

# *Passages* Friendly

Supporting Equal Access to Law in Florida

May/June  
2016

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



# Table of Contents



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

**On Behalf Of The Publisher**

*By James T. Walker Page 3*

**Discovery of Expert Witness Bias:  
How Much is Enough?**

*By Hon. F. Shields McManus Page 5*

**Hurricane Sandy and Her Lasting  
Environmental Impacts: Part 1**

*By Amanda Hunt Page 7*

**Pinkerton Detectives and Private Law Enforcement**

*By Richard Wires Page 9*

**Consequences of the Legalization of  
Same-Sex Marriage: A New Estate Planning Frontier**

*By Jonathan Coleman Page 11*

**The Rupert J. Smith Law Library: A Treasure Trove**

*By Carolyn Fabrizio Page 14*

**From the Clerk of the Court St. Lucie County Florida**

*By Joseph Smith Page 15*

**You Can Quote Me on That!**

*By Robert Brammer Page 16*

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

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

## Library Holiday Schedule

The library will be closed:  
 Saturday July 2nd, Sunday July 3rd,  
 and Monday July 4th

## On The Cover

“Out to Pasture”  
 Pastel on sanded paper  
 by Paul Nucci  
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## On Behalf of the Publisher

By James T. Walker President,  
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Law Library



*“William Roper: ‘So, now you give the Devil the benefit of law!’*

*Sir Thomas Moore: ‘Yes! What would you do? Cut a great road through the law to get after the Devil?’*

*William Roper: ‘Yes, I’d cut down every law in England to do that!’*

*Sir Thomas Moore: ‘Oh? And when the last law was down, and the Devil turned ‘round on you, where would you hide, Roper, the laws all being flat? This country is planted thick with laws, from coast to coast, Man’s laws, not God’s! And if you cut them down, and you’re just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I’d give the Devil benefit of law, for my own safety’s sake!’”* – Robert Bolt, A Man For All Seasons

In its annual report, The Rule of Law Index, the World Justice Project serves as a reminder of what is meant by “The Rule of Law”. It’s a useful tutelage. Not everyone attaches the same meaning to such rule. President Xi Jinping of China, for instance, was widely quoted in 2012 as committing himself to the Rule of Law when, giving a speech on the 30<sup>th</sup> anniversary of the Chinese constitution, he said “We must firmly establish, throughout society, the authority of the Constitution and the law and allow the masses to fully believe in the law. ... To fully implement the Constitution needs to be the sole task and the basic work in building a socialist nation ruled by law.” Yet similarity of words from the leader of a One Party State hardly conveys the same substance when compared with the meaning others attach to the Rule of Law.

The concept of rule-based law traces back to antiquity, but one of the first uses of the phrase “Rule of Law” came in 1610 when used by the House of Commons in a Petition addressed to James I of England: “Amongst many other points of happiness and freedom which your majesty’s subjects of this kingdom have enjoyed under your royal

progenitors, kings and queens of this realm, there is none which they have accounted more dear and precious than this, to be guided and governed by the certain rule of the law which giveth both to the head and members that which of right belongeth to them and not by any uncertainty or arbitrary form of government.”

The World Justice Project notes in its report that the “rule of law is notoriously difficult to define and measure.” It sees necessity for striking a balance between what the editors note in the report as a “‘thin’ or minimalist conception of the rule of law that focuses on formal, procedural rules, and a ‘thick’ conception that includes substantive characteristics, such as self-government and various fundamental rights and freedoms.” Eventually the Project resolves such difficulty by recognition of a system which upholds four basic principles which are each viewed as universally accepted international standards: (1) the government and its officials and agents as well as individual and private entities are accountable under the law; (2) the laws are clear, publicized, stable and just, are applied evenly, and protect fundamental rights, including security of persons and property; (3) the process of enactment is accessible, fair and efficient; and (4) justice is delivered timely by competent, ethical and independent representatives and neutrals who are of sufficient number, have adequate resources and reflect the makeup of the communities they serve. Those four bedrock principles are, in turn, measured by nine criteria including constraint placed on government power, absence of corruption, openness of government, protection of fundamental rights, maintenance of order and security, environmental regulation, provision of civil justice, effectiveness of criminal justice, and extent to which informal cultural justice succeeds in remedying failings of formal legal institutions.

The Project then ranks each country according to the success with which they implement these measures. Out of 102 countries thus ranked, the United States comes in nineteenth, ahead of many central European countries, but behind Scandinavia, Western Europe and Hong Kong SAR China.

Importance of the Rule of Law can hardly be overstated: “Effective rule of law reduces corruption, combats poverty and diseases, and protects people from injustices large and small. It is the foundation for communities of peace, opportunity, and equity-- underpinning development, accountable government, and respect for fundamental rights.” It impacts virtually every aspect of daily life, as by creating a stable, rule-based environment within which investment may take place, and integrity

## **On Behalf of the Publisher**

of bridges, roads and buildings assured through building codes governing design, safety, and quality. The public health and environment are assured by restrictions placed on toxic chemicals that would otherwise be released into the air, streams and rivers. Right of public participation in the decision-making processes of government, for example, gives residents opportunity to object and to explain how proposed construction projects will affect their neighborhoods before such projects are approved. Functional mechanisms for conflict resolution, both civil and criminal, provide a means for settling disputes or seeking out shelter from overreach, without resort to violence or vigilantism.

Abraham Lincoln urged that it be celebrated in every nook and cranny of American life: “Let reverence for the law be breathed by every American mother to the lisping babe that prattles on her lap. Let it be taught in schools, in seminars, and in colleges. Let it be written in primers, spelling books, and in almanacs. Let it be preached from the pulpit, proclaimed in legislative halls, and enforced in the courts of justice. And, in short, let it become the political religion of the nation.”

Friends, too, joined in such celebration, with our Annual Law Day Reception and Art Contest, which took place this past May 2<sup>nd</sup>. This function is made possible with sponsorship and support from the St. Lucie County School Board, St. Lucie County Bar Association, the Trustees of the RJS Law Library, Everlove and Associates, and Kim Cunzo. Additional help for which much gratitude is merited and acknowledged came from the Hon. Charles Schwab, the Hon. Mark Klingensmith, Kathryn Hensley, attorney Amy Burns, Rene Artaega, Franny Hutchinson, attorney Andrew Blum, Nora Everlove, attorney Carlos Wells, Paul Nucci, and Carmela Gallese and her family, as well as so many others. Particular thanks is also due to those invitees who attended so as to show support for the young students whose artistic contributions well expressed the 2016 ABA Theme for Law Day: “Miranda--More than Just Words”. The Hon. Janet Croom keynoted an address and Superintendent Wayne Gent spoke and helped to hand out the awards.

And Friends took particular pleasure in being able to honor several very special individuals whose accomplishments so well embody the ideals and benefits we proudly proclaim for the Rule of Law. Although lawyers and judges often come immediately to mind in this context, they are but its laboring servants, carrying out the yeoman’s work through which the Rule of Law finds its

most formal expressions. The Rule achieves its life, its highest meaning in the efforts of ordinary members of the community, people whose daily lives, through example and leadership, inspire awareness of and support for the Rule of Law in everything that takes place around us. This year’s Honorees were Ernesto Urbina and Judi Miller, with special recognition and thanks to Commissioner Paula Lewis.

Amy Burns, Deputy Director for Florida Rural Legal Services, introduced and celebrated Mr. Urbina. Mr. Urbina was first introduced to us in Burns, Amy; “Time Passages”, Friendly Passages, July/August (2015). There it was learned that he grew up in a family of migrant farm workers, one of fifteen children, only five of whom reached adulthood. “His incubator was a pot belly stove and his bed was a shoebox.” By the age of six Mr. Ernesto was helping to pick cotton, moving with his family from state to state as crops were ready for harvesting. But since 1969 he has been working for Florida Rural Legal Services, and its predecessor, South Florida Migrant Legal Services. There he serves the needs of migrant farm workers and indigents with compassion and understanding.

Rene Artaega, branch manager and Vice President for TD Bank, introduced and lauded Judi Miller. For twenty-four years Judi Miller served on the St. Lucie County School Board, helping it through difficult periods involving court-ordered desegregation, bond issue campaigns and a restructuring after the 2004 hurricanes. For the past twenty-five years she has served as CEO for Big Brothers Big Sisters of the Treasure Coast (St. Lucie, Indian River and Okeechobee Counties), and Chaired a number of statewide organizations including the Florida Association of Partners in Education, and Big Brothers Big Sisters Association of Florida.

Frannie Hutchinson, County Commissioner, acquainted attendees with and feted her friend and colleague, fellow Commissioner Paula Lewis, whose career of public service began in 1994 with a term on the Port St. Lucie City Commission. For the next twenty years, she served on the Board of County Commissioners for St. Lucie County, including four terms as Chair. She has been on the Board of Directors for the Florida Association of Counties and has held too many memberships and offices to list here. Our Rupert J. Smith Law Library is particularly indebted to her for the approximately sixteen years given over to distinguished, devoted service as the County Commission’s representative member on the library’s Board of Directors. She will be retiring from public service with the end of her current term in office.



# Discovery of Expert Witness Bias

## How Much is Enough?



By *The Hon. F. Shields McManus,*  
*Circuit Judge*

The investigation into expert witnesses' business practices in order to prove bias has become exceedingly intrusive in recent years. It has expanded into the records of medical businesses and even into the parties' lawyers' records. Reflecting on the personal injury practice of 25 or 30 years ago, today's practice seems excessive. Judging by the few treating physicians who are willing to testify and the few physicians who are willing to perform medical examinations for litigation, it is likely that aggressive discovery is having a chilling effect on the availability of physician experts.

Looking at the Florida history of rules of expert discovery, one can see not only that lawyers have been expanding their requests for information, but also that the appellate courts have been limiting the discovery allowed in order to prevent undue burden on the witnesses and to protect privacy interests. This article will review the rules as they exist and argue that further expansion of discovery of expert witnesses should be discouraged.

The personal injury practice early in my legal career did not include discovery requests for such things as doctor's and lawyer's records of payments made to witnesses over several years, records of the number of like surgeries performed over time and the amounts charged for those not involving negligence claims, copies of CME reports from other lawsuits, and lawyer's letters of protection. I am mindful that the past was never as good (or bad) as we remember it, but I am sure discovery of the "plaintiff doctors" and of the "insurance company doctors" was less intrusive and less contentious than now.

No doubt I am not the first judge to bemoan a progression of complexity in litigation, especially discovery. I remember one time arguing a motion in front of this journal's namesake, Judge Rupert Jasen Smith, and he gave us his view on things in his charming way. "You fellas have made this so complicated," he said, meaning the personal injury bar in general. "We used to take a little auto accident case and settle it for \$600 and make a nice living without all the fuss." Likewise, I think that today, lawyers have unwisely made discovery of evidence of expert bias the central issue in personal injury cases, especially the non-catastrophic injury cases. There have always been plaintiff doctors and defendant doctors. Today, the numbers of referrals and the amounts of money are bigger. Even so, juries can figure out the inherent bias in physician testimony without "all the fuss."

### Judicial Limits on Expert Discovery

The judicial effort to oppose escalation of physician expert discovery was incorporated into the Rules of Civil Procedure twenty years ago. It arose out of a case where a plaintiff's lawyer sought evidence to impeach the testimony of the defendant's expert witness who did an IME. ("IME" stands for independent medical exam, now known as "CME" for compulsory medical exam.) The lawyer served a subpoena duces tecum on the physician's records custodian bookkeeper. The defendant's counsel filed an objection and a motion for protective order. The trial court ordered the CME physician to (1) produce material ordered in earlier cases by other trial judges; (2) begin keeping certain new records to be made available to plaintiff's counsel; and (3) produce certain financial data, including federal income tax 1099 forms. The Third District Court of Appeal granted certiorari.

continued from page 5

## Discovery of Expert Witness Bias

The District Court acknowledged that lawyers were making many such discovery requests seeking access to the doctor's office files either to obtain the number of IME's the doctor performed, or to come up with exact income figures which could be presented to the jury. In an en banc decision, the court quashed the trial court's order. The court adopted limits on expert discovery balancing the need for proof of bias with avoidance of burdensome discovery and protection of patients' privacy. The court denied discovery of financial records and patient information absent "the most unusual or compelling circumstances". Regarding the amount of information it decided was normally needed in order to sufficiently inform the jury of witness bias, the court wrote:

The data suggested by our guidelines will normally be sufficient to show the jury the expert's background and orientation. With this information, the opponent may, even with minimal cross-examination, make perfectly clear to a jury that a defense doctor testifies as a defense doctor, and plaintiff's doctor testifies as a plaintiff's doctor, and that each may spend considerable time doing just that.

*Syken v. Elkins*, 644 So.2d 539, 547 (Fla. 3d DCA 1994).

The Florida Supreme Court accepted jurisdiction and affirmed, acknowledging that the issues presented in the case were an expanding problem. As initially conceived by the en banc decision of the Third District Court, the Supreme Court created Rule 1.280(b)(5)(A)(iii). That is still the basic rule today. It reads, in part, as follows:

(iii) A party may obtain the following discovery regarding any person disclosed by interrogatories or otherwise as a person expected to be called as an expert witness at trial:

1. The scope of employment in the pending case and the compensation for such service.

2. The expert's general litigation experience, including the percentage of work performed for plaintiffs and defendants.

3. The identity of other cases, within a reasonable time period, in which the expert has testified by deposition or at trial.

4. An approximation of the portion of the expert's involvement as an expert witness, which may be based on the number of hours, percentage of hours, or percentage of earned income derived from serving as an expert witness; however, the expert shall not be required to disclose his or her earnings as an expert witness or income derived from other services.

## Discovery of Insurance Company - Expert Relationships

Three years later, in *Allstate Insurance Co. v. Boecher*, 733 So.2d 993 (Fla. 1999), the Supreme Court decided that because of the more extensive financial relationship between the expert - an accident reconstruction and injury causation expert - and the party - an uninsured motorist insurer - a more extensive discovery of the relationship was justified. Discovery was allowed including the identity of cases in which the expert had performed services and rendered opinions nationally and the cumulative amount paid from the insurer to the expert nationally for the preceding three years.

The court distinguished its decision in *Elkins* because the information here was sought from a party, not from the expert. The court pointed out that Rule 1.280(b)(5)(A)(iii) restricted only discovery obtained directly from experts. The court was not concerned that this expansive discovery of a party could have a "chilling effect" on a party's ability to obtain doctors willing to testify as it was in *Elkins*. *Id.*, at 997. The court noted that the more extensive a relationship is between a party and a witness, the more it is likely that the witness has a vested interest in that financially beneficial relationship continuing. The court found that not only was such information relevant but it should be presented to the jury.

Now, it has become routine for plaintiffs to seek from the defendant the amount of payments made over a period of time to a physician by the insurer providing the defense. I doubt the Supreme Court intended this. Discovery of expert's reports of CME's of non-parties, however, has not been allowed. See *Crowley v. Lamming*, 66 So.3d 355 (Fla. 2d DCA 2011), and *Coopersmith v. Perrine*, 91 So.3d 246 (Fla. 4th DCA 2012).

## Discovery of Plaintiff's Lawyer-Doctor Relationships

Eventually, the chickens came home to roost when the defendants began requesting similar discovery from plaintiffs about their experts. In *Steinger, Iscoe & Greene, P.A. v. GEICO Gen. Ins. Co.*, 103 So.3d 200 (Fla. 4th DCA 2012) the court held that Rule 1.280(b)(5) and *Allstate Insurance Co. v. Boecher* apply to treater witnesses, too. The court stated that where there is a preliminary showing that a plaintiff was referred to the physician by the lawyer, or vice versa, the defendant is entitled to discover information about the extent of the relationship.

The court further emphasized that while the rule limits discovery where it is sought solely to establish bias, the trial court has discretion to order additional discovery when relevant to a discrete issue in the case.

Even so, it said, the trial court must always balance discovery with the privacy rights of former patients and



## Hurricane Sandy and Her Lasting Environmental Impacts: Part 1 of 2



By Amanda Hunt

Endnotes for this article can be found on page 26 of the online edition of Friendly Passages

More than three years have passed since Hurricane Sandy, estimated to be nearly 900 to 1,000 miles wide, made landfall along the U.S. Mid-Atlantic and Northeast Coasts on October 29, 2012.<sup>1</sup> With it came large storm surge, which destroyed buildings and bridges, filling even subway stations in New York City with saltwater.<sup>2</sup> The total damage was estimated to be around \$65 billion, which makes it the second costliest storm to hit the United States.<sup>3</sup>

Killing 117 people in the United States alone, Hurricane Sandy was the deadliest of the 2012 Atlantic hurricane season.<sup>4</sup> To aid in response and recovery of Hurricane Sandy’s aftermath, the Obama Administration requested \$60.4 billion.<sup>5</sup> Despite the infusion of federal, state and private sector funding, Hurricane Sandy continues to affect the lives of tens of thousands of New Jersey and New York City residents, who are still dealing with unfinished repairs, disputed claims, and recurrent mold more than three years later.<sup>6</sup>

This Comment addresses the exacerbated environmental and public health effects of Hurricane Sandy, which resulted from flaws in disaster relief funding. Part II will examine the process for disaster funding, including major disasters such as flooding and hurricanes. Part III will examine federal, state and local disaster relief efforts. Part IV will address environmental and public health effects, which have increased over time. Part V examines the inquiry of lingering unmet needs despite obvious environmental and public health threats and available funding. Finally, Part VI concludes with a recommendation for revamping funding processes for disaster relief by preserving the Disaster Relief Fund to minimize response and recovery during major disasters.

### Overview of the Disaster Funding Process and Intergovernmental Responsibilities

When a major disaster strikes, such as Hurricane Sandy, local government’s emergency services are initially responsible for responding.<sup>7</sup> Initial response efforts are generally supplemented by neighboring municipalities, state and volunteer agencies.<sup>8</sup> If local government becomes overwhelmed despite such efforts, assistance is then sought from the state.<sup>9</sup> In response, the state offers its own resources, such as the National Guard and state agencies.<sup>10</sup>

*continued on page 8*

## The Alto Adams Law Student Writing Competition

We have just announced the winner of our annual writing competition, Amanda Hunt, a law student at Barry University in Orlando. The writing competition is sponsored by the Adams Family and organized by the Friends of the Rupert J. Smith Law Library. Our special thanks to Alto “Bud” Adams, Jr. for his generosity. We wish to thank Judge Burton Conner and Judge Mark Klingensmith for judging the papers again this year. We also wish to thank the other students who submitted their work. Among our top finishers, we want to acknowledge Shont’a McCord who submitted a strong Second Place paper and to Charles Hamilton who received an Honorable Mention. They are all from Barry University. It must be noted that beyond their law school, Louis Rosen, Assistant Professor, is their common denominator. Each of our winners took advanced legal research with Louis and were encouraged to enter the writing competition.

We are delighted to publish Amanda’s paper in this issue of “Friendly Passages.” It discusses a topic of interest to every Floridian: Hurricane relief and governmental response and obligations. In subsequent issues we will also publish the articles by Shont’a McCord and Charles Hamilton.

*continued from page 7*

## **Hurricane Sandy and Her Lasting Environmental Impacts: Part 1 of 2**

The next step in the disaster funding process calls for a damage assessment, which is conducted by state representatives, federal representatives such as Federal Emergency Management Agency (FEMA), and volunteer organizations to determine losses and disaster recovery needs.<sup>11</sup> Based upon the damage assessment results, the governor can then make a major disaster declaration request for federal resources that are mobilized through FEMA.<sup>12</sup> Such resources include, but are not limited to, search and rescue, electrical power, food, water, shelter and other basic human needs.<sup>13</sup>

Major disaster declaration requests entail many requirements, beginning with the Stafford Act requirement that: “All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State.”<sup>14</sup> As part of the request, the governor must not only inform as to the nature of damages, but also provide specific information on present and future resource plans to alleviate the aftermath of the major disaster on both local and state levels.<sup>15</sup> In order to further comply with the major disaster declaration request requirements, the governor must provide the type and amount of assistance needed under the Stafford Act.<sup>16</sup> Lastly, a certification from the governor regarding the current disaster is required, which must indicate an intention to comply with all applicable cost-sharing requirements.<sup>17</sup>

Once a major disaster declaration has been requested, it is then up to the President to make the determination regarding the disbursement of supplemental federal aid.<sup>18</sup> Depending upon the severity and circumstances surrounding the disaster, the process can take anywhere from a couple of hours to several weeks.<sup>19</sup> If denied, FEMA has the responsibility of informing the governor.<sup>20</sup> However, if the President determines the major disaster warrants federal aid, FEMA then evaluates and recommends the request to the White House for action.<sup>21</sup>

Alternatively, if the governor’s proposed disaster fails to qualify as a “major disaster,” the governor may request the President declare an emergency instead.<sup>22</sup> An emergency refers to an event that requires supplemental federal aid to save lives, protect public health, safety and property, or avert the threat of a catastrophe.<sup>23</sup> The requirements for requesting an emergency declaration are very similar, with only slight differences required in the governor’s basis and findings for the request.<sup>24</sup> However, in a major disaster declaration request, preliminary estimates of the type and extent of supplemental federal aid must be provided in accordance with the Stafford Act.<sup>25</sup>

A Presidential major disaster declaration receives supplemental federal aid from the President’s Disaster Relief Fund, which is also known as the Disaster Relief Fund (DRF), as well as long-term recovery programs.<sup>26</sup> While most long-term recovery programs are strictly federal programs, some programs require that states match federal funds. Regardless of the source or its structure, the main goal amongst all recovery programs is to assist those affected by disaster, including businesses and public entities.<sup>27</sup>

### **Disaster Relief**

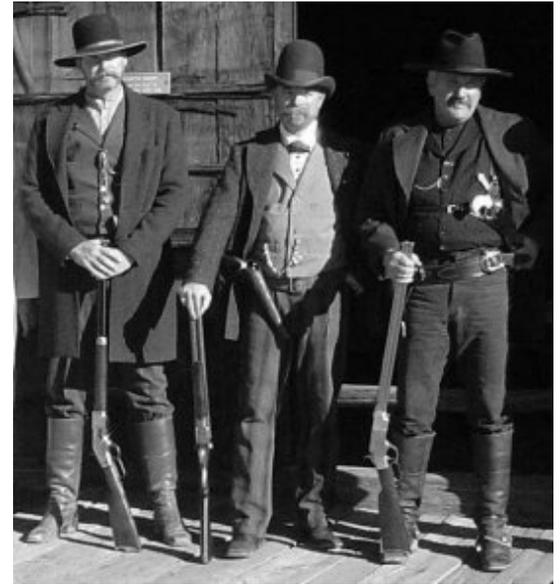
Before 1950, the federal response to disasters was criticized for being delayed, insufficient, and inconsistent.<sup>28</sup> Over time, the federal government took on a larger role in disaster relief assistance, which ultimately led to the creation of FEMA in 1979.<sup>29</sup>



*continued on page 17*

# Pinkerton Detectives and Private Law Enforcement

By Richard Wires



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*The company's services varied in nature and emphasis over time. Protection and detection were frequently interlinked. Investigating crimes against clients who hired the agency to protect their premises and property might lead to extended chases and searches.*

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In the mid-nineteenth century law enforcement in both urban and rural areas was seldom adequate. Where police forces did exist, the personnel focused on petty crimes and maintaining order, but were untrained in detection, essential for investigating the growing number of major crimes. Home and business owners often relied on their own weapons or on private security agents to protect their lives and property. Among special problems was authority limited to specific jurisdictions, making pursuit of criminals across local boundaries or state lines difficult, even as society became more mobile and new settlements appeared. While neighboring communities might coordinate efforts, cooperation from more distant places was nearly impossible, given the period's poor communications. The frontier's open spaces posed difficulties made famous in outlaw stories. But riverboats and railroads also allowed suspects to escape crime scenes quickly and avoid capture and prosecution. Under such conditions a private law enforcement company appeared and prospered, relying on well-trained operatives, offering both protection and detection, and pursuing the fleeing criminals by working closely with local authorities. It was the first national law enforcement service in the country.

Scottish immigrant Allan Pinkerton (1819-1884) co-founded Pinkerton's National Detective Agency in Chicago in 1850. A maker of barrels by training, he had become a policeman after helping catch a gang of counterfeiters, and then one of the first detectives. He and his brother Robert had separate detective businesses but joined efforts to form the PNDA as a stronger service. A sign on the company's headquarters displayed its motto, "We never sleep," and its symbol, a watchful eye, items familiar to generations of people over the decades. They are the originators of the term "private eye" now a part of our popular language. Because other early detective services had questionable reputations the company controlled agents' conduct. From the outset they were governed by a strict code: they must always cooperate with local law enforcement organizations, were forbidden to accept any bribes or rewards, could not compromise or make deals with criminals, were not to handle divorce or scandalous cases, could not raise fees without clients' prior agreement, and must inform clients regularly of developments and progress.

The company's services varied in nature and emphasis over time. Protection and detection were frequently interlinked. Investigating crimes against clients who hired the agency to protect their premises and property might lead to extended chases and searches. An example of more focused protective work occurred during the Chicago fire in 1871 when the company agents guarded area homes and businesses from looters. Before long the firm's files and mug shots formed what today would be called a database. But protection assignments later did great harm to the company's image when it enforced the orders of some big corporations. In time other types of security work, such as safeguarding corporate information, and screening applicants for employment, would also become important sources of business.

*continued on page 10*

*continued from page 9*

## **Pinkerton Detectives and Private Law Enforcement**

Given the broad nature of their responsibilities the agents were necessarily a diverse group. The first of the agency's female detectives was hired in 1856 and during the Civil War the first black operatives were added to the firm's roster. By the 1890s the company had about 2000 active agents and 30,000 in reserve. During that period it was the biggest private law enforcement group in the world. Looking at some aspects of the company's evolution tells much about conditions and crime-fighting during the country's formative years.

Pinkerton was a strong abolitionist and the Civil War era brought national fame to the PNDA. His agents may have foiled a plot to kill Abraham Lincoln, but certainly protected him en route to his first inauguration, and then provided security for the president during those dangerous years. They also organized an intelligence service. After the war the company had government contracts for a range of duties. Acting in such capacities made it a forerunner of the Secret Service and FBI in handling the tasks now assigned to those federal organizations.

From its beginning the agency's detectives worked for express companies like Wells Fargo to protect their shipments of valuables by both stage coaches and railroads. Their determined efforts helped solve in 1866 the country's first recorded train robbery. During the following decades they pursued the famous outlaw gangs with good success – the James brothers, Youngers, Daltons, and Wild Bunch. But when they went after Jesse James at his farmhouse, a device intended to smoke everyone out instead exploded, killing Jesse's young half-brother and wounding other family members. The public sided with the outlaws and Pinkerton's in consequence found itself very widely criticized.

The company's well-publicized work for big corporations in early labor disputes is generally downplayed in its official literature. Protection of the equipment and operations of railroads, mining companies, and factories meant enforcing their anti-union policies. One of its agents infiltrated the coal miners' group called the Molly Maguires and helped undermine the miners' attempt to organize a union. A more famous incident occurred in 1892 at the Homestead steel mill near Pittsburgh when Henry Clay Frick acting for the Carnegie Steel Company hired about 300 Pinkerton men to act as strikebreakers. During the violence many of the hated "Pinks" and a number of workers were killed. Such tragic confrontations were common. To many people the names "Pinkerton" and "Pinks" came to mean the enemy. A legal reaction soon followed. Ohio banned the agency, calling it a private army or militia for hire, and Congress also acted. Company ties with the Department of Justice were ended under the Anti-Pinkerton Act (1883).

Meanwhile agents in 1895 caught a vicious killer, H.H. Holmes, who is sometimes called America's first serial killer. In 1905 the Pinkertons also apprehended the man accused of assassinating former Idaho governor Frank Steunenberg. Harry Orchard claimed he had been hired by the president of the Western Federation of Miners, "Big Bill" Haywood, but Clarence Darrow got the jury to acquit the union leader while Orchard himself was convicted.

Dashiell Hammett is perhaps the most famous of Pinkerton detectives. Many critics and viewers consider *The Maltese Falcon* (1941) the best detective film ever. It was adapted from his 1930 novel of the same title but made Hammett's characters a little less shady. Hammett acknowledged that many of his characters were based on criminals he encountered while with Pinkerton's. The Peter Lorre character was modeled on a forger, for instance, and Effie the secretary was suggested by a drug smuggler.

Two developments in the 1920s and 1930's caused adjustments in operations. During that crime-ridden period the new law enforcement and security powers given the FBI meant that federal authority replaced the company in fields where it had been prominent. With the depression and unemployment the agency's work for corporations got renewed scrutiny. Congressional hearings again tarnished the reputation of Pinkerton's.



Yet the company prospered and in the 1960s had 45 offices in major cities across the country. Protection by then had replaced the role of detection. The shifting business focus meant that the word "Detective" was no longer used in the company name. One interesting assignment was Pinkerton's guarding of the "Mona Lisa" during 1962-1963 when it came from Paris's Louvre museum to New York for exhibition that winter. Development of foreign offices in the 1960s eventually led to major international growth.

# CONSEQUENCES OF THE LEGALIZATION OF SAME-SEX MARRIAGE:

## A NEW ESTATE-PLANNING FRONTIER

Endnotes for this article can be found on page 26 of the online edition of Friendly Passages



By Jonathan Coleman, Esq.



Before the Supreme Court's recent landmark 5/4 rulings in Obergefell v. Hodges, 135 S.Ct. 2584 (2015), and shortly before in United States v. Windsor, 133 S.Ct. 2675 (2013),<sup>2</sup> the only financial and estate planning vehicles available to Florida same-sex couples were those available to legal strangers (or single people). These included powers of attorney, written medical directives, adoption of adult by adult, and specific testamentary provisions - which were often then challenged by disapproving surviving family members.

For those same-sex partnerships - no matter the duration or strength of their committed relationships - there was no Federal marital or estate tax deduction, no "elective share" to be claimed against marital property in the event of death, and no ability to file joint taxes. In addition, same-sex couples could not take advantage of Florida's constitutional homestead protections, were denied the ownership form known as "tenancy by the entireties" and they could not avail themselves of other creditor protections automatically and ordinarily available to married couples.

All of that changed when the Supreme Court held first in Windsor in 2013, regarding the Federal Government's interpretation of "marriage" and "spouse" under the Defense of Marriage Act, that those terms could not be constitutionally restricted only to heterosexual unions. Last year, in Obergefell, the Supreme Court held, in a still hotly-debated decision,<sup>3</sup> that Florida's statutory and state constitutional policy of denying all legal recognition to same-sex marriages violated both the Due Process and Equal Protection guarantees of the United States Constitution.

This recent seismic change in the legal landscape means now that same-sex couples, providing they legally marry according to the laws of their jurisdiction, are entitled to the same rights and protections as all married people, and a review of any pre-Obergefell and Windsor estate planning should be a top priority.

The IRS followed up Obergefell by issuing proposed regulations changing, for all Federal tax purposes, the terms "spouse," "husband," and "wife" to mean an individual lawfully married to another individual, and the term "husband and wife" to mean two individuals lawfully married to each other. However, it should be noted that the proposed regulations would not treat registered domestic partnerships, civil unions, or similar relationships that are not denominated as marriage under state law, as marriage for Federal tax purposes.<sup>4</sup>

In light of the Court's June 26, 2013 and June 26, 2015 decisions and the accompanying proposed regulations, the areas that same-sex couples should now consider in developing an estate plan include:

*continued from page 11*

## **Consequences Of The Legalization Of Same-Sex Marriage:**

### **Marital Deduction and Estate Tax Exclusion Amounts.**

Same-sex couples who decide to marry may now take advantage of the estate and gift tax unlimited marital deductions. With same-sex marriage becoming legal in all 50 states and Washington D.C., those couples who have been holding off getting married or who have entered into civil unions or domestic partnerships are now eligible to marry and take advantage of the Federal benefits afforded to married couples, such as the unlimited marital deduction from Federal estate and gift tax.

As a result of Obergefell and Windsor (and the proposed regulations discussed above), couples who are in a civil union or domestic partnership should consider applying for a marriage license, even if the state laws provide the same benefits of marriage to civil unions or domestic partnerships, because current Federal laws afford those same Federal benefits only to legally married couples. Federal recognition of marriages of same-sex couples leads to the availability of the unlimited marital deduction from Federal estate tax and gift tax for transfers between same-sex spouses, and couples no longer have to rely on an individual's applicable exclusion amount from Federal estate tax and federal gift tax (currently \$5.45 million, adjusted annually for inflation).<sup>5</sup> Additionally, the "portability" provisions of Federal gift and estate tax laws also entitle a surviving spouse of the same sex to use any portion of the deceased spouse's unused exclusion amount, allowing the surviving spouse to make additional tax-free gifts and reduce the amount of estate taxes owed upon the surviving spouse's death.

**Structure of Prior Gifts/Bequests.** Planners previously advising same-sex couples may have drafted their estate planning documents under the assumption that any gift or bequest to a spouse of the same sex over and above the individual's applicable exclusion amount would be subject to Federal estate tax (currently at a rate of 40%). However, in light of the current changes precipitated by Obergefell and Windsor such gifts and bequests, if properly structured, are now entitled to the unlimited marital deduction. Accordingly, a married same-sex couple may wish to modify their estate planning documents to provide that (i) any assets included in their estates in excess of the applicable exclusion amounts will pass to the surviving spouse, either outright or in a properly structured marital trust for the spouse's benefit, thus deferring all Federal estate taxes until the death of the surviving spouse, and (ii) to include a separate marital trust that is designed to permit a spouse to use any of the individual's unused Federal GST exemption that remains after the individual's death.

**Gift Taxes.** Prior to the Windsor decision, each spouse could make gifts only up to the annual exclusion amount from Federal gift and GST tax (the "annual gift tax exclusion amount" and the "annual GST exclusion amount," respectively - each currently \$14,000) without using any portion of his or her applicable exclusion amount. Going forward, however, each spouse may now make gifts from his or her own assets and, with the other spouse's consent, have such gifts deemed to have been made one-half by the other spouse for purposes of Federal gift tax and GST tax laws. By electing gift-splitting, a married couple currently may give up to \$28,000 to any individual without using any portion of either spouse's applicable exclusion amount.

**Retirement Accounts.** A surviving spouse is entitled to roll over a deceased spouse's retirement account into the surviving spouse's retirement account, treating such account as the surviving spouse's account and thereby avoiding the necessity to take minimum distributions or lump-sum distributions until such time as the surviving spouse ordinarily would be required to take minimum distributions (e.g., age 70½). As a result of Windsor, this benefit is now available to married same-sex couples, and married same-sex spouses should consider naming each other as the beneficiary of his or her retirement accounts in order to defer income tax recognition as long as possible.

However, a spouse-participant in an ERISA-covered plan (e.g., a 401(k) plan) should consider that his or her spouse may now automatically be a beneficiary of the retirement plan. Accordingly, if such spouse desires to designate someone other than his or her spouse as a beneficiary, such participant will need to obtain the consent of his or her spouse to make such a designation effective. Prior to the Court's decisions, consent was not needed from a spouse of the same sex.

**Inheritance and Intestate Succession.** Under Florida law, spouses are entitled to many preferences and rights upon the death of a spouse (e.g., family allowances, homestead, elective share etc.). Specifically, Florida has a strong policy against disinheritting spouses, and as a general rule, a surviving spouse can claim an "elective share" equaling 30% of an estate. These are complicated areas of the law and require considerable planning.

**Homestead Protections and Other Property Ownership.** One potential downside of marriage for spouses who own more than one residence is the removal of homestead protection for one of them: each married unit can claim only one homestead. On the other hand, a surviving spouse will be afforded homestead protection as

continued from page 12

## Consequences Of The Legalization Of Same-Sex Marriage:

to the descent and devise of the homestead, as well as against potential creditors. Another advantage available to married couples in the State of Florida is their ability to own property in what is called “tenancy by the entireties,” which provides that each spouse is deemed to own 100% of the property. Accordingly, the property is protected from attachment by a creditor of just one of the spouses.

The sea-change in the legal landscape relative to same-sex spouses, brought about by the Obergfell and Windsor decisions, is – to paraphrase the “Star Trek” franchise – a new (but undoubtedly not final) frontier. Same-sex couples, whether legally married or not, should carefully review their existing estate plans (or create them!) in consultation with qualified legal and tax professionals.

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

*Jonathan S. Coleman, who holds a B.A. from the University of Richmond, a graduate degree in History from the University of North Carolina at Chapel Hill, and a law degree from the University of Florida, is a partner at the St. Petersburg office of Johnson, Pope, Bokor, Ruppel & Burns, LLP.*



continued from page 10

## Pinkerton Detectives and Private Law Enforcement

Throughout most of its history Pinkerton’s remained a family-run business. But there was no suitable heir in 1967 to assume leadership of the firm. In 1999 both the Pinkerton firm and the rival Burns Detective Agency were acquired by the big Swedish company Securitas AB. It has also absorbed the Loomis Fargo company with its armored truck business. Pinkerton’s arranged about that time to donate its extensive and valuable archives to the Library of Congress. The company in 2000 celebrated its sesquicentennial. It still offers a range of services: they include many kinds of investigation, protection, crisis management, employment screening, security, intelligence, and safeguarding industrial secrets from spies. But its work as the country’s first national law enforcement group, chasing train and bank robbers or battling unions and strikers, has been replaced by less publicized activities for today’s complex businesses.

*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.”*



### Upcoming CLE Programs

- 8/26: Technology and the Legal Profession: Challenges and Opportunities by John Stewart
- 9/30: Representing the Mentally Ill by Diamond Litty
- 10/28: Motion Practice by Steve Hoskins
- 11/18: Oral Argument Before the Appellate Court, Up to and Including the United States Supreme Court by Mark Miller
- 12/16: Bankruptcy topic TBA by Malinda Hayes

Lunch is sponsored by Mike Fowler.

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

### Last Issue’s Cryptoquote Answer

XQQ MOT ZCLOMN NTDGZTI MB MOT DC-  
MCPTWN GWITZ MOT DBWNMCMGMCBW  
XZT YBZMO WBMOCWL, XWI X FTZT JGJJ-  
QT, TKDVTMLGXZXWMTTI MB MOTF JA XW  
CWITVTWITWM XWI HCZMGBGN RGICD-  
CXZA. – XWIZTY RXDENBW

All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous Judiciary. -Andrew Jackson



# The Rupert J. Smith Law Library: A Treasure Trove

*By Carolyn Fabrizio*

Law Libraries are an integral part of providing access to justice. Our local Rupert J. Smith Law Library of St. Lucie County (RJSLL) provides a resource for legal information and education to both the legal community and the community at large. The law librarians are a great resource and they will point you in the right direction to find the answers you are looking for. The law librarians are not attorneys, and as such, cannot provide legal advice. However, they have many resources to provide to you.

The Mission Statement of our local law library is: *The Rupert J. Smith Law Library of St. Lucie County strives to provide equal access to the courts through a strong collection of legal materials in print and electronic format to better serve all of the residents, bar and judiciary of St. Lucie County. The library staff endeavors to assist all patrons in using the collection effectively. Any patron who enters the RJSLL will easily recognize that the staff members and board of directors work hard to meet the mission.*

To that end, the RJSLL provides an efficient way to access legal information. Besides the many books that are available, it maintains electronic subscriptions which may be accessed from inside the library by any patron. These sources include, but may not be limited to, Florida Law Weekly, Florida Law Weekly Federal, Florida Law Weekly Supplement, and WestlawNext. There are also secondary sources including: American Jurisprudence, American Law Reports, Florida Jurisprudence, Florida Trial Court Opinions, Florida Briefs and law reviews, Lexis - including many major Matthew Bender Treatises, Shepard's Online, Hein Online, and Practical law available in all topics.

The RJSLL also offers a helpful website. The website is a portal to many useful links including legal research portals such as FindLaw and Cornell's Legal Information Institute, State and Federal Government sites such as MyFlorida, FL Attorney General, and the U.S. House of Representatives. It also includes links to Municipal Code of Ordinances, Professional Associations, Florida Law Schools, Public Records Search Sites, Administrative Orders of the 19th Judicial Circuit, Local Rules, etc. There are many ways that the library can meet your needs; please contact the library directly for information about additional services.

The RJSLL has seen a dramatic rise in the number of self-represented litigants seeking assistance with obtaining legal information at the Library. Due to this increase, public access to legal information has become increasingly important. In light of this, the library partners with various legal professionals and community service partners to provide continuing legal education to attorneys and to members of the general public. The library continues to assess the needs of the community to create programs, fine-tune services, and provide access to research materials to best meet those needs. Florida Rural Legal Services, Inc. (FRLS) and the 19<sup>th</sup> Circuit Pro Bono Initiative, which is comprised of hundreds of private attorney volunteers are able to assist only a fraction of the low income, elderly, and disabled residents seeking free legal assistance throughout the Circuit. This creates a "justice gap" where an individual may be forced to represent himself in court as a self-represented litigant, otherwise known as a *pro se* litigant. This increase in self-represented litigants can cause various issues within the court system when the Court and Clerks of Court have to effectively control traffic within the court which can often be likened to a police officer directing traffic on a road filled with unlicensed drivers. When private attorneys volunteer to provide pro bono services, community service partners and other legal professionals present educational seminars to lawyers and the general public, or when the law librarian directs a member of the public to the information he needs, the Court and Clerks of Court can do their jobs more effectively and efficiently.

*continued on page 23*

## From the Clerk of The Court, St. Lucie County Florida



*By Joseph Smith*

Since being elected your Clerk eight years ago, my goal has been to make the St. Lucie Clerk's office the best in Florida. I've worked closely with my colleagues locally and across the state to identify service gaps and create innovative programs. Our office has adopted new technologies and best practices to enhance your customer experience while improving transparency and efficiency throughout the office.

Together with my team of caring and knowledgeable professionals, we've launched new programs to save you money and to make you money. We've cross trained our Deputy Clerks, and instituted training programs to ensure that we are all experts at our crafts. These changes have helped us evolve into the nationally recognized governmental organization we are today. I'm pleased to report some of the successes we've had that are important to you.

### New Technology:

- Upgraded the court case management system, allowing customers to view digital case dockets and records
- Implemented electronic court case filing and document recording
- Launched online tax deeds and foreclosure sales, saving approximately \$30,000 a year
- Introduced a third-party translation service to serve non-English speaking customers
- Launched new website with integrated online case and official records searches as well as a live chat feature for improved customer service
- Created social media pages on Facebook, Twitter, LinkedIn, and YouTube to educate and inform the public about services
- Launched online check in for jury duty and began providing qualifying jurors with cash payments instead of mailed checks

### Financial Accountability:

- Earned more than \$29 million for citizens by investing tax dollars since 2009
- Instituted a new nationally recognized credit card rebate program in 2011, which has generated \$742,267 in new revenue while saving taxpayers an additional \$750,000 in operating, printing and mailing costs
- Created the award-winning Dollars & Sense: Your Practical Guide to County Finances to educate citizens about how their tax dollars are collected and spent
- Implemented new Internal Audit Department designed to improve Clerk and county processes

### New and Enhanced Services:

- Implemented new goals designed to achieve and maintain the office's 99 percent customer service rating
- Created central cashiering for customers to conveniently pay any criminal payments in one location
- Established centralized scanning to ensure all documents are scanned the same day they are received
- Consolidated services from five buildings to three, reducing overhead costs by \$40,000
- Enhanced guardianship audits to investigate fraud, waste, and financial mismanagement affecting our most vulnerable citizens
- Expanded services in St. Lucie West to process passports, notices of commencement, and marriage licenses
- Opened the Self-Service Center, providing self-represented litigants with easy online and in-person access to more than 45 court packets and forms
- Introduced phone, online and mobile-friendly web payments
- Ensured every Deputy Clerk receives a minimum of 40 hours of specialized training annually

# You Can Quote Me On It.

By Robert Brammer

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*“It’s all too tempting to take a quote that fits our purposes, take it at face value, and use it to advance our argument. How could you be wrong if George Washington agreed with you?”*

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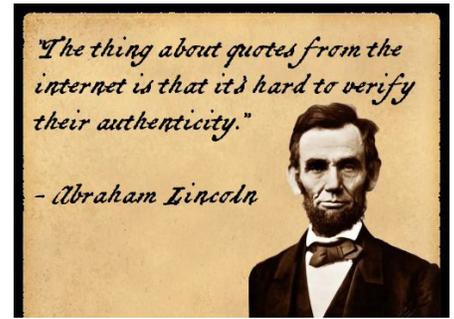
Falsely attributed quotes and quotes invented out of whole cloth seem to be everywhere. You will find them written on the signs of protesters, emailed through chain letters, and occasionally they find their way into the bill hopper in a state legislature. Everyone wants to bolster their position by aligning it with the views of a renowned public figure. It’s all too tempting to take a quote that fits our purposes, take it at face value, and use it to advance our argument. How could you be wrong if George Washington agreed with you?

It’s not just armchair partisans who are guilty of falsely attributing quotes to suit their own ends. U.S. News reported that a gun rights bill, [House Bill 2975](#), was introduced in Washington State with misattributed, if not altogether fake quotes from founding fathers that are commonly circulated on the internet. Some of these quotes find their origin in authors who can’t resist the urge to embellish the reputation of their subject for commercial gain, such as Mason Locke Weems. Weems seems to have invented the familiar story of George Washington and the cherry tree in *The Life of Washington*, capitalizing on the national outpouring of grief that occurred after Washington’s death. If Weems’ homilies and accompanying quotes seem too saccharine to take seriously, there are others, such as [Augustus Buell](#), who pose a more serious threat to the historical record. Buell was a journalist in the 19th Century who wrote purported first-hand accounts of the Civil War and several biographies of prominent American public figures, including Andrew Jackson. The broad outlines of his stories are accurate, but the details are invented. In fact, Buell’s own biographical statements are riddled with errors. Even though his biography of John Paul Jones was assailed as a fraud shortly after his death, his work has somehow acquired credibility through antiquity, and has wound its way into the work of subsequent authors, including some Jackson biographers.

Despite the prevalence of false attributions and outright inventions, you do not have to take the quotes at face value. There are many reference sources available that you can use to verify a quote, most notably [Bartlett’s Familiar Quotations](#), which is available in almost every library reference collection. If you really want to make sure a quote is accurate, there is no substitute for reading a public figure’s papers, which archivists often index by name and subject. You can explore many primary sources on the Library of Congress website, including Presidential papers. One interesting collection that was recently opened contains the love letters that Warren Harding exchanged with his mistress, Carrie Fulton Phillips. These letters reveal Phillips attempts to sway Harding’s politics and the letters are sometimes amusing because they are fairly explicit. <https://www.loc.gov/collection/warren-harding-carrie-fulton-phillips-correspondence/about-this-collection/>

Primary sources can serve an even greater purpose than verifying random internet quotes. They also contain a great deal of information that can help you better understand a historical event, especially if you take the time to examine the event from the papers of multiple people who were a participant or witness to the event. The papers also provide a unique source to explore the depth of character and biases of historical public figures. So, the next time you receive an email from a blowhard misquoting a founding father, I hope you turn to Bartlett’s or a primary source, click “reply all,” and call them on it.

*Robert Brammer is a member of the Kentucky and Florida Bars.*



*continued from page 8*

## **Hurricane Sandy and Her Lasting Environmental Impacts.**

Not only is FEMA responsible for managing the President's Disaster Relief Fund, but FEMA is also responsible for coordinating all government-wide relief efforts.<sup>30</sup> Since becoming part of the U.S. Department of Homeland Security in 2002, FEMA no longer makes decisions independently, but reports to the Secretary of the U.S. Department of Homeland Security.<sup>31</sup> FEMA's role became to oversee and promote an orderly system for state and local government that provides citizens with federal disaster assistance.<sup>32</sup>

### **A. Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (Stafford Act)**

The federal government's legal authority to provide assistance to states during major disaster and emergency declarations comes from the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (Stafford Act).<sup>33</sup> Under the Stafford Act, there are three types of aid available: (1) individual; (2) hazard mitigation; and (3) public assistance.<sup>34</sup> Individual assistance provides immediate temporary housing and financial assistance for uninsured emergency personal needs, and other disaster related needs such as emergency food supplies and crisis counseling.<sup>35</sup> Moreover, if deemed to be in the public's best interest, some private property debris removal also falls under this category of aid under the Stafford Act.<sup>36</sup> Hazard mitigation assistance, which is only available for major disaster declarations, provides financial assistance towards long-term hazard mitigation in the affected geographic areas designated by the declaration.<sup>37</sup> Lastly, public assistance allows for repair, reconstruction and/or replacement of structures such as schools, hospitals, custodial care facilities, and other public buildings.<sup>38</sup>

The Stafford Act greatly affects the total disaster declarations that are administered.<sup>39</sup> The financial threshold for storm-related damage under the Stafford Act is relatively low with many states at less than one million dollars.<sup>40</sup> As long as FEMA has issued a disaster declaration, the federal government will pay 75% to 100% of the costs in response to the disaster.<sup>41</sup> In 2015 alone, a total of 79 disaster declarations were made, including assistance for managing fires.<sup>42</sup> Of those, 43 were major disaster declarations, two were emergency declarations, and 34 were fire management assistance declarations.<sup>43</sup> This trend is further evidenced by the 13 disaster declarations that have already been made for 2016.<sup>44</sup>

### **B. Disaster Relief Fund**

For major disasters and emergencies that overwhelm state resources pursuant to the Stafford Act, the Disaster Relief Fund (DRF) is the main appropriation used during disaster recovery.<sup>45</sup> The DRF is funded annually, with FEMA and the Office of Management and Budget (OMB) initial-

ly requesting the amount.<sup>46</sup> Congress initially receives an administration request from the President, which does not have to be the amount suggested by FEMA and the Office of Management and Budget.<sup>47</sup> The Stafford Act does not explicitly spell out the DRF as the source to be used, but can be traced back to legislative and federal policies following World War II.<sup>48</sup>

A presidential declaration pursuant to the Stafford Act triggers disbursement of funds from the DRF.<sup>49</sup> However, if a major disaster costs more than \$500 million, it is not funded by the DRF but with emergency supplemental appropriations instead.<sup>50</sup> Managed by FEMA, the DRF can be used from any one, or any combination, of the three types of aid previously mentioned under the Stafford Act.<sup>51</sup> The DRF also funds fire management assistance grants for large forest or grassland wildfires that qualify for aid.<sup>52</sup> If a catastrophic event depletes the DRF, emergency appropriations can be requested by the President to supplement it.<sup>53</sup>

As of December 7, 2015, FEMA had disbursed \$1.4 billion in individual assistance, \$13.3 billion in public assistance, and \$802.2 million for hazard mitigation in New York and New Jersey combined.<sup>54</sup>

### **C. National Flood Insurance Program**

Flood insurance became available for the first time in 1968 with the National Flood Insurance Act creating the Federal Insurance Administration.<sup>55</sup> Created to provide property owners with flood insurance protection, Congress required a commitment to related flood disaster mitigation efforts and floodplain management from local government in response.<sup>56</sup> Subsequently, the Hurricane Sandy Relief Bill amended the National Flood Insurance Act of 1968 to increase the total amount of federal borrowing authority from \$20.725 billion to \$30.425 billion.<sup>57</sup> With the President's approval, FEMA may issue National Flood Insurance Program funds.<sup>58</sup>

To date, approximately \$4 billion has been paid on flood insurance policyholders claims in New York.<sup>59</sup> Additionally, approximately \$3.5 billion has been paid on flood insurance policyholders claims in New Jersey.<sup>60</sup> However, it was discovered in 2015 that payments did not include tax calculations, so aid recipients saw at least a 7% reduction in their awarded amounts.<sup>61</sup> In response, the National Flood Insurance Program required affected recipients to go through an appeal hurdle, which most were likely unable to complete.<sup>62</sup> Many attorneys have even described the appeal process for flood claims as being impossible absent a legal background.<sup>63</sup>

*continued from page 17*

## **Hurricane Sandy and Her Lasting Environmental Impacts.**

### **D. Community Development Block Grant**

Additional funding that falls outside of the Stafford Act requirements may also be available for those affected by major disasters.<sup>64</sup> An example would include the Community Development Block Grant (CDBG) provided by the Department of Housing and Urban Development (HUD).<sup>65</sup> Working to ensure affordable housing, as well as creating jobs, the CDBG began in 1974 and continues to be one of HUD's longest running programs.<sup>66</sup>

The CDBG is a program that provides communities with resources, which HUD determines by using a formula based upon the needs of the community.<sup>67</sup> The CDBG program provides annual grants, which are allocated between states and local government.<sup>68</sup>

Additionally, Congress may appropriate CDBG funding specifically for disaster recovery purposes (CDBG-DR) in extraordinary circumstances.<sup>69</sup> Extraordinary circumstances are those resulting in unmet needs for long-term recovery and they must be of some significance.<sup>70</sup> Such funds, however, do not replace other federal aid, but merely supplement it.<sup>71</sup>

This process commences once HUD receives major disaster damage estimates from FEMA and the Small Business Administration (SBA).<sup>72</sup> Taking into account other contributions such as insurance, grants and loans, HUD estimates any remaining unmet needs.<sup>73</sup> Grantees of the CDBG-DR funds may then use them for homeowner assistance, rental housing, economic revitalization, and even infrastructure.<sup>74</sup>

Once CDBG-DR funds have been awarded, 80% must be spent in the most impacted counties, which are determined by HUD.<sup>75</sup> HUD makes this determination based upon the estimation of unmet severe housing and business needs.<sup>76</sup> Specifically, counties having more than \$10 million in unmet needs, meet this requirement for assistance.<sup>77</sup> Less than four months after Hurricane Sandy made landfall in New Jersey, HUD announced that New Jersey would receive \$1.85 billion in CDBG-DR funds.<sup>78</sup> Upon New Jersey submitting their action plan in accordance with CDBG-DR requirements, HUD approved the first round of funding on April 29, 2013.<sup>79</sup> Subsequently, \$1.46 billion was announced by HUD for New Jersey's second round of CDBG-DR funding, which was approved by HUD on May 30, 2014.<sup>80</sup> HUD determined that the following counties of New Jersey were the most impacted: Atlantic, Bergen, Cape, May, Essex, Hudson,

Middlesex, Monmouth, Ocean and Union.<sup>81</sup> In New York, HUD approved the first round of CDBG-DR funding in the amount of \$1.7 billion on April 25, 2013, and then the second round in the amount of \$2.1 billion on November 25, 2013.<sup>82</sup>

### **Environmental and public health effects - Mold**

Only days after Hurricane Sandy made landfall, the mayor of New York estimated that close to 80,000 homes had water damage resulting from Hurricane Sandy.<sup>83</sup> The health and safety of thousands could be threatened if these homes were not completely dried out within 48 hours of coming into contact with water due to the likelihood of mold infestation.<sup>84</sup> Additionally, if the homes were remediated following the storm, but done so improperly, mold could still be a potential hazard to the health and safety of the public.<sup>85</sup>

Mold concerns are "issues that can affect workers, residents that are living in homes and tenants, and also volunteers who are graciously donating their time and their energy to clean up their communities," said Judith Enck, regional administrator for the federal Environmental Protection Agency (EPA).<sup>86</sup> "In addition to visible or hidden mold, damp spaces likely harbor mold breakdown products, dust mites, bacteria, and chemicals, gasses, and particulate matter released from the materials where mold grows."<sup>87</sup>

According to the Center for Disease Control (CDC), exposure to mold can cause symptoms such as nasal stuffiness, eye irritation, wheezing, or skin irritation.<sup>88</sup> People with weakened immune systems and with chronic lung diseases, such as asthma or chronic obstructive pulmonary disease, may develop mold infections in their lungs.<sup>89</sup> Exposure to mold, via skin contact, ingestion, or inhalation, can even result in toxic (poisonous) effects, resulting in neurological damage and even death.<sup>90</sup>

Nearly six months after Hurricane Sandy made landfall in New York City, the need for mold remediation was still present.<sup>91</sup>

Aside from privately funded programs, there surprisingly is limited assistance available to people experiencing, or at risk of developing moldy homes.<sup>92</sup> Even after homes appear to be repaired, mold issues have caused many people to remain displaced from their homes.<sup>93</sup> FEMA provides money for mold treatment, but only for visible mold that is present during an inspection for damage.<sup>94</sup> Obviously, because mold grows over time, it may not be visible at the time of inspection, but surfaces after inspectors have left.<sup>95</sup>

*continued from page 18*

## **Hurricane Sandy and Her Lasting Environmental Impacts.**

### **Water Pollution**

Water pollution can also affect public health and safety following a major disaster like Hurricane Sandy. After Hurricane Sandy made landfall, hazardous chemical containers from homes and businesses were swept away and they later ended up in nearby marshland.<sup>96</sup> Additionally, in New York City, raw sewage spilled into homes and businesses after a sewage plant flooded.<sup>97</sup> Ultimately, an estimated 2.75 billion gallons of untreated waste ended up flowing into the nearby bay.<sup>98</sup>

After the storm, the EPA warned the public of the risks of being exposed to raw sewage and encouraged the public to stay away from floodwaters.<sup>99</sup> Children, the elderly, and pregnant women were among those that were the most vulnerable to illnesses caused by sewage overflows.<sup>100</sup>

Beyond the immediate consequences of floating waste, such overflows can not only seriously impact public health, but the ecosystems in the nearby waterways as well.<sup>101</sup> The EPA reported that sewage overflow can greatly elevate waterborne illness risks in several ways.<sup>102</sup> If someone comes into contact with contaminated water, they are at risk of contracting a waterborne disease.<sup>103</sup>

### **Pest Exposure**

Following a major disaster like Hurricane Sandy, damaged areas are generally exposed to more contact with pests than normal.<sup>104</sup> This increased exposure to rats, bed bugs, termites and even flies can be the direct result of their displacement following a storm, and increased moisture.<sup>105</sup> Accordingly, pests immediately begin seeking food and shelter, thereby increasing human contact.<sup>106</sup>

Another factor leading to an increase in human contact with pests is due to the delay in garbage and debris pick-up.<sup>107</sup> Not only does this delay increase food sources for displaced pests, but construction debris can be a source of temporary shelter.<sup>108</sup> Because this abundance of food and potential shelter may sit for extended periods of time, pest infestations are likely to occur.<sup>109</sup> According to the CDC, rodents can directly and indirectly pass dozens of diseases, such as Lyme Disease, West Nile Virus, Plague, and Rat-bite Fever, just to name a few.<sup>110</sup> Such pest-related environmental and public health concerns can have lasting effects even months after a storm.<sup>111</sup>

Despite obvious environmental and public health threats and available funding, why are so many needs still unmet?

More than two years post Hurricane Sandy, the Sandy Child and Family Health Study discovered that the lives of many New Jersey residents were still being affected.<sup>112</sup> A field team of over 30 interviewers made the striking discovery that despite a clearly persistent need, many federally-funded programs had ended.<sup>113</sup> According to David Abramson, clinical associate professor and director of the Program on Population Recovery and Resiliency at New York University, this discovery was very concerning.<sup>114</sup>

In the aftermath of Hurricane Sandy, the President promised to help victims recover by having federal resources bear the full weight.<sup>115</sup> President Barack Obama stated that:

[T]here are still millions of people without power and many whose neighborhoods have been damaged or destroyed by water, heavy winds, and falling trees. There are places like Newark, New Jersey, for example, where you've got 80, 90 percent of the people without power. We can't have a situation where that lasts for days on end. And so my instructions to the federal agency has been, do not figure out why we can't do something; I want you to figure out how we do something. I want you to cut through red tape. I want you to cut through bureaucracy. There's no excuse for inaction at this point. I want every agency to lean forward and to make sure that we are getting the resources where they need -- where they're needed as quickly as possible.<sup>116</sup>

The question remains, why are so many needs still unmet despite the overwhelming evidence of environmental and public health threats and the availability of funding? There are many theories, which include lack of government accountability, ambiguous requirements for disaster declarations, and wasteful spending.<sup>117</sup>

**End of Part 1. Part 2 will appear in the next edition of Friendly Passages.**

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

*Amanda Hunt grew up in Brevard County, Florida, and is a University of Central Florida graduate. Currently, Amanda is a 3L at Barry University School of Law, Editor-in-Chief of the Environmental and Earth Law Journal, and will be graduating in May of 2017.*



# Law Day 2016



Honorees and Art Contest Winners - Law Day Celebration 2016



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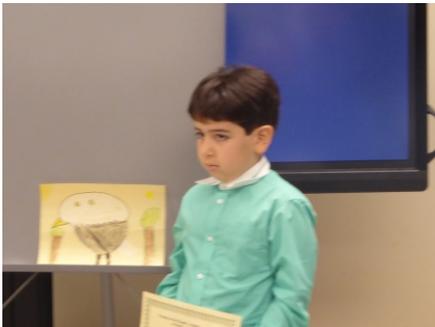
Frannie Hutchinson



Paula Lewis



Wayne Gent



*continued from page 5*

## Discovery of Expert Witness Bias

former clients and implement safeguards. The information should be sought from the party and the witness first, and only from the lawyer directly as a last resort.

Subsequently, in *Worley v. Central Florida Young Men's Christian Ass'n., Inc.*, 163 So.3d 1240 (Fla. 5th DCA 2015) the court found that YMCA showed a sufficient good faith basis of an existence of a referral relationship between the Morgan & Morgan law firm and the treating physicians, so it allowed the YMCA to ask the plaintiff if she was referred to the physicians by her law firm. The court also approved the trial court's order requiring Morgan & Morgan to produce "any and all documents reflecting formal or informal agreements, arrangements, and understandings regarding the billing for patients or any direct or indirect referral of a client by any attorney employed by or affiliated with Morgan & Morgan" to any of the treating physicians in this case. *Id.*, at 1248.

In another negligence action arising from an automobile accident, the Fourth District Court found that the trial court did not depart from the essential requirements of law when the judge ordered the law firm to provide a list of all payments made to the plaintiff's treating physician over the previous three years with all client and patient information redacted. *Lytal, Reiter, Smith, Ivey & Fronrath, LLP v. Malay*, 133 So.3d 1178 (Fla. 4th DCA 2015). The court said that since the physician denied having any records and provided "nebulous testimony" about the number of his patients who were represented by the law firm, the law firm was an appropriate source of this information.

As for letters of protection (LOP's), it is now clear that they may be introduced into evidence to show bias of a treating physician. *Pack v. GEICO*, 119 So.3d 1284 (Fla. 4th DCA 2013).

## Subpoena of Expert's Records

While the rule of expert discovery does not provide for subpoena of an expert's records, a subpoena has been allowed when it was relevant to bias and also to the reasonableness of medical bills and necessity of the procedure. See *Katzman v. Rediron*, 76 So.3d 1060 (Fla. 4th DCA 2011). Nevertheless, a subpoena was quashed when it was based only on a letter of protection and not on a showing of referral by the attorney. Furthermore, the court found that requiring information about four different medical procedures was potentially more burdensome than the "limited intrusions" in *Rediron*. *Katzman v. Ranjan Corp.*, 90 So.3d 873 (Fla. 4th DCA 2012).

Where it was established that the plaintiff's attorneys had referred the client to the doctor, the defendant was allowed to subpoena the person in the treating physician's

documents regarding patients who had been previously represented by the plaintiff's law firms, LOP cases, and referrals from the plaintiff's attorneys. While the court found that Rule 1.280(b)(5) did not apply, the court noted that a party may attack the credibility of a witness by exposing his bias, per §90.608(2), Fla. Stat. (2009). *Brown v. Mittleman*, 152 So.3d 602 (Fla. 4th DCA 2014) (citing *Morgan, Colling & Gilbert, P.A. v. Pope*, 798 So.2d 1 (Fla. 5th DCA 2001)).

## How Much is Enough?

While it is appropriate for litigants to seek evidence of witness bias, the question is how much is enough. When resolving objections to the scope of discovery, the court must consider the unique record and circumstances of the particular case. As the foregoing decisions have shown, not every case should involve discovery of records of payments to experts, identification of cases in which the expert has been the examiner or treater involving the same lawyers, or records of the number of procedures performed and the amounts billed. Only when there is a showing of good cause by "the most unusual and compelling circumstances," such as an on-going lawyer - expert referral relationship, should more discovery than that of Rule 1.280(b)(5) be countenanced.

*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 County.*



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X QIVH GR YH OVXTIV PQXY XY HVBGYXVW  
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continued from page 14

## The Rupert J. Smith Law Library: A Treasure Trove

One of the newest programs being offered by the RJSLL and FRLS are family law clinics. These clinics are open to the public and will provide general information and *pro se* resources. Residents from all counties are welcome to register. Seating is limited. All participants must register in advance by calling FRLS at (772) 466-4766. If you are a private attorney and you are interested in participating as a presenter, please contact Carolyn Fabrizio at [carolyn.fabrizio@frls.org](mailto:carolyn.fabrizio@frls.org).

If you are interested in more information or would like to join The Friends of Rupert J. Smith Law Library of St. Lucie County to take a more personal interest in advancing legal education and building a stronger law library, please visit [www.rjsslawlibrary.org](http://www.rjsslawlibrary.org) and click on "friends". Annual Dues are \$25.00 for individuals and \$50.00 for institutions.

Everyone is invited to visit the law library!

*Carolyn received her JD from Suffolk University Law School in Boston, MA, and has been the Private Attorney Involvement Coordinator for the 19<sup>th</sup> Circuit through FRLS since 2009.*



## New Family Law Clinics Offered at the Rupert J. Smith Law Library

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continued from page 15

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continued from page 4

## On Behalf of the Publisher

Each of these honorees is a fitting exemplar for the Rule of Law, and Friends was proud to recognize them accordingly. They remind us of the words of one of the Founding Fathers, Richard Henry Lee, in Letters of the Federal Farmer (1788): "The great object of a free people must be so to form their government and laws, and so to administer them, as to create a confidence in, and respect for, the laws; and thereby induce the sensible and virtuous part of the community to declare in favor of the laws and to support them without an expensive military force." May we as a free people ever remain committed to the Rule of Law and praise generously and lavishly those among us who would teach us by example to reach for the highest ends that it is capable of. Thank you for your support.

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1837	Sunshine Law, Public Records & Ethics for Public Officers and Public Employees	8/20/2016	8	4
1911	Guardianship Intensive Program	8/26/2016	8	1
1841	Basic Trial Practice 2015	8/27/2016	7	0
1843	Real Estate: What All Family Lawyers Need to Know but Most Don't	9/6/2016	5	0
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1836	Annual Civil Trial Update and Certification Review	9/27/2016	15	2
1847	Hot Topics in Evidence 2015	10/17/2016	7.5	1
2073	2015 Survey of Florida Law	11/4/2016	12.5	4
1962	Arbitration, Effective Joint Opening Sessions, And Ethical Issues	12/24/2016	3	1
1968	Differences among the DCAs	12/24/2016	2	0
1871	Florida Law 2015	12/25/2016	8	0
1964	Electronic Discovery and Digital Evidence Pre-Discovery Through Trial	12/26/2016	4.5	1
1931	2015 Masters Seminar on Ethics	12/26/2016	4	4
1980	The Income, Estate & Gift Consequences of Divorce	1/15/2017	2	0
1982	The 35th Annual RPPTL Legislative and Case Law Update	1/31/2017	8	0
1984	2015 Case Law Update	4/22/2017	2.5	0
1989	Annual Ethics Update 2015	4/2/2017	5.0	2.0E/3.0P
1991	How to be an Estate Planning Wizard	4/9/2017	9	0
1997	Bankruptcy Law and Practice: View from the Bench	5/5/2017	4.5	0
2020	Advanced Federal Practice	7/15/2017	5.0	1.0
2021	Elder Law Annual update & Hot Topic	7/15/2017	5.0	1.0
2015	Top Mistakes Attorneys Make in Family Law	6/16/2017	2.0	0
2022	Solo & Small Firm Annual Conference	7/22/2017	10.0	2.0
2036	Litigation & Trust Law Symposium 2016	9/4/2017	7.5	1.0
2104	Same Sex Marriage & Estate Planning	4/7/2017	1.0	0
1996	Estate & Trust Tax Planning/Asset Protection	4/23/2017	7.5	1

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continued from page 13

## Consequences Of The Legalization Of Same-Sex Marriage:

(Endnotes)

1 Mr. Coleman practices in the areas of investor representation and securities law, and Mr. Sims is a C.P.A./LLM estate planner, at the St. Petersburg offices of Johnson, Pope, Bokor, Ruppel & Burns, LLP.

2 Both cases have been the subject of prior articles in *Friendly Passages*.

3 The refusal of a Kentucky Clerk of Court (Kim Davis) to honor Obergefell, and her subsequent brief imprisonment by a Federal Court, was the subject of the news cycle for months. Other pockets of resistance, though less reported than the Davis matter, continue today. Florida Governor Rick Scott and Florida Attorney General Pam Bondi both publicly opposed same-sex marriage in Florida, and participated in litigation designed to defeat it.

4 See IRS Bulletin No. 2015-45 dated November 9, 2015, REG-148998-13.

5 For more information on current IRS regulations regarding gift tax amounts, see IRS Publication 559, Cat. No. 15107U, giving guidance to survivors, executors and administrators, as well as the IRS's separate Instructions for Form 709 (United States Gift and Generation-Skipping Transfer Tax Return).



continued from page 19

## Hurricane Sandy and Her Lasting Environmental Impacts.

(Endnotes)

1 Matt Daniel, *This date in science: Hurricane Sandy hits U.S. Northeast*, EARTHSKY (Oct. 29, 2013), <http://earthsky.org/earth/this-date-in-science-hurricane-sandy-hits-u-s-northeast>.

2 *Id.*

3 *Id.*

4 Josh Siegel, *Home is Where the Heartache Is: Hurricane Sandy Victims Still Not Recovered*, THE DAILY SIGNAL (April 20, 2015), <http://dailysignal.com/2015/04/20/home-is-where-the-heartache-is-hurricane-sandy-victims-still-not-recovered/>.

5 Matt A. Mayer, *Hurricane Sandy: Disaster Aid Request too Big*, THE HERITAGE FOUNDATION (Dec. 13, 2012), [http://www.heritage.org/research/reports/2012/12/hurricane-sandy-disaster-aid-request-too-big#\\_ftn1](http://www.heritage.org/research/reports/2012/12/hurricane-sandy-disaster-aid-request-too-big#_ftn1).

6 Julie Cartwright, *Hurricane Sandy Still Taking a Toll Nearly 3 Years Later*, FUTURITY (July 31, 2015), <http://www.futurity.org/hurricane-sandy-mental-health-973262/>.

7 *The Disaster Process & Disaster Aid Programs*, F.E.M.A., available at <https://www.fema.gov/disaster-process-disaster-aid-programs> (last updated Oct. 15, 2015) [hereinafter *Disaster Process*].

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.*

13 *Id.*

14 See *The Declaration Process*, F.E.M.A., available at <https://www.fema.gov/declaration-process> (last updated Sept. 21, 2015).

15 *Id.*

16 *Id.*

17 *Id.*

18 *Disaster Process*, *supra* note 7.

19 *Id.*

20 *Id.*

21 *Id.*

22 Requests for Emergency Declarations, 44 C.F.R. § 206.35(a) (2009).

23 *Robert T. Stafford Disaster Relief and Emergency Assistance Act*, ASSOCIATION OF STATE AND FEDERAL TERRITORIAL HEALTH OFFICIALS, <http://www.astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Emergency-Authority-and-Immunity-Toolkit/Robert-T--Stafford-Disaster-Relief-and-Emergency-Assistance-Act-Fact-Sheet/> (last visited Jan. 1, 2016) [hereinafter *Stafford Disaster Relief*].

24 44 C.F.R. § 206.35(a), *supra* note 22.

25 Federal Disaster Assistance, 44 C.F.R. § 206.36(c)(5) (2009).

26 *Disaster Process*, *supra* note 7.

27 *Id.*

28 West's Encyclopedia of American Law (2d ed. 2008).

29 *Id.*

30 *Disaster Process*, *supra* note 7.

31 *Id.*

continued from page 25

## Hurricane Sandy and Her Lasting Environmental Impacts.

32 *About the Agency*, F.E.M.A., available at <http://www.fema.gov/about-agency> (last updated Jan. 31, 2015).

33 *Stafford Disaster Relief*, *supra* note 23.

34 *Id.*

35 Stafford Act FAQ's, PRIMA CENTRAL, <http://www.primacentral.org/resources/Stafford%20Act%20FAQs%2Epdf> (last visited Jan. 1, 2016).

36 *Id.*

37 *Stafford Disaster Relief*, *supra* note 23.

38 *Id.*

39 Steven P. Bucci, David Inserra, Jonathan Lesser, Matt A. Mayer, Brian Slattery, Jack Spencer & Katie Tubb, *After Hurricane Sandy: Time to Learn and Implement the Lessons in Preparedness, Response, and Resilience*, THE HERITAGE FOUNDATION (Oct. 24, 2013), available at <http://www.heritage.org/research/reports/2013/10/after-hurricane-sandy-time-to-learn-and-implement-the-lessons>.

40 *Id.*

41 *Id.*

42 *Disaster Declarations for 2015*, F.E.M.A., available at <https://www.fema.gov/disasters/grid/year/2015>.

43 *Id.*

44 *Id.*

45 *Disaster Relief Fund: Monthly Report*, F.E.M.A., available at <http://www.fema.gov/media-library/assets/documents/31789> (last updated Oct. 9, 2015).

46 Bruce R. Lindsay and Justin Murray, *Disaster Relief Funding and Emergency Supplemental Appropriations* (April 12, 2011), <http://fas.org/sgp/crs/misc/R40708.pdf>.

47 *Id.*

48 *Id.*

49 *Id.*

50 *Id.*

51 *Id.*

52 *Disaster Relief Fund: Monthly Report*, *supra* note 45.

53 Lindsay & Murray, *supra* note 46.

54 *Sandy Recovery Three Years Later: By the Numbers*, F.E.M.A., <https://www.fema.gov/sandy-recovery-office> (last updated Dec. 7, 2015).

55 *National Flood Insurance Act of 1968*, F.E.M.A., available at <https://www.fema.gov/media-library/assets/documents/7277> (last update May 1, 2014).

56 *Introduction to NFIP Direct Servicing Agent*, available at <https://www.nfipservices.com> (last visited on Dec. 28, 2015).

57 Summaries of Hurricane Sandy Relief Bill, Congressional Research Service (January 6, 2013), <https://www.govtrack.us/congress/bills/113/hr41/summary>.

58 *Id.*

59 *FEMA aid reaches \$16.9 billion for New York's Hurricane Sandy Recovery*, F.E.M.A., available at <https://www.fema.gov/news-release/2015/10/21/fema-aid-reaches-169-billion-new-yorks-hurricane-sandy-recovery> (last visited Dec. 28, 2015).

60 *Three Years after Sandy: Recovery by the Numbers*, F.E.M.A., available at <https://www.fema.gov/news-release/2015/10/29/three-years-after-sandy-recovery-numbers> (last visited Dec. 28, 2015).

61 Telephone Interview with Meghan E. Wren, Chairman, Cumberland County Long Term Recovery (Oct. 16, 2015).

62 *Id.*

63 Scott Gurian, *With Insurance Settlements Still in Limbo, Sandy Victims Turn to Legal Remedies*, NJ Spotlight (Sept. 24, 2013), <http://www.njspotlight.com/stories/13/09/23/with-insurance-settlements-still-in-limbo-sandy-victims-turn-to-legal-remedies/?p=all#>.

64 Mitchell L. Moss and Charles Shelhamer, *The Stafford Act: Priorities for Reform*, [http://www.nyu.edu/ccpr/pubs/Report\\_StaffordActReform\\_MitchellMoss\\_10.03.07.pdf](http://www.nyu.edu/ccpr/pubs/Report_StaffordActReform_MitchellMoss_10.03.07.pdf) (last visited on Dec. 28, 2015).

65 *Id.*

66 *Community Development Block Grant Program – CDBG*, U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/communitydevelopment/programs](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs).

67 *Id.*

68 *Id.*

69 *Id.*

70 *Id.*

71 *Id.*

72 *Id.*

73 *Id.*

74 *Id.*

75 *Id.*

76 *Id.*

77 *Id.*

78 *Recovery Initiatives*, STATE OF NEW JERSEY: GOVERNOR'S OFFICE OF RECOVERY AND REBUILDING, available at <http://www.state.nj.us/gorr/plan/index.html> (last visited Dec. 28, 2015).

79 *Id.*

80 *Id.*

81 *Id.*

82 *Action Plans and Amendments*, STATE OF NEW YORK: GOVERNOR'S OFFICE OF STORM RECOVERY, <http://stormrecovery.ny.gov/funding/action-plans-amendments> (last visited Dec. 28, 2015).

83 ALIGN, Community Voices Heard, Faith in New York, Make the Road NY, New York Communities for Change, & VOCAL-NY, *Sandy's Mold Legacy: The Unmet Needs Six Months After the Storm* (May 2013), <http://www.rebuildajustny.org/wp-content/uploads/2013/05/Sandys-Mold-Legacy-Final-Report.pdf>.

84 *Id.*

85 *Id.*

86 Mary Ann Spoto, *Officials Warn Hurricane Sandy Victims of Mold, Asbestos, Lead Paint*, N.J. ADVANCE MEDIA (Dec. 18, 2012), [http://www.nj.com/politics/index.ssf/2012/12/officals\\_warn\\_hurricane\\_sandy.html](http://www.nj.com/politics/index.ssf/2012/12/officals_warn_hurricane_sandy.html).

87 Rose Ann Gould Soloway, *Mold 101: Effects on Human Health*, <http://www.poison.org/articles/2011-oct/mold-101-effects-on-human-health> (last visited Oct. 17, 2015).

88 *Frequently Asked Questions*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <http://www.cdc.gov/mold/faqs.htm#affect>.

89 *Mold After a Disaster*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <http://emergency.cdc.gov/disasters/mold/index.asp>.

90 *The Truth About Toxic Mold*, <http://www.ehagroup.com/mold-iaq-services/toxic-mold/> (last visited Oct. 17, 2015).

91 ALIGN et al., *supra* note 83, at 1.

92 See Sarah Maslin Nir, *Questions Emerge About the Mold That Hurricane Sandy Left Behind*, NEW YORK TIMES (March 1, 2013), [http://www.nytimes.com/2013/03/02/nyregion/response-to-post-hurricane-sandy-mold-is-questioned.html?\\_r=1](http://www.nytimes.com/2013/03/02/nyregion/response-to-post-hurricane-sandy-mold-is-questioned.html?_r=1).

*continued from page 26*

## **Hurricane Sandy and Her Lasting Environmental Impacts.**

93 Telephone Interview with Jessica Limbacher, Staff Counsel, Volunteer Lawyers for Justice (Oct. 8, 2015).

94 See Nir, *supra* note 92.

95 *Id.*

96 John Manuel, *The Long Road to Recovery: Environmental Health Impacts of Hurricane Sandy*, ENVIRONMENTAL HEALTH PERSPECTIVES (May 1, 2013), <http://ehp.niehs.nih.gov/121-a152/>.

97 *Id.*

98 *Id.*

99 Alyson Kenward, Daniel Yawitz, & Urooj Raja, *Sewage Overflows from Hurricane Sandy*, CLIMATE CENTRAL (April 2013), <http://www.climatecentral.org/pdfs/Sewage.pdf>.

100 *Id.* at 19.

101 Kenward, Yawitz, & Raja, *supra* at 99, at 19.

102 *Id.*

103 *Id.*

104 NPMA Staff, *Hurricane Sandy Predicted to Have Long-term Effects on Pest Population* (November 14, 2012), <http://www.pestworld.org/news-and-views/press-releases/press-releases/hurricane-sandy-predicted-to-have-long-term-effects-on-pest-populations/>.

105 *Id.*

106 *Id.*

107 *Id.*

108 *Id.*

109 *Id.*

110 *Diseases from Rodents*, CENTERS FOR DISEASE CONTROL AND PREVENTION, available at <http://www.cdc.gov/rodents/diseases/direct.html> (last updated June 7, 2011).

111 NPMA Staff, *supra* note 104.

112 Cartwright, *supra* note 6.

113 *Id.*

114 *Id.*

115 An Ongoing Response to Hurricane Sandy, THE WHITE HOUSE, available at <https://www.whitehouse.gov/issues/hurricane/sandy#new-jersey> (Oct. 21, 2012).

116 *Id.*

117 See Manuel, *supra* note 96.

