Friendly Passages

Supporting Equal Access to Law in Florida

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

"The Horse"
Pastel on paper
By Paul Nucci

In This Issue

Are fewer trials a good thing? The jury is still out.

By The Honorable Judge Mark W. Klingensmith

Unless you are a litigator, you may not be aware that the number of jury trials nationwide has been declining over time. Many states and organizations have recognized the existence of this decline, but cannot adequately explain why this phenomenon is occurring. The cause is likely to be multi-factorial. This was a topic of conversation among some lawyers and others at a recent American Board of Trial Advocates (ABOTA) reception, leading to a friendly debate: Are fewer jury trials a good thing or a bad thing?

In June 2010, The Florida Bar commenced a study to examine the decline in the number of jury trials in both civil and criminal matters, in state and federal courts, and the impact of this decline on the judicial system, lawyers, and the public in general. Similar to statistics showing a decline in the percentage of cases going to trial in the federal system, the percentage of Florida Circuit Court criminal cases going to trial has dropped from 3.1% in 1987 to 2.1% in 2010, while the percentage of Circuit Court civil jury trials has dropped from 1.6% **down to only 0.2%** over that same time frame. Interestingly, the jury trial rate for County Court criminal cases (not involving criminal traffic offenses or DUI) has remained steady at between 0.3% and 0.4%.

This Florida Bar study cited several possible reasons for the reduced number of jury trials but could not definitively identify anything as being the primary cause. Possible reasons cited in this Florida Bar study, and other reasons that have been posited elsewhere, include the following:

- The increased use of alternative dispute resolution (ADR) mechanisms such as binding arbitration;
- Court-ordered mandatory mediation as set forth in the Rules of Civil Procedure and local administrative rules for all civil cases;
- Escalating costs associated with conducting pretrial discovery and trial preparation, including increasing expert witness fees and the prevalence of non-refundable retainer agreements;
- Plea agreements and sentencing guidelines in criminal actions, and proposals for settlement in civil cases;
- The lack of confidence that a jury's decision will bring about a just result; and
- The time delay in getting a case to trial creates a substantial incentive for parties to settle cases.

".....[A]ny reduction in the number of jury trials may lead lawmakers to propose deeper funding cuts to a court system already severely strapped for resources."

While encouraging amicable resolutions in cases is a laudable goal, there may be negative consequences to this decline. Fewer trials mean less chances for the public to come into contact with the court system through jury service. The greater use of mediation and arbitration also means that more parts of the system will be kept private and not part of the public record, or publicized in the news. Further, any reduction in the number of jury trials may lead lawmakers to propose deeper funding cuts to a court system already severely strapped for resources.

Another consequence of this decline that might not be so obvious is that as the relative number of jury trials decrease, so will the number of lawyers who can achieve significant trial experience. This will create a snowballing problem if the next generation of lawyers actively avoids going to trial because they do not know how to conduct them, leading to even less trials being conducted, and fewer "trial-ready" lawyers, over time. Even the Florida Bar appears to have recognized that fewer cases are being tried, and has permitted attendance at a trial skills seminar to satisfy one of the jury trial requirements for certification, thus "watering down" the amount of actual jury trial experience needed to achieve Civil Trial certification status.

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On Behalf of the Publisher

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

In the period leading up to 449 B.C., Roman society was torn by open class warfare. The elite aristocracy, known as the Patricians, and the commoners, referred to as the Plebeians, were locked in a bitter struggle. Armed revolt threatened. Plebian anger stemmed from the Patrician's common practice of keeping the laws a closely guarded secret. Knowledge of the laws was confined to a group of priestly overseers, the pontifices. Ostensibly, the laws were an inherited oral tradition that reflected social customs of the day. But somehow application of such "customs" always seemed to favor Patrician interests. The result of the secrecy was that judgments were applied harshly and arbitrarily to Plebeians who knew little about how to avoid transgression and punishment. After many years of increasingly heated controversy, the Roman Senate finally agreed, for the first time, to reduce the entire body of laws to writing. This code was carved into twelve bronze tablets, the Lex Duodecim Tabularum, also known as The Twelve Tables. They were put on prominent display in the forum where they could be seen and read by all. Henry Sumner Maine wrote of these tablets in his classic, ***Ancient Laws,*** that "their value did not consist in any approach to symmetrical classification, or to terseness and clearness of expression, but in their publicity, and in the knowledge which they furnished to everybody, as to what he was to do, and what not to do."

The Lex Duodecim Tabularum

The concept of popularizing the law thusly went on to become a cornerstone in what is now identified as The Rule of Law. It is a process described by the American Bar Association, "Part I, What is the Rule of Law," ABA Division for Public Education as meeting a "… need for, first, an open and transparent system of making laws and, second, laws that are applied predictably and uniformly. Openness and transparency are essential. If people are unable to know and understand what the law is, they cannot be expected to follow it. At the same time, people deserve to know why a particular law has been passed and why they are being asked to obey it."

Countries around the world are ranked according to their successful implementation of the rule of law by The World Justice Project, an independent, non-profit organization that works to strengthen the rule of law. Its annual report for 2012, "Rule of Law Index," sets out a series of graded factors, including Open Government and Civil Justice. Open Government is assessed by The Project according to several elements, the first of which, pg. 14:

" …relates to the clarity, publicity, and stability that are required for the public to know what the law is and what conduct is permitted and prohibited. The law must be comprehensible and its meaning sufficiently clear, publicized, and explained to the general public in plain language for them to be able to abide by it. This is one of the most basic preconditions for achieving and maintaining a rule of law society capable of guaranteeing public order, personal security and fundamental rights."

The second element encompasses the opportunity to participate in the process by which the laws are made and administered. Among the indicia of participation are: whether people have the ability to petition the government; whether proceedings are held with timely notice and are open to the public; and, whether drafts of legislation, records of legislative and administrative proceedings, and other kinds of official information are available to the public.

Here, the United States ranks close to the upper end of the scale, particularly when compared to a group of sixteen western countries, at .77 (the laws are comprehensible to the public) and .79 (the laws are publicized and widely available).

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On Behalf of the Publisher

However, the ranking is much different in the area of Civil Justice. That is described as including the following criteria, measuring, page 15,

" …whether ordinary people can resolve their grievances peacefully and effectively through the civil justice system. Effective civil justice requires that the system be accessible, affordable, effective, impartial, and culturally competent. Accessibility includes general awareness of available legal remedies; availability and affordability of excessive or unreasonable fees, procedural hurdles, linguistic or physical barriers and other impediments. Impartiality includes absence of arbitrary or irrational forms of bias, as well as decisions that are free of improper influences by public officials or private Interests."

On this scale, the United States comes in much lower in the overall rankings with a composite score of .65, 22nd out of the 97 countries measured. Some of the lower sub scores are .53 for accessibility and affordability for civil justice, and .53 for provision of civil justice free of discrimination. In those categories, the United States trails Albania (.61), Belarus (.60) and Botswana (.59).

Whether the reader accepts these conclusions or not, such rankings are nevertheless a useful reminder that the high ideals of the law are imperfectly rendered. They find life only when consciously and rigorously pursued in a sustained quest for improvement.

Law libraries are integral to the maintenance and extension of the rule of law. These are facilities staffed with trained professionals, with comprehensive, up to date collections of statutory and case law materials in both printed and electronic formats, with open hours convenient to the schedules of ordinary people. Libraries assure that the law is "publicized and explained to the general public in plain language for them to abide by it." Law libraries make sure that "records of legislative and administrative proceedings and other kinds of official information are available to the public." They promote "general awareness of available remedies." All who value the principle that each individual member of society should enjoy equal access to the law, must insist that a law library be kept close at hand, reasonably available to everyone in the community. In a modern society, law libraries are the equivalent of a display of bronze tablets in the public forum, the Lex Duodecim Tabularum. Our freedom and way of life depend on them. Thank you for your support.

HELP WANTED

Candidates are now being considered for the position of **Business Manager**, to oversee the business affairs of ***Friendly Passages.*** There are only two requirements: that there be a warm interest in people, and that there be an abiding commitment to the ideals of the law and a desire to promote them. This is a volunteer position, like all of the staff positions at ***Passages.***

Additional staff opportunities are available for those willing to serve in other capacities.

Anyone wishing to participate on an exciting team in service to an important cause are invited to contact the editor, Nora Everlove at 727-644-7407 or nora@everlove.net.

We look forward to hearing from you.

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Are Fewer Jury Trials A Good Thing?

As one of my ABOTA colleagues wryly observed during our discussion about this topic, this might serve to create a level playing field among the attorneys of the plaintiff and defense bars in the future – but only because the lawyers on each side will be scared to death to go to trial since they will all be equally inexperienced!

During our discussion, there was wide disagreement about the cause for these declining percentages, and what is to "blame" for their occurrence.

One lawyer suggested that while it is the organized bar and various affiliated associations who are now "sounding the alarm", it was these same groups that pushed for the enactment of the mandatory mediation rules and who also created ADR in the first place.

Another lawyer pointed out that twenty years ago it seemed that the general complaint we heard from the public was that there were too many jury trials, and too much litigation, which was placing great burdens on the system. In his view, wasn't it always the intent of ADR and those court rules to reduce the number of jury trials, and isn't that why they were created in the first place? If so, why is everyone now complaining when the results are as good, or better, than they expected? Are people actually complaining because parties are settling cases and resolving disputes without being unnecessarily litigious?

One attorney (who is not a litigator) suggested that if the Bar was really interested in increasing the number of jury trials, all they need to do would be to change, or repeal, the mandatory mediation rules. The fact that they will not means that no one truly views this trend as a legitimate long-term problem.

However, even someone who believes that less jury trials is not necessarily a bad thing for society should have a degree of concern. If lawyers cannot develop and maintain their jury trial skills, it increases the likelihood that some future judges may have less experience dealing with the evidentiary issues that typically arise at trial, and may also have less understanding or appreciation of the pressures lawyers experience when litigating their cases in court.

Therefore, maintaining the number of jury trials at a certain level may have demonstrable benefits for society by helping to maintain the professional skills of attorneys, ensuring the continued quality of our judiciary, and lead to maintaining or improving the public's confidence in our judicial system as a whole.

So, what do ***you*** think? Are fewer jury trials a good or bad thing?

Judge Klingensmith is a Circuit Court judge in the 19th Judicial Circuit, currently assigned to the Family Division in St. Lucie County. He received his B.A. and J.D. degrees from the University of Florida. He now serves on the UF Law School Board of Trustees, as well as the St. Lucie County Children's Services Council, the Executive Roundtable of St. Lucie County, and is the Treasure Coast District Chairman for the Boy Scouts of America Gulf Stream Council. Judge Klingensmith is also Board Certified by the Florida Bar in Civil Trial Law, and a member of the local chapter of the American Board of Trial Advocates and the Major Harding Inns of Court.

If you have any comments in response to Judge Klingensmith's comments, please forward them to the library or to the editor at nora@everlove.net. We are very interested in opening a dialog and hearing your ideas. Are you going to court for jury trials less often now compared to years ago?

Lawyer's Life Caption Contest

We have a split decision on the cleverest caption:

Craig Hewitt of Okeechobee: "But counsel assured me it was legal."

Vince Patrucco of Bartow: "It turns out the legal circle is much larger than the moral circle."

...and a few of our own:
"I expected it to be a lot more crowded"

"Perhaps I went too far introducing Bystander Whip-lash as a practice area"

"Did you take my lighter"?

Last Issue's Cryptoquote Answer

QIYDXE YXX ZIQ HYQ SAYQG YGKIDSNAE, VLA NT EPL FYQA AP AISA Y ZYQ'S HWYDYHAID, MNKI WNZ JPFID.
- YVDYWYZ XNQHPXQ

Nearly all men can stand adversity, but if you want to test a man's character, give him power.
- Abraham Lincoln

Come To The Next Friend's Meeting

Please Come Join Your Friends At Upcoming Meetings At the Rupert J. Smith Law Library **at Noon**

Thursday, February 7
Thursday, March 7

INTERVENTION: An Improved Model For Foster Children

By Jeanne T. Tate

We recently celebrated National Adoption Awareness Month. It was a time for adoption celebrations gargantuan and intimate, private and public. We celebrated the creation, or in many instances, the expansion of forever families through adoption. However, as a Florida-licensed attorney and champion of adoption for over thirty years, I submit that there should be a calendar-long "all hands on deck" effort to grow adoption, especially in the public sector where there are over 400,000 children in foster care. While November may get the publicity, the work to grow adoption needs to endure each day of every month.

The traditional method by which many children are placed for adoption relies on a birth parent's selfless decision. Yet, for a parent whose child has been removed by the state and placed into protective custody or foster care, that parent often no longer enjoys the right to make a private adoption plan for her child. It is as if that parent is labeled not worthy and stripped of their constitutionally protected right to determine her child's future. Regrettably, it is a scenario that has played out countless times in the juvenile courts across the United States and one that prolongs permanency for children.

A positive and emerging change has begun to take root, albeit slowly and unevenly. In Florida, through a statutory mechanism known as intervention, a parent whose child has been removed by the state retains the right to make a private adoption plan, provided that parent's parental rights remain intact. This option allows a parent to consent to a voluntary adoption, select adoptive parents, and receive information about the child in the future. Contrast this with the inexorably lengthy and expensive process associated with having parental rights involuntarily terminated by a judge, and the parent's exclusion from any permanent decision-making for the child.

Intervention also accomplishes the laudable goal of removing a child from the state system. It frees up the juvenile court's resources to address those cases that desperately need attention. It dramatically decreases and virtually eliminates the substantial public cost attendant to having a child remaining in foster care. Most importantly, intervention quickly creates a "forever family" by obtaining the approval of the birth parent. With nearly 50,000 children remaining in foster care five years or more, there can be no doubt about the benefits for both the children who await adoption and for society as a whole if adoption of children in foster care was made easier, faster, and more frequent.

In working with a legion of dedicated child welfare professionals, I have come to understand one universal truth: the state does not make a good parent. Developmentally speaking, remaining in state care disadvantages a child, whereas adoption into a "forever family" yields the most positive outcomes and is the place where a child thrives. Moreover, nearly 30,000 children in foster care age out of the system annually with no hope of a permanent family. These children struggle in inordinate numbers with homelessness, lack of education, unemployment, poverty, unwed pregnancy and criminality. These children are our responsibility.

November saw the dawn of new families sewn and grown together by adoption. That effort needs to continue throughout the year, and if a birth parent elects to make the difficult decision to place a child for adoption, the Department of Children and Families and the courts should applaud and honor this choice, and move the child out of state custody to the safe, loving environment of a "forever family."

Jeanne T. Tate is a Board Certified Adoption Attorney and the managing partner of Jeanne T. Tate, P.A., with offices in Tampa, Naples, and Orlando, and an Adjunct Professor at the University of Florida College of Law where she teaches Adoption Law and Procedure.

Jeanne graduated with high honors in 1978 from the University of Florida with a B.S. in Journalism and in 1981 she received her J.D. with honors, as a member of the Order of the Coif and editor of the Law Review, from the University of Florida College of Law.

Jeanne is rated AV Preeminent by Martindale-Hubbell, signifying that the legal community ranks her "at the highest level of professional excellence".

"Threat Enough": Criminal Justice and Gun Violence in the Lives of Young Black Men

By Ashley Walker

"If you are a young black man, who you are is threat enough." On December 5, 2012, Melissa Harris-Parry, host of the "Melissa Harris-Perry" weekend news and opinion television show on MSNBC, used this concept to begin a feature exploring the role of race in the criminal justice system. As many law scholars might agree, America's legal structure centers upon the ideal that all accused are innocent until proven guilty, and under that model, it may seem inaccurate to suggest that anyone would be judged before standing trial for an alleged crime. However, as most lawyers can corroborate, all men and women are not truly equal in the face of the law in our country. There are grave injustices that mark criminal justice, from accusation to the likelihood of sentencing to the punishments issued for the commission of a crime, and young black men suffer from these injustices at a disproportionate rate.

In the past year, two young men have been killed in Florida by older assailants who cite the now infamous "Stand Your Ground" law as their defense: Trayvon Martin, who was shot by George Zimmerman on February 26, 2012, and Jordan Davis, who was shot by Michael David Dunn on November 23, 2012. Both were 17, and there is no evidence that either young man was armed. Both were shot merely because, as Harris-Parry noted, "Guilt – not determined by what they did or said" was "presumed to be inherent in their very being". For these young black men, who they were was threat enough.

"Critics of the [stand your ground] law have noted that it actually gives civilians 'more rights to use deadly force than we give police officers, and with less review'."

Under Title XLVI, Chapter 776: Justifiable Use of Force of the 2012 Florida Statutes, individuals have the right to use deadly force against intruders entering their homes. They no longer need to prove that they feared for their safety, only that the person they killed had intruded unlawfully and forcefully. Vehicles are also covered under this principle. However, Florida's law goes beyond this "Castle Doctrine" of self-defense, doing away with an earlier requirement that a person attacked in a public place should retreat if possible. Chapter 776.013 states that the individual "has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force." Critics of the law have noted that it actually gives civilians "more rights to use deadly force than we give police officers, and with less review."

Trayvon Martin

There may be situations in which the Stand Your Ground defense has been used to promote safety rather than obstruct it, such as in the case of Jacqueline Galas, a 23 year old with a known history of prostitution from Port Richey, Florida. In 2006, Galas shot and killed a 72 year old male client with his own gun. The client, Frank Labiento, reportedly pointed his .357 handgun at Galas repeatedly and threatened to kill her. She was able to calm him down, and he placed his gun on his kitchen table. The phone then rang, he walked away to pick it up, and Galas picked up the gun. When Labiento approached her, she pulled the trigger. Authorities found a note from Labiento stating that he planned to kill Galas, then himself, on that fateful day, and police found that the evidence clearly pointed to a case of self-defense.

However, Trayvon Martin and Jordan Davis were killed under far different circumstances. On February 26, 2012, 28 year old George Zimmerman shot Martin, an unarmed, 17-year-old African American young man, in Sanford, Florida. That evening, Zimmerman was in his vehicle on a personal errand in a gated community where Martin was staying with his family. He noticed Martin walking inside the community and called the Sanford Police Department to report Martin's behavior as suspicious, stating that Martin was "cutting in-between houses... walking very leisurely for the weather." and "looking at all the houses." According to a police report, however, "there is no indication that Trayvon Martin was involved in any criminal activity at the time of the encounter."

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Rules of Engagement III: The Domestic Use Of Courts-martial In Maintaining Good Order And Discipline

by Hugh J. Eighmie II Esq.

This is the third and final installment in the three part series of our military justice system. The focus here is the use of the court-martial system to achieve "Good Order and Discipline" within the ranks.

The use of severe corporal and harsh methods of punishment to our military members were phased out during the mid-nineteenth century. For example, both the U.S. Army and Navy practiced flogging enlisted members as a form of punishment for various infractions. The U.S. Navy ceased flogging as method of keeping order and disciplining in 1850 which was a very controversial decision of that time. Naval commanders plead the use of flogging as an intimidation measure especially to deter mutiny and sedition.

Other forms of punishment included hard labor, food rationing commonly referred to as "bread and water" and confinement to certain areas of a fort or ship.

Once these methods of punishment were no longer practiced and acceptable, the courts-martial system began to be used with much more frequency. The modern day courts-martial is very similar to the civilian counterpart criminal justice system. Like the civilian system, the courts-martial is divided into two levels, the special courts-martial for misdemeanor level offenses and the general courts-martial for more serious felony level crimes.

The Uniform Code of Military Justice (UCMJ) is the statutorily codified criminal procedure and criminal laws which is used to prosecute all U.S. military members worldwide. When an individual enters any of the five branches of the military, including the U.S. Coast Guard, that member comes under the jurisdiction of the UCMJ. This jurisdiction is worldwide no matter where the member is stationed, either on a land base or war ship. As a protection for the individual member, this jurisdiction is used in instances when a military member commits offenses in foreign countries and that government wants to prosecute the member. The UCMJ allows the particular branch to prosecute the member and if found guilty, punished by the branch of service as opposed to a foreign country's jurisdiction.

When a military member commits an offense in violation of the UCMJ a determination must be made as to the degree by which that member should be prosecuted, either a special or general court-martial. As previously stated, more serious felony level offenses such as murder, rape, and robbery are prosecuted in a general court-martial and more minor offenses such as petty theft, minor drug possession and drunk driving are prosecuted in a special court-martial.

If a special court-marshal is to be used, a local unit commander signs an Information charging document detailing who the accused is and the offense(s) for which he or she is being charged. This document is served on the accused and a military attorney is assigned to represent the accused at no cost to the accused.

For a general court-martial, the UCMJ directs that a "one-man grand jury" be formed with an officer appointed as the single grand jury member. That officer will hold an open hearing into the facts and circumstances surrounding the charges. The accused is assigned counsel to represent him/her during the hearing. The rules of evidence loosely apply to the hearing, and the hearing officer makes a written determination to the commanding general if there is enough evidence to proceed to a general court.

Once the commanding general (or admiral in the case of the Navy/Coast Guard) receives the written report from the hearing officer, an independent decision is then made as to whether to convene a general court-martial to try the accused on the charges.

Military criminal courts are divided amongst the various branches of the military. Each branch has its own military judges; however, any military judge can preside over any trial of any member. Therefore, an Army judge can conduct a court-martial against an Air Force member. Judges are further divided into Special Court-martial and General Court-martial judges with the more experienced judges being general court-martial judges. Military judges receive extensive training and further education in order to fulfill the duties and responsibilities of judge. Being chosen judge is a career path for a military attorney and, in most cases, will take that particular member to retirement. In order to minimize the appearance of undue influence by the command, judges are reassigned and do not fall under the chain of command of any commander. This assures their responsibility of fairness and independence to the system. Judges are then authorized to accept negotiated pleas, conduct trials, rule on motions and hand down punishments to those members found guilty of offenses.

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Rules of Engagement III

Military courts-martial are governed by the Federal Rules of Evidence as codified in the UCMJ. Additionally, the accused is provided many more rights than that of a civilian defendant. For example, an accused has the right to a free military attorney, may request a particular military attorney of his/her choice, and can hire (and pay for on his/her own) a civilian attorney and keep all three. Another example is the extension of *Miranda* rights a military member is afforded in the courts-martial system. This is all done to minimize what the U.S. Supreme Court has coined the inherit issues of command undue influence which such a system can produce. It is this system of justice that is being debated currently with the military prosecutions of the detainees in Guantanamo Bay, Cuba. The issue is always, whether a system can be fair and independent when that system accuses a member, tries that member before a jury chosen by the command with a military judge, and carries out sentences in the military corrections system. Therefore, the system goes above and beyond to insure the fairness and independence of the trial.

The final level of insurance in the fairness of the court-martial process is the courts of appeal including the U.S. Supreme Court. Appeals are automatic in most all criminal cases, and those appellate cases can be appealed to the civilian U.S. Court of Appeals for the Armed Forces. This multi-level appellate structure looks at all of the same issues a civilian appellate court would examine; however, generally in more depth so as to guard against any hint of impropriety.

I sincerely hope this series of articles on our military's attorneys and justice system have served to enlighten those who have had an interest in our nation's best military in the world. Our military is made up of dedicated men and women who serve our country all over the world often times in harm's way on the battle field. I am proud and privileged to have served my country and salute all those who have in defense of our proud nation.

Hugh Eighmie II graduated from Florida State University with a Bachelor's of Science in Criminology. He received his J.D. from Thomas Cooley Law School in 1995. A police officer for seven years, Hugh served in the Navy JAG Corps (National Guard) for two years. He practices law in St. Lucie County and is the President of the SLCBA.

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"Threat Enough"

After the phone call, Zimmerman approached Martin. The evidence surrounding the details of their meeting is still being investigated, but it ended with Zimmerman fatally shooting Martin in the chest at close range.

The parallels of Jordan Davis' case to Martin's are eerily similar in several ways. Michael David Dunn and his girlfriend were in Jacksonville for Dunn's son's wedding when they made a stop at a convenience store, according to Jacksonville's sheriff Lt. Rob Schoonover. Jordan Russell Davis and several other teenagers were sitting in a SUV in the parking lot when Dunn pulled up next to them in his car and asked them to turn down their music. Jordan and Dunn exchanged words, and Dunn pulled a gun and shot eight or nine times, hitting Jordan twice. No one else was hurt. Dunn has stated that he believed he saw a shotgun in the vehicle, but police have found no evidence that the teens had any weapons. Like Trayvon, Jordan was a promising high school student beloved by his family. His teachers described him as "bright," and he had recently begun a part-time job at McDonalds to make some extra money. Both boys' lives were cut unnecessarily short, and under the "Stand Your Ground" law, their killers may not face significant charges.

"For the sake of our nation's young people, it is imperative that we examine the effects of gun control laws for our society."

The fact that two black boys have been shot and killed in one state in the span of just nine months, by a pair of men who described the unarmed teens as threatening, is a testament to Florida's repeated legal affirmation of gun-rights principles and our comparatively lax gun control laws. As public records show, Florida has licensed nearly 1 million people who do not work in law enforcement or security – more than any other state in the country – to carry a concealed weapon since the conceal-carry program began in the late 1980s. Like many Southern states, Florida's gun culture plays a vital role in the state's identity. In central and northern Florida in particular, gun collecting, hunting and shooting are seen as favorite pastimes or central rites of passage. The last three fiscal years have been the most active on record for the Florida Department of Agriculture staff members who process concealed carry permits, according to Ken Wilkinson, the department's Assistant Division Director for licensing. Both in our state and across the country, interest in gun ownership is growing at a new rate.

George Zimmerman

Jordan Davis

Presidential Trivia Part 1

Where do the Presidents Come From?
Did you think more U.S. Presidents came from Virginia than any other state? Nope!
Five presidents came from Virginia: Washington, Jefferson, Madison, Monroe and Tyler, Seven presidents came from Ohio: William Henry Harrison, Grant, Hayes, Garfield, McKinley, Taft and Harding. In between Virginia and Ohio, New York has six presidents: Van Buren, Fillmore, Arthur, Cleveland, and both Roosevelts.

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"Threat Enough"

Gun rights advocates, however, too often overlook the disproportionate racial burden that gun violence poses upon society. Rare, tragic mass shootings like those at Columbine, Virginia Tech, and Sandy Hook Elementary School receive national news coverage. They shock and grieve us because they are so random, horrifying, and unimaginable. However, the wider-ranging tragedy of gun violence is one that more commonly plagues our inner cities, and it is represented by the hundreds of young black men who are shot and killed before their thirtieth birthdays every year. According to research done by criminologists Philip J. Cook and Jens Ludwig in their book *Gun Violence: The Real Costs*, Youths and Hispanic and African American males in the United States were the most likely to suffer from crime or homicide, with the injury and death rates tripling for black males aged 13 through 17 and doubling for black males aged 18 through 24.

In 2009, black males aging from 15 to 19 were eight times as likely as white males the same age, and two and a half times as likely as Hispanics, to be killed in a gun-related homicide. That same year, black children and teens accounted for 45% of all child and teen gun deaths, though they accounted for only around 15% of the total population of children. More than 30,000 Americans are shot and killed annually, or about 82 per day, and a majority of these homicides are not pre-meditated murders. Many killings result from the unplanned escalation of another crime, such as burglary or drug-related offenses, in which firearms are present. Philip Cook hypothesizes that if guns were less available, criminals might continue to commit the same crimes, but using less-lethal weapons.

The ramifications of gun violence trickle outwards in ways that may not be immediately obvious. Today, U.S. taxpayers cover $1.1 billion, or nearly half, of all lifetime medical expenses relating to gunshot injuries. The criminal justice system also accounts for a great deal of expense to taxpayers, from law enforcement and police to our nation's courts and corrections facilities. The social costs of criminal justice are harder to measure, but even more burdensome. By the age of 17, a quarter of black children will have a father who has served time in prison. These children are more likely to suffer from depression, drop out of school, and later, to commit crimes themselves. The issues of gun control and gun safety are complex, and most gun owners do not have a part in our national epidemic of violence. Most firearm enthusiasts in America simply enjoy Sunday target practice or value the connection that gun collections allow them to have to the past. However, for the sake of our nation's young people, it is imperative that we examine the effects of gun control laws for our society, and furthermore, to recognize that young black men like Trayvon and Jordan suffer from gun violence at such disproportionate rates. Banning assault weapons and tightening license requirements are important starting points as we consider how gun control laws must be reformed. Reforms should also include measures to protect and promote the safety and economic livelihoods of those in the inner cities for whom gun violence is not a rare horror, but a daily occurrence. Only then will merely existing as a young black man in America cease to be a position of such vulnerability. Identity – and life itself – should not be "threat enough."

Ashley Walker is a legal assistant with the firm Lichtman and Elliot, PC, in Washington, D.C., specializing in immigration and asylum law. She graduated from Dartmouth College in 2010 after studying English Literature and Arabic. Subsequently, she was a paralegal with Cleary Gottlieb Steen & Hamilton, LLP, working primarily on antitrust litigation and securities. She plans to pursue graduate study beginning in 2013.

Cryptoquote

"ZWNQDHXX PWDDSJ ZNKAH SYJ ZWNQDHXX: SDBT BKLRJ PWD ZS JRWJ. RWJH PWDDSJ ZNKAH SYJ RWJH: SDBT BSAH PWD ZS JRWJ." ¯ UWNJKD BYJRHN QKDL, EN.

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.

What Have you Been Reading Lately?

Crime, Punishment, and - Relativity? Fred Vargas's The Ghost Riders of Ordebec (2011)

By Jonathan Coleman

The deadline for the long-promised Mayan apocalypse may have come and gone, but miraculous things can still happen. One of the most enjoyable occurs when a very good book falls into your lap, virtually out of the blue.

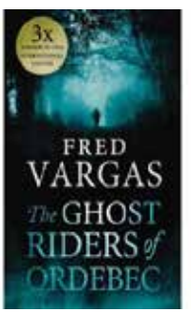
This recently (well, okay, a few months ago), happened to me when a French friend, at the conclusion of a dinner party, gave me a book with the title L'Armee furieuse,[1] which translated literally means The Furious Army. The author was somebody I had never heard of; a certain Fred Vargas.
Not being particularly interested in armies or fury, I had my doubts. But, my friend vouched for it, having previously enjoyed other books by the same author. This was a good sign: it was recommended by someone I knew, and if I liked it, I could look for more of the same. So without researching either the book or the author, I took a flyer: I read it, and I loved it.

The book, a work of crime fiction, begins when Paris Police Commissioner Adamsberg is called, as a matter of mere routine, to an apartment where a retired man has reported finding his wife dead. A trail of bread crumbs from the kitchen to the bed causes the inspector to ask questions, which leads him down an entirely unexpected, more sinister path. None of this has anything to do with the remaining plot of the novel, but it is an introduction to his unusual technique for sensing and solving crimes, more intuition than method.

The "real" plot involves a plea from a widow, concerned for her daughter and somewhat oddball sons, which draws Adamsberg from Paris to a small town in Normandy, Ordebec. This is a place inhabited by superstitious townspeople who believe in a thousand-year-old legend, subject to the political will and influence of a local noble, and where Adamsberg has no jurisdiction. Woven into the action are subplots involving the murder in Paris of a wealthy industrialist; a likeable arsonist; a torturer of pigeons; a sexy lawyer; and Adamsberg's own developing relationship with an adult son who he only recently discovered existed. There is, in short, a lot going on.
Of particular note is Vargas's ability not just to weave seemingly-unrelated plot lines together but to develop unconventional, even bizarre characters. Adamsberg's intuition and zen-like introspection is balanced by a colleague named Danglard, who while a walking, talking encyclopedia of information great and small, has personality tics of his own. Lina, the daughter of the woman who launches Adamsberg's adventure in Ordebec, is described in a way which makes her physical imperfections even more seductive than were she absolutely perfect: like the last melted caramel in a box, flawed but still wildly appealing. And through all of this, as in real life, not every question is answered, not every "t" is crossed, even at the end. There are no superheros. Some criminals simply get away.

Fred Vargas, by the way, is neither a Fred nor a Vargas: it's a woman named Frederique Audoin-Rouzeau (b. 1957) who happens to be, in addition to a fiction writer, a historian and archaeologist (with the Institut Pasteur, where she has studied the medieval bubonic plague). As it turns out, Ms. Audoin-Rouzeau's police novels have sold more than ten million copies and won three International Daggar awards (2006, 2008 and 2009) from the Crime Writers Association. Why Fred Vargas? Well, Fred is a diminutive of Frederique and Vargas derives from the Maria Vargas dancer character in "The Barefoot Contessa" – played by Ava Gardner. A little humor goes a long way.

Confession: I read L'Amee furieuse in its original French, but it is available in English. According to amazon.com, even though the translated book is out of print, it is available in electronic form for the Kindle, as The Ghost Riders of Ordebec, for a paltry $9.99. Highly recommended.



Jonathan S. Coleman practices law in Tampa with Johnson, Pope, Bokor, Ruppel & Burns, LLP. He graduated from the University of Richmond with a B.A. and studied in France at the Sorbonne. He earned his J.D. with honors from the University of Florida. Additionally, he has an M.A. and a Ph.D. from the University of North Carolina at Chapel Hill (French History). Jonathan is a bonafide Francofile and a huge fan of the detective and crime genres.

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Nora Everlove, Secretary
Kim Cunzo, Student Contest Chair

Presidential Trivia Part 2

Single Term Presidents
Can you name the twelve U.S. presidents who failed to win another term? This doesn't include presidents who died in office, such as Harding, or chose not to run such as Lyndon Johnson. They are: John Adams (1800), John Quincy Adams (1828). Van Buren (1840), Fillmore (1856), Cleveland (1888), Benjamin Harrison (1892), Teddy Roosevelt (1912), Taft (1912), Hoover (1932), Ford (1976), Carter (1980) and George H.W. Busch (1992).

On The Cover

"The Horse" Pastel on Paper
By Paul Nucci

Do you have original art or photographs that would be suitable for the cover of Friendly Passages? If so, send it to Nora@everlove.net

Social Media: What Is It, What It Does, and Why you should Care

By David Steinfeld, Esq.

If you are like many people, you look at the youth of today typing incessantly on their smartphone keyboards and wonder, "what do they have to say that is so important and to whom?!" Then, with a Scrooge-like "harrumph", you discount the entirety of social media and with a wave of your hand, brush off instantaneous global connectivity and the entire digital world of the 21st Century. Nice going . . . you just put your law practice behind others and destined your clients for potentially serious problems later.

Ok, so you don't have to jump into social media and begin posting what you are doing at every minute to the world, but you should at least understand what it is all about so you can use it, if you want to, or know how to apply it in future litigation. It is a proven fact that social media is a "gateway" drug and that you will wind up typing away on your smartphone everywhere you go if you start using it so read on at your own peril.

As something of an aside, this article is naturally not intended to provide legal advice or to form an attorney-client relationship with the reader; it is only meant to provide general information on the important topic of social media and its impact on the modern legal practice. Also, social media is not a gateway drug, really, that was just a joke.

What Is Social Media, Really?

Recently, I watched a very funny twenty year old Saturday Night Live fake commercial for robot insurance. It featured a well-known actor telling older people that one of the greatest risks they faced was robot attacks and that robots eat their medicine for fuel. The comedy of that ad highlights the fact that the world continues to change, that it is difficult to adapt to those changes, and that it is human nature to fear what we do not understand. Social media is no different; you may be reluctant to try it or use it because you don't understand it or think you don't. This article will give you an overview of social media to give you the confidence to give it a test drive and see whether you like it. Of course, if you don't, you leave yourself wide open to robot attacks.

Now, just to impress upon you the scope and scale of social media, by the summer of 2012, Americans spent something like 120 billion minutes a month on social media, up from 88 billion a year earlier. That accounts for upwards of 30% of all time spent on-line. Over 600 million people now use Facebook, which ranks as the most-used social media site, and more than half of all Americans have some form of social media account.

Also, mobile usage is up tremendously with the reduced cost and proliferation of smartphones. So what is the accuracy of these figures you ask aside from the fact that 62% of all statistics are made up on the spot? Who cares?

This is not a PhD thesis, but the fact of the matter is social media usage is up and you see it all around you and hear about it regularly. Thus, for better or for worse, it is here to stay.

Ok, so you realize you can't ignore social media anymore, but you're still not convinced that you need or want to use it and wonder what it really is. To break this information down succinctly, social media can be lumped into two general groups, (1) websites that host user-created content, like photos, videos, and text postings, and (2) sites that replicate that content and provide enhanced internet visibility.

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Presidential Trivia Part 3

Weak Executive Branch in the 19th Century
Only a handful of U.S. Presidents served more than one term in the 19c. They were: Jefferson, Madison, Monroe, Jackson, Lincoln, Grant, and Cleveland.

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Social Media

In the first category, there are some more commonly used or "older" sites, which in the social media world means more than five years old, such as Facebook, LinkedIn, YouTube, Google Plus, and Twitter, to name a few, and some arguably less well-known or "newer" sites like Pinterest, Ezine, Delicious, Squidoo, Slideshare, and About.me. Likewise, in the second category, there are older sites, like Twitter (yes, it also replicates content), Hootsuite, and Tweetdeck and newer ones such as Sharehaulic, Reddit, and StumbleUpon. Haven't heard of most of these? Don't worry, neither had I just a few years ago, therefore, it isn't difficult to wrap your mind around all of this as I did and understand how it can benefit your practice. Just think to yourself that the 12-year old you saw engrossed in her phone last Saturday morning was more than likely optioning positions on the Tokyo Exchange and definitely not telling her peers what she was shopping for or who liked who better. That will make all of this much easier to accept.

What Does Social Media Do? I Mean, What Are Its Benefits And Uses?

Alright, now you understand what social media is so you're likely wondering how it can benefit you. A very interesting phenomenon of social media is that credibility and visibility seem to have merged. When thousands of people accept what an actor or actress, for example, says on social media or they act in a certain manner because of that, it demonstrates that those who are visible through social media have instant credibility with the masses that they attract. It is a strange world where a store's profits can increase simply as a result of a reality TV show star's social media postings raving about the store, but it is the world in which we now live and the world that you must understand because it impacts your business and that of your clients. Ask yourself, would such postings qualify as unfair competition? What if they were disparaging to the competition? If you don't understand social media at a fundamental level, how can you properly advise your clients and potential clients on points such as these?

Another benefit of social media is the referral of business. I know it sounds like a cliché adult story and I really should have started this article with, "I never thought this would happen to me", but I have had clients find and retain me in my business litigation practice purely and entirely from the internet. I really thought it would not happen, at least not for another few years, but when it did I was pleasantly surprised. It shows a trend that some segment of our population is looking on-line for professional help and advice.

So, if you are not using social media, I thank you because you are allowing me and everyone else to capture that business. If you want to see what you can do on-line and how you can show potential clients who you are with a few simple clicks of a mouse or pokes of a phone screen, look at my site, www.davidsteinfeld.com. I never imagined that I would be one to write articles and make videos about Florida business law, e-discovery, and commercial litigation, but they are actually fun to do and if I can, you can too.

One other social media benefit is networking, instantaneous communication, and the sharing of information, knowledge, and documents. Not long ago, I met a pipe smoker in Japan on Facebook. We corresponded and I sent him a corncob pipe and some tobacco and in return he mailed me a Japanese pipe and some of their tobacco. He has since become the President of the Pipe Club of Japan. How amazing is that?! Ok, candor to the tribunal, I cheated a bit because I lived in Japan as a Rotary Exchange Student and I speak Japanese, but without social media we would not have been able to connect and build a friendship that easily across the planet.

When I was in the Army and stationed in South Korea, I practically needed an act of Congress to get a phone line to call back to the States. Now, with social media, I was able to Skype with my old Army buddy who was the Military Judge there and have a real-time video and voice conversation with him. This technology is available to us all so why not use it? With the permission of my opposition, I Skyped my client into a mediation not long ago, which saved my client a tremendous amount of money on airfare and hotel charges. That is just one way to use social media for the benefit of our clients.

So Why Should You Care - Social Media In Litigation

Now, getting to the heart of the matter, you understand social media. You use or are at least willing to try social media. So how do you integrate it into litigation or how does it factor in? First, you already know that our Florida Rules of Civil Procedure added e-discovery components on September 1, 2012. You are also likely aware that the comments to those new Rules make it clear that the Courts will not look favorably upon counsel that claim ignorance of e-discovery. Therefore, to protect yourself and your clients, you must understand social media and e-discovery.

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Before Libel and Slander Lawsuits: Settlements by Dueling

By Richard Wires

Before countries in the latter nineteenth century began enacting libel and slander laws, personal disputes were often settled by dueling, an aggrieved individual citing an injury to someone's honor and demanding proper satisfaction. The practice started in the early 1500s in Italy among its feuding families and factions. It spread rapidly after the Thirty Years' War ended in 1648, leaving veterans armed but unemployed and edgy, and enjoyed a "Golden Age" from 1770s through the 1870s. The appeal and importance of dueling, using swords or pistols, were more widespread than many realize. Such confrontations reflected a romanticized notion of the age of chivalry that suited the vanity and pretensions of the upper classes. But their quarrels and antics provided others with gossip, entertainment, and newspaper stories that help to perpetuate such contests.

Codes of conduct emerged in the late 1700s with Ireland producing the first written book of rules. Other countries followed: the "American Code of Duel" appeared in 1838. Specific practices varied among nations but the basic patterns were universal. Codes began with advice to calm down, think, and avoid any sort of rash action. Most other arrangements were negotiable with the aim not only to promote fairness but also to allow time for compromise and cancellation. Often both sides sought an excuse to avoid contests. The various steps and procedures can be described in general terms.

Involvement in a duel usually meant each participant named a second, a friend to carry out set tasks, although duels could be fought without a principal giving a second. Being asked to be a second was an honor not often declined. Scholars think the arrangement went back to when medieval knights had squires to assist them. Seconds were expected to have a social status equal to that of the principals they helped.

To guide them an instruction book published in 1793 explained the seconds' important role and various duties. Their first task was to negotiate a solution and if possible prevent the duel; otherwise they arranged the details of the duel through formal notes and private talks. At the event they were essentially in charge, as referees and witnesses, ensuring that everything conformed to the agreed terms. The seconds also loaded the principals' guns in each other's presence. Seconds were known to collude to end duels in ways letting the duelers save face. They might even decide when satisfaction was achieved and halt things. But they could do little with someone set on a course or outcome.

Challenges were issued for provocations that might be substantial or trivial, often resulting from drinking, gambling, or rivalry in romance, but also from rumors, slights, or a dog's behavior, anything affecting the challenger or someone the person sought to protect. Young military officers were especially quick to defend their honor or regiment; flirtatious women enjoyed the attention and sometimes engineered conflicts leading to duels. Only challenges from a social equal had to be accepted. Any from a social "inferior" were ignored or refused. The rules held that a verbal challenge should be followed by a polite formal note delivered by the challenger's second and covering four points: describing the alleged offense, explaining why satisfaction was expected, identifying the challenger's second, and requesting a time and place. Thereafter the seconds completed the details.

The person challenged could choose the weapon, pistols becoming common, but they never fully replaced the sword. Skillful handling of a sword showed an upper-class background, allowed more control, and gave the dueler a much better chance of surviving. But anyone choosing swords who then discovered the opponent was more proficient was trapped. Inequality in expertise was irrelevant.

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Settlements by Dueling

Many people thought they might do better with pistols. But early pistols only had one shot and would sometimes misfire; an accurate aim under pressure was a major problem for shooters. A misfire or a poorly aimed shot could leave the person defenseless. In later years agreements often allowed multiple shots in duels. It was not uncommon for frequent duelers to carry their own finely crafted dueling pistols in special boxes.

Determining the site for dueling depended on taste and publicity. Reasonable privacy was respected and precautions were sometimes necessary. The practice of having duels in the early morning, in rather isolated places and with few people present, reflected the belief or need that duels be private. The familiar scene of men standing back to back, taking ten paces, turning and firing, was not common because of far too many variables. What length of pace? Taken with what speed? Therefore distances and spots for standing were usually fixed and firing would occur upon a predetermined signal. Some duelists preferred flamboyance and showmanship. Rivals for the charms of a Parisian opera singer in 1808 ensured a crowd for their duel. They ascended in identical hot-air balloons and upon a signal when about a half-mile up, they fired blunderbusses at each other's balloon. One plummeted and killed the occupant; the other landed safely somewhat later. The public loved such events and stories.

What constituted "satisfaction" was personalized. It might be merely having the duel, a few sword clashes or shooting in the air, with each side declaring it was satisfied. The intent might also be to humiliate, wound, or in bitter disputes kill the opponent. Failure to understand an adversary's real intentions destroyed lives and reputations: while one person might not shoot or would fire into the air, the other might take more careful aim with the intent to kill. Though dueling was generally illegal and was condemned by religious leaders, enforcement was minimal, since the participants belonged to the privileged and influential elite. Probably only ten percent of duelists were tried and even fewer were convicted. And then the charge might be manslaughter or simple breach of the peace. Thus at the time when the poor caught stealing bread suffered long imprisonment, the upper classes could literally get away with murder.

Comments, Captions and Cryptoquote

Craig Hewitt, of Okeechobee, was first to submit the correct answer to the Cryptoquote in the last issue. Please note that not all of the e-mail issues are sent at the same time. They are mailed by location and the 19th Judicial Circuit is mailed first. We take into consideration our mailing schedule when determining the winner of any contest or puzzles. Someone sent in the same correct answer eight days later but he was actually very close to winning because of when he received his issue.

Regarding the cartoon caption contest, we had several clever captions for the burning in hell scene. Probably funniest of all, most of our caption writers assumed the characters engulfed in flames were lawyers. Please find the cartoon in this issue to see some of the answers.

If you read something you don't like in "Friendly Passages," please don't hesitate to let me know. Most of our articles are not controversial but we attempt to include at least one article in every issue that might provoke a countering opinion. We want your comments especially when you have another point of view.

Finally, I would also like to thank my new friend, Granville E. Petrie from Cedar Key, for his nice note. You made my day!

-Nora Everlove

Sometimes women fought duels with men or other women. In the early 1700s at a ball in Versailles two titled ladies, the Comtesse de Polignac and the Marquise de Nesle, had a scuffle later continued in the Bois de Boulogne with pistols. Both suffered minor wounds. Two English ladies met in Hyde Park with pistols in 1792. When only a hat was damaged, they fought with swords until one was wounded, after which they curtsied and left.

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Settlements by Dueling

Many famous people dueled. Lord Byron shot and killed a man in 1765; the writers Alexander Pushkin and Mikhail Lermontov died in dueling; French politician Gorges Clemenceau fought a dozen duels. Frequent duelist Andrew Jackson in 1806 killed a man whose shot had missed; such a deliberate act under the European codes would not have been permitted. There were so many challenges to General Sam Houston that he told one angry man in 1836 he would have to wait his turn. Alexander Hamilton and Aaron Burr engaged in America's most famous duel in July 1804. Hamilton had been the first Secretary of the Treasury and Burr was then Vice-President under Thomas Jefferson and an old enemy of Hamilton.

Coming to the Library for the first time?

We are located at 221 South Indian River Drive in downtown Fort Pierce

We are just South of the Clerk's new building and on the Courthouse campus. We are the only entrance on Indian River Drive. Usually you can find a parking spot on Indian River Drive but if none is available, there is a three story parking garage on 2nd Street directly across from the Courthouse.

From the south:
Take US 1 to Orange Avenue
Turn right (East) on Orange Avenue
To South Indian River Drive and turn right (South)
You'll see us on the right hand side of the Indian River Drive

From the West:
Take S.R. 70 (Delaware Avenue to US 1 and
Turn right (North) on US 1 to Orange Avenue
Turn right (East) on Orange Avenue
To South Indian River Drive and turn right (South)
You'll see us on the right hand side of the Indian River Drive

We hope to see you soon!

He blamed him for major setbacks in his career. When some of Hamilton's earlier remarks came to light, Burr's demand for an apology was rejected by Hamilton, and in the subsequent duel Hamilton was mortally wounded. Exact circumstances remain controversial. Who fired first? Had Hamilton intentionally shot over Burr's head? Did Burr plan to kill or was there unexpected damage in Hamilton's body? Even the seconds were unsure. But the outcome destroyed Burr's career in public life. Ironically Hamilton's oldest son had died in a duel at the same site in 1801.

In the late nineteenth century dueling lost its attraction and faded quickly. There were still duels, especially between sensational journalists and touchy politicians, but less public interest.

Vocal opponents now demanded the enforcement of official bans; military services made dueling a serious breach of discipline. Most of all the public turned against it. Though acquitted of charges at his House of Lords trial in the 1840s, Lord Cardigan was heckled in public for dueling. Newspapers had stories of greater importance. Duelers seemed rather foolish instead of romantic. Under newly enacted libel and slander laws redress was pursued in the courts. Some people regretted that only judgments and money awards could be obtained, however, feeling that their personal honor demanded direct action and more public vindication. But dueling could not survive as industrial and more democratic societies supplanted

For more information see John Norris, "Pistols at Dawn: A History of Duelling" (2009).

Author's note: The British spelling of "dueling" is correct in the title of this book.

"Duel" is correct; it is not plural.

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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Social Media

While at present there is more Federal case law on the topic, a recent Virginia State Court decision sanctioned an attorney for over $500,000 for allowing his client to remove posts and photos from social media sites that were relevant to the case. The worst part is that the direction to do so came not from the attorney, but a paralegal, however, the Court found that the attorney learned of it and allowed it. While that may be an extreme case, the day is not far off when we may have Florida decisions along those lines.

Let me pose a hypothetical to illustrate the impact of social media in litigation and e-discovery's place in it. Let's take a client who advances a personal injury claim and asserts that he or she can no longer lift, bend, or whatever. Then, during the course of the litigation, that person or even a friend of that person posts photos of them skiing and having a great time in the hot tub near the slopes. If you are defending the case, those photos will make your client very happy. If you are prosecuting the case, they probably won't. As you can see, understanding social media and how to ethically obtain those social media posts are now a relevant and important part of the practice of law in Florida.

Social media posts in the context of litigation can be thought of in two categories; (i) open source, which is unprotected information voluntarily placed in the public domain, and (ii) protected or compartmented information which has limited access or is intended to only be viewed by those the creator allows to see it. The common methods of obtaining information in discovery, such as Requests to Produce, Interrogatories, Request for Admissions, and physical inspections of hard drives, to name a few, still work for electronically stored information (ESI) and social media posts. What practitioners must do is understand applicable case law in the e-discovery arena and word these requests in a specific and acceptable manner.

In addition to obtaining ESI, including social media posts, in a lawsuit, counsel now have an obligation to act in advance to preserve this ESI through such mechanisms as Litigation Hold Notices. Florida attorneys must also be aware of and advise their clients of the liabilities for failure to preserve ESI, whether it is requested or, in some cases, not. For further information on this, you are welcome to view the two featured videos on e-discovery on the homepage of my site at www.davidsteinfeld.com.

Conclusion

In conclusion, Florida attorneys can now ill afford to ignore social media. While you may not desire to tell the world what you think of a movie you just saw through social media posts, you at least must understand the basics of social media, how it can impact a lawsuit in which you are involved, and how to properly and ethically advise your clients and prospective clients of this in an appropriate manner.

When you use social media in your law practice, it is prudent to review the Florida Bar Rules on advertising. It is also a good idea to be cautious in what you post and to recognize it is available to the world virtually on a permanent basis. When in doubt, contact the Bar.

What's New At The Law Library

Live CLE Presentations

The Rupert J. Smith Law Library is pleased to present the following "Lunch and Learn" programs:

Friday, February 22 at noon in the library's large conference room,
Mike Fowler presenting "Medicaid Reform and the New Power of Attorney Statute."

and

Friday, March 15 at noon in the library's large conference room,
Robert Gorman presenting "Competency, Capacity and Detecting Financial Exploitation of the Elderly."

$25 includes your lunch. Please RSVP at 772-462-2370. Please note if you cancel less than 72 hours before the meeting, you will be expected to pay the $25 fee because we've already ordered your food.

We hope to see you there!

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Social Media

If you are still unsure about social media and would like to get more information and a tutorial of sorts on how to start using it or how to use it more effectively, check out the free webinars put out by the free networking group, the Business Connection at http://www.yourlinktolocalbusiness.com. Click the "Blog" tab and down on the right side of the new window you will see a list of items. Follow that to Networking Education, Educational Videos, and LinkedIn Training (the direct link is http://pbbcblog.palmbeachbusinessconnection.com/group-video/linkedin-training).

The Business Connection is a free and unrestricted networking group with about 10,000 members from Miami to the Treasure Coast. It holds regular, in-person coffee and breakfast meetings at various locations and has on-line groups and forums that many members use. The Business Connection is a good way to interact with others who are also trying to get their arms around social media and understand its applications in business. The Calendar tab on yourlinktolocalbusiness.com provides the time and location for the events. There are even very nice people in it who will teach you privately how to create on-line profiles.

As businesses, in particular, gravitate to storing all their data electronically and individuals increasingly live in the digital world of social media, you can no longer ignore social media. It is not as difficult as you likely thought and once you try it, you will develop more comfort with it and may even come to embrace it. Good luck and see you on-line.

David Steinfeld, Esq. is one of just over 200 of the almost 100,000 attorneys in Florida that is a Board Certified Expert in Business Litigation Law by the Florida Bar. He is the Owner of the Law Office of David Steinfeld, P.L. in Palm Beach Gardens and is rated AV-Preeminent by Martindale-Hubbell, which is the highest peer review rating an attorney can receive. He is a Member of the Florida Bar's Business Litigation Board Certification Committee that oversees certification in that area, the Florida Bar's Subcommittees on Florida's LLC and Corporate laws, and serves on the Palm Beach County Bar's Professionalism and Business Litigation Education Committees. Informative videos and articles on business litigation, e-discovery, real estate, and business law, as well as social media links, can be accessed at www.davidsteinfeld.com.

New Florida Bar CLE Programs Available at the Library

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New Frontiers in Post Conviction Litigation: A Practical Guide	4.5	3	3/20/2014
ELULS Annual Update	16.5		12/9/2014
Case Law Update 2012: Stay Up to Date….Family Law	2.5	.5	4/24/2014
Guardians and Attorneys Ad Litem: Voicing A Child's Best Interest	2.5		01/25/2014
An Introduction to E-Filing and E-Discovery	2.0		03/21/2014
Annual Ethics Update: Ethics Technology & Trust Accounting	5.0	5	4/14/2014
Practice Management Track 6th Annual Solo & Small Firm Conference -			
The Extraordinary Lawyer: Minding Your Own Business	9.0	2	3/21/2014
32nd Annual RPPTL Legislative & Case Law Update	8.0	1	1/27/2014
Nuts and Bolts of Workers' Compensation Appeals	1.5		4/15/2014
Basic Bankruptcy, Collections and Foreclosures	8.0	1	4/19/2014
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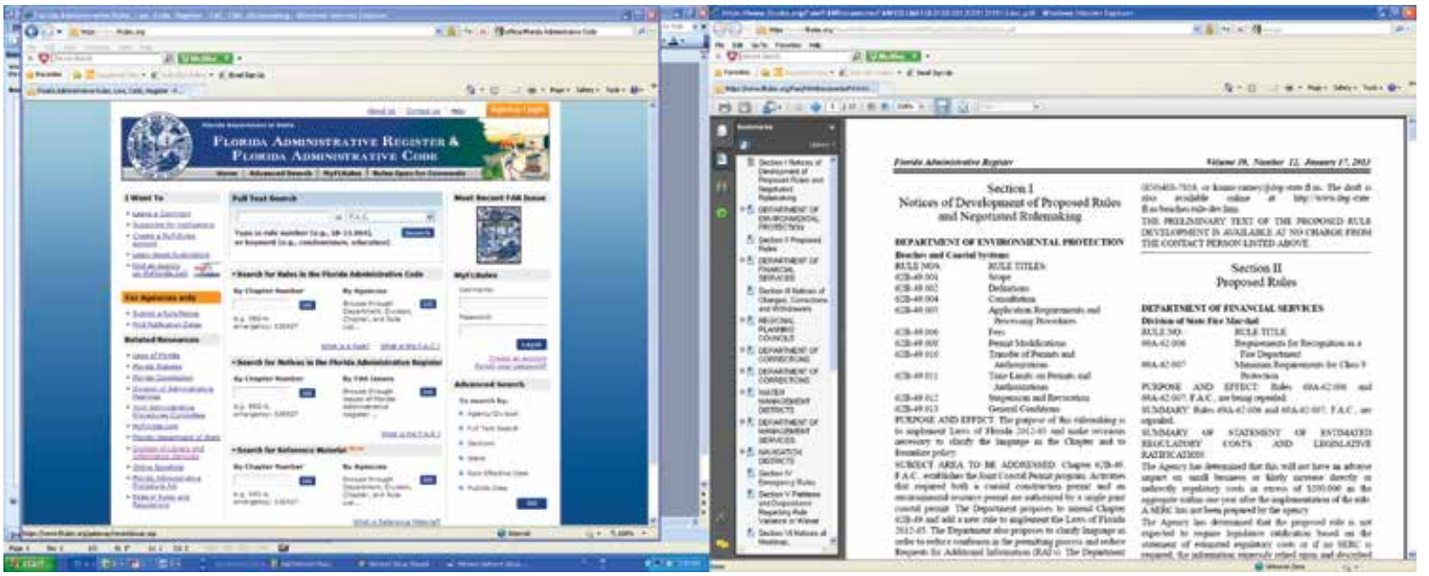
Keeping up with the new Florida Administrative Code and the Florida Administrative Register

Are you familiar with the State's new website?

http://www.flrules.org

Here, you'll find the "Florida Administrative Register," (on the right below) which replaces the "Florida Administrative Weekly" as well as the new *official* version of the "Florida Administrative Code." The main screen of the website (on the left below) gateways you into the "Florida Administrative Code" and "MyFLRules" which allows you to set up alerts, view proposed changes, as well as comment on them and receive replies, and set up a list of your favorite Chapters and Rules.



The Florida Administrative Code will continue to be published by Lexis but it will no longer be the official version. If you would like to learn more about the online Florida Administrative Code as well as the Florida Administrative Register, please call the library at 772-462-2370 and let us know. As soon as we have two or three names, we will schedule a training session. You can bring your own laptop and set up your password or you can work on one of the library's laptops.

Please remember that the "Florida Administrative Weekly" will no longer be published and the information will only be available online through http://www.flrules.org.

Presidential Trivia Part 4

Thirty Were Lawyers but Fourteen Presidents Came From Other Professions

Which U.S. Presidents were not lawyers? Zachary Taylor (soldier), Andrew Johnson (tailor), Ulysses Grant (soldier), James Garfield (school teacher), Theodor Roosevelt (soldier), Warren Harding (publisher), Hoover (engineer), Truman (haberdasher), Eisenhower (soldier), Kennedy (writer/sailor), Lyndon Johnson (teacher), Carter (farmer/sailor), George H.W. Bush (oilman), George W. Bush (business). That's fourteen in all but let me know if I missed someone! I think it's surprising that ten of them served since 1900.

Upcoming Bar Events

St. Lucie County Bar Association

Friday, February 1st at noon
Regular meeting at Cobb's Landing

Friday, March 1st at noon
Regular meeting at Cobb's Landing
More details at:
http://www.slcba.org

Port Saint Lucie Bar Association

Wednesday, February 20 at noon
Regular meeting
More details are available at
http://pslba.org

Martin County Bar Association

Friday, February 15th
Regular Monthly Meeting
MCBA Annual Bench-Bar Professionalism Program
Monarch Country Club

Friday, March 15th
Regular Monthly Meeting
Major General Clyde Tate
More details are available at
http://www.martincountybar.org

Law Library Hours

Monday through Thursday from 8:30 a.m. to 7:00 p.m.
Fridays from 8:30 a.m. to 4:30 p.m.
Saturdays from 9:00 a.m. to 1:00 p.m.
Sundays from 1:00 p.m. to 4:00 p.m.

The library is closed when then the court house is closed as well as any holidays that fall on a Saturday or Sunday.

In Observance of Easter
The Library will be closed:
Friday, March 29th 2013
Saturday March 30th 2013

Student Art Contest Student Essay Contest

The 2013 Law Day Student Art Contest and NEW! The Student Essay Contest St. Lucie County Students

Each year the Law Library celebrates Law Day by promoting citizenship through a Student Art Contest. For students K through 12, with prize money excess of $2000, this year the art contest will focus on the American Bar Association theme, "Realizing the Dream: Equality for All." The complete rules are at the Rupert J. Smith Law Library Website: http://www.rjslawlibrary.org.

Making this an even more exciting program, for the first time, all middle school and high school students are invited to participate in the Law Day Essay Contest. Following the same ABA theme, the students will write on the theme, "Realizing the Dream." The Essay Contest first prize for High School is $750.00 and the total prize money is almost $2000. Again you can find the complete rules at the law library website.

Typically we have 400 students participate in the art contest. We hope to have as many young authors submitting their thoughts in essay form.

A special thank you to the following sponsors:
Trustees of the Rupert J. Smith Law Library
Friends of the Rupert J. Smith Law Library
St. Lucie County Bar Association and
Gordon & Donor, P.A.

Details for the upcoming Law Day Reception, scheduled for Wednesday, May 1, will be in the upcoming "Friendly Passages" issue. We hope to see you there!

Happy Valentine's Day