Friendly Passages

Supporting Equal Access to Law in Florida

September/October
2014

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

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On The Cover

Brain Coral with Cleaning Goby, Photograph
By Jim Wilder

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On Behalf of the Publisher

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

"There is little doubt that there has been a long-term failure in society to establish an infrastructure to ensure that every American has access to justice." – Eugene Pettis

In an editorial in the April 2014 issue of **The Florida Bar Journal,** Eugene Pettis, then President of The Florida Bar, pointed to a crisis in providing Floridians with access to justice. Not just the poor, but "half to two-thirds of middle-income Americans' legal needs go unaddressed, according to a Stanford study. Sixty percent of Floridians seeking legal aid are turned away because of lack of funds or because they are not poor or desperate enough." One factor he identified as contributing to the problem was the prospective exhaustion of the Bar's IOTA program, funded with interest from lawyers' trust accounts. IOTA is used to provide grants in support of legal aid programs. Its annual revenues went from seventy-two million in 2007, to just five and a half million dollars presently. As a result, "… the significant drop in interest on trust account (IOTA) funds has had a tremendous impact on support for various legal service programs around the state and across this country."

In a well-meaning effort to relieve these aid efforts, a group of attorneys now petitions for an increase in Bar dues, amounting to an extra $100 annually, with such increase to go to IOTA. Former Justice Raoul Cantero speaks passionately in support of the increase, as noted in the Florida Bar News (July 1, 2014): "… we can invest in families, invest in children, invest in veterans, in our neighbors, to get access to justice. At the moment, thousands of Floridians go without justice because they cannot afford access to legal services."

But while joining in the sentiment, the Bar is reportedly unmoved by the suggested remedy, and opposes the Petition. Mr. Pettis stated: "An analysis of the entire dilemma shows that the widespread access to justice problem was still prevalent even at the height of funding for legal services. That leads me to believe that the solution rests with something more than additional funding from the legal profession." The Petitioners must be honored for their motives, while recognizing that Mr. Pettis is correct. The proposed increase would unfairly weigh on younger lawyers, will not meaningfully contribute to addressing the needs of the poor and certainly not the already unmet needs of the rest of the population. A different approach is required.

Nowadays, young lawyers typically emerge from law school with an average debt of one hundred thousand dollars. The median starting salary of Florida lawyers, according to the Tampa Bay Times (August 16, 2014) is but forty-five thousand, while only twenty-seven percent of last year's graduates, nationally, found full-time employment in an already crowded field within nine months. For such young people, the proposed increase, on top of the present dues of $265, would be onerous, at least for those below the median. And let's not forget that Rule 6(b) of the Florida Bar's Rules of Professional Conduct already imposes an aspirational duty on each lawyer to give twenty hours of pro bono time annually on behalf of the indigent. So this is no small matter for many members of the Bar.

Moreover, in relation to the very real sacrifice this may represent to some of the membership, it would do little for the intended beneficiaries. There are presently 98,595 Bar members. An extra per member surcharge of one hundred dollars results in added IOTA income of almost ten million dollars. The US Census Bureau reported that, in 2011, seventeen percent of the population in Florida lives below the poverty line, meaning that there are 3,173,456 poor people here. The proposed increase is seen to work out to roughly three dollars and seventeen cents worth of extra legal services for each indigent. This is a fine statement of concern, but that's all. The proposed increase can have little practical impact on the overall picture.

Nor does this do anything for the rest of the population unable to find access to justice, but who cannot qualify for aid on the basis of indigence, the half to two-thirds of Americans referred to by Mr. Pettis above, the sixty percent of Floridians seeking legal aid who are turned away because of lack of funds or because they are not poor or desperate enough. Lawrence Tribe, former Presidential counselor, and constitutional law scholar, said "Three out of five in the middle class have serious legal needs that remain unmet because justice is beyond their economic reach. …Even if pro bono contributions quintupled, there would be many who still would be forced to go without help when faced with catastrophic threats to their businesses and families."

So the problem is real and needs to be addressed. But it's not a lawyer issue. Nor is it the exclusive responsibility of the Bar. It's a social issue and requires involvement by a broad range of service providers, all working together. There must be recognition that lawyers are but one point on a spectrum of services. See ex. ABA Rule of Law Initiative, "Access to Justice Assessment Tool: A guide to analyzing access to justice for civil society organizations." There are legal clinics, for instance. In 1974 Congress established the Legal Services Corp. to promote equal access to justice and to provide grants for civil legal assistance through a competitive grant process. LSC supports seven independent nonprofit organizations in Florida, with approximately forty locations throughout the state. One of these groups is the Florida Rural Legal

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On Behalf of the Publisher

Services Corp., here in St. Lucie County and south Florida. **Passages** has published several articles on FRLS including an update in this issue.

There are also Legal Self-Help Centers, established through the Office of the Clerk of Court. Sixteen Florida counties presently provide the public with this limited, but crucial service. Our Joe Smith, Clerk of Court for St. Lucie County, is now establishing such a center for this county, described elsewhere in this issue of **Friendly Passages.** We give warmest thanks to Joe for undertaking this initiative.

Finally, there are county law libraries. There are approximately thirty county law libraries in Florida. Their importance cannot be overstated. See ex. ***Farabee v. Board of Trustees, Lee County Law Library,*** 254 So.2d 1 (Fla 1971) ("Few courts could operate without an adequate law library. *More importantly, a public law library is open to and serves the needs of all persons throughout the county, rich and poor alike.* ... It is essential to the administration of justice today… .", pg. 5)(e.s.) "State and county law libraries have carried much of the burden of assisting self-represented litigants because attorney pro bono work and legal assistance programs give only bare bones service to a minority of those needing help. Attorneys from small firms also need access to legal materials because many of them cannot afford subscriptions to pricey legal databases." Adams, "The evolution of public law libraries", **AALL Spectrum** (2006).

This is an undeveloped resource in Florida. Unlike California and New York, for instance, which require all counties to provide the public with law libraries, Florida only recognizes them as a permitted public purpose. See Fla. Stat. sec. 125.01(1)(f). A county may, if it chooses, enact an ordinance imposing a surcharge up to, but not exceeding, sixty-five dollars, for certain criminal and traffic offenses which is then divided equally among courthouse innovations as determined by the Chief Judge, legal aid programs, teen court and a county law library. See Fla. Stat. sec. 939.185. In addition, Fla. Stat. sec. 318.18(13)(a)1 authorizes a county to asses a surcharge for traffic offenses in an amount up to thirty dollars and, of that sum, up to twenty-five percent may be allocated to the maintenance of a law library. Some counties, such as St. Lucie, take full advantage of this authorization. Others do not. As a result, the public's access to legal information is spotty. Many counties simply offer no law library at all-- Lake, Okeechobee, Indian River and Martin Counties come immediately to mind as examples. In others, the library may be little more than a room off the private offices of a lawyer. See Statsky, **The Florida Paralegal** (2009 ed.), Cengage Learning, pg. 301. The quality and usefulness both of their print collections and their electronic offerings vary widely.

In sum, it is fair to conclude that a dialogue needs to take place among Florida's decision-makers about what must be done to assure that all of its citizens have equal access to justice. As the Supreme Court Justice Lewis Powell once famously declared, "Equal justice under law is not merely a caption on the façade of the Supreme Court Building. It is, perhaps, the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists… It is fundamental that justice should be the same, in substance and availability, without regard to economic status." Their review should involve a study of the precise scope of the problem and a definition of what each service provider can and should contribute to the solution. Individual lawyers can help, but that's all. The Florida Bar is an important agent. But so are legal clinics, Self-help Centers, and County Law Libraries. The latter may do far more to carry their share of the load than what they are doing presently and that, too, needs attention. Thank you for your support. /JimW

What's New at the Library?

The Law Library is very pleased to announce a series of free lectures and workshops designed for the general public. The first lecture is:

POST CONVICTION RELIEF:
A Second Chance for the Fortunate
Thursday, October 16 at 5:30 p.m.
By Attorney David Lamos
At the Rupert J. Smith Law Library of St. Lucie County
In the large conference room

We have plenty of ideas on future presentations but want to hear your ideas too. Please let us know what you would find useful. We are very grateful to Mr. Lamos for giving us his time and expertise. Although everyone is welcome, it would be appreciated if you could call and let us know if you are coming. Because this is a new program, we have no way to anticipate the number of attendees.

Why Did The Judge Decide The Case That Way?

Judicial Restraint

By The Hon. F. Shields McManus, Circuit Judge

Sometimes a judicial decision leaves people thinking the process failed to get to the heart of the issue. The case was decided on what people felt was a "technicality." People perceived it as unjust. Actually, that "technicality" was the rule of law. The judge was following the law. The alternative would have been for the judge to ignore the law and do what he or she thought was a good idea. There are times when the judge is allowed to use discretion, for example, whether to grant a party more time to respond, or whether to limit the number of requests to produce. Even then, an arbitrary, unreasonable decision can be an abuse of discretion reversible on appeal. Most decisions, however, are guided by statutes created by the legislature, rules adopted by the court, and legal precedents from prior case decisions.

In our "nation of laws" the legislative bodies make the law, the executives manage the governments according to the law, and the courts resolve disputes according to the law. In resolving disputes, the courts follow a doctrine called "judicial restraint." This means that the court should not decide issues which are not required to be decided. This is a self-imposed limit on judicial power. Judicial restraint protects the parties from a court becoming an advocate for one party or for a particular result. *Black's Law Dictionary,* 924 (9th ed. 2009) defines judicial restraint as, *inter alia,* "[a] philosophy of judicial decision-making whereby judges avoid indulging their personal beliefs about the public good and instead try merely to interpret the law as legislated and according to precedent." A judicial decision should not be a means of substituting the values or judgment of the individual judge deciding a case for the values or judgment of the elected representatives of the people. *T.M.H. v. D.M.T.,* 79 So.3d 787, 826 (5th DCA 2011) (Judge Lawson, dissenting).

Often there are several ultimate facts and issues of law disputed in a case. If a decision on one of the disputed matters resolves the pending motion or the whole lawsuit, the court should not decide the other disputed matters. Judicial restraint, in this context, refers to the principle that a court's power of judicial review should only be used where the law demands it. This is so even when it is possible there will be litigation later on the unresolved matters. It protects the law from being changed based on speculation of what the court would do if the case were different. "Under the doctrine of judicial restraint, a court is limited to deciding only questions properly presented to it and necessary to the determination of the case." *Shands Teaching Hosp. and Clinics, Inc. v. Smith,* 480 So.2d 1366, 1368 (Fla. 1st DCA 1985)(Barfield, J. concurring opinion) (Since the husband was being sued for the medical expenses of his wife based on a contract, and not on the common law doctrine of necessaries, the husband would not have standing to challenge the doctrine as violative of his constitutional right to equal protection).

Judicial restraint is applied in many ways. The requirement that a party serve the opposing party with a written document stating the claim with specific facts not only gives notice to the opposing party - this is called "due process" - but it also limits what the court may ultimately do. If the document - sometimes called a petition, a complaint, or an information - states one legal and factual claim, the court may not allow evidence or grant relief for a different claim. Thus, if a person is charged with theft, he may not be tried for battery; so the judge may exclude any evidence of a battery. If a parent files a motion to collect child support arrearages, the parent cannot expect an order changing which parent the children live with.

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Why Did The Judge Decide The Case That Way?

Judicial restraint may also compel a court to take action when no progress is being made in a case. Thus it has been held that the court has a duty to end a case that has not been diligently pursued by the party. "A ruling on a motion for order of dismissal for failure to prosecute is subject to attack only on the ground that it constitutes an abuse of discretion and this heavy burden rests with the losing party, in this case the defendants. [Citations omitted.] Furthermore, judicial restraint should be practiced in the court's inherent power to dismiss actions for want of prosecution to the end that persons have the guarantee and privilege of having their cause adjudicated." *Waldman v. Frankel,* 343 So.2d 1325, 1326 (Fla. 3rd DCA 1977).

When the court has discretion whether to exercise jurisdiction, judicial restraint is also a consideration. There are many situations where two different courts could have jurisdiction to hear a case. It could be federal or state court, county or circuit court in Florida, state courts in different counties or different states, or an administrative court and a judicial court. A court that could accept jurisdiction may decline because another court is better suited to hear the particular case. For example, the Florida Statutes provide that nothing in the Administrative Procedures Act shall be construed to repeal any provision of the Florida Statutes which grants the right to a proceeding in the circuit court in lieu of an administrative hearing. Nevertheless, Florida courts have noted that the doctrine of primary jurisdiction is one of 'self-limitation' which has 'evolved in marking out the boundary lines between areas of administrative and judicial action.' [Citations omitted.] That is, the doctrine of primary jurisdiction does not serve to divest the circuit court of jurisdiction; it merely counsels that when issues arise which have been placed within the special competence of an administrative body, the court should practice judicial restraint." *Flo-Sun, Inc. v. Kirk*, 783 So.2d 1029, 1040 (Fla. 2001).

The rules of evidence are a form of restraint on the court. A witness may want to testify about some event he or she was told about and the witness is certain it really happened. An opposing party's objection to hearsay testimony will be granted to prevent the testimony. The legal precedents over hundreds of years have decided that hearsay testimony is not reliable and should not be allowed. This was a form of judicial restraint. By the Code of Evidence, Chapter 90, Florida Statutes, the legislature made this common law precedent a part of the statutory law. The judge must follow the Code of Evidence. As a result, if there is no other evidence on a necessary element of the claim, the party offering the hearsay testimony may lose the case. If the opposing party does not object, however, the judge should not raise an objection. That is judicial restraint also. As a result, the party offering hearsay may win the case. This actually happens, especially in small claims and family courts, where people appear without lawyers.

In the most fundamental exercise of judicial restraint, a judge must restrain his or her reaction to the behavior of persons in the courtroom. Litigants and lawyers can become excited and speak disrespectfully to the court. This can cause an emotional reaction by the judge. The judge must strive to control his or her behavior, but the judge also has a duty to preserve order in the court and to require respect for the role of the court. Ignoring misbehavior can be a failure to perform that duty, but overreacting can bring further disrespect for the court. The judge must demonstrate self-control and exercise discretion in such circumstances. In serious cases of misbehavior in open court the judge can immediately adjudicate the wrongdoer in criminal contempt and punish him with arrest and incarceration. This is an unusual power and care must be exercised that it is not abused.

"The power to punish direct criminal contempt is one of the most unusual of judicial powers: the judge who was the object or butt of the allegedly contemptuous conduct becomes the prosecutor and then sits in judgment over the very defendant who is said to have just assailed the judicial dignity. That precise circumstance is condoned nowhere else in the law. For that reason, the power must be cautiously and sparingly used." *Seaboard Air Line R. Co. v. Tampa Southern R. Co.,* 101 Fla. 468, 134 So. 529 (1931); *Demetree v. State,* 89 So.2d 498 (Fla.1956); *Fabian v. State,* 585 So.2d 1158 (Fla. 4 DCA 1991) (Judge Farmer, dissenting).

You may have noticed that many of the above citations are from dissenting or concurring opinions. Judicial restraint is rarely discussed in opinions when restraint is exercised. It engenders comment more often when a judge thinks a fellow jurist has exceeded the proper limits of judicial action.

As a judge, I am very aware that I have been entrusted with the power of the court and required to rule based on the law as it applies to the facts of the case. The principle of judicial restraint is a valuable tool used every day to help me make decisions. Not only does it keep me from inserting my personal opinions into the decision-making, but it also makes my decisions more predictable. This leads to a more efficient administration of justice because predictability in the law promotes settlement of disputes without the intercession of the courts.

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.

If The Constitution Were Drafted Today

By The Honorable Judge
Mark W. Klingensmith

The Constitution of the United States has served as a model for the construction of other constitutions throughout the world, providing the framework for the protection of basic human rights, checks and balances with a separation of powers, and establishing an independent judiciary. The Founders never considered this document to be perfect, evident by the express inclusion of a process for amending it (which has been done 27 times), but it has remained relatively intact, and insulated from the "starts of passion, flights of enthusiasm, partialities or prejudice, hasty results, and absurd judgments"[1] that the Drafters sought to prevent.

But the fact the Constitution remains functional and relevant even after 225 years is testament to the enduring values expressed in the document that have transcended the generations, so important to the free exercise of liberty that men and women have been willing to fight and die to preserve the freedoms that the Constitution protects. Ask any American what makes this country great and they will probably tell you that it is the protection of these rights, and other first principles such as limited government, that serves as the foundation for American exceptionalism.

Recently, I came across this quote from a current United States Supreme Court justice that provoked a great deal of debate:

> "I would not look to the U.S. Constitution if I were drafting a constitution in the year 2012."[2]

Instead of spending time trying to decipher what she was or was not trying to say, or what concept she wanted to convey in the context of her remarks, her statement instead caused me to wonder what a new constitution might look like if an attempt was made to draft it today with the express intent of trying to improve on the original. What provisions might be included that are currently missing? How would someone propose to tweak the language of the existing document for adapting it to the 21st century America? If an attempt was made, would it even be possible to improve on James Madison's timeless handiwork? Former Justice John Paul Stevens recently wrote a book attempting to do precisely this, proposing a few ideas I will not discuss here.[3]

So, in the spirit of intellectual debate on this topic, let us consider what a U.S. Constitution 2.0 might look like if drafted today.

Perhaps one would start with the First Amendment. No one argues that there is not a lot of specificity in the wording for us to know precisely what the Framers had in mind. So, what if it read as follows:

> "In accordance with the interests of the people and in order to strengthen and develop the [American]system, citizens of the [United States] are guaranteed freedom of speech, of the press, and of assembly, meetings, street processions and of demonstration."[4]

What about adding a clause specifically designed to protect religious liberty:

> "Citizens of the [United States] are guaranteed freedom of conscience, that is, the right to profess or not to profess any religion, and to conduct religious worship. Incitement of hostility or hatred on religious grounds is prohibited. In the [United States], the church is separated from the state, and the school from the church."

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If The Constitution Were Drafted Today

Some might argue that our Fifth Amendment right to equal protection is also too vague in the way it is written. Would it be better if it said this:

> "Citizens of the [United States] are equal before the law, without distinction of origin, social or property status, race or nationality, sex, education, language, attitude to religion, type and nature of occupation, domicile, or other status."
>
> "The equal rights of citizens of the [United States] are guaranteed in all fields of economic, political, social, and cultural life."

While on the subject of equality, the current Constitution currently does not say a lot about the rights of women. What if our constitution said this:

> "Women and men have equal rights in the [United States]. Exercise of these rights is ensured by according women equal access with men to education and vocational and professional training, equal opportunities in employment, remuneration, and promotion, and in social and political, and cultural activity, and by special labor and health protection measures for women; by providing conditions enabling mothers to work; by legal protection, and material and moral support for mothers and children, including paid leaves and other benefits for expectant mothers and mothers, and gradual reduction of working time for mothers with small children."

Would we also guarantee equality for minorities by adding something like this:

> "Citizens of the [United States] of different races and nationalities have equal rights. Exercise of these rights is ensured by a policy of all-round development and drawing together of all … nationalities…, by educating citizens in the spirit of … patriotism and … internationalism, and by the possibility to use their native language and the languages of other peoples in the [United States]. "Any direct or indirect limitation of the rights of citizens or establishment of direct or indirect privileges on grounds of race or nationality, and any advocacy of racial or national exclusiveness, hostility, or contempt, are punishable by law."[6]

Sounds great so far, right? Who wouldn't want to live in a country whose constitution expressly makes all these guarantees?

Why stop there? There are a lot of *other* things missing from our constitution that some folks believe should be granted rights of constitutional standing. How many of these would you like to see added to this new Constitution?

- **The right to rest and leisure**, ensured by the establishment of a working week not exceeding 41 hours, and even shorter working days in a number of trades and industries, and shorter hours for night work; paid annual holidays, and weekly days of rest.[7]
- **The right to health protection**, ensured by free, qualified medical care provided by state health institutions; by measures to improve the environment; by special care for the health of the rising generation, including prohibition of child labor, excluding the work done by children as part of the school curriculum; and by developing research to prevent and reduce the incidence of disease and ensure citizens a long and active life.[8]
- **The right to maintenance in old age, in sickness, and in the event of complete or partial disability**, guaranteed by social insurance of workers and other employees; by allowances for temporary disability; by the provision by the state of retirement pensions and disability pensions; by providing employment for the partially disabled; care for the elderly and the disabled; and other forms of social security.[9]
- **The right to housing**, ensured by the development and upkeep of state owned housing; by assistance for co-operative and individual house building; by fair distribution, under public control, of the housing that becomes available through fulfillment of the program of building well-appointed dwellings, and by low rents and low charges for utility services.[10]
- **The right to education**, ensured by free provision of all forms of education, by the institution of universal, compulsory secondary education, and broad development of vocational, specialized secondary, and higher education; by the provision of state scholarships and grants and privileges for students; by the free issue of school textbooks; by the opportunity to attend a school where teaching is in the native language; and by the provision of facilities for self-education.[11]

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St. Lucie's Self-Help Center

By Joseph Smith, Clerk of Court

In 2012, the St. Lucie County Clerk's office began strengthening its relationship with the Rupert J. Smith Law Library. We saw the law library as a strategic partner committed to a mutual goal: helping the people of our community and providing that assistance during a time of economic distress. As I learned more about the services provided by RJS, I was amazed that our community did not utilize this resource more.

One evening, as I was leaving the Clerk's office, I noticed an elderly gentleman standing across the street shuffling through many pieces of papers as if he was confused. I stopped and asked if I could help. He began to share his story. He did not have much wealth in his old age, but the little he had he wanted to leave for his sons. He wanted to leave his home to the two of them but he was unsure about how to do it. I found myself in quite a predicament. While this is no surprise to you, elected officials love to be helpful! However, I realized that this gentleman did not need me to help him, but he needed a lawyer. I advised him that he could contact an attorney, but he responded that he didn't have enough money or time to do so. We parted ways and I hope that he received the assistance he needed from an attorney at some point.

That evening, as I tried to sleep, I kept thinking about the conversation and wondered if there was a way that our office could help people like him.

Those reading *Friendly Passages* understand that navigating the court system alone can be confusing and intimidating. But in the instance of the gentleman with whom I spoke, he didn't believe that he needed an attorney for the thing he was trying to do. There are some attorneys who say to potential clients after consultations, "you don't need me, you can do this yourself and it will cost you a lot less that way." That's helpful advice, but there was no place in our county where people could go to receive consistent information. After talking with members of the Clerk's office, we decided that it was time to change that.

Over the next few weeks our Clerk team began to speak with our friends at the Law Library, including Jim Walker and Nora Everlove. We decided that we should get together with the larger Board and discuss the idea of a self-service center. The self-service center would not replace the need for attorneys, obviously, but would supplement and enhance current services available to the public.

We got to work! The Law Library Board began vetting the idea. Our team went down to Palm Beach County to gather additional information. I took a second trip with former president of the St. Lucie County Bar Association, Hugh Eighmie. We spoke to the professionals in the office at length. We listened to all the different services that could be provided and at that time, we also determined that our self-service center needed to crawl before it walked.

And so we crawled for more than a year. We spoke to the Law Library Board, we spoke with the Bar Associations, we spoke with clerks, members of Florida Rural Legal Services and members of the public. We took our time because we wanted to make sure that everyone saw us as a resource.

The rubber met the road on November 1, 2013, after nearly two years of conversation. St. Lucie County residents finally had an additional place to go for help when they wanted to represent themselves in civil and family court. The county's first Self-Service Center was born. In it, residents could obtain information about 47 types of civil cases where each packet included step-by-step instructions on how to complete them!

We conducted some minor remodeling to the fourth-floor of the main Clerk's office to house our team, and the packets. Dropping by today, one would witness a floor that is often a flurry of activity as landlords purchase evictions packets, custodial parents try to obtain child support, and individuals deciding whether to take someone to Small Claims Court.

It remains important to note that Pro-Se filers have been around for many years. Some were experienced in the ways of the law while others were not. Regardless, these filers took additional judiciary time when addressing these pleadings. While the level of guidance provided to pro-se filers is small, it assists the efficiency of the court system. Pro-se filers who use our services have the advantage of utilizing packets that are vetted by the Florida Supreme Court.

Purchasing forms from the Self-Service center costs between $5 and $30, depending on the size of the packet. Packets to petition injunctions against acts of domestic violence are no charge (free) and the Self-Service Center accepts cash, checks, and credit cards.

The St. Lucie County Self-Service Center supplements the many services provided by the RJS Law Library by providing computers with free Internet access, copying and faxing services. Customers can also get packets for child support, name changes, child custody, replevins, and other family and civil court cases. We also have a notary available. Online customers can purchase and download packets to their computer at their convenience.

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St. Lucie's Self-Help Center

At this time we are able to assist with the following case types:

Child Custody/Time Sharing

Divorce

Evictions

Name Change

Paternity

Replevin Cases

Small Claims (under $5,000)

As we look to the future of the Self-Service Center, we hope to be able to provide "consult an attorney" services and build out a complete pro-se center where a citizen can consult an attorney for 5 or 10 minutes, purchase a digital packet, complete it and file it electronically. If my elderly friend should stop me today, thanks to the help of the Law Library and our community partners, I would have a much better response. But because of him, all citizens of our community have two legal gems, not just one! We appreciate the support of our next-door neighbors at the Rupert J. Smith Law Library and look forward to continuing our relationship long into the future.

The Self-Service Center is located on the fourth floor of the Clerk's main office at 201 S. Indian River Drive in downtown Fort Pierce. It is open from 8 a.m. to 5 p.m., Monday to Friday, excluding legal and court holidays. We dedicate a deputy clerk professional to the role of self-service center clerk and Katie Slay looks forward to meeting and helping the people of our community. Katie can be reached in the Self-Service Center by email, online messenger or phone.

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Update From Your Local Legal Aid Office Florida Rural Legal Services, Inc.

By Carolyn Fabrizio

Florida Rural Legal Services, Inc. (FRLS) is a non-profit law firm with an office in Fort Pierce. The Fort Pierce office currently has four full time Staff Attorneys and one Managing Attorney. It is the only civil legal aid office servicing the four counties that make up the 19th Judicial Circuit. We are always looking for private attorneys to partner with us through the 19th Circuit Pro Bono Project by accepting cases pro bono.

We are in crisis. We need more help to service the low income population in the 19th Circuit. Consider this: In the 19th Circuit we have five Legal Aid Staff Attorneys. This comes out to approximately one Legal Aid Staff Attorney for every 16,000 low income residents in our service area. In our work to provide equal access to justice we rely heavily on Private Attorney Involvement (PAI) with our pro bono program. We cannot meet the need for legal help without placing low income residents with private attorney volunteers through our pro bono project.

We are always looking for new ways to increase free civil legal assistance to our most vulnerable. We are in the initial planning phase of a Legal Advice Hotline. We are seeking attorney volunteers in all civil legal areas to sign up to return calls to our low income, elderly, and disabled residents. The goal is for the Hotline to run Monday through Thursday from 2 pm until 5 pm. If you are interested in donating your time and expertise please contact PAI Coordinator Carolyn Fabrizio at carolyn.fabrizio@frls.org or go to www.frls.org. Together we can make a difference in our community.

"If we do not maintain justice, justice will not maintain us." Francis Bacon

Carolyn Fabrizio received a Juris Doctorate from Suffolk University Law School and a Bachelor of Science in Business Administration from Stonehill College. Carolyn Fabrizio has been the Private Attorney Involvement Coordinator for the 19th Judicial Circuit through FRLS since 2009.

Cryptoquote

KO TVW QVNV ZWEVFI, WL ELGVNWTVWC QLSFD YV WVXVIIZNH. - MZTVI TZDKILW

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

FLORIDA MARRIAGE EQUALITY LAWSUITS ADVANCE AT BREAKNECK SPEED

By Jonathan Coleman

In two previous publications of this journal, your author examined the advancing law on the same-sex marriage front, and for the curious uninitiated, the first of these articles was entitled "The Political Supreme Court: Public Opinion, Change, and the Pending Same-Sex Marriage Cases" (May/June 2013 issue of Friendly Passages). The companion piece, entitled "The Decisions Are In," appeared in the September/October issue, and examined the Supreme Court's decisions in Hollingsworth v. Perry (which invalidated California's "Proposition 8," banning same-sex marriage in that state) as well as the more sweeping Windsor v. United States (which declared unconstitutional a portion of the Federal "Defense of Marriage Act").

In that latter publication, I concluded that if same-sex marriage debate is a proxy war between traditional/conservative/forces and progressive/secular values, the "momentum, clearly, is with the latter." Few expected – yours truly included - that actual change would be so fast and furious. By mid-February, 2014, five federal courts had already ruled in favor of marriage equality.[1] Currently, counting some very recent decisions of Florida state courts and a Federal Court sitting in Florida, there have been approximately close to 50 rulings in favor of marriage equality from almost 40 different federal and state courts.[2] No federal court post-Windsor has (yet) ruled against marriage equality, or upheld the validity of any law or state constitutional provision that purports to prohibit same-sex marriage.

There are currently pending, according to the Chicago Tribune, 92 cases in 33 states and federal courts, with three potentially heading to the United States Supreme Court.[3] Developments in Florida courts have been especially rapid, as set forth below.

Florida Federal Court

In March of 2014, the ACLU filed suit in Florida in the United States District Court for the Northern District of Florida on behalf of eight same-sex couples who sought recognition of marriages performed in other states. That lawsuit named as defendants (among others) Florida Governor Rick Scott and Attorney General Pam Bondi. Bondi sought to dismiss the case, Grimsley et al. v. Scott et al., Case No. 4:14-00138, on the basis that allowing marriage recognition would "impose [unspecified] significant public harm."

This argument failed. On August 21, United States District Judge Robert L. Hinkle of Tallahassee ruled against Scott and Bondi, declaring that the state's same-sex marriage ban impermissibly discriminated against married couples and others who sued to have out-of-state marriages recognized by Florida. Judge Hinkle then voluntarily stayed his ruling until an appeals process could be completed.

The day of Judge Hinkle's decision, Bondi appeared before the Palm Beach Republican Party and, without being asked by a reporter, stated that she was "just getting started" defending Florida's same-sex marriage bans.[4]

Monroe County

On Thursday, July 17, 2014, Monroe County Circuit Judge Luis Garcia struck down Florida's ban on gay marriage as unconstitutional, holding that marriage licenses could be issued as early as the following Tuesday, but his ruling was limited only to Monroe County[5]. Bondi immediately filed a notice of appeal, effectively staying any implementation of that ruling. The plaintiffs sought a lift of the stay, which was denied, and an appeal was filed to the Third District Court of Appeal.[6]

Miami-Dade County

On July 25, Miami-Dade Circuit Judge Sarah Zabel also ordered that six same-sex couples be allowed to marry, and similarly stayed her ruling pending appeal, at Bondi's request. Bondi has argued that Florida should stop fighting the same-sex marriage battle at the state level, and wait until the United States Supreme Court settled the issue nationally. In response, Elizabeth Schwartz, one of the plaintiffs' lawyers in the Monroe County case, minced no words, stating:

> Justice need not be patient. In my law practice, I see the real-life damage done to same [sex] couples each day because of the failure to allow us to marry or to recognize our out of state marriages. For Florida's attorney general to argue that they could continue to wait, asserting both that there is no real urgency and, somehow, the Florida Supreme Court is incapable of resolving the matter statewide is insulting to our judiciary.[7]

Broward County

On August 4, 2014, Broward Circuit Judge Dale Cohen agreed to dissolve a Vermont civil union of a Lake Worth resident, effectively recognizing the legality of the relationship, another recognition of the validity of same-sex civil relationships.

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FLORIDA MARRIAGE EQUALITY LAWSUITS

Palm Beach County

A mere day after Judge Cohen ruled in Broward County, Palm Beach County Circuit Judge Diana Lewis on August 5, 2014, ruled in favor of recognizing the marriage of two men for estate purposes.

Bondi's Stay Requests Were Denied by Two Florida Appellate Courts in Late August, 2014

On Wednesday, August 27, 2014, in an unusual 10-3 decision, the entire Florida Second District Court of Appeal sent a request to the Florida Supreme Court, asking the Florida Supreme Court to take on a Hillsborough County marriage equality case as a matter of "great public importance." Hillsborough County Circuit Judge Laurel Lee had previously refused to grant a couple a divorce on the basis that the state did not even recognize their marriage; the couple then appealed to the 2nd DCA.

Should the Florida Supreme Court take up the 2nd DCA on their request to "kick it upstairs" and then rule on the constitutionality of Florida's ban, it would effectively bypass the entire Florida appellate system.

Even more recently, on Thursday, August 28, 2014, Bondi's request for a stay was again denied, this time by the Miami-based Third District Court of Appeal. [8] That same appeals court consolidated the Miami-Dade and Monroe County cases so that they could be heard together.

Significant National Developments

In December of 2013, United States District Judge Robert J. Shelby became the first federal judge to overturn a state (Utah) ban on same-sex marriage. Utah appealed that decision, Kitchen v. Herbert, and on June 25, 2014, the Tenth Circuit again ruled for the plaintiffs, agreeing that Utah's ban on same-sex marriage was unconstitutional.

On August 5, 2014, as promised, Utah became the first state to file an appeal to the United States Supreme Court.[9] Should the Supreme Court decline to hear the case and deny Utah's request, the 10th Circuit decision would stand – effectively legalizing same-sex marriage not just in Utah, but in all the states in that circuit: Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming. The Seventh Circuit, on August 26, 2014, heard marriage cases from Wisconsin and Indiana. The Seventh Circuit is also responsible for Illinois, but same-sex marriage is already legal there, under a 2013 law signed by Governor Pat Quinn that became effective January 2, 2014.[10]

What's next for Florida, and the nation? Given the marriage equality proponents' virtually unbroken string of victories, their chances look good in the Supreme Court, where prognosticators give them a 5-4 edge, with the same line-up that decided Windsor.

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Endnotes

1 Millhiser, Ian, "Since DOMA Decision, 5 Federal Courts Sided with Marriage Equality," Think Progress (2/14/14).

2 For a recent or near-recent list of those decisions, see www.lambdalegal.org/post-windsor-rulings; and/or Freedomtomarry.org/pages/marriage-rulings-in-the-courts, last updated August 21, 2014.

3 Sweeney, Annie and Rodriquez, Meredith, "Judges ask pointed questions about same-sex marriage bans in Wisconsin, Indiana," Chicago Tribune (8/26/14).

4 Man, Anthony, "Pam Bondi defends her defense of Florida ban on same-sex marriage," Sun-Sentinal (8/21/14).

5 Stutzman, Rene, "Florida declares Florida's ban on gay marriage unconstitutional," Orlando Sentinal (7/17/14); "Ruling allows same-sex marriage for FL Keys," Associated Press (unattributed), (7/17/14).

6 Scouten, Ted, "Stay on Same-Sex Marriage Ruling Not Lifted," Miami.CBSLocal.com, (7/21/14).

7 "Bans" is the appropriate terms because Florida has not only a statutory "mini-DOMA," but also a constitutional provision prohibiting same-sex marriage. For more information on Bondi's speech, *see* Rothaus, Steve, "Let the U.S. Supreme Court decide gay marriage, not Florida courts," Miami Herald (8/8/14).

8 Rothaus, Steve, "Appeals court to Bondi: Gay marriage cases will go forward," Miami Herald (8/28/14), reprinted in Tampa Bay Times.

9 Lang, Melissa, "Utah files same-sex marriage appeal with U.S. Supreme Court," Salt Lake Tribune (8/5/14).

10 Illinois recognized the legality of same-sex civil unions as early as 2011.

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If The Constitution Were Drafted Today

- **The right of the family to protection by the state**, where marriage is based on the free consent of the woman and the man, and spouses are completely equal in their family relations; providing and developing a broad system of childcare institutions; by paying grants on the birth of a child; by providing children's allowances and benefits for large families.[12]
- **The right to privacy** of citizens, where correspondence, telephone conversations, and telegraphic communications are protected by law.[13]
- **The right to protection by the courts** against encroachments on their honor and reputation, life and health, and personal freedom and property.[14]

Do you think you might be better off living in a country whose constitution *guaranteed* all these rights, and more? If you said yes, consider this: every one of the rights just mentioned was a part of the Constitution of the former Soviet Union,[15] what President Ronald Reagan appropriately called "the evil empire." Yet almost no one believes that life in the old USSR was anything close to idyllic (other than perhaps Vladimir Putin).

What makes us so different? As Justice Antonin Scalia once observed, "if you think simply having a bill of rights is what sets us apart, you're crazy. Every banana republic in the world has a bill of rights. Every president for life has a bill of rights."[16] Why does our Bill of Rights have real meaning when so many others around the world do not?

The Soviet government simply ignored its constitution when it became convenient to do so. Whatever their ends justified their means. When its Supreme Court (and yes, they did have one) determined that the Soviet Legislature could override its Constitution at will, its Bill of Rights became simply words on paper, devoid of true meaning and bereft of any avenues of legitimate enforcement. In effect, the constitutional civil liberties and democratic government they gave lip-service to were what James Madison called mere "parchment guarantees" – words on a vacuous document that no one in the government enforced, nor ever really intended to. And, because these rights were all "granted" by its government, they could be easily taken away as well.

In contrast, the US Constitution does not *grant* rights such as freedom of speech or freedom of religion; what our Constitution does is deny the government the right *to interfere* with the people's inherent right to free speech and religion, among others. Our government, as chartered under the Constitution, recognizes that these rights (what John Locke called "natural rights") exist *irrespective of* government, not *because of* government. This is an important difference to note when comparing ours to a Constitution like the Soviets that purported to *grant* citizens their freedoms. The rights described in our founding document are protected *from* the government, not protected *by* the government. For example, our freedom of speech is preserved because our constitution says that Congress "shall make no law" that infringes on that freedom. It does not give us our rights, but instead acknowledges their existence and requires the government to secure the blessings of liberty by protecting them. A constitution backed by a limited government as opposed to a Hobbesian Leviathan, and empowering a truly independent judiciary willing to constrain governmental overreach, is what separates a democratic republic that has endured for more than 200 years from a totalitarian regime that lasted only 74. It is what distinguishes a country like the United States that stands as a model of freedom to the world, from one like the Soviet Union, North Korea, or Cuba that keeps its citizens as virtual hostages. It is what distinguishes a society of virtue, from a society of iniquity.

Through this fidelity to the rule of law and proven success in protecting civil liberties, our Constitution has become the oldest effective charter in the world today, emulated in countries around the world, including Japan, India, and several countries in Latin America.

John Adams believed that virtue was the cornerstone of a just society, and that this mechanism of mixed government would best ensure the voice of virtue in the republic. By requiring an oath taken by all elected officials to follow the Constitution, we strive to create in actual practice the type of government Adams envisioned in theory -- a government committed to the ideal of adherence to the rule of law, vigilant in its observance and dedicated to its enforcement – where "the noblest principles and most generous affections in our nature then, have the fairest chance to support the noblest and most generous models of government."[17] Such a model protects the individual's free exercise of unalienable rights even when the government may find it unpleasant, for if the provisions of the constitution are not upheld "when they pinch as well as when they comfort, they may as well be abandoned."[18]

The Russians had a saying that put the comparison between our country and theirs into perspective better than any other could: "In the Soviet Union we had freedom of speech; but in the United States, you have freedom *after* speech."
And it is because of our Constitution that this will always be so.

Endnotes
1 John Adams, "Thoughts on Government," April 1776.

2 Justice Ruth Bader Ginsburg, in an interview aired on Al-Hayat TV, Egypt, on January 30, 2012. "I might look at the constitution of South Africa," Ginsburg added. "That was a deliberate attempt to have a fundamental instrument of government that embraced basic human rights, had an independent judiciary."

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Using Military Tribunals: The Wartime Precedent of the Nazi Saboteurs Case

By Richard Wires

The ongoing discussions of the appropriate venue for possible trials of the Guantanamo detainees has renewed interest in a Supreme Court decision in the early months of World War II that upheld using a specially appointed military tribunal instead of civil courts. In that case the principal issue was whether eight German saboteurs were entitled to a civil trial and protections. The situations of the prisoners then and now differed in significant ways. In 1942 there was a declared war between Germany and America and the Germans were charged with offenses committed on American soil. As saboteurs and spies, they were enemy agents considered to be unlawful combatants, not prisoners of war. Both the status and alleged crimes of current detainees remain unclear and thus open to debate. While the saboteurs' military trial was proceeding their attorneys petitioned for writs of habeas corpus seeking access to the civil courts. An important background factor too was the attack on Pearl Harbor only six months earlier and Americans' worry about every aspect of the nation's security. In the jittery circumstances of mid-1942 strong measures were often deemed necessary. After an exceptional special session the Supreme Court ruled unanimously to deny the writs. The justices did not fully agree, however on the bases of their decision.

Facts in the case are clear. All eight men were German-born, lived in America for some years, both George Dasch and Herbert Haupt becoming American citizens, had returned to Germany before the war, and been trained by the Abwehr. The military intelligence service used them for Operation Pastorius, named for the founder of Germantown near Philadelphia in the late seventeenth century, planning to sabotage factories and transport facilities in America. They were landed from two submarines, four at Amagansett beach on eastern Long Island on 13 June and four at Ponte Vedra beach close to Jacksonville on 17 June, wearing full or partial military uniforms. If caught in uniform they would be prisoners of war, but they changed to civilian clothes, making them enemy agents and unlawful combatants in legal terms. Death was the usual punishment for those caught. They had brought explosives, and some $172,000 in American money, but tried no sabotage. The Long Island group had unexpectedly run into a Coast Guardsman on beach patrol, whose report alerted authorities to the suspicious men's presence, but the Germans had taken the train into New York and melted into the crowds. Those who landed in Florida had not been spotted.

Although J. Edgar Hoover claimed credit for the FBI in foiling a major plot, that was hardly the case, for Dasch telephoned the bureau's office in New York just a day after landing. He and Ernest Burger wanted to give up to American officials. But he even had trouble getting the FBI agent to believe the story he told. Five days later he called again, arranging the surrender, and thereafter revealing the plan's details. In subsequent days all the others were traced and arrested. The first public news of the situation, an FBI statement on 28 June, was followed by a nearly total silence. Enforcement of the tight news blackout let Hoover's claim go unquestioned and bolstered public morale.

President Roosevelt wanted an immediate and closed military trial and ordered that such a tribunal be formed on 2 July. The panel consisting of seven generals under Major General Frank R. McCoy would determine a verdict and any sentence. Its decisions would be forwarded directly to the president. A former senator from North Carolina, Colonel Kenneth Royall, was assigned to defend the Germans. The proceedings continued for weeks in a lecture hall at the Department of Justice under tight security and with the press receiving almost no information. McCoy rejected all requests for press briefings and was backed by Secretary of War Henry Stimson. Only when the case went before the Supreme Court did the press and public learn much.

Nazi Saboteurs at Tribunal

Royall did not dispute the defendants' training and secret landings as saboteurs, but instead tried to convince the military court they just wanted to return, stressing that they had committed no acts of sabotage once in America. Their personal motives even if believed were scarcely relevant, however, since their very presence constituted the crimes being charged. The defense's main challenge was to the military tribunal itself, contending that the defendants had the constitutional right to a civil trial and protections, and that the president lacked authority to order military trials. Such tribunals could not be used because the country's mainland was not a theater of operations and the civil courts were functioning. Royall therefore petitioned for writs of habeas corpus for all the men except Dasch. His status was special.

After the U.S. District Court for Washington had rejected the defendants' petitions, the attorneys took the matter to the Court of Appeals and also asked the Supreme Court

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Using Military Tribunals: The Wartime Precedent of the Nazi Saboteurs Case

to review the issues and rejection, the Supreme Court then moving more quickly than the Court of Appeals. Chief Justice Harlan Fiske Stone cited the issues' "public importance." Although the court was in summer recess, Stone summoned the justices for a special session on 29 July, but two justices played only limited roles. Frank Murphy was then in uniform, listening while carefully concealed, and not participating; William Douglas had been far away, returning a day late, but subsequently voting. The situation was unusual too because so many attorneys were in uniform. And the court also modified its customary pattern in hearing arguments. *Ex Parte Quirin,*317 U.S.1 (1942) referring to one defendant, was heard on 29-30 July.

Principally at issue was the president's power under the broad notion of "laws of war" and under the Articles of War to order a military trial in lieu of civil courts and protections. While the president's action under so-called "laws of war" might be questioned, Congress had clearly authorized military trials for unlawful combatants under the Articles of War, so Royall faced a difficult task arguing that civil courts should be used. None of the points he raised to support his main argument seemed to carry much weight. He sought to invoke rights guaranteed under the Fifth and Sixth Amendments even though the accused were wartime enemy agents. It was claimed the military tribunal failed to meet requirements Congress set forth in the Articles of War with respect to some of its basic methods and procedures: determination of its own operating rules, allowing convictions without a unanimous vote, absence of provision for judicial review. Yet in advancing such contentions he ignored the purpose and character of military tribunals. Nor did his assertion that the country was not a theater of operations, where the law allowed a suspension of habeas corpus, appear to sway the justices given their questions about changes in modern warfare. Did not using airplanes and submarines alter old notions of fighting theaters? Had not coasts where enemy agents could land also become war zones?

Some of the Saboteurs

In presenting the government's position Attorney General Francis Biddle countered all the petitioners' assertions. The military tribunal under the Articles of War had been legally authorized. Biddle maintained too that President Roosevelt as a wartime commander-in-chief had constitutional powers not limited to those specified in the Articles of War passed by Congress. Since the defendants were clearly unlawful combatants their trial before a military court was entirely proper. He asserted also that it had not been the intent of framers of the Constitution to extend the rights it set forth to the country's wartime enemies.

During a very brief session on 31 July the court announced its decision. All the justices concurred in the denial of writs of habeas corpus and in the use of a military trial. In order to reduce speculation and strengthen the ruling's impact Stone had persuaded the justices not to release any separate opinions. He then labored to phrase a written opinion which all the justices would be willing to accept. Yet not until three months later on 29 October would the court's official text be released.

Just what happened behind the scene was long unclear. But unanimous agreement on the court's ruling did not extend to individual reasons for supporting it. The justices' views exchanged in memoranda and conference suggest that for some the situation and reasoning posed no special problem: the defendants had been unlawful combatants caught in wartime, enemy agents or spies could not claim to have constitutional rights and protections, the president as commander-in-chief had authority to order a military trial, death was a recognized penalty for captured wartime spies. But the exact bases and extent of presidential power were not points of full accord. There was perhaps also some feeling that the court should not have heard the case.

The military trial ended with guilty verdicts and death sentences announced for all defendants on 3 August, though executive action reduced sentences to life for Burger and to thirty years for Dasch in recognition of the assistance they had given, and within a week the remaining six men were put to death by electrocution on 8 August. In 1948 Burger and Dasch were released and deported to the American Zone of Germany. When cases charging two men with having helped the agents later reached the Supreme Court it overturned one conviction because the evidence showed only social contacts without clear awareness. That did not constitute material support of the enemy. But still the 5-4 vote was close. The other case was more serious, involving charges that Haupt's father, then a naturalized American citizen, had several

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Using Military Tribunals: The Wartime Precedent of the Nazi Saboteurs Case

times helped his son. After his conviction was upheld 8-1, he served part of a life sentence, being freed and deported in 1957.

Recently the court's decision to hear the saboteurs' case has been criticized as having been unfortunate. Professor Andrew Kent of the Fordham Law School has argued that enemy agents had never been given access to American civil courts before 1942. Without a critical reason to question that principle or record, the court should never have heard the case, risking that its ruling or opinion could create new controversy. Apparently that same concern bothered some of the justices. A much later comment by Douglas appears to suggest that view. But in the highly charged atmosphere of 1942 it had perhaps seemed useful to Stone and others to underscore the court's position. How much the decision regarding the saboteurs affects the Guantanamo detainees' cases is difficult to estimate with much certainty. The situations may seem similar but key differences exist: current absence of a declared war, the circumstances of apprehension, legal definition of prisoners' status, and detention without charges, to cite only some major ones. Inaction with respect to prosecution shows the obvious reluctance to tackle such issues.

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. "

References

Rachlis, Eugene. *They Came to Kill.* Random House, 1961. The fullest account of the mission. Free download from Universal Digital Library.

Kent, Andrew. "Judicial Review for Enemy Fighters: The Court's Fateful Turn in *Ex parte Quirin*, the Nazi Saboteur Case." *Vanderbilt Law*

Last Issue's Cryptoquote Answer

RCCW BPRHD, RCCW BPRHD! XGLDPBR PJ JKIH JNSSD JCLLCN, DHGD P JHGTT JGE RCCW BPRHD DPTT PD ZS OCLLCN.

- NPTTPGO JHGFSJXSGLS

Good night, good night! Parting is such sweet sorrow, that I shall say good night till it be morrow. – William Shakespeare

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If The Constitution Were Drafted Today

3 John Paul Stevens, *Six Amendments: How And Why We Should Change The Constitution* (Little, Brown and Company, 2014).

4 See note 15, *infra* at Article 50.

5 *Id.* at Article 35.

6 *Id.* at Article 36.

7 *Id.* at Article 41.

8 *Id.* at Article 42.

9 *Id.* at Article 43.

10 *Id.* at Article 44.

11 *Id.* at Article 45.

12 *Id.* at Article 53.

13 *Id.* at Article 56.

14 *Id.* at Article 57.

15 Constitution of the Union of Soviet Socialist Republics, adopted at the Seventh (Special) Session of the Supreme Soviet of the USSR, Ninth Convocation, on October 7, 1977.

16 Scalia, Remarks before the Senate Judiciary Committee, October 5, 2011.

17 Adams, *supra* at note 1.

18 *Home Building & Loan Association v. Blaisdell*, 290 U.S. 398, 483

Judge Klingensmith is a judge in the Fourth District Court of Appeals, 4th Judicial Circuit. He serves on the UF Law School Board of Trustees, is the Treasure Coast District Chairman for the Boy Scouts of America Gulf Stream Council, and is a member of the local chapter of the Major Harding Inns of Court.

Sites For Sure Cite-Checking

By Frank Pennetti, J.D., Staff Reference Librarian

Even for traditional researchers that like to depend on print resources, tracking a case through the Shepard's books is like utilizing the legal Rosetta Stone. Very few want to brave the paper decoding process for case citators, especially when online resources have reduced everything to a simple system of flags and icons. Non-lawyers especially are easily intimidated by all the symbols and abbreviations found in the paper version of Shepard's. The necessity of being able to rely on a web service's judgment, therefore, is crucial, and so this article takes a look at how several research services handle the "good law or bad law" question.

As a test case to compare in the major online citation-checkers, I chose Allen v. Scholastic Inc., 739 F.Supp.2d 642, (S.D.N.Y., 2011). It has been cited and mentioned by a manageable amount of other cases, and there is one case that explicitly discusses the principle that Allen was decided on. So the results in the online services should be fairly similar. Also, it's just a really fun case to read, as the court has to decide if a Harry Potter book was so similar to a book called "The Adventures of Willy the Wizard" that copyright infringement took place. The court painstakingly compares the opening scenes of the two books and becomes more harshly critical as the opinion goes on due to the court's obvious dislike of the Willy book. The court writes, "Beyond the background fact of the wizards' contest, the book lacks any cohesive narrative elements that can unify or make sense of its disparate anecdotes—a generous reading may infer that its purpose is to engage a child's attention for a few moments at a time, much like a mobile or cartoon. Indeed, the text is enlivened only by the illustrations that accompany it." Ouch.

A baseline start to checking citations would be Google Scholar, since it's free and everyone can access it. Putting the Allen citation in Google Scholar retrieves the full text of the case, and clicking on the "How cited" link retrieves Google's version of Shepardizing. It found the major case that follows Allen's ruling, DiTocco v. Riordan, 815 F.Supp.2d 655 (S.D.N.Y., 2011). Google assigned DiTocco a special symbol that looks like 3 horizontal lines on top of each other. When hovering over the symbol, the words "discusses cited case at length" appears. DiTocco has a very similar fact pattern in which 2 similar books were compared for copyright infringement purposes in the context of a motion to dismiss. In its citation list, Google also found, among others, the 3 other cases that were all listed by Westlaw, Lexis, and Fastcase when a similar search for Allen was done: Hallford v. Fox Entm't. Grp., Inc. (S.D.N.Y., 2013), Alexander v. Murdoch (S.D.N.Y., 2011), and Muller v. Twentieth Century Fox Film Corp., 794 F.Supp.2d 429 (S.D.N.Y., 2011). Google, however, does not provide easy colored flags to tell you if the Allen case has been negatively treated by other courts. You must either read the selected quotes from other cases that Google provides in order to decide for yourself, or you can read the entire cases that Google has linked to. Because Google gave the DiTocco top listing in its results, though, it certainly leads the researcher in the right direction.

I next put the Allen case in Fastcase, since every Florida Bar member has access to a free level of the Fastcase service. Fastcase listed Hallford, Alexander, and Muller as its only case references for Allen, did not offer any flagging, and the text of the cases were not available through the free level. It even states that its "authority check" service "is not a citator, and does not include editorial information telling you whether your case is still good law." I was very surprised that Google's offerings easily surpassed what Fastcase provides.

Westlaw decided that 3 cases discussed the Allen case with a high level of depth. These cases were the DiTocco and Alexander cases, plus a case that did not make the Federal Supplement, Mena v. Fox Entertainment Group, Inc., 2012 WL 4741389. Westlaw labeled these high-depth discussion cases with a symbol that looks like 3 bars of 4. Whether you think this is a better graphics system than Google's 3-lines symbol is a matter of personal preference. Westlaw also lists the Hallford and Muller cases by assigning them 2 bars out of 4 as merely cited cases. When printing out the Keycite list of references, all the cited cases are listed as positive, so Westlaw leaves no doubt that it feels the Allen case has no negative history. It's this small but crucial bit of editorial that one pays for with the Westlaw and Lexis systems.

Lexis owns the brand name Shepard's and so it is the default report that attorneys know carries the most credibility when presented to a judge. With our Allen case, Lexis gave the case only positive treatment, and found that DiTocco was the only case to explicitly follow Allen. Lexis also provided an interesting feature of dividing its cited cases by district, which of course is helpful in looking for cases within your own district that would carry more weight with your local judge. To this effect, the cases Lexis cited were DiTocco, Alexander, Mena, Muller, Hallford, and Angela Adams Licensing LLC v. Wal-Mart Stores, Inc; 2011 U.S. Dist. LEXIS 131697.

All the services thankfully brought up the same core of cited cases when I entered my Allen test case. I was pleased to find that Google is making more of an editorial effort as it flagged the major case DiTocco which discusses my test case. This means that the general public can use Google a little more easily and reliably to research the citation history of a case, even more so than the free attorney access that Fastcase provides! The most immediate convenience of a positive/negative flagging system still is only available through the Westlaw and Lexis services.

Remember, the Rupert J. Smith Law Library provides free Westlaw and Lexis access so you can come in and take your own sample case for a test spin with all of these services.

When Your Name Becomes a Verb: Shepardizing

By Nora Everlove

Who is the man behind Shepardizing? Frank Shepard invented the Shepard's legal citation system around 1895. The company started in Chicago although it soon moved operations to New York and then to Colorado Springs in 1948.

Initially, his citation notes were published on long thin strips of paper called "Shepard's Adhesive Annotations." They were glued into West reporter volumes in the margins. Aside from the tedium of gluing the strips into the books, it was initially very convenient for the users. Additional citation notes could be glued in later one on top of the other. Eventually it became rather unwieldy. The "adhesive notes" were then published in the signature maroon volumes still used today. Interestingly, the page layout was fashioned after the original strips and so it continues. It is easy to imagine what the early strips looked like by opening any printed volume of Shepard's. As recently as twenty-five years ago, it wasn't unusual to pick up an old case book and see one of Frank's Adhesives flutter to the floor.

I was taught in library school, "It takes a good manual system to make a good automated system." ("Automated" really speaks to the parlance of those prior times!) The professor's point was organization is always the key. Today, Shepard's online is still as vital as it was 120 years ago although it no longer has a corner on the market.

One hundred years ago, the West and Shepard Companies worked very closely together. West created the first casebook series that attempted to be comprehensive and Shepard dovetailed his new system by using West citations. This newly available mountain of case law would not have been nearly as popular without a simple way of determining whether it was still good law. Shepard took this one step farther with much needed analysis to track how subsequent decisions interpreted the original cited decision. The harmony between the companies continued until the mid-90s until Thomson, now the parent company of West, introduced KeyCite, a competing online citation system.

And, what did Frank Shepard and John B. West have in common besides creating great American legal publishing houses? They were both book salesmen and neither was a lawyer.

Mental Health Crisis in Florida

By Art Ciasca

"Mental illnesses are treatable and people can recover to live full, productive lives," said SAMSHA Substance Abuse Mental Health Services Administration's Administrator Pamela S. Hyde.

Mental health is a topic that receives very little press until there is a mass killing or death of a famous person who suffered from a mental health issue. It is misunderstood, or better yet, under-understood, if you will. Many people who receive mental health care do not disclose that information with friends, family, or co-workers. Yet, nationally 44.5 million adults aged 18 or older experienced some form of mental illness in the past year, which equates to 19.7% of the adult population. Unfortunately, only 37.9% of adults with mental illnesses received any type of care in the past year. Left untreated, mental health issues can cause loss of productivity, decreased functionality, social isolation or withdrawal, poor quality of life, hospitalizations, and death.

Major barriers to seeking and receiving mental health care include the stigma regarding mental health, and the cost of services, which usually are not well-covered by most health insurance plans.
I frequently ask people if they had a fever or toothache for days or weeks on end, or if their child did, would they not seek treatment to relieve the pain? When we realize that our mental health and mood affects us every minute of each day, it is unimaginable how people may go weeks, months, or years, being depressed, anxious, or experiencing distorted thoughts and perceptions.

Examining a few of the mental health disorders that may first occur in children and adolescents, we break them down as such:

Anxiety disorders: Children with anxiety disorders respond to certain things or situations with fear and dread, as well as with physical signs of anxiety (nervousness), such as a rapid heartbeat and sweating.
Attention-deficit/hyperactivity disorder (ADHD): Children with ADHD generally have problems paying attention or concentrating, can't seem to follow directions, and are easily bored and/or frustrated with tasks. They also tend to move constantly and are impulsive (do not think before they act).
Disruptive behavior disorders: Children with these disorders tend to defy rules and often are disruptive in structured environments, such as school.
Pervasive development disorders: Children with these disorders are confused in their thinking and generally have problems understanding the world around them.
Eating disorders: Eating disorders involve intense emotions and attitudes, as well as unusual behaviors associated with weight and/or food.
Elimination disorders: Disorders that affect behavior related to using the bathroom. Enuresis, or bed-wetting, is the most common of the elimination disorders.
Learning and communication disorders: Children with these disorders have problems storing and processing information, as well as relating their thoughts and ideas.
Affective (mood) disorders: These disorders involve persistent feelings of sadness and/or rapidly changing moods, and include depression and bipolar disorder.
Schizophrenia: This disorder involves distorted perceptions and thoughts.
Tic disorders: These disorders cause a person to perform repeated, sudden, involuntary (not done on purpose), and often meaningless movements and sounds, called tics.
Some of these disorders, such as anxiety disorders, eating disorders, mood disorders and schizophrenia, can occur in adults as well as children. Others begin in childhood only, although they can continue into adulthood. It is not unusual for a child to have more than one disorder.

Mental illness is one of the leading causes of disability in the United States. New state-level data produced by SAMHSA will advance our understanding of the nature and extent of mental illness, which is critical in the planning and implementation of effective programs and services in communities to improve the lives of individuals with mental illness and their families.

In looking at our state, Florida had a 4.7% rate of mental illness among its adult population. 20 states had higher rates. Of Florida's approximately 19.32 million residents, close to 660,000 adults live with serious mental illness and about 181,000 children live with serious mental health conditions.

In 2012, 2,922 Floridians died by suicide, which is over 8 Floridians per day. Suicide is almost always the result of untreated or undertreated mental illness. Nationally, we lose one life to suicide every 15.8 minutes. Suicide is the eleventh-leading cause of death overall and is the third-leading cause of death among youth and young adults aged 15-24. During the 2006-07 school year, approximately 51% of Florida students aged 14 and older living with serious mental health conditions who receive special education services dropped out of high school.

Florida's public mental health system provides services to only 26% of adults who live with serious mental illnesses in the state. Florida spent just $38 per capita on mental health agency services in 2006, or $686.6 million. This was just 1.1% of total state spending that year. In 2006, 56% of Florida state mental health agency spending was on community mental health services; 42% was spent on state hospital care. Nationally, an average of 70% is spent on community mental health services and 28% on state hospital care. Criminal Justice Systems bear a heavy burden. In 2006, 7,302 children were incarcerated in Florida's juvenile justice system. Nationally, approximately

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70% of youth in juvenile justice systems experience mental health disorders, with 20% experiencing a severe mental health condition. In 2008, approximately 24,600 adults with mental illnesses were incarcerated in prisons in Florida. Additionally, an estimated 31% of female and 14% of male jail inmates nationally live with serious mental illness. Many residents rely on public services for needed care. Approximately 10.1% of Floridians are enrolled in Medicaid. Approximately 3,633,000 Floridians are uninsured. The average rent for a studio apartment in Florida is 119% of the average Supplemental Security Income (SSI) payment, making housing unaffordable for adults living with serious mental illness who rely on SSI.

That Florida is nearly last out of 50 states in Mental Health services is a prime example of why we need to start a real dialogue on the importance of mental health in our state. Statistics from the Florida Center for Fiscal and Economic Policy show Florida as 49th in the nation in funding for mental health programs. By failing to recognize the need to treat and fund mental health, all of us are at risk.

The tragic death of comedian Robin Williams from an apparent suicide resulted from severe depression, according to his publicist. While many of us are shocked to know that someone with his talent, humor, likeability, success, and wealth could take their own life, we in the mental health field know that depression is a real medical condition, as real as diabetes, cancer, cardiac disease, and other conditions. Depression is caused by a disease of the brain. Too often people suffering from depression who have "everything going for them" are told to "get over it," or "what do you have to be depressed about," or "it will pass." Those phrases do not cure cancer, diabetes, or cardiac disease, and depression also warrants treatment from professionals who are highly trained in that arena.

There is no discrimination with depression; it affects the young and old, rich and poor, all cultures, ethnicities, religions, and both genders.

A few of the famous people who were challenged by depression include Abraham Lincoln, Ashley Judd, Billy Joel, Hugh Laurie, Princess Diana, Marie Osmond, Brooke Shields, Rosie O'Donnell, Sheryl Crow, James Taylor, Buzz Aldrin, Winston Churchill, and Lawton Chiles.

Statistics are revealing that suicide is the third leading cause of death for young people 15-24, and each day in the U.S. there are 11.5 youth suicides. Every 2 hours and 5 minutes a person under the age of 25 commits suicide. It is estimated over 16 million adults in the U.S. suffer from depression.

Suicide is the worst case scenario. Most suicide attempts are expressions of extreme distress, not harmless bids for attention.

The stigma attached to mental health is a major barrier working against the treatment of mental illness. It can cause a person to delay or avoid getting the appropriate help. It can also undermine recovery by isolating individuals from the social and emotional supports they need. More education and awareness about mental health issues needs to occur, and more acceptance of those battling mental illness will enable people to receive treatment and assistance.

Do not take depression, or other mental health issues, lightly. It is a medical condition that can ruin one's quality of life, and as the above statistics display, also ends lives. Don't hesitate to seek help for yourself or loved ones with mental health issues. Learning about depression and mental health treatment options will help you decide what approach is right. From therapy to medication to healthy lifestyle changes, there are many effective treatments that can help people overcome depression and other mental health issues and reclaim their life.

Art Ciassca is the CEO of Suncoast Mental Health Center, a four county not-for-profit organization serving the Treasure Coast. He has served on the Board of Directors for Suncoast from 2006 to 2011. Prior to coming to Suncoast, Art was the Director of Development for SafeSpace, a domestic violence organization. Art has worked in mental health management for twenty years and is a former elementary school teacher, and a varsity baseball and girls volleyball coach. Art has a Master's Degree in Health Services Administration and a Bachelor's Degree in Education.

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

Poet's Corner

The Lawyers Knew Too Much
By Carl Sandburg

The lawyers, Bob, know too much.
They are chums of the books of old John Marshall.
They know it all, what a dead hand wrote,
A stiff dead hand and its knuckles crumbling,
The bones of the fingers a thin white ash.
The lawyers know
A dead man's thought too well.

In the heels of the higgling lawyers, Bob,
Too many slippery ifs and buts and howevers,
Too much hereinbefore provided whereas,
Too many doors to go in and out of.

When the lawyers are through
What is there left, Bob?
Can a mouse nibble at it
And find enough to fasten a tooth in?

Why is there always a secret singing,
When a lawyer cashes in?
Why does a hearse horse snicker,
Hauling a lawyer away?

The work of a bricklayer goes to the blue.
The knack of a mason outlasts a moon.
The hands of a plasterer hold a room together.
The land of a farmer wishes him back again.
Singers of songs and dreamers of plays,
Build a house no wind blows over.
The lawyers...
Tell me why a hearse horse snickers hauling a lawyer's bones.

LAW LIBRARY 2014 CLE SERIES: The Fall Programs

Free CLE Seminars sponsored by the Law Library and the Friends of the Rupert J. Smith Law Library. We sincerely thank our presenters who make this project possible:

- Bankruptcy 101, Including the New Mortgage Modification Program in Ch. 13
  September 19, 2014 – Colin Lloyd
- Handling and Management of Discovery Disputes
  October 30, 2014 – Harold Melville
- Motion Practice in the Fourth District: Before and After the Opinion is Released
  November 14, 2014 – Mark Miller

These programs begin at Noon and provide one hour of general CLE credit. Call 772-462-2370 to reserve your spot today! Please bring your lunch. We look forward to hearing from you!

Florida Bar CLE Programs At The Law Library

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

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

Recorded CLE Programs - Sorted by Expiration Date

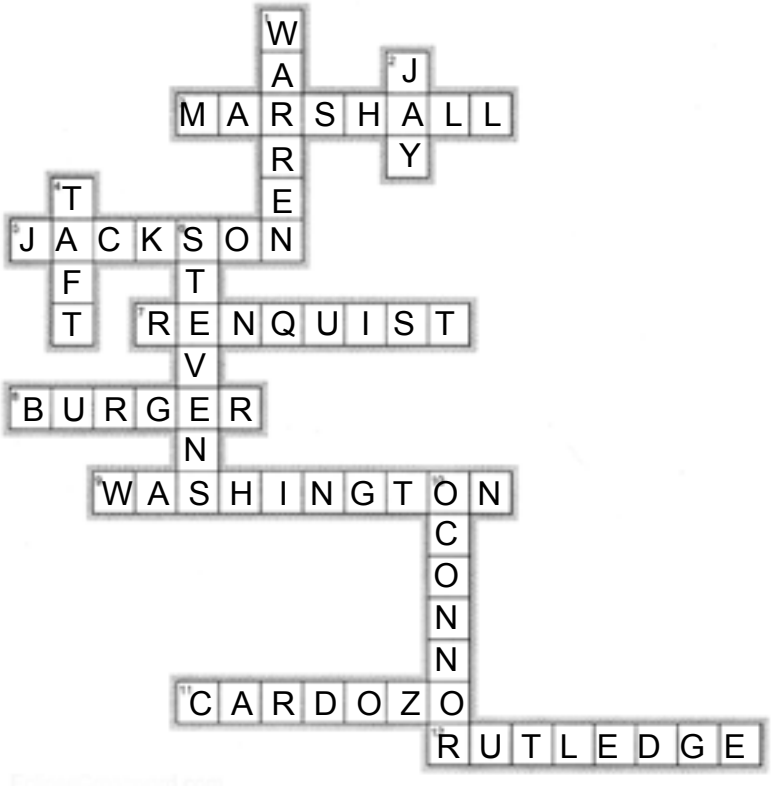
Course #	Title	Expiration Date	General Hours	Ethics Hours
1529C	Basic Criminal Practice	10/26/2014	7	2
1741C	Survey of Florida Law	10/30/2014	6	0
1459C	36th Annual Local Government in Florida	11/10/2014	12	2
1501C	Hot Topics In Appellate Practice 2013	11/17/2014	8	1
1482C	Beyond Ch. 61: Interrelated 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
1741C	Survey of Florida Law 2013	2/8/2015	14.5	4
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
1686	Advanced Administrative and Government Practice Seminar 2014	10/10/2015	7	1
1678	Art of Objecting: A Trial Lawyer's Guide to Preserving Error for Appeal	9/14/2015	7.5	1
1760	Professional Fiduciary: Responsibilities and Duties	11/2/2015	7	2
1883	Ethics for Public Officers and Public Employees 2014	8/7/2015	4	1
1682	Hot Topics in Evidence 2014	9/21/2015	7.5	1
1670	Masters of DUI 2014	8/21/2015	8.5	2
1666	Divorce over 60	11/14/2015	2	0
1665	Guardian Ad Litem or Attorney Ad Litem: Making Informed Decisions About the Lives of Children	8/19/2015	2.5	0

Florida Bar CLE Programs At The Law Library

Recorded CLE Programs - Sorted by Expiration Date

Course #	Title	Expiration Date	General Hours	Ethics Hours
1667	Representing the Military Service Member in Marital and Family Law Matters	12/4/2015	2	0
1898	Top 10 Things You Need to Know About Florida's New LLC Act	10/25/2015	1	0
1902	Maintaining a TRUSTworthy Trust Account: TRUST ME, IT'S NOT YOUR MONEY	11/4/2015	1.5	0
1375	Managing Business Risk in the Law Firm	12/25/2015	2	0.5
1539	Working in the Cloud: It's the Latest; It's the Greatest, or Is it?	9/5/2015	2.5	0
1702	Bursting Through the Techology Barrier - the RPPTL Edition	11/30/2015	3	2
1899	Drafting a Better Commercial Real Estate Contract - Standard Provisions and Pitfalls	11/15/2015	4	0
1687	The Ins and Outs of Community Association Law 2014	10/4/2015	8	1
1716	IRS: We got What it Takes to Take What You Got (Round 2)	10/25/2015	9	1
1700	Medical malpractice Seminar 2014	9/14/2015	6	1
1903	Survey of Florida Law 2014 (2 copies)	11/9/2015	12	3.5

Last Issue's Crossword: Justices of the Supreme Court



Across

3. MARSHALL—Not his first choice, John Adams next chose this brilliant jurist who did much to make the judiciary a coequal branch
5. JACKSON—We are not final because we are infallible, but we are infalliable only because we are final
7. RENQUIST—As a clerk to Justice Jackson, he wrote a memo defending Plessy v Ferguson
8. BURGER—Elevated by the same, he led the court to the unanimous decision in US v Nixon
9. WASHINGTON—Not surprising, this President appointed the most justices (eleven)
11. CARDOZO—After a brilliant career on the NY Ct of Appeals, Hoover appointed him to the US Sup. Ct.
12. RUTLEDGE—He left the Sup. Ct. but later returned as Chief Justice only for the Senate to reject him. He served for five months.

Down

1. WARREN—He wrote the unanimous opinion in Brown v Board of Education
2. JAY—Our first Chief Justice
4. TAFT—The only Chief Justice to have a state funeral
6. STEVENS—Another long serving justice, he wrote a cutting dissent in Bush v Gore
10. OCONNOR—She sat on the court for twenty-five years