class Action Settlement," Washington Post, May 6, 2015. The class action settlement referenced in the headline of the Washington Post article is the same class action settlement proposed in *Lee* in the Southern District of Florida, which is addressed at length in the text of this article.

25 The rough 2% figure is the author's calculation derived from a New York Times report on the greater amount of monies paid by the thirteen largest banks to agencies of the Federal Government over the span of four years, with their vast respective capabilities for claims and litigation. Dennis J. Wall, "Lender Force-Placed Insurance Practices," § 2.1, p. 11 (American Bar Association 2015):

> Taking this view means considering the costs of settlement with the U.S. government for all claims made or that could be made by all of its agencies arising out of residential mortgage-backed securities as additional costs of doing business over the course of only four years. Looked at in that way, these additional costs of doing business in residential mortgage-backed securities during those four years were 2 percent of the revenue generated by those costs for the thirteen biggest banks in that line of business during that time.