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May/June
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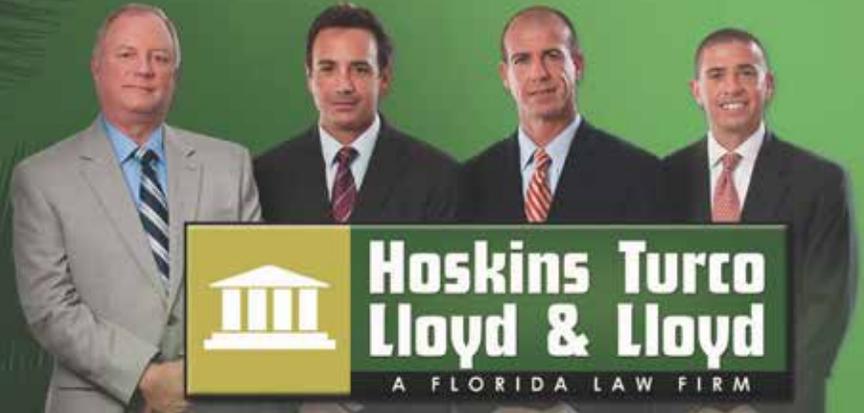
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Table of Contents



On Behalf of the Publisher	<i>By Jim Walker Page 4</i>
Florida's Death Penalty: A Haunting Experience	<i>By Mark Harlee Page 5</i>
Preparing for a Family Law Trial	<i>By Hon. F. Shields McManus Page 6</i>
Life Builders A Look at how one Treasure Coast Organization is Helping to Turn Troubled Lives Around	<i>By Diamond Litty Page 8</i>
What the Heck is a Qui Tam Lawsuit?	<i>By Jonathan Coleman Page 10</i>
England's Legal System Part II: The Courts	<i>By Richard Wires Page 12</i>
Two Track Case Development Theme Development	<i>By Edmund Sikorsky, Jr & Robert Hamilton. Page 14</i>
Identity Theft: More than a Financial Risk	<i>By Carrie Kerskie Page 16</i>
Congress.gov Provides New Avenues of Access to Federal Legislation	<i>By Robert Brammer Page 18</i>
Poet's Corner: "The Core and the Crust" "Two Little Poems"	<i>By Nathan Gill Page 23</i> <i>By Mark E. Martin Page 23</i>



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On The Cover

"The Homecoming" Pastel on Paper
By Maj. Owen J. Nucci, USMC. (Sitting in the jet.)

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On Behalf of the Publisher

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



A.A. Milne expressed it better than most anybody, in **Winnie-the-Pooh**, when he wrote “Piglet noticed that even though he had a Very Small Heart, it could hold a rather large amount of Gratitude.” Truly does the Heart hold much gratitude for those writers who are kind enough to add their collective wisdom to **Friendly Passages**. Readers need to realize that these wonderful people receive no compensation for their efforts. This volunteer publication gets by only because of their generous support and hard work. And make no mistake, good writing is hard, time-consuming work, a truth no lawyer needs to be convinced of whoever struggled through his or her first brief in Legal Research & Writing I. So we thank them profusely.

Solely for the purposes of example, I’ll single out the authors of our last issue, March/April 2014, knowing that the sentiment is equally applicable to all who contributed to still earlier issues. Most of them have been here before, which makes **Passages** even more indebted for their role in its continued success. Take Paul Nucci, and his poem “Hats”. Robert Frost once said, “To be a poet is a condition, not a profession.” Perhaps it is no coincidence that Mr. Nucci is also a professional painter and musician. Prose alone is insufficient to translate and explain the human condition. How fortunate we are that Mr. Nucci shares his insight with this magazine. Judge Shields McManus, Circuit Court Judge for the Nineteenth Circuit, shared another valuable installment of judicial perspective, this one entitled “Why Are Courts So Slow?” Like the rest of the Bench, his is a heavy case load. So when he sets aside personal time to help others understand the workings of the judicial system, it is a deeply appreciated and important public service. Diamond Litty, Public Defender for the Nineteenth Circuit, provided an exciting look at ground-breaking judicial reform measures in “An Overview of Diversion Courts”, as she wrote about how Drug Court and Mental Health Court rebuild lives. This is a reminder that law exists to protect and to serve the public welfare. Diamond Litty was one of two people honored this year for their contributions to the Rule of Law, during a Law Day observance by Trustees and Friends of the RJS Law Library. David Steinfeld contributed an article of interest to business and legal folks entitled “New Year, New Revised Limited Liability Company Act”. In so doing Mr. Steinfeld was acting in the best traditions of professionalism through this educational and informative piece that helpfully summarized and simplified a complex subject for the benefit of readers. Mr. Steinfeld has a successful commercial practice in Palm Beach Gardens.

Carolyn Fabrizio brought readers current with Florida Rural Legal Services Corp. in “Update From Your Local Legal Aid Office”. Ms. Fabrizio coordinates between that agency and the Bar to assure that low income residents find access to legal services. **Passages** is proud of her for her role in highlighting the important functions of FRLSC as it obtains equal justice for those who might otherwise go without. Dr. Richard Wires, professional author and Professor Emeritus at Ball State University (among many other distinctions) provided a fascinating look at English law in “England’s Legal System Part 1: Lawyers”. Readers of previous submissions by Dr. Wires recognize him for the remarkable range of engrossing subject matter covered in his writings. All are direct beneficiaries as he shares the discoveries of an insatiable curiosity. Paul Nucci adds prose to his list of talents, on display in another installment of Arts and the Law, “Lost Art”. Mr. Nucci places law within the greater cultural context of the social universe, granting invaluable access to the big picture of life. Katie Everlove-Stone, St. Petersburg lawyer specializing in tax law, enlightened with a historical piece titled “The Unlucky Wives of Henry VIII”. Out of the painful misfortunes of women such as those there eventually arose the powerful tides of feminism which transformed the law. Ms. Everlove-Stone shines a bright light on its earliest beginnings. Edmund Sikorsky is due warmest thanks for his scholarly approach to mediation in “Aristotle on Mediation of Insured Claims”. Mr. Sikorsky is a full-time mediator and his series on this form of proceeding is essential reading in a time when cases are more often resolved in mediation than in trial.

Passages honors the impulse to excellence so manifest in the writings of each of them. One Ursula K. LeGuin, an author herself, once gave this interesting description of who they are and what they do: “A writer is a person who cares what words mean, what they say, how they say it. Writers know words are their way towards truth and freedom, and so they use them with care, with thought, with fear, with delight. By using words well they strengthen their souls. Story-tellers and poets spend their lives learning that skill and art of using words well. And their words make the souls of their reader stronger, brighter, deeper.”

May these contributors never fear that their submissions go unnoticed or unappreciated. We know the extent of the personal investment made by each in these works. Readers know it, too. Thank you. /JimW

Come To The Next Friend’s Meeting

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Florida's Death Penalty: A Haunting Experience

By Mark Harllee



Editor's Note

We are very saddened to report to you the unfortunate death of Mark Harllee. We publish this article written for us as a tribute to him and as a sincere expression of our gratitude.

The summer of '96 brought with it scorching, record-breaking temperatures, toasting the landscape along the Treasure Coast. Sweat beaded through the light-colored jackets of lawyers as they entered the four-story courthouse. The AC had gone out several times that day caused by the local power company's outdated grid system.

Inside the courtroom, twelve weary souls filed back into the jury box, having spent the last two days deliberating the fate of the man accused of brutally bludgeoning an elderly woman in her home out on the beach. The motive for the murder was greed: a 4 carat diamond ring, some necklaces and other designer jewelry.

A week earlier, the jury had unanimously found him guilty of first degree premeditated murder, but now their thankless task was to recommend to the Judge a sentence of death by lethal injection or life without the possibility of parole. The evidence presented by the prosecution was pretty weak—no DNA, no fingerprints, no eyewitnesses and no confession. There was even testimony of an alternative suspect presented by the defense with the same monetary motive. But the crime was so bloody, so heinous, someone had to pay.

Seconds before the death verdict was read, my client leaned over toward me and whispered very clearly in my ear: "If they come back with death—I'll come back and haunt you." Madame Clerk read the verdict: 9 to 3 for death.

Eighteen years later that man, now in his 70's and receiving dialysis every other day, sits in his six' by nine' concrete cell on Florida's death row at Union Correctional Facility in Starke. The cold, institutional steel bars and Plexiglas keep him from any human contact. At least a dozen more years of appeals, writs and petitions will pass before the first execution warrant will be signed by whoever sits in the governor's chair. He is permitted a last meal request—as long as it doesn't exceed the statutory max of \$40.

Every week this drama is played out in a courtroom somewhere in Florida, which leads the nation in the number of defendants sentenced to death row. Anywhere else in the nation a 9 to 3 vote for death would have resulted in a life sentence. Even in Alabama, the only state other than Florida that does not require a unanimous death verdict, 10 votes are required for the judge to consider a death sentence. Here, only a 7 to 5 vote is necessary.

The death penalty took a hiatus from 1972 through 1979 in Florida while the U.S. Supreme Court and the Florida legislature wrangled through cruel and unusual punishment arguments. Since John Spenkellink's execution that year, the number of annual executions have gone up and down, depending on the political tides. A total of 81 people have been put to death statutorily in Florida and on any given day there are about 400 people on The Row. On March 20th, Florida executed its fourth man in 2014, leading the nation in this dubious category.

One haunting question remains: what of the innocent human being who is pumped full of sodium thiopental until all breathing and heart-beating ceases? Hospira, the sole U.S. manufacturer of this lethal cocktail, halted production in 2011 due to anticipated lawsuits over wrongful executions. The European Union banned exportation of any drug to the U.S. if it was to be used for legal executions. Propofol (the anesthetic blamed for Michael Jackson's death) can no longer be imported from European manufacturers. Pentobarbital, another lethal injection ingredient which is produced only in Denmark cannot be shipped into the U.S. because of E.U. prohibitions against torture.



Some will say these wrongful executions simply cannot happen, with all the decades of appeals and reviews of these cases, paid for of course by the law-abiding, tax-paying citizenry. One problem, however, has happened and continues to happen every year. Florida leads the country in the number of individuals sentenced to die who later were exonerated, acquitted or had their charges dropped. The state has admitted to at least 24 death row inmates who were wrongfully convicted and sentenced to die.

continued on page 21

Preparing for a Family Law Trial



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

Part I

Because I have been in a judge in the Family Division for several years, family law practitioners ask me, “What would you like to see presented at trial?” or “How should I prepare for trial?” Here are some of my thoughts on the subject.

Make Time to Prepare

The first step is to make time to prepare for trial. Sometimes it appears to me as if the lawyer didn’t prepare at all. I have seen lawyers stumble along without any apparent plan, as if unaware of the elements of chapter 61, Florida Statutes, which they need to prove, without essential evidence or witnesses, offering hearsay and incompetent witnesses. Thankfully that does not describe most family lawyers.

Preparation for trial or an evidentiary hearing should begin with the first client interview. Make a place in your file for notes for trial. If you are a family law practitioner, you should develop a model trial notebook which can be used in all family trials. You should also build a notebook for legal citations. A good place to start is the annual Marital & Family Law Review Course by the Florida Chapter of the American Association of Matrimonial Lawyers.

Review the Pleadings and the Law

When you get close to trial, preparation can begin with a review of the pleadings. Review the petition, the answer and counterpetition, or the pending motion. These pleadings should have outlined the essential elements which must be proven. They must also have stated the relief that is being sought. Sometimes at trial, lawyers are asking for something that is not mentioned in the petition or motion. This violates a fundamental requirement of due process. Upon the objection of the opposing party, the court cannot give relief for something which was not in the pleadings. After many months of discovery, it is easy to overlook this most fundamental matter. So go back and read the pleadings. If necessary, seek leave to amend.

Review the relevant family law forms, especially the Final Judgment and other relevant orders. These summarize the law and are focused on what the finder of fact will be looking for. They are useful for preparation of bench trials. Review the relevant statutes and case law. Some of these are noted in the forms and the comments to the forms.

As you read some reported cases with similar facts, you will often see evidentiary issues of proof that are common to such a fact pattern. Make note of those. Preparation includes anticipating objections to evidence. Review the applicable rules of evidence such as hearsay. Often there will be financial records, personal records, letters, telephone texts, photos and videos, social media posts, and the like, which you and the other party have identified as relevant during discovery. Is the opposing counsel agreeable to admission? If you cannot get a stipulation, can you lay the foundation to admit these? A social media site may not be self-authenticating.¹ Review the Code of Evidence and prepare a colloquy of questions for admission. If you are opposed to admission, prepare authorities to support your objection.

Prepare an Outline

Prepare an outline of the elements and the proofs of the case and build upon it. The presentation of the case usually starts with a chronological story of the family: the marriage or partner relationship, the history of education and employment of the parties, the births of children, the acquisition of assets and debts, and culminating in the situation as of the filing of the action. Then, move to details following the “PEACE” outline.

continued from page 6

Preparing for a Family Law Trial

The judge will decide the final judgment in a divorce case in the order of P.E.A.C.E. which stands for **P**arenting plan, **E**quitable distribution, **A**limony, **C**hild support, and **E**verything else, such as attorney's fees, name change, and passports.

Organize the Evidence

Once it is established what needs to be proven, it is time to turn to how to prove it, or in the defense of the case, how to show it is not proven. Review the investigation notes and discovery to catalogue what evidence is available on each element of the cause of action. Different witnesses may be necessary for different elements. Usually the petitioner will be the first witness in order to give the story of the family. If other witnesses need to be called out of order, the opening statement can give attention to this. Other witnesses could include eye witnesses of an event such as domestic violence or child neglect, persons knowledgeable about the history of parenting, or the family business. The lawyer needs to talk to these people and make sure they can be qualified to testify before it is too late to search for other witnesses.

If it is a family law case involving minor children, there will need to be witnesses to show that a party demonstrated capacity and disposition to parent per section 61.13(3), Florida Statutes. Testimony, photographs, emails and texts of the parties, records of the parent's participation in the child's school, health care, and community activities should be prepared. All 21 factors of the statute should be covered. Typically, there will be efforts to introduce hearsay testimony, photographs, reports, affidavits, print outs of social media, texts, and emails.

If the issue is equitable distribution, alimony, or child support, then financial affidavits, tax returns, pay stubs, bank statements, broker statements, real estate appraisals, and other financial records are relevant. Many times I am presented with a handful of these from persons without lawyers or with a three-ring binder full of these by lawyers. Often, this is not complete enough for a judge. I am asked to reduce these to an accounting. I did not take an accounting course in college, but even if I did, I cannot work with a pile of records that are incomplete, and I do not have time to do so. When I am writing the final judgment and looking at my notes and the evidence, I often find there is some piece of data missing. I may not be able to calculate total net worth, or the amount by which the mortgage principal was paid on a non-marital asset during the marriage.

Presentation of voluminous writings such as financial records can be made simpler by utilizing a summary, per section 90.956 of the Code of Evidence. If you have been served with a notice of intent to use a summary, make sure you examine the summary and the originals or duplicates of the data from which the summary is compiled.

If the parties have assets and debts to be divided, prepare to prove the value of each asset and debt on the date of filing. Sometimes I'm given a vague description of a lot of personal property with mere guesses about value. The law requires a family judge to list each asset and debt, state an amount of its value at one point in time, add it all up, and split it equally. I often spend more time on that than on parental responsibility and time-sharing, alimony, and child support altogether. A more persuasive and effective presentation of financial information must be user friendly: a comprehensive summary which has some back-up information. At the very least, give the judge a list of assets and liabilities that is complete. When the stakes are high enough, hire a forensic accountant. If that's not feasible, make a summary that is complete and logical. See 90.956, Florida Statutes.

Prepare the Witnesses

The witnesses must be prepared for trial too. There's an old truism about examination of witnesses: never ask a question unless you know what the answer will be. It is very important to discuss with each witness what the questions will be and find out what the answers will be. You do not want to be ambushed by your own witness. Witnesses will be more comfortable as well and will answer with confidence when they know what to expect. When conducting the examination of the witness have a plan. Follow a logical sequence such as chronological order or the elements which define the subject matter. For example, if the issue is parenting, follow the sequence of 61.13 (3) (a) through (s). Take the time to outline the examination and write out important questions. Explain to each witness the type of facts you are looking for. For instance, section 61.13(3)(j) says: "The demonstrated knowledge, capacity, and disposition of each party to be informed of the circumstances of the minor child, including, but not limited to, the child's friends, teachers, medical care providers, daily activities, and favorite things." Discuss that with the witness until you and the witness have a common understanding of the questions and the answers.

It may be best not to have your client present while you meet with witnesses. You need to be able to speak freely and get honest responses from the potential witnesses. Definitely, do not prepare your client in the presence of others as this will not be privileged attorney-client communication.

Part II

In the next edition, I will discuss preparation of expert witnesses and preparing opening statements and closing arguments.

continued on page 15



*By Diamond Litty,
Public Defender,
19th Judicial Circuit*

Life Builders

A Look at how one Treasure Coast organization is helping to turn troubled lives around

I am proud to write my second in a series of articles, which addresses what to me is “truly a dream come true.”

As Public Defender for 22 years, I know now, more than ever, that by taking the time and going the extra mile, lives can be saved. Certainly not all of the approximately 25,000 cases that we represented last year can turn their lives around, but many can, thus, the reason LifeBuilders was formed.

LifeBuilders of the Treasure Coast, Inc., was incorporated as a non-profit agency in 2009 with a Mission to: “Strive to reduce crime, recidivism, and otherwise assist low-income individuals who come in contact with Treasure Coast courts as a consequence of criminal behavior or a dependency action, and strives to expand and enhance services not provided by the courts with the goal of potential autonomy of individuals and entities.”

LifeBuilders’ history has its roots in three programs developed by the Office of the Public Defender, 19th Judicial Circuit, and one established by the Circuit’s Court Administration. The Client Services program, Mental Health Court, and the Ex-Offender Re-Entry Program began in 1998, 2002, and 2003, respectively. Drug Court came into being in 2001. Each reaches past the courtroom to treat low-income individuals whose conditions were the root cause of their criminal behavior. Each program has documented phenomenal results, including reduced recidivism and increased public safety. Collectively, they have forged a continuing collaboration with the courts, law enforcement, and community and state agencies. Each has saved lives that otherwise would be “lost.”

Public Defender professionals working within these programs recognized that clients were successfully turning their lives in a positive direction. However, these clients still had diverse financial needs that could not be met through the courts, public funding, or family resources.

Led by Public Defender professionals, a group of committed citizens developed LifeBuilders as the logical extension to the established court and jail programs. LifeBuilders’ Board of Directors operates as a voluntary administrative work-force, and is comprised of professionals from the justice, medical/mental health, substance abuse, financial/accounting, and business sectors of the Treasure Coast community. The Board, aided by one part-time Administrative Assistant, and a Volunteer Unit of four community members, review client applications for Board approval, monitor client progress and assist clients with the application process. Furthering volunteer efforts, a core of doctors and dentists provide reduced rate treatment. Revenue that gives LifeBuilders’ clients the help necessary for a productive and beneficial lifestyle comes from grants, fund-raising activities, and donations.

The purpose of LifeBuilders of the Treasure Coast, Inc. is to give a “hand-up,” not a “hand-out.” to make a positive impact in the lives of individuals, their children, their families, and, ultimately the entire community. Funding is granted based upon the applicant’s: **Eligibility**, involved in the criminal or dependency court system; **Commitment**, evidence that the individual is actively engaged in changing his or her lifestyle (working, seeking employment, enrolled in an educational/vocational program, living in a stable housing environment, participating in self-help/counseling); and, **Community/Family Resources**, all community resources have been exhausted and family resources have been evaluated. Each recipient of aid from LifeBuilders is asked to “pay it forward” in some way, either with volunteer hours or direct donations to any community agency, thus, instilling a sense of social responsibility.

Life Builders

Individuals are interviewed by volunteers, 90 days, 6 months and 1 year to assess the degree to which they are taking responsibility, and working toward a productive lifestyle. Individuals are asked about their: current activity (participating in, or successfully completing an educational program, working, seeking employment, continuing counseling/treatment); impact of LifeBuilders assistance; positive and negative events that have been helpful or problematic; living arrangements; and any situations that warrant referrals or additional assistance.

Results from these interviews show that LifeBuilders' clients are working toward changing a negative lifestyle into a positive one by becoming productive citizens within the community. Correspondence from clients continues to give LifeBuilders' Board of Directors the evidence that LifeBuilders mission is working. As LifeBuilders reduces the barrier created by the lack of finances, individuals are able to pursue a path toward a lifestyle that extends beyond the individual, to benefit family, friends, and the community.

Several client reports show the progress and success that LifeBuilders assistance has promoted:

- * LifeBuilders purchased a computer for a client enrolled in a design school. This individual has maintained a 3.0 grade point average and contacts LifeBuilders to report her grades and her progress;
- * Another individual secured a job with a water treatment plant within the 19th Judicial Circuit, after completing four vocational modules at Florida Gateway College in Lake City, FL; three paid for by LifeBuilders and one by the individual;
- * A letter from a teacher mentoring a young lady and her brother, who witnessed their mother's death at the hands of their father: "I am forever grateful for the assistance you have so quickly given my student. The student's determination to succeed has taken her through high school and into a nursing program. She works 16 hour shifts at a rehabilitation center on weekends. When she reached the maximum available through school loans, LifeBuilders provided her the final tuition to attain her LPN. She remains successful to this day."

Foundations and agencies supporting LifeBuilders revenue are: The William and Helen Charitable Trust, The Frances Langford Foundation, United Way of both St. Lucie and Indian River counties; John's Island Community Service League, the McCabe Foundation, TD Bank, and Quail Valley. Fundraising events have included golf tournaments, restaurant and wine-tasting events. From these have come additional donations from community members and the St. Lucie County Sheriff's Office.

LifeBuilders has forged agreements with community professionals and other organizations that support LifeBuilders clients as well as its organizational structure. LifeBuilders makes payment for all services directly to the provider.

Current programs:

- * Approved requests for education and vocational training, and required clothing or equipment are paid by LifeBuilders;
- * A cooperative agreement for treatment at a reduced rate has been forged between community doctors, dentists and vision professionals. LifeBuilders makes appointments for clients in need of medical, dental or vision care;
- * Payment is made for transitional and traditional housing, utilities, drug test, anger management classes, and behavioral and mental health counseling and treatment;
- * A Voucher System with merchants allows clients to purchase clothing and household items;
- * Organizational support comes from a collaborative agreement with St. Lucie County Information Technology for development and maintenance of a database;
- * The St. Lucie Boys and Girls Club affords LifeBuilders office space and equipment use; and,
- * LifeBuilders Volunteer Unit, open to interested community members, reviews requests for assistance, contact clients, and participate in fund-raising activities.

continued on page 21

Cryptoquote

W RKFS NQHEY VRKV VRS DSIV AKT VQ
GWFS KYFWZS VQ TQHP ZRWLYPSE WI VQ
NWEY QHV ARKV VRST AKEV KEY VRSE KY-
FWIS VRSJ VQ YQ WV. - RKPPT I. VPHJKE

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

What the Heck is a Qui Tam Lawsuit?

By Jonathan Coleman



On those rare occasions when we cast our minds back to American History class, Abraham Lincoln and the Gettysburg Address, we probably don't also consider the genesis of modern "whistleblower" laws. In fact, almost one hundred and fifty years ago, a number of unscrupulous Civil War traders (our early pre-Halliburton defense contractors) regularly sold the Union Army swaybacked mules, lame horses, rancid provisions, defective guns, and useless ammunition. This profiteering exploitation was so widespread that Congress was forced to act, and responded with the 1863 False Claims Act. That Act, dubbed the "Lincoln Law," offered a reward to citizens who successfully sued fraudsters on behalf of the government. It contained what is now known as a "qui tam" provision, which is an abbreviation of the Latin phrase *qui tam pro domino rege quam pro se ipso in hac parte sequitur*. What does that mean? Loosely translated, it means: "[he] who pursues this action on our Lord the King's behalf, as well as his own." This *qui tam* concept was imported into American jurisprudence from the same English common law that still forms the foundation of large parts of our modern legal system.

For those who remember Venn diagrams from math class, *qui tam* lawsuits can be conceptualized as a circular subset within the larger circular set of "insider information" lawsuits more commonly known as "whistleblower" cases. In a generic "whistleblower" suit, a person with inside information (usually an employee, but sometimes an accountant, contractor, or stockholder) has information about an illegal business practice. The resulting lawsuit is designed to prohibit any further corporate fraud, which may have adverse consequences on the company's employees, shareholders, or even the public. A set of laws has been developed to protect the whistleblower from any retaliation coming from the company.

In contrast, the *qui tam* version of whistleblower lawsuits is limited to suits against persons or entities that are defrauding the federal or state government - not private interests. Under the federal False Claims Act, 31 U.S.C. §3729, people possessing inside information about fraud committed against the federal government, known as "relators," may file a suit against those government contractors. Many states have similar provisions: Florida has the "Florida False Claims Act," codified at §68.081 *et seq.* Fla. Stat. This Act, instead of protecting the federal government (which is protected by the federal Act) is instead designed to protect against frauds committed against employees, officers, or agents of the State of Florida.

A relator who files suit under either Act need not be personally harmed by the fraud, but the information in the relator's possession must not be public knowledge, unless the relator was the "original source" of the public disclosure. Many *qui tam* cases involve fraudulent Medicare or Medicaid practices, improper activities by defense contractors, or contractors on public works projects such as road construction. These are just some examples. Only an individual represented by a lawyer may bring a *qui tam* suit, but the statutes allow the relator to receive a portion (usually about 15 to 25 percent) of any recovery as well as his or her attorneys' fees. Frequently, those cases are handled on a contingency basis, so the relator has little (if any) economic risk in the litigation - other than possible retaliation, which is prohibited by the law.

The process works as follows. Once the *qui tam* relator with inside knowledge of a fraud against the government selects a lawyer, a lawsuit is filed with enough supporting factual allegations and documentation to permit a thorough governmental investigation. A federal *qui tam* suit is filed "under seal," meaning that it is kept secret from everyone but the government, and it remains initially sealed for 60 days. This gives the Justice Department, the appropriate Attorney General in the district where the lawsuit is filed, or the appropriate State authorities (in a non-federal *qui tam* action) an opportunity to carefully investigate the suit's factual allegations. Frequently, even the target of the suit is not told about the existence of the sealed case. The seal period is frequently extended, as the investigations can be protracted. These investigations are assisted, in appropriate cases, by the Department of Defense, Office of the Inspector General, Defense Criminal Investigative Service, or other appropriate State or federal agency. A suit brought under Florida's False Claims Acts is similar to a suit brought under the Federal Act, except that after investigation, the suit can be taken over by the Florida Department of Legal Affairs, or the Florida Department of Financial Services, both of which have statutory enforcement powers.

continued on page 11

Last Issue's Cryptoquote Answer

QLC TMB WLLN MNN RGH DHLDNH ILJH LW
RGH RUJH, MBS ILJH LW RGH DHLDNH MNN
RGH RUJH, ECR QLC TMBBLR WLLN MNN RGH
DHLDNH MNN RGH RUJH.

~MEVMGMJ NUBTLNB

You can fool all the people some of the time, and some of the people all the time, but you cannot fool all the people all the time. ~Abraham Lincoln

What the Heck is a Qui Tam Lawsuit?

After the government investigates the allegations (often with the relator's attorneys' assistance), the government decides whether it will join or "intervene" in the suit. Typically, the government intervenes in only a small percentage of qui tam lawsuits, and although relators have the option under the False Claims Act to proceed on their own, chances of success are much higher when the government joins in the action. Sometimes, the government will have the Court partially lift the seal so that settlement options can be explored. Many successful *qui tam* cases are resolved through these settlement negotiations rather than a full court trial, and defendants found liable under false claims acts may have to pay as much as three times the government's losses, plus additional penalties.

The amount of the relator's reward can depend on many factors, including the quality of the case as presented to the appropriate governmental agency, and the participation of the relators' attorney if and when the government decides to intervene. The benefit to the relator is based on the procedural status of the resolution: if government intervenes and recovers through a settlement or a trial, the relator will receive between 15% to 25% of the recovery. If the government doesn't intervene in the case, however, but if the case is successfully pursued by the relator and his or her legal team, the stakes are increased and the relator's reward will be between 25% and 30% of the government's recovery.

The financial consequences of *qui tam* actions can be significant. In 2012, a suit against Maersk Group, a Danish conglomerate active in shipping and transportation, was settled when Maersk agreed to pay \$31.9 million in fines without admitting wrongdoing. The relator, who had charged that Maersk overcharged when sending shipments to U.S. forces in Iraq and Afghanistan, was entitled to \$3.6 million of that settlement. Also in 2012, the British pharmaceutical giant GlaxoSmithKline agreed to pay \$3 billion to settle two separate *qui tam* suits for "off-label" marketing, which is promoting drugs for uses not approved by the Food and Drug Administration. Other charges included false pricing, Medicare fraud, and paying kickbacks to physicians to promote GSK products. Another drug company, Pfizer, settled claims in 2011 for \$14.5 million in connection with the off-label promotion of a drug. Other substantial False Claims Act settlements have ranged from things as diverse as improper billings, the supply of defective munitions, and excessive markups.

Many successful *qui tam* cases, not surprisingly, have involved Medicare fraud. In late 2012, a \$95 million settlement was announced in a case first launched by a Florida resident who worked for a company for 14 years, before becoming concerned about illegal Medicare

marketing practices. The total reward to the relator in that case was approximately \$20 million. In late 2013, an ongoing *qui tam* action was unsealed which deals with deceptive billing practices at Vanderbilt University Medical Center. According to the lawsuit, the Center engaged in a "scheme to maximize income from its medical practices by submitting false claims to federal and state health insurance programs for physician services" that did not meet Medicare's billing standards. Similar wrongdoing is frequent. The effects of the Affordable Care Act on *qui tam* litigation remain to be seen.

In any event, *qui tam* suits are a powerful tool that permits private citizens with inside knowledge of improper practices to take action, and relators' actions have curtailed fraud which costs taxpayers money and otherwise endangers the lives of medical patients, soldiers, and consumers of various products and services.

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 Tampa office of Johnson, Pope, Bokor, Ruppel & Burns, LLP.

Law Day 2014

The Friends of the Rupert J. Smith Law Library celebrated Law Day once again making this the eleventh reception. This year James Walker was the Master of Ceremonies and the Honorable Burton Conner led the participants in the Pledge of Allegiance and gave a short but inspiring talk on its importance.

Paula Lewis made a special presentation to Judge Conner who is leaving the library's Board of Trustees after eight years of service. Judge Conner introduced Judge Schwab who gave the keynote address. Rene Artaega introduced and presented Theresa Garabino Mays who was honored for her work as the executive director of CASTLE. Bruce Colton introduced and presented Diamond Litty who was honored for her work as Public Defender for the 19th Judicial Circuit.

Jeff Rollins took over duties as Master of Ceremonies for the second part of the program, the Student Essay and Art Contests. Michael Lannon gave the introduction and Genelle Yost make remarks as well as presenting the winning students with the awards.

Each year the Friends of the Law Library raise thousands of dollars in prize money to promote awareness and encourage our students' creativity and talent. We thank our sponsors for making all of this possible; The RJS Law Library Board of Trustees, the St. Lucie County Bar, Everlove & Associates and the law firm of Gordon & Doner. Please see the pictures

England's Legal System

Part II: Courts

By Richard Wires

Editor's Note

In our last issue, the first installment of Dr. Wires' series on England's Legal System contained several typographical errors. We regret those errors and apologize to Dr. Wires. A corrected version of the article appears on our website: www.rjlawlibrary.org.

Through a number of separate acts of Parliament approved during the past quarter-century substantial changes have been effected in the structure of the English judicial system and in handling of cases. The cumulative result is a simpler and more rational organization. A strong concern with dignity and objectivity is evident all through the system. In the absence of political partisanship and judicial elections, of disputed appointments and rancorous confirmation hearings, the system functions without much public controversy or criticism. Nor do the atmosphere and activities of the courtrooms have the air of confrontation that more adversarial systems produce.

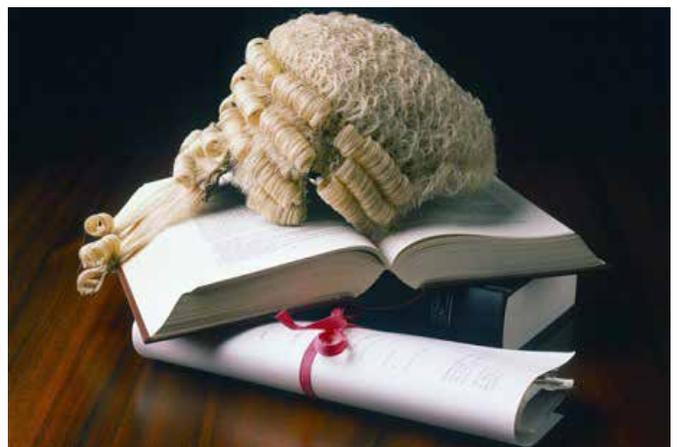
Here the approach is to outline the basic hierarchy of courts with some comment about their jurisdictions and judges. The overall system combines courts that hear only specific types of cases with those based on geographic districts. There are parallel but separate courts for criminal and civil matters at most levels. Because the courts have evolved over many centuries, some retaining now unfamiliar but historic names, brief statements about the function are sometimes needed. To illustrate how courts operate the examples use criminal proceedings since most civil disputes are now settled without courtroom litigation. Of course this overview is only an introduction and cannot cover the many subtleties and quirks found in a system deeply rooted in tradition and being changed only piecemeal to meet modern needs.

Courts are divided into senior and lower levels. Changes made under the Constitutional Reform Act of 2005 reshaped the upper courts: a new Supreme Court, a Court of Appeal, and High and Crown Courts. The creation of a Supreme Court was most significant. Courts that previously had been referred to as "supreme" are now called senior courts to avoid confusion. Historically final appeals in the country's legal system were heard by the House of Lords, at first by the whole body and later by just a select group, those identified as Law Lords and who had much stronger knowledge of the law. Now comprising the Supreme Court are twelve justices. The new act reduced the Lord Chancellor's power to a great extent.

Although the official's historic role included shielding the judiciary from government pressure, it became ambiguous over time, so recent changes have strengthened the separation of powers and judicial independence. It should be emphasized that not even the Supreme Court can declare unconstitutional an act of Parliament even though judges at any level may criticize laws.

Next highest is the Court of Appeal with about 40 Lord/Lady Justices of Appeal sitting in five divisions: Criminal, Civil, Chancery, Family, Queen's Bench. The Lord Chief Justice heads the Criminal Division and the Master of the Rolls the Civil Division. Currently about 110 other justices are assigned to the High and Crown Courts.

The High Courts are the courts of first instance for civil cases that are complex or involve high value disputes. They have three divisions: Family, Queen's Bench, Chancery. Queen's Bench courts stress the common law and trace their origins back to the Magna Carta. By tradition they heard cases, civil and criminal, seeking to stop unlawful actions. At times the offending party was a royal official, but if it was someone else a "common" plea would be the term used, so that they were soon called common pleas courts. Many grievances involved financial matters. The modern Queen's Bench (or King's Bench) in time absorbed both the old Common Pleas and Exchequer Courts. Many Queen's Bench cases are now assigned to be heard by a supervised "Master." Chancery is an old name for equity. Crown Courts are where criminal trials are conducted when there is a serious or indictable offense. A jury is present. (How cases are chosen for Crown Courts is discussed a little later.)



All judges in these senior courts are appointed in the name of the monarch, upon the "advice" of the Prime Minister for the highest positions and of the Lord Chancellor for the other courts, with appointees usually drawn from among the most capable justices of the lower courts. Thus they bring considerable experience and established integrity to the new posts. In particular they are neither political figures nor people elected by popular vote. It is common for justices at the highest levels to receive a knighthood.

continued from page 12

England's Legal System Part II: Courts

Lower courts in descending order are Crown and County Courts, where a circuit judge, recorder, or district judge may preside, and Magistrates' Courts with a district judge or magistrate sitting. Looking at criminal cases helps illustrate the roles of different courts. In such prosecutions a distinction is made between summary offenses (minor crimes), where cases are heard by a magistrate, and indictable offenses (including "hybrid" crimes), with trials in a crown Court before a judge and jury.

A hybrid crime, also called an "either way" or "triable" offense, is one of degree: a simple assault charge goes before a magistrate but an assault with major bodily harm would go to a Crown Court. The prosecutors decide where to bring the charges. In effect the Crown Courts deal with all but the simplest crimes. County courts are where non-complex and low-value civil cases are first heard. The damages are called the "quantum" in references to a civil judgment.

Minor or summary offenses are heard in a Magistrate's Court. When the person hearing the case is a qualified lawyer he or she is called a district judge and holds the position by appointment. The judge sits alone; there is no jury. Others without legal training are called lay magistrates or just magistrates. They are essentially the former justices of the peace, not lawyers but people receiving some legal instruction, with further guidance by a mentor when starting out, and who work with professional and independently appointed clerks. Lay magistrates rely heavily on their clerks for advice on proper procedure and such things as sentencing guidelines. Their advantage is that they know the local community. Magistrates also hear cases without a jury. They receive no salary but their expenses are reimbursed. About an equal number of men and women currently serve. In difficult cases magistrates may sit as a "bench" or a panel consisting of three magistrates. Its chair is the person with the most experience who speaks for the group, but all decisions are by a majority vote. A magistrate or a bench determines both guilt and suitable sentence. The systems function well. Few appeals are filed and most contest only the sentence. Some civil matters are also heard in magistrates' courts.

For serious and thus indictable offenses the Crown Prosecution Service (CPS) decides whether to prosecute and determines charges. At one time the police themselves could initiate prosecutions but complaints about abuse of power grew. There were also frequent accusations of improper police actions: arrests, searches and seizures, questioning, handling of evidence. Under the Police and Criminal Evidence Act of 1984 the Home Secretary (the cabinet minister responsible for domestic safety and security) now issues written Codes of Practice for the police. For each of the country's 43 police districts there is a parallel district of the CPS to work

closely on major cases. The police can make an arrest with or without a warrant, as when there is a reasonable suspicion of a crime just committed or in progress, or they believe that some serious offense is about to occur. But their actions throughout an investigation are checked by the CPS to make certain rights are not violated or cases compromised. The CPS has also expanded and in 2010 absorbed the Revenue and Customs Prosecutions Service. Friction between the police and the CPS is common over some issues. Major complaints by the police are the prosecutors' frequent plea bargaining, quick settling for a lesser charge, and their sensitivity and reluctance in pursuing cases against minority offenders. Prosecutors counter that a judge may dismiss an overreaching charge or a jury may fail to return a conviction. A point worth particular note is that double jeopardy is no longer an absolute defense. Now in some circumstances there can be a new prosecution on the same charges.

With a few but important differences a Crown Court judge and jury trial would seem familiar. But especially notable are the judge's much greater involvement and the more limited presence of adversarial elements. The judge like others would probably have been a barrister, but some solicitors are now appointed, though they would be required to take further special training. A judge can be removed under certain conditions but normally serves until retirement at age seventy. Jurors must be between 18 and 70 and registered as voters. After a prior and careful vetting process the selection of a twelve-person jury takes little time. During testimony by a witness the judge (or magistrate) may also put questions to the witness. The aim is both to prevent significant points from being overlooked or concealed and to ensure that the testimony is clear to the court and the jury.

After all evidence and testimony have been introduced it is the judge's responsibility to summarize everything for the jury and instruct it on the applicable law.

continued on page 20

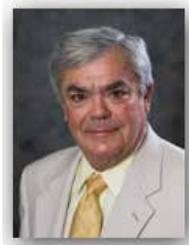
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TWO TRACK CASE DEVELOPMENT THEME DEVELOPMENT

By Robert W. Hamilton, Jr. and Edmund J. Sikorski, Jr., J.D.



The earliest case intake and preparation process is the identification of the developed law on the subject at hand and then identifying the relevant facts that support the cause of action or defense in an attempt to withstand motions for summary judgment and simultaneously make the final result appeal-proof. That is, after all, the road travelled to earn a Juris Doctor degree.

There is, however, a second parallel track that trial lawyers must pursue that is not taught in law school. That is the track of developing HOW the case materials will be presented to the trier of fact. This is an entirely different discipline – it is found in the realm of psychology, human dynamics, and drama. Like a two track road, the parallel tracks are not only independent but are also interdependent and must proceed to a destination. Imagine the result of one track crossing over the other or intersecting. The road would obviously come to an end without a destination. In the case of litigation, the evidence would not make sense, confusion would reign, and an unsatisfactory result would occur.

This article addresses the starting point for the 2nd track – presentation.

The starting point is the development of a case theme. A case theme is a short statement that articulates a principle underlying a story. It is not a fact, it is a rule that helps evaluate and filter facts. It provides the moral compass for a resolution – the moral infrastructure. (Van Patten, Univ. S. Dakota School of Law, January 2012). A case theme includes some sense of right and wrong, community values and mores, and is something grounded in reality.

A trial theme is a summary of the case, the essence of the case expressed in one sentence or phrase that appeals to the moral force or the values of the jurors or trier of fact. Identifying the moral infrastructure is the key to persuading the listener, i.e. the trier of fact (Remember that in insured claims, the 1st juror may be the claims adjuster).

Examples of case theme are: “No one likes a bully” – implying that might makes right. “Safety first not Last”.



One word case themes also work well if they are carefully chosen: “Arrogance”, “indifference”(“whatever”), “greed” “integrity”, “responsible”, “fairness” (“fair play”). Themes are the glue that binds the story of the case together. The theme must be memorable, simple, and worked into the case from intake development, mediation, voir dire, opening statement, witness testimony, exhibits, illustrations, videos, jury instructions, and then driven home in closing argument.

Ideal trial themes are not found by asking law firm partners, associates, and staff what THEY think. You just might be getting back what YOU think. Likewise, an ad hoc opinion from the hairstylist, barber, or fishing companion also has questionable value.

To illustrate the absolute importance of the word choice in selecting the theme, the author will borrow an example given by the noted Trial Consultant Amy Singer, Ph.D. (Jury-Validated Trial Themes):

“In the winter of 1993 I worked on a product liability case...concerning a vehicle roll-over. When we first tested the case, we found that the surrogate jurors spent much of their time speculating on how the driver probably ‘over-corrected’ his steering thus resulting in the roll-over. Who owns “over-correction”? The driver does... so the jurors blamed him for the accident.

“We recast the deliberations by introducing two new terms – ‘steer-ability’ and ‘steer-worthiness’. Who owns these terms? ‘Steer-worthiness’ clearly belongs to the vehicle manufacturer ... and guess whom the jurors now blamed for the incident? The manufacturer, of course.”

Why do you need a case theme? People tend to unconsciously evaluate nearly everything they come in contact with in a crude good-or-bad manner. “Priming” words and metaphors are essential because they are abstract versions of a mental concept strongly associated with the inhabited physical world. These effects occur unconsciously and automatically without one being aware of the subsequent behavior influenced- they are reflexive reactions based on minimal information.

continued from page 14

TWO TRACK CASE DEVELOPMENT THEME DEVELOPMENT

The stronger the unconscious influence, the harder one has to work to consciously overcome it. (John A. Bargh, Yale University, Scientific American January 2014)
Consider the following example from a typical trip and fall type case:

Scenario 1: Plaintiff presents evidence of a broken tile in a commercial establishment causing plaintiff to trip and sustain injuries and claims that defendant had a duty to maintain flooring in a safe and secure manner. Defendant establishes that plaintiff is a responsible person and is thus responsible to see where plaintiff was walking and thus avoid an open and obvious danger. Was there a theme and which theme resonates?

Scenario 2: Plaintiff puts forth the same facts but presents them in the context that defendant impliedly promised all business invitees (guests) that the premises would be maintained in a safe and secure manner – i.e. a promise made but a promise broken. Defendant takes the same tact as in Scenario 1 above. Was there a theme and which theme resonates?

Once having selected theme, now the question becomes “How do you present it?” Will photos and videos stir the emotional responses desired? How will the testimony describe how things look, sound, taste, smell and /or feel to help jurors remember and gain confidence in the witness? (Note use of present tense.)

What you say, how you say it, and how you develop and present the 2nd track of the 2 track presentation are the reasons why a litigation consultant is a necessary ingredient in early and continuing case preparation and presentation in the Information Age.

*Robert W. Hamilton, Jr. Litigation Consultant,
President of Legal Consulting Services, Inc.*

*Edmund J. Sikorski, Jr., J.D. is a Florida Supreme
Court Certified Circuit Civil and Appellate
Mediator. Treasure Coast Mediation Services*



continued from page 7

Preparing for a Family Law Trial

(Endnotes)

1 Holt and San Pedro, “Social Media Evidence: What You Can’t Use Won’t Help You”, *The Florida Bar Journal*, Vol. 88, No. 1, page 9 (January 2014)

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

What’s New at the Library?

By Nora Everlove

Secondary Sources on Lexis

Did you know the law library has a Lexis subscription with many Matthew Bender titles available online? Here are just some of them:

- Moore’s Federal Practice – Civil/Criminal
- Weinstein’s Federal Evidence
- Florida Administrative Code
- Southeast Transaction Guide
- Collier on Bankruptcy
- Current Legal Forms With Tax Analysis
- Civil Rights Actions
- Manual for Complex Litigation
- Larsons Workers Compensation Law
- New Appleman on Insurance Law

New High Speed Access at the Law Library through Comcast

If you have ever been frustrated with the internet speed at the library, you’ll hear this as good news. We hope you will be very pleased! And, don’t forget, we have two laptops for your use. You can find a cozy corner in the library or use one of our easy chairs.

Check out Frank’s New Website at ifrank.com

Frank Pennetti, one of our reference librarians, has created a new website on free sites and applications to help you build an internet marketing plan. Also look for his YouTube introduction to the site. So far, it is broken into Organizational Tools, Search Engines and Stock Photos. Barely a month old, you can subscribe to his mailing list and get additional content as it is developed. Remember this is all FREE!

On Order – Black’s Dictionary – 10th edition

This makes me feel really OLD.

Identity Theft, More Than a Financial Risk

By Carrie Kerskie



When it comes to identity theft most people often think of credit cards and bank accounts, but these are only part of the epidemic. In fact, identity theft has the potential of causing life threatening consequences. The only way to truly understand the enemy that is identity theft is by knowing and understanding all of the different types of identity theft.

FINANCIAL

Financial identity theft is what often comes to mind when you hear “identity theft.” This may involve a thief using your credit card, debit card, or opening a new account in your name. But it can also involve a thief using your personal information to obtain a loan (car, home or line of credit) or file for bankruptcy. If a thief has used your identity for a period of time he may need to file for bankruptcy to keep up the charade. This is exactly what happened to a client of mine a few years back. Imagine the surprise when you are notified all of your accounts have been frozen for failing to disclose them on a bankruptcy filing that you did not file.

Financial identity theft also occurs when someone files a tax return in your name. This is much more dangerous than someone merely using your credit card because now the thief has your social security number. IRS tax return identity theft has greatly increased over the past four years and until the IRS develops procedures to detect fraudulent transactions the upward trend will continue.

UTILITY

Utility identity theft is exactly as it sounds. It occurs when a thief uses your identity to obtain utilities such as electric, water, gas, telephone (landline or cell phone), or cable. When the bill is not paid it is reported to your credit report.

GOVERNMENT BENEFITS/GOVERNMENT DOCUMENTS

Government benefits identity theft occurs when a thief files for and receives your Social Security benefits. I have worked with clients that decided to delay receiving Social Security. When they applied to receive the benefit they were told they were already receiving Social Security. Another example of government benefits identity theft is when a thief uses your Medicare information to obtain medical services, treatment or products. This will be discussed further in medical identity theft.

Government identification identity theft occurs when a thief uses your identity to obtain a driver’s license or when a thief purchases a driver’s license containing your information, also known as a novelty ID, but with the thief’s photograph. Now the thief’s driving record becomes part of your driving record.

CRIMINAL

Criminal identity theft occurs when a thief presents your information to law enforcement when he is arrested for a crime. Imagine finding out that there is a warrant for your arrest for a triple homicide. This is exactly what happened to my client when he mistakenly left his wallet on a gas pump.

MEDICAL

Medical identity theft could prove fatal. The thief uses your identity to obtain medical services and/or products as well as health insurance. The thief’s symptoms, test results, diagnosis and blood type are now part of your permanent medical record. Unfortunately the new health exchanges and electronic medical records make it extremely difficult, if not impossible, to get the information corrected. When a doctor is attempting to make a diagnosis he will review your entire medical history including test results and symptoms. I have had clients that were denied payment for services or treatment because they had exhausted their benefits, only they were not the ones who received the benefits.

BUSINESS

Business identity theft occurs when a thief uses the personal information of a business, tax ID number, company name or logo, to obtain credit accounts or to steal money from the business’ customers. The reward to identity thieves is a payout of ten times that of stealing an individual identity. The average criminal can gain around \$500-\$5,000 with individual identity theft. The average gain with business identity theft could be \$50,000 and up. There is also less risk to the criminal with business identity theft as most identity theft laws exempt business entities.

continued on page 17



Identity Theft

So what can you do to protect yourself from identity theft? Unfortunately, nothing. Identity theft cannot be prevented. The best you can do is to reduce your exposure and monitor to detect the early warning signs. Early detection of identity theft greatly reduces your risk of financial loss or permanent damage.

WARNING SIGNS

Here is a list of the most common warning signs of identity theft.

1. Discrepancies on statements (credit card, bank, etc.)
2. Collection calls
3. Bills or explanation of benefits for unknown medical procedures
4. Stolen wallet
5. Not receiving paper statements when expected
6. Reduction in credit score
7. Auto insurance premium increase due to unknown traffic citation
8. Complaint calls from unknown customers
9. Notification from the IRS that your return has already been filed when you have not yet filed it
10. Credit denial

If you should detect any of these warning signs take action right away. Make calls, ask questions. This is not the time to be shy and assume it is merely a clerical error.

YOU ARE A VICTIM, NOW WHAT?

First you need to know your rights. There are numerous laws, federal and state, created to help you recover from identity theft. Unfortunately many of the credit bureaus and credit card companies know that victims do not know nor do they understand their rights. These organizations use this to their advantage. The majority of my clients have spent months to years trying to restore their identity without seeing results. Once I became involved I was able to restore the client's identity within a few hours or days. Why? Because I know and understand victim's rights and do not allow these organizations to delay or avoid what they are required by law to do.

So what are these laws? The first is the Fair Credit Reporting Act which allows you to obtain a FREE copy of your credit report from each credit bureau every twelve months. The three main credit bureaus are TransUnion, Equifax and Experian. You can also visit www.AnnualCreditReport.com to access your credit reports online. This website is the ONLY website endorsed by the Federal Trade Commission. DO NOT use any other website, except for the credit bureau's website, to get your credit report. The other websites were created to sell you services and will often demand a credit card.

The second law is the Fair and Accurate Transaction Act which allows you to place a free 90 day fraud alert on your credit report with each bureau if you believe you may be a victim of identity theft. If your wallet was stolen then you are entitled to the free 90 day fraud alert. To activate the fraud alert simply contact each credit bureau and tell them you suspect you might be a victim of identity theft. You will also have the opportunity to order a free credit report at the same time. Once you have filed an Identity Theft Report you are allowed up to two free credit reports within a twelve month period from each credit bureau. You also have the option request an extended fraud alert for up to seven years. Depending on your state you may have to pay a small fee for the extension.

There are also credit card and banking laws which protect you from financial loss due to fraud. If you should observe a fraudulent transaction on your credit card statement simply contact the credit card company, in writing, and the transaction will be removed. It is really just that simple. If you should observe a fraudulent transaction on your bank statement contact your bank, in writing, and after the bank has verified the transaction to be fraudulent the money will be refunded to your account. Please note that if you should incur overdraft fees due to the fraudulent transactions the banks are NOT required to refund the amount of the overdraft fees.

continued on page 19

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CONGRESS.GOV PROVIDES NEW AVENUES OF ACCESS TO FEDERAL LEGISLATION

By Robert Brammer

Congress.gov debuted in October of 2012. The site has seen significantly improved since its initial rollout. Not only has the Library of Congress migrated a great deal of content over from THOMAS, it is also rolling out new features with each release. This article highlights a few of the new features and provides ideas on how you can use them to gain new insights into the inner workings of the legislative branch.

I. Browse legislation by policy area subject.

In addition to search, Congress.gov now has a browse function. Navigate to beta.congress.gov and click on “Browse” above the search box. First, use the drop-down to select a Congress. By default, you are browsing content produced during the current Congress. Next, you can choose to browse enacted laws; bills, resolutions, and amendments; bills by policy area subject; vetoed bills; or committee reports.

The ability to browse by policy area subject is particularly interesting. The Congressional Research Service uses two separate vocabularies to assign subjects to bills: policy area subjects and legislative subjects. Only one policy area subject is assigned to each bill, while multiple legislative subjects may be assigned to the same bill. Congress.gov currently allows you to interact with policy area subjects. We plan to provide legislative subject access in a subsequent release. Click on “bills by subject” and a menu opens that displays all of the policy area subjects represented in the selected Congress. Next to each subject, you will see a number that indicates how many times that subject has been assigned to a bill. This in and of itself provides an insight into the legislative priorities of the selected Congress.

If you select a subject, you can discern which members and parties are interested in that particular policy area. After you select a subject, you can select the facet for Sponsor on the left-hand side of the screen. This will display all of the members that have sponsored at least one bill on that subject; next to each name is the total number of bills they have sponsored on that subject. If you want to know which parties are interested in the subject, continue down the left-hand side of the screen, and click on “Party.” Next to each party name, you will see the number of bills classed under the selected subject that have been sponsored by a member of that party.

To see which policy area subjects attract the interest of a particular member of Congress, return to the main screen by clicking “Congress.gov” at the top left.

Next, click on “Members.” Type in the name of a member or use the drop down menu to select a member from the current Congress. After you have selected a member, a member profile page pops up that displays all of the legislation sponsored and co-sponsored by that member for all of the Congresses represented in Congress.gov. You can display the policy areas that a member is interested in by clicking on the Subject facet. Click on “Show more” to display the complete list of subjects. Next to each subject, you will see the number of bills the member has sponsored and co-sponsored in all Congresses represented in Congress.gov. If you would like to narrow your results to a particular Congress and/or just display legislation that member has sponsored, use the Sponsorship and/or Congress facets on the left.

II. Advanced Search

The advanced search form provides you with a great deal of flexibility, allowing you to easily perform searches that would have been difficult and time intensive in the past. Let me start with an overview of the advanced search form. Navigate to beta.congress.gov, and click on “Advanced Search” on the right-hand side of the screen. Starting on the left, you see a plus sign that allows you to add additional search strings. Next, you see a drop-down menu that allows you to select the type of content you are interested in. By default, this is set to search “Current Legislation.” Continuing to the right, you see a field selector that allows you to narrow your search so that it only returns results from a particular field, such as the bill summary, the full text of the bill, the subject of the bill, the bill’s status in Congress, sponsor, co-sponsor, etc. Finally, you see the text box where you type in your search on the far right.

The best way to realize the flexibility of advanced search is to experiment with it, but I will provide you with an example of the complex research you can do with the advanced search feature. For example, let’s say you want to search for each instance where two legislators cooperated with one another to sponsor and/or cosponsor a bill. First, select “All Legislation” using the drop-down. Then, use the next drop-down to select “Sponsor/ Cosponsor” and type in the last name of the first member of interest. Click on the plus sign on the left. This will add a second search string. Select “AND” from the drop-down to connect the two search strings. Make the second search string identical to the first search string, but type in the second member’s last name in the text box, and click “search.” Do you want to edit your search? Click on “Show Search Form” at the top of the screen and you can alter your search.

continued from page 18

Would you like to learn more about Congress.gov? The Library hosts free webinars bi-monthly. To register, navigate to law.gov, and at the bottom right-hand side of the screen, click on "Sign up." Fill out the registration form, and we will send you an email with a link to the webinar. I close by mentioning that we need to hear from you. Are there any features you would like to see added to Congress.gov? Please let us know. You can send feedback directly to our development team by clicking on the "give feedback" link.

Robert Brammer is a former staff librarian at the Rupert J. Smith Law Library and is now a legal reference specialist at the Law Library of Congress. He holds both his JD and his MLS degrees. His opinion does not necessarily reflect that of the Law Library of Congress.



continued from page 17

Identity Theft

This is why it is better to always use a credit card as opposed to a debit card.

Identity theft is the fastest growing crime in America today. No one is immune from identity theft. Even though I am an identity theft expert it has happened to me three times, once while I was a patient at a local hospital. There was NOTHING I could have done that would have prevented the hospital employee from accessing my medical record. Unfortunately this epidemic is going to get worse before it gets better. My advice to you is to be alert, monitor your statements (credit card, bank, health insurance, etc.) and keep your eyes and ears open to warning signs. Remember the gazelle. When he senses a lion he runs. He does not stand around trying to rationalize it otherwise he would be the lion's lunch. If something is making the hair on the back of your neck stand up, take action. Otherwise you will be an identity thief's lunch.

Carrie Kerskie is the President of Kerskie Group, Inc. and the Founder of the Association of Certified Identity Theft Investigators. She authored the book, "Your Public Identity: Because Nothing is Private Anymore" and is a speaker, trainer and consultant specializing in identity theft restoration.



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continued from page 13

England's Legal System Part II: Courts

The summary must be impartial and fair: nothing that dictates or directs the jury's finding is permissible. Once the jury has reported its verdict in a criminal case it is dismissed. If it has found the accused guilty the judge alone then decides the punishment. There are few rigid guidelines. The jury's verdict in a criminal case must be accepted regardless of the judge's own view. While in over three-fourths of convictions the jury's verdict is unanimous, a judge has been allowed since 1974 to accept a somewhat lesser vote, a decision that represents the view of just ten or eleven jurors. These are called "majority verdicts" in the records. Obviously the underlying objective of many provisions and practices governing English trials is to reduce time-consuming procedures and avoid deadlocks.

Courtroom trials are increasingly rare in civil cases. Well over 90 percent of disagreements are settled without a trial by the extensive use of a system called Alternative Dispute Resolution. It involves negotiation, mediation and conciliation efforts. Lawyers are obviously kept busy by the many meetings. Civil cases in the lower or county courts are grouped by the value of dispute: under 5000 pounds (currently about \$8200), 5000-25,000 pounds (up to about \$41,000) and anything over 25,000 pounds. Three points about civil lawsuits bear note. Under the Access to Justice Act of 1999 there is no automatic right of appeal. The Court of Appeal must agree to hear the matter. A related point is that the Court of Appeal since 1990 may change jury awards it deems excessive. The courts do not countenance damages that are very large. And especially important is the policy that the losing party in civil cases must usually pay all the legal expenses of the successful party. The arrangement clearly discourages frivolous or questionable litigation.

Probably the two most significant features that distinguish the court system of England from that in America are the non-politicized judicial appointments and the measures to avoid prolonged litigation. In general the judiciary consists of capable judges whose advancement depends on experience and proven capability. Minor offenses are handled effectively at the local level, undue delays in trials for more serious crimes are not allowed by courts, and appeals are limited to cases raising important issues. Nor do civil lawsuits clog the courts. Thus there is minimal public concern that some recent practices, like allowing majority verdicts and modifying double jeopardy, threaten the basic fairness of proceedings or endanger traditional rights.

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."



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continued from page 5

Florida's Death Penalty: A Haunting Experience

Case in point, that of William Dillon, who spent 27 years in prison for a murder/rape charge in 1981 in Brevard County. The state's evidence consisted of a sweaty t-shirt, a dog sniff and a photo lineup. After spending years on The Row and other prisons, the Innocence Project requested the DNA on the t-shirt be re-tested. With new, more reliable science available it was proven that Dillon absolutely could not have secreted perspiration on the t-shirt which was the key piece of evidence. What if the state's protracted appeal process had been shortened during those 27 years? Would we as a society be willing to accept that a mistake had been made but continue status quo?

A death sentence is different from any other sentence in one obvious aspect—it's hard to do-over. The trend nation-wide has been to abolish or place a moratorium on executions. The states which continue the practice have largely adopted a sentencing procedure which requires unanimity. Most legal observers predict that Alabama and Florida will eventually evolve to the unanimous death recommendation requirement. The issue then will be litigated for years as to the ex post facto effect on all non-unanimous death row inmates at Florida State Prison, Union Correctional and Lowell Prison (where female death row inmates are housed).

The moral, philosophical and religious debate over the propriety of a state-licensed execution will rage on ad nauseam. But what's new to the debate is the certainty which a society requires before acquiescing to a government performing a function which no individual is legally permitted to perform.

Do I want to subject myself to attend the execution of my spirit-haunting client when his time comes? He continues to protest his innocence in Christmas cards he sends to me every year. Will I witness him being strapped to a gurney and given a series of injections until the heart monitor stops beeping? Until the muscle contractions and cramping ceases? Until the last gasp of air escapes his lungs and hangs in the air of that black-curtained room? I don't know yet—would you?

The late Mark Harlee was an honors graduate of Stetson University with a B.A. in English 1981. He received his law degree from the University of Florida in 1984. He was Chief Assistant Public Defender from 1993 until 2013.

continued from page 9

Life Builders

In closing, let me reiterate what I express in any speech or presentation that I give. The tremendous collaboration with all agencies in the 19th Circuit is not only unique, but truly allows great things to happen in our community. We have received unprecedented support for our charity from both those involved in the criminal justice system, dependency court, as well as private citizens in St. Lucie County, and the entire 19th Circuit. Our concept is truly unique in the State of Florida, and growing stronger every day as the community support we receive provides a "hand-up, not a hand-out" to those in need.

Remember, "Change a life, Change the world"

To learn more about LifeBuilders, please go to www.lifebuilderstc.com.

Diamond Litty has been the Public Defender since 1992. Prior to her election she had a criminal defense practice and was with the State Attorney's office also in the 19th circuit. A native Floridian, raised in Fort Pierce, she is married to the Honorable Thomas Walsh and has one son, Blaze. She formed with others LifeBuilders of the Treasure Coast, a 501(c)(3) which is designed to help those who have been touched by the criminal or dependency courts in the area.



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CELEBRATION OF LAW DAY



Hon. B. Conner, Hon. C. Schwab, K. Cunzo, T. Mays, D. Litty



Winning art



Judge Schwab



Honoree T. Mays and Guests



G. Yost, K. Cunzo, winning artist, J. Rollins



Hon. B. Conner, Hon. C. Schwab, Walker, Lewis



Art in Courthouse Hallway



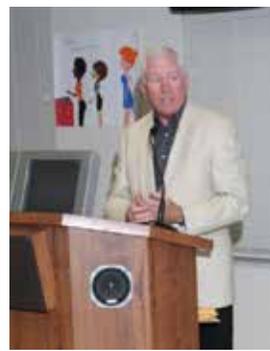
Winning Art



G. Yost & winning elementary students



Hon. B. Conner



M. Lannon



Winning Middle School artist



T. Mays & R. Artaega,



G. Yost, J. Rollins

2014 Law Day Celebration
Theme: Every Vote Counts!

2014 CLE CALENDAR AT THE RUPERT J. SMITH LAW LIBRARY

Preparing Both Yourself and the Client for Mediation
by Ed Sikorski on Friday June 6

Handling and Management of Discovery Disputes by
Harold Melville on Friday, October 31

Motion Practice in the Fourth District: Before and
After the Opinion is Released by Mark Miller on
Friday, November 14

Each program offers 1 hour of CLE credit.

All meetings are at noon in the large conference room
of the law library at 221 South Indian River Drive
in downtown Fort Pierce. More details will follow.
Reservations can be made by calling the library at
772-462-2370.



We would like to thank Bruce Abernethy for lecturing at our most recent program in the RJS Law Library's 2014 Lecture Series. Bruce gave an excellent presentation on "Re-Thinking Basic Estate Planning in Light of Recent Tax Law Changes." We also want to thank all of the participants; they make this project worthwhile. Don't forget Ed Sikorski's presentation entitle "Preparing for Mediation" is scheduled for Friday, June 6 at noon. These programs are free and give one hour of CLE credit. Come visit your law library!



Poet's Corner

The Core and the Crust

By Nathan J. Gill

Atop my mantle is bare
not one photograph
not one clock
not dust or even hair.

Atop my mantle is bare
a mirror does not hang above it
it is simple
you will not find extravagance anywhere.

Atop my mantle is bare
it is not adorned with accomplishments
but beneath it there is a fire
so its use is not rare.

Atop my mantle is bare
when there is no fire
there is soot
then it reminds of what was there.

Atop my mantle is bare
not of monuments, not of gold
even before we walked the earth
the core was not cold.

Nathan Gill was born in the island nation of Trinidad and Tobago and came to the U.S. at the age of two. He is currently studying for a degree in computer information technology at St. Petersburg College. He has been published three times in poetry contests, and as the illustrator of a children's book called Beenie's Search written by his mother.

Two Little Poems

from Mark E. Martin

The Bird

Who does he call to
This bird that
Keeps me awake
At this hour?

The Wind

The wind is playing the governmental buildings
With shrieks and howls
Mixing with the sound of
The flags atop the Capitol
Flapping on their pole

I can't believe I can hear
Those sounds from so far away.

Mark E. Martin works for the libraries at Louisiana State University. He is an archivist specializing in historic photography. He has studied at Western Carolina University, University of Texas Austin as well as LSU. He has a Masters in Library Science.

Florida Bar CLE Programs At The Law Library

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

Recorded CLE Programs - Sorted by Expiration Date

Course #	Title	Expiration Date	General Hours	Ethics Hours
1444C	Sunshine Law, Public Records & Ethics	8/8/2014	9	6
1510C	Probate Law 2013	8/21/2014	7.5	1
1494C	Masters of DUI 2013	8/22/2014	8	1.5
1557C	Till Divorce Do Us Part...The New Beneficiary Designation Legislation	8/26/2014	1	1
1495C	Topics in Evidence 2013	9/15/2014	7.5	2
1529C	Basic Criminal Practice	10/26/2014	7	2
1741C	Survey of Florida Law	10/30/2014	6	0
1459C	36th Annual Local Government in Florida	11/10/2014	12	2
1501C	Hot Topics In Appellate Practice 2013	11/17/2014	8	1
1482C	Beyond Ch. 61: Interrelated Laws Every Divorce Lawyer Should Know	12/5/2014	7	0
1094C	Building a Business in a Down Economy	12/26/2014	2.5	1
1503C	Florida Law Update 2013	12/27/2014	8	1
1535	Developing a Business Plan for the Start-up Law Firm	1/26/2015	1.5	1
1612	Keeping Up With Changing Times: Same-Sex Issues and Beyond in Your Family Law Practice	2/7/2015	3.5	0
1617	ELULS Annual Update	2/8/2015	19.5	8
1660C	The Tangled Web of Ethics-Advertising Websites & Social Media	3/11/2015	2.5	2.5
1632	Practice Before DOAH: Judge Cohen's Opus	4/4/2015	7	1
1625	How NOT to Get Beaten Up in Domestic Violence Court	4/9/2015	8	1
1640	Current Development in Estate Planning Techniques	4/18/2015	8	1
1728	2013 Case Law Update: Stay Up to Date and ...	4/23/2015	2.5	0.5
1623	Annual Ethics Update 2013	4/23/2015	4	4
1749	Get Ready for the LL "Sea" Change - Navigating the New Florida Revised LLC Act	4/24/2015	7.5	0
1633	39th Public Employment Labor Relations Forum	4/24/2015	11.5	2.5
1637	Bankruptcy Law & Practice: View From the Bench 2013	5/7/2015	4.5	0
1639	Agricultural Law Update	5/22/2015	5	1
1672	Probate Law Essential Issues and Development	6/6/2015	8	1
1540	Electronic Discovery in Florida State Court Navigating New Rules for New Issues	7/25/2015	3	1