Friendly Passages

Supporting Equal Access to Law in Florida

September/October 2015

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

September/October 2015

Table of Contents

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Friendly Passages — Supporting Equal Access to Law in Florida — September/October 2015

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On The Cover

"Lined Seahorse" Photograph
By James Wilder

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On Behalf of the Publisher

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

Turning and turning in the widening gyre
The falcon cannot hear the falconer;
Things fall apart; the centre cannot hold;
Mere anarchy is loosed upon the world,
The blood-dimmed tide is loosed, and everywhere
The ceremony of innocence is drowned;
The best lack all conviction, while the worst
Are full of passionate intensity.

Surely some revelation is at hand;
Surely the Second Coming is at hand.
The Second Coming! Hardly are those words out
When a vast image out of Spiritus Mundi
Troubles my sight: somewhere in hands of the desert
A shape with lion body and the head of a man
A gaze blank and pitiless as the sun,
Is moving its slow thighs; while all about it
Reel shadows of the indignant desert birds.
The darkness drops again, but now I know
That twenty centuries of stony sleep
Were vexed to nightmare by a rocking cradle,
And what rough beast, its hour come round at last,
Slouches towards Bethlehem to be born?
W.B. Yeats, "The Second Coming"

Commonly regarded as a thing of the past, social status as an "untouchable" continues to follow those who are members of low-ranking castes in India, or who are even outside the caste system that lives on as the heritage of a centuries old Hindu tradition. Known also as Dalits, these are people whose occupations and habits of life are deemed to involve ritually unclean activity, such as fishermen, sweepers and washermen. They are segregated in hamlets outside towns and villages, forbidden entry to schools, temples, access to communal water wells. Their very touch is seen as polluting. They face violence if they refuse to take on the hazardous job of emptying human waste from private and public latrines, the task of "manual scavenging", commonly done by hand. The Indian Constitution officially bans the classification, but they nevertheless remain pariahs, hated outcasts of society.

The law of early colonial America likewise recognized and created such a class of individuals. Plymouth Colony, for example, adopted the Statute of 1671, whereby Puritans required miscreants to wear two large capital letters on their uppermost garments on the arm and back, "and if any time they shall be found without the letters so worn while in this garment they shall be forthwith taken and publicly whipped". Drunkenness, blasphemy, theft and pauperism were all signified by forcing the offender to wear the initials of their crime. Nathaniel Hawthorne described the practice in his 1850 novel **The Scarlet Letter**, for women found guilty of adultery, forced to wear the outward evidence of shame and obloquy wherever they went, constantly exposed to contempt and scorn.

Even today American law fosters a class of untouchables. These are individuals sentenced by the legal system to a lifetime of social ostracism and isolation, condemned to public shaming and given little means of redemption, constituting a permanent underclass forced into perpetual poverty and denied meaningful prospect of rehabilitation. It is true of anyone branded by the law as a "felon". Such people take on a status that marks its wearer for life, regardless of the gravity of the offense. It's a huge class of Floridians who are so affected, over one and a half million people, condemned to harsh, lifelong consequences for even minor misconduct, the college student who carries false ID to get into adult activities, the young person who is caught with more than 20 grams of marijuana, the buyer who fails to remit more than $300 in sales tax, any nonviolent activity officially classed as a Class 3 felony. Not for them does there shine the bright promise of proportional punishment offered by Art. 1, Sec. 17 of the Florida Constitution ("Excessive fines, cruel and unusual punishment, attainder, forfeiture of estates, indefinite imprisonment… are forbidden."). All are forced to wear the open badge of calumny, exposed to a lifetime sentence of privation, derision and distain.

Diamond Litty, Public Defender for the Nineteenth Circuit, well described some of the many disabilities permanently imposed on felons in "Is a Felony Conviction a Life Sentence", **Friendly Passages** (May/June 2015): "… your arrest record is not private or confidential… you may not be able to live with or visit someone who lives in public or Section 8 housing… You may have your license suspended… you will not be able to obtain State of Florida college financial aid… you will not be eligible for food stamps… you will not be able to obtain employment… Your photograph may be posted on the Florida Department of Corrections website… ."

The process of degradation begins with the experience of imprisonment. See Fla. Stat. 921.002(1)(b)("The primary purpose of sentencing is to punish the offender. Rehabilitation is a desired goal of the criminal justice system, but is subordinate to the goal of punishment."). He or she

continued on page 4

continued from page 3

On Behalf of the Publisher

is ill-prepared for what comes next: "Survey results suggest that between 60 to 75% of ex-offenders are jobless up to a year after release." National Institute of Justice, "Research On Reentry and Employment" (April 3, 2013). The mere fact of incarceration reduces lifelong prospects of employment by up to 30%. Center for Economic and Policy Research, "Ex-offenders and the Labor Market"(2010). Only 40% of employers will even consider hiring a convicted felon, while even fewer will consider a felon for a job that consists of customer services or for positions with little employee supervision. Center for Economic and Policy Research, supra.

Civil rights are taken away with no hope of restoration. Article VI, sec. 4(a) of the Florida Constitution states that "a person convicted of a felony or adjudicated in this or any other state to be mentally incompetent shall not be qualified to vote or hold office until restoration of civil rights or removal of disability". The Florida Board of Executive Clemency restored civil rights in the last four years to 1,534 nonviolent felons, while 1.6 million, or about 9% of the state's population, await restoration. At the current rate, the average felon must expect to wait over 4,172 years before he or she is allowed to serve on a jury, hold office or cast a vote, left to wander the streets for eternity like a zombie, the civilly undead. It's the highest rate of disenfranchisement in the nation by far, and about half of all disenfranchised Americans in the entire country are right here. Miami New Times, "Ten Percent of Floridians are Forbidden from Voting Thanks to Previous Felony Convictions" (July 24, 2015). Almost a quarter of all Florida's African Americans, 23.3 percent, are thus prevented from voting. Miami New Times, supra. And that "does American democracy no favors to keep from the ballot box members of a group of people who, by virtue of the amount of melanin in their skin, were denied that very fundamental right for most of America's history." The Economist, "Voting rights: Pointless, punitive and permitted" (May 17, 2013).

It is no cause for wonder that Diamond Litty concludes in her article that "… if you're not exhausted and overwhelmed, you should be. Imagine how the convicted felon feels, especially if he or she made a mistake, wants to be successful and productive, and will never, ever break the law again. How do I rise above? How do I succeed?" They don't. They won't. They aren't permitted to. And it has consequences. When dignity is taken away, when hope dies, a person changes. As Laura Hellenbrand observed, "Dignity is as essential to human life as water, food and oxygen. The stubborn retention of it, even in the face of extreme physical hardship, can hold a man's soul in his body long past the point in which the body should have surrendered it. The loss of it can carry a man off as surely as thirst, hunger, exposure and asphyxiation, and with greater cruelty… degradation could be as lethal as a bullet." Results are predictable. The chances are almost 30% that a released inmate will return to prison within three years of release, irrespective of the crime that was initially committed, and nearly 50% of all new prison admissions are by those who previously served time. Florida Tax Watch/Center for Smart Justice, "Inmate Reentry in Florida: The impact of reentry programs on Florida's recidivism rate" (December 2013). For them, "freedom is just another word for nothing left to loose", justice an empty promise of nothing more but the same.

Frederick Douglas warned that "where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is an organized conspiracy to oppress, rob and degrade them, neither persons nor property will be safe." When that class is made up of over one and a half million alienated Floridians, society now looses a fearful beast upon itself and we shall each of us pay the price.

Come To The Next Friend's Meeting

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.

Application of Daubert v. Merrell Dow Pharmaceuticals, Inc. in Florida

Examples from orders on motions in limine

By The Hon. F. Shields McManus, Circuit Judge

This article will present a basic review of Florida's new rules governing the admissibility of expert testimony as well as some examples of the application of the rules.

ADOPTION OF THE DAUBERT TEST

In 2013, the Florida Legislature amended the Florida Evidence Code to adopt the standards for expert testimony as provided in *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579 (1993). The *Daubert* test applies not only to "new or novel" scientific evidence, but to all other expert opinion testimony. *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999).

Section 90.702, Florida Statutes, now provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:
>
> (1) The testimony is based upon sufficient facts or data;
>
> (2) The testimony is the product of reliable principles and methods; and
>
> (3) The witness has applied the principles and methods reliably to the facts of the case.

EXPERT QUALIFICATIONS

A witness may be qualified as an expert through specialized knowledge, training, or education, which is not limited to academic, scientific, or technical knowledge; an expert witness may acquire this specialized knowledge through an occupation or business or frequent interaction

with the subject matter, but general knowledge is insufficient. *Chavez v. State*, 12 So. 3d 199, 205 (Fla. 2009); *see* Fla. R. Civ. P. 1.390 (defining expert as one holding a professional degree with training and experience or "one possessed of special knowledge or skill about the subject upon which called to testify"). A person does not necessarily need to have a degree in a specific field in order to qualify as an expert. *See Sihle Insurance Group, Inc. v. Right Way Hauling, Inc*., 845 So.2d 998 (Fla. 5th DCA 2003) (a public adjuster who prepared appraisals and negotiated settlements for property owners who had experienced losses was qualified to testify about lost profits), and *Weese v. Pinellas County*, 668 So. 2d 221 (Fla. 2nd DCA 1996) (a witness may testify as an expert if he was qualified to do so by reason of knowledge obtained in his occupation or business). As far as health care providers, however, the legislature has provided specific standards establishing minimum qualifications of persons giving expert testimony concerning the prevailing professional standard of care. Generally, the witness must practice the same specialty and have other qualifications similar to the defendant health care provider. §766.102 (5-8), Florida Statutes (2014).

continued on page 6

continued from page 5

Application of Daubert v. Merrell Dow Pharmaceuticals, Inc. in Florida

THE JUDGE AS GATEKEEPER

The legislature specifically intends for trial judges to apply to all expert testimony principles which are in conformity with *Daubert* and *Kumho Tire*. The judge must be a gatekeeper to exclude evidence which is unreliable and may confuse or mislead the jury. The trial court has broad discretion, however, in determining how to perform its gate keeping function when addressing the admissibility of expert testimony. A judge's determination that an objection was not timely raised will be reviewed for abuse of discretion. An objection to an expert's opinion should be made in a timely fashion so that the expert's proposed testimony can be evaluated with care. It should not be a "gotcha" tactic. See *Booker v. Sumpter County Sheriff's Office / North American Risk Services*, 166 So.3d 189, 40 Fla. L. Weekly D1291, 2015WL3444359 (Fla. 1st DCA 2015) (affirming judge's finding that objection was untimely when made four days before the final hearing which was five months after the first notice of the IME report and four months after the examining physician's deposition).

THE OPINION MUST BE RELIABLE AND HELPFUL

If an objection is timely raised, the party offering the expert opinion testimony bears the burden of establishing, by a preponderance of the evidence, the expert's qualification, reliability, and helpfulness. *Kilpatrick v. Breg, Inc.,* 613 F.3d 1329, 1335 (11th Cir. 2010), citing *McCorvey v. Baxter Healthcare Corp.,* 298 F.3d 1253, 1256 (11th Cir. 2002).

First, the judge must determine whether "scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue." § 90.702. The judge should also consider §90.403.

Exclusion on grounds of prejudice or confusion. — Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence.

If it meets these standards, then the judge must determine if the proffered testimony is truly scientific. Under *Daubert*, "the subject of an expert's testimony must be 'scientific knowledge.'" 509 U.S. at 590. "[I]n order to qualify as 'scientific knowledge,' an inference or assertion must be derived by the scientific method." *Id*. The touchstone of the scientific method is empirical testing — developing hypotheses and testing them through blind experiments to see if they can be verified. *Id*. at 593; see also *Black's Law Dictionary* 1465-66 (9th ed. 2009) ("[S] cientific method [is] [a]n analytical technique by which a hypothesis is formulated and then systematically tested through observation and experimentation."). As the United States Supreme Court explained in *Daubert*, "This methodology is what distinguishes science from other fields of human inquiry." *Id*. at 593. Thus, "a key question to be answered" in any *Daubert* inquiry is whether the proposed testimony qualifies as "scientific knowledge" as it is understood and applied in the field of science to aid the trier of fact with information that actually can be or has been tested within the scientific method. *Id.* "General acceptance" from *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) (the *Frye* test) can also have a bearing on the inquiry, as can error rates and whether the theory or technique has been subjected to peer review and publication. *Id*. at 593-594. Thus, there remains some play in the joints. However, "general acceptance in the scientific community" alone is no longer a sufficient basis for the admissibility of expert testimony. It is simply one factor among several. Subjective belief and unsupported speculation are henceforth inadmissible. *Id.* at 590.

Pure opinion testimony is prohibited. The Legislature expressed its intent to "prohibit in the courts of this state pure opinion testimony as provided in *Marsh v. Valyou*, 977 So.2d 543 (Fla. 2007)." Ch. 2013-107, § 1, Laws of Fla. (2013) (Preamble to § 90.702). No longer will pure opinion or ipse dixit expert testimony be admissible as the Florida courts allowed under the *Frye* test. *Perez v. Bell South Telecommunications, Inc.,* 138 So.3d 492 (Fla. 3d DCA 2014).

Daubert outlined four considerations: testing, peer review, error rates, and acceptability in the relevant scientific community. These four tests for reliability are known as the *Daubert test*. The four factors in *Daubert* are simply illustrative and the court may consider other factors to determine reliability. Additional factors for reliability may be found in the advisory committee notes to Federal Rule 702. These include:

(1) Whether the expert is proposing to testify about matters growing naturally and directly out of research he has conducted independent of the litigation, or whether he has developed his opinion expressly for purposes of testifying;
(2) Whether the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion;
(3) Whether the expert has adequately accounted for obvious alternative explanations;

continued on page 7

continued from page 6

Application of Daubert v. Merrell Dow Pharmaceuticals, Inc. in Florida

(4) Whether the expert is being as careful as he would be in his regular professional work outside his paid litigation consulting; and

(5) Whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give.

EXAMPLES OF ORDERS FROM CASES

Payne v. C.R. Bard, Inc., 2014WL988754 (M.D., Orlando, Florida. 2014).

In this medical device products liability action involving defective device and causation experts, the trial judge excluded the testimony of Frederick Hetzel, Ph.D., but allowed the testimony of Timothy Harward, M.D. The case involved the failure of a Bard G2 inferior cava filter, a metal device placed in a person's inferior vena cava ("IVC") as a mechanical barrier to prevent thrombi from becoming a life-threatening pulmonary embolism.

The trial judge found that despite Dr. Hetzel's impressive education in chemistry, his education did not qualify him to testify because metallurgy, rather than chemistry, was implicated in plaintiff's claim. Although he had some limited experience on similar product development, it was only conceptual and occurred more than 20 years before. His experience was not tied to the opinions that he offered.

Furthermore, the judge found that Dr. Hetzel's methodology did not support a finding of reliability. The witness reviewed only three deposition transcripts, and he referenced too few scholarly articles, most of which discussed unrelated medical products for hip implants. His work in developing his opinions was called "slipshod" and developed solely in the context of this litigation.

Dr. Harward opined that the plaintiff's symptoms were caused by inflammatory response to the strut in his left lung and fibrosis in the pulmonary arteries which was exacerbated by recurrent pulmonary emboli that occurred when the IVC was no longer properly covered due to the failure of the G2 filter. The trial judge found that this differential diagnosis was properly based on eliminating each of the potential causes for the patient's symptoms until reaching one that could not be ruled out? or determining which of those that cannot be excluded was the most likely.

He did not rely solely on the temporal proximity between the G2 filter failure and the onset of symptoms to establish medical causation. The judge found that although the opinion was admittedly speculative it did not depart from the normal practice of diagnosis any more than the defendant's causation expert. In fact, they were consistent in part. The defendant's medical expert diagnosed the plaintiff's illness was due to chronic pulmonary hypertension from chronic pulmonary emboli, acquired over a long period of time. Thus, the court found that Dr. Harward's opinion was reliable and admissible.

Therese Mendy v. Dianne Rennick, Case No. 31-2013-CA-786 (19th Cir. Ct., Indian River County, Fla., 2014).

The trial judge denied plaintiff's motion to exclude testimony of Donald J. Fournier, Jr., P.E., a mechanical engineer with 22 years of experience in accident reconstruction, who offered opinions on the applicability of various codes to the intersection and site lines in question. The judge found Mr. Fournier qualified and that the methods used by him were sufficiently well-established and reliable and were admissible under § 90.702.

Mr. Fournier did not consider himself a "civil engineer" and did not have a degree in civil engineering. He was a licensed professional engineer in the State of Florida, a board certified diplomat in forensic engineering by NAFE, and an ACTAR accredited Traffic Accident Reconstructionist. He had a Bachelor of Science degree in Mechanical Engineering as well as a Master's Degree in Mechanical Engineering, including studies of statics, dynamics, design, drafting, and physics. He also had education in safety, ergonomics, human factors, municipal codes, state statutes, consensus standards and DOT regulations by a metric that was at the college level. He had taken accident reconstruction courses taught beyond the college level. The judge found that accident reconstruction draws upon the fields of both mechanical and civil engineering because it is concerned with studying the interaction of the human, the vehicle and the environment.

Mr. Fournier's opinions were based upon the following: the physical evidence preserved by the police department, a site inspection of the intersection in question, evaluation and analysis of the measurements and photographs taken of the subject intersection, a Ford F250 truck, and plaintiff-decedent's bicycle; photographs and measurements taken of numerous intersections throughout the City of Vero Beach, and the application of the city's Ordinance §71.08, FDOT Standard 546, and the county's Ordinance §911.15.

continued on page 10

The Drug War—Time To Wave a White Flag

By Charles Shafer

Recently, while speaking at a presidential forum in New Hampshire, New Jersey governor and presidential hopeful Chris Christie remarked, "… the war on drugs has been a failure -- well-intentioned, but a failure." One only need look at the startling statistics associated with the U.S. "War on Drugs" to see how right he is:

- Although the U.S. has less than 5 percent of the world's population, our country houses approximately 25 percent of the world's prison population.
- Since the war on drugs began in 1971, the U.S. prison population has surged 700 percent.[1]
- According to FBI data from 2012, an arrest for violating an American drug law occurs every 42 seconds.[2]
- There are more people now under "correctional supervision" than were in the Gulag Archipelago during Stalin's reign in Soviet Russia.[3]
- One in every 110 adults in the U.S. is incarcerated.
- Nearly half of those in federal custody are for drug offenses.[4]
- The number of persons in state prisons for drug offenses has increased thirteen fold since 1980.[5]
- The number of people arrested for a marijuana law violation in 2013 was 693,482. Of those, the number arrested for possession only was 609,423 (88 percent).[6]
- More than $51,000,000,000 spent by federal, state, and local governments annually.[7]
- More than a trillion dollars has been spent during the more than four decade's long drug war.
- African Americans, who make up 13 percent of the U.S. population, proportionally account for 13 percent of the nation's drug users. Of those, 30 percent are arrested for drug offenses, and nearly 40 percent of those are held in state and federal prisons for drug crimes. [8]
- Two thirds of those in U.S. prisons for drug offenses are persons of color[9] although their drug use is in the same proportion as that of whites.
- Of the 23.5 million Americans in need of substance abuse treatment, only one in ten receive it.[10]
- Conservative estimates of legalizing drugs could boost the U.S. economy by $88 billion a year in law enforcement savings and new tax revenue.[11]
- Mexican drug cartels now control illegal drug markets in at least 230 American cities. [12]
- More than 100,000 persons have been killed in Mexican drug violence since 2006.[13]
- Al Qa'ida and almost half of those groups on the U.S. State Department's Foreign Terrorist Organizations list have ties to the illegal drug trade.[14]
- Three out of four American voters look upon "the war on drugs" as a failure.[15]
- According to the U.S. Drug Enforcement Administration, as of 2012, the cost of one gram of pure cocaine cost $177.26, 74% lower than it was 30 years before.[16]
- Teens report that buying illegal marijuana is easier than buying legal beer.[17]
- Twenty-three states and the District of Columbia have decriminalized[18] marijuana possession in some form,[19] and four states: Alaska, Colorado, Oregon, and Washington, have legalized marijuana possession.

Decades of Drug War Policy

A brief review of drug law policy since the second half of the last century shows how we arrived at the current situation.

continued from page 8

The Drug War—Time To Waive The White Flag

In the 1960s, drugs came to symbolize a youthful rebellion period and social and political dissent. It was during this time that the government halted scientific research to evaluate the medical safety and efficacy of many drugs.[20]

The Comprehensive Drug Abuse Prevention and Control Act of 1970[21] divided controlled substances into five schedules or classes on the basis of their potential for abuse, and their safety under medical supervision. Title II of the Act, entitled "Control and Enforcement," forms the legal basis for the government's fight against abusive drugs and other substances.[22]

In June of 1971, President Nixon declared a "War on Drugs." Thereafter, his administration dramatically increased the size and presence of several drug control agencies, including the creation of the federal Drug Enforcement Agency in 1972, and began to push measures such as mandatory sentencing.

The Nixon administration also placed marijuana into Schedule I, the most restrictive category of drugs, pending a review by his appointment of a commission led by Pennsylvania governor, Raymond Shafer. In 1972, although the Commission unanimously recommended decriminalizing possession for personal use, the president ignored the report and rejected its recommendation.

Even so, during the 1970s, eleven states decriminalized marijuana possession. In October of 1977, the Senate Judiciary Committee voted to decriminalize possession of up to an ounce of marijuana for personal use.

Soon, however, public opinion began to change. During the 1980s, there was increasing media anti-drug campaigns, most notably Nancy Reagan's "Just Say No," initiative. Throughout the mid-1980s, zero tolerance policies were implemented. By the middle of the 1980s, Congress and state legislatures passed laws that rapidly increased prison populations. The 1986 Anti-Drug Abuse Act strengthened crimes for drug possession, and made sentences stiffer, including five (5) year prison terms for possession of 5 grams of "crack" cocaine.

Although Presidents Nixon and Reagan both paid lip service of the need to deal with the demand (rehabilitation and treatment) side of the drug war, neither did much in this area, preferring instead to concentrate the lion's share of money and resources on supply (prevention) side efforts. Reagan actually decreased funding for programs of education, prevention and rehabilitation.[23]

President Clinton, although increasing the percentage spent on rehabilitation and preventions programs, continued to concentrate on supply side drug war efforts, encouraging substantial increases for eradication programs and law enforcement.

However, the Clinton era also saw the emergence of a movement seeking a different approach to the drug policy. Prominent conservatives such as William F. Buckley, and civil libertarians including Nobel Prize winning economist Milton Friedman, joined in advocating for ending drug prohibition. A number of other educators, scholars, and members of government joined them.
Unfortunately, the era of George W. Bush witnessed a rapid escalation of the militarization of domestic drug law enforcement.[24] Although in the early part of this century federal drug reforms mostly stalled, state level reforms began a slow growth.

Most recently, our country has seen state after state reassess its marijuana laws, especially for medicinal purposes. Four states, as previously mentioned, have made marijuana for personal use completely legal.

The Failure of Supply-Side Drug War Eradication

As the U.S. war on drugs escalated, so did the view to eradicate drugs at their source. This falls in line with the view that the U.S. drug policy should place emphasis on supply side strategies.

continued on page 14

continued from page 7

Application of Daubert v. Merrell Dow Pharmaceuticals, Inc. in Florida

Jones v. CSX Transportation, Inc., 2014WL7670444 (Fla. 4th Judicial Circuit, Duval County, Fla., 2014).

The defendant moved to exclude the testimony of plaintiff's expert witness, Tyler Kress, Ph.D., an engineer specializing in the areas of biomedical/ biomechanical and human factors engineering. Dr. Kress's opinion correlated railroad work duties with the development of osteoarthritis in the knees. The trial judge found that while the witness was qualified, the proffered testimony of plaintiff's expert witness did not reach the level of scientific or technical reliability required under the standard of Section 90.702, Florida Statutes.

There was no independent investigation into the plaintiff's work tasks. Dr. Kress's opinion was based solely on the plaintiff's own description of his work. There was no evidence of the amount of force or the number of repetitions necessary to cause the plaintiff's condition. Dr. Kress did not quantitatively measure the plaintiff's exposure to the risk factors he found in the plaintiff's duties. Further, Dr. Kress did not apply the specific facts of the plaintiff's employment to existing studies so that his opinion could be tested or peer reviewed.

Further, Dr. Kress had not met the plaintiff in person, having only spoken to him on the phone for approximately one hour, nor had he spoken to any of the plaintiff's co-workers or supervisors, and he did not inspect the work conditions and areas where the plaintiff worked during his railroad career. Dr. Kress was not a medical doctor, nor did he speak with any of the plaintiff's doctors, and he did not review the plaintiff's medical records. His recommendations regarding occupational risks for the development of osteoarthritis in the knees had never been adopted by any industry, nor had it ever been cited in any medical research on the cause of osteoarthritis or cumulative trauma to the knees.

Dr. Kress testified that, while there are ways to measure the forces generated in getting on and off moving railroad cars and engines, he performed none of those tests. Further, he did not perform any measurement of the forces applied to knees as a result of walking on large ballast, small ballast, pea gravel, mud, cinders, sand, or any other walking surface normally found on railroads. Dr. Kress opined that using smaller ballast is safer for the railroad employee because it reduces the risk factors for development of cumulative trauma, but he conceded there was no scientific evidence to support that theory. Dr. Kress testified that he was unaware of any biomechanical studies involving a reduction of risk of developing osteoarthritis by reducing the amount of weight railroad workers lift when handling knuckles and end of train devices.

Dr. Kress's report made mention of the plaintiff climbing ladders on railroad equipment, but admitted in his deposition that he had no opinion as to when or how climbing a ladder could constitute an excessive biomechanical force.

None of the studies or programs cited by Dr. Kress amounted to peer reviewed scientific literature on the issue of musculoskeletal disorders. None of the studies cited by Dr. Kress correlated railroad work duties with the development of osteoarthritis in the knees. Thus, the testimony of the plaintiff's expert witness did not reach the level of scientific or technical reliability required under the standard of Section 90.702, Florida Statutes.

The author thanks Hon. Cynthia L. Cox, Circuit Court Judge for the 19th Judicial Circuit of Florida, for her contribution of materials for this article.

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.

Last Issue's Cryptoquote Answer

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

A mind always employed is always happy.
This is the true secret, the grand recipe, for felicity.
– Thomas Jefferson

The Sheppard Murder Case

By Richard Wires

From time to time there are murder prosecutions that gain wide publicity and remain in the public's mind for years. They include the Lizzie Borden case, the Lindbergh trial, the Sheppard case, the Manson trial and the O.J. Simpson prosecution. Generally such cases share a number of qualities: elements like prominent people or sex that attract continued attention, uncertainties about the crime or police investigation, controversy over the evidence and its interpretation, trials conducted in a heated atmosphere created by media hype. In these respects the Sheppard case is a classic. Its puzzling circumstances produced a significant ruling by the Supreme Court that an overcharged public environment can deny due process.

Dr. Samuel Sheppard was an osteopathic physician qualified as a neurosurgeon. His father and older brothers were also physicians practicing from a local private hospital. Sheppard said he found his pregnant wife, Marilyn, bludgeoned to death on the morning of 4 July 1954 in the bedroom of their house on Lake Erie's shore in the western Cleveland suburb of Bay Village. At 5:40 a.m. he telephoned the suburb's mayor, Spencer Houk, who went at once to the Sheppard house. The mayor and his wife found him bare-chested, saying "they" killed Marilyn, and that he was knocked unconscious for a time. When a police officer arrived at 6:00 he repeated his account. After entertaining friends the previous night Sheppard said he fell asleep on a downstairs couch, had been awakened when Marilyn shouted out his name, had struggled with a tall "bushy-haired" intruder in the house but been knocked out, recovered to find Marilyn battered but his son safe, and then caught up with and again fought with someone on the Lake Erie beach. But he was unclear about the number of assailants, used the words "form" and "biped" for the stranger, could not identify the "bushy-haired" form by sex, and changed his story in its several retellings. The police investigators found no signs of forced entry, or of a major struggle in the house, but some indications of a real or staged robbery.

Upon arriving at the scene Cuyahoga County Coroner Samuel Gerber took charge of official efforts. He concluded from police statements and his inspections that it was a domestic murder. Since Sheppard had been taken to Bay View hospital, the family-dominated facility, supposedly with serious injuries, Gerber left to interview Sheppard and get his clothes. Meanwhile some physical evidence was poorly protected. Even a curious neighbor who stopped by, the Cleveland Browns' famous quarterback Otto Graham, was allowed to see the murder room. By day's end the city's best-known defense lawyer, William Corrigan, was hired and had spoken with his new client. Later the autopsy findings set 4:30 as the approximate time of death. Soon investigators also discovered an apparent motive in Sheppard's philandering and lengthy affair with a laboratory technician. He repeatedly denied any sexual relationship but she readily admitted its character. Still no weapon was found. After more than two weeks had passed without Gerber having scheduled an inquest, Louis B. Seltzer, editor of one of the city's three daily newspapers, the *Cleveland Press,* openly asked in a front-page editorial on 21 July about family interference and official stalling.

Gerber finally held an inquest in a local school gymnasium on 22 July. He did not let Corrigan sit with his client, who wore a neck brace, nor did Gerber keep the packed gathering under control. In both his manner and account Sheppard struck many present as oddly detached. Testifying the next day he firmly denied he and Susan Hayes had engaged in a sexual affair at any time. Because the largely female crowd was so often raucous, Corrigan's call to a recorder to note such behavior angered Gerber, who had the attorney removed amid shouts and cheers. The inquest produced demands that Sheppard be questioned much more closely. He was now arrested and questioned but then released on bail. On that same day, 16 August, the grand jury met. Especially important was testimony by Susan Hayes, flown in from California where she had moved, admitting a long sexual relationship with Sheppard. The grand jury indicted Sheppard for first-degree murder.

There were key questions for both sides. Sheppard said he heard his wife call out to him, but the autopsy report placed her death at about 4:30, so why had he not telephoned for help until 5:40, and why not summon the police instead of Mayor Houk? Had he used the time to dispose of the weapon and bloodied clothes? How had someone entered the house and gone upstairs while he slept? Why had such an intruder and murderer, having fought with Sheppard inside the house, then remained around while he was upstairs? How serious was Sheppard's alleged head injury? Was his family exaggerating it to protect him? What weapon was used and what happened to it? Why had the defendant lied about his affairs? What might have provoked an attack on that morning? And perhaps most basic: if the killer was not Sheppard then who had it been?

Dr. Sam Sheppard

Marilyn Sheppard

continued on page 12

continued from page 11

The Sheppard Murder Case

On 18 October 1954 the trial began with Judge Edward Blythin presiding. A quiet man once Cleveland's law director and briefly its mayor, he denied motions for a change of venue or a delay, but Blythin clearly had great difficulty in preventing a media frenzy. He believed he lacked the authority to control the press. One incident is instructive. Among prominent journalists covering the trial was Dorothy Kilgallen, a syndicated columnist who also appeared on "What's My Line?", then a very popular television quiz show, and who later related a story involving Judge Blythin. She claimed that during jury selection he asked her to his chambers and remarked that the defendant was clearly guilty. But she said nothing of the matter until the judge had died and could not challenge her claim. Why would he have singled her out and made such a comment? And would not a responsible citizen and eager journalist have reported the incident at once? Her story scarcely seems credible but illustrates how later claims of "inside" information or secret roles often cloud the account of major events.

City newspapers followed the proceedings in sensational stories, printing the names and photographs of the 5 women and 7 men finally selected for the jury, and keeping the atmosphere tense through constant commentary. That soon everyone had an opinion was clear.

Although prosecutors thought they could establish a motive, absence of a weapon was a problem, so their case relied largely on circumstantial evidence. Could they overcome any reasonable doubt? The jury visited the murder scene, along with Sheppard in handcuffs, the day before the opening statements. Throughout his case Prosecutor John Mahon attacked the defendant's story. Using slides the autopsy doctor showed the attack's great brutality; police officers reported finding nothing to indicate a forced entry or to confirm the defendant's story of struggle; the lead detective described the inconsistencies in his early accounts. What about the weapon? Gerber's slides showed an impression on a blood-stained bed pillow that he believed was made by a "surgical instrument." But he could not identify what it might be. Others' slides showed blood on Sheppard's wrist watch and its strap. Susan Hayes testified about her lengthy relationship with Sheppard. Then the prosecution rested. It had presented a substantial case not much hurt in cross-examinations by the defense attorneys.

After rejection of Corrigan's motion for a directed acquittal on 2 December he opened the defense. He sought to show that the defendant's injury while struggling with the real killer had caused his early confusion and vagueness. The weakness was that supporting medical testimony came from his brother, Dr. Steven Sheppard, and other professional staff of the close-knit private


CLEVELAND PLAIN DEALER FINAL

SHEPPARD GUILTY, GETS LIFE; INNOCENT, DOCTOR INSISTS

QUAKE DAMAGES WEST COAST TOWN, TOSSES MAN TO DEATH IN POOL

BEATHERED BY AT LEAST ONE WOMAN

SECOND-DEGREE VERDICT COMES IN 102 HOURS

The headline

hospital. Then the defense acted to counter other points in the prosecution's case. Corrigan had decided to risk testimony by Sheppard. Apparently his efforts to prepare his client were ineffectual. During three days of questioning, Sheppard made a poor impression on those present. He seemed wooden and clinical, describing what happened in a stilted manner, his choice of words unnatural. He had been "stimulated" to go to his wife's aid, on his way had "visualized" some "forms" and fought with them, he had found his wife in "a bad condition" once upstairs, and had a "vague sensation" of fighting at the water. Under Mahon's cross-examination he finally admitted the two-year sexual affair with Susan Hayes. He had been caught in one lie. But he denied killing his wife.

In closing arguments on 15 December the prosecution stressed the crime's violence, the absence of evidence confirming the alleged struggles, and the inconsistencies in accounts Sheppard gave about events that holiday morning. It dismissed the claim that an early blow left him confused. The defense argued the prosecution had not proven a motive, or produced the weapon, and raised questions about the fairness of the entire proceedings. After the jury deliberated for several days with eighteen ballots, Sheppard was found guilty of second-degree murder on 21 December, receiving a life sentence with parole possible after ten years. State courts rejected his appeals. Before long his mother committed suicide and his father succumbed to cancer.

Soon experts and others were suggesting new evidence and theories of what happened. When a neighbor found a dented flashlight in the lake, many thought it the weapon, and others challenged the findings about blood types and spatter. Then another man, Richard Eberling, figured in suspicions. He had washed the Sheppards' windows and, when arrested in late 1959 on a larceny charge, had a ring that belonged to Marilyn. Was he a killer or just a thief? The blood evidence did not implicate him, however, nor apparently did a lie detector test. Many still thought him a good suspect. In 1989 when convicted in a different murder, Eberling hinted at knowing something about the Sheppard murder, but he revealed nothing before dying in 1998. Yet even in 2000 lawyers argued that Eberling was the killer. Meanwhile public sympathy was roused by a television program. Although their creator denied any connection to the case, the popular television show

continued from page 12

The Sheppard Murder Case

"The Fugitive" (1963-1967) and a 1993 Harrison Ford film featured "Dr. Richard Kimble" seeking his wife's killer, the likeable character one for whom viewers felt compassion.

Next came consideration by federal courts of whether exceptional publicity had made the trial unfair. Corrigan had died in 1961 and young F. Lee Bailey took on Sheppard's case. Bailey sought a writ of habeas corpus in spring 1963, arguing that public clamor had denied Sheppard his right to due process, and Sheppard was released on bond in summer 1964. Sheppard's trial to the federal district judge had been a "mockery of justice." But the Sixth Circuit Court of Appeals voted 2-1 to reinstate his conviction, though letting Sheppard remain free, pending an appeal eventually heard by the Supreme Court in February 1966. Representing the state was Attorney General William Saxbe, later a United States Attorney General, but the court sided 8-1 with Sheppard, saying the case's "carnival atmosphere" denied him due process. The prosecution quickly announced a retrial.

Sheppard's second trial began on 24 October 1966. For some reason the prosecutor, Leo Spellacy, presented a much weaker case. Though relying on Sheppard's womanizing as the motive, and reading his inquest denial into the record, he did not call Susan Hayes to testify. Under forceful cross-examination by the defense Sperber admitted uncertainty about what the bloody impression showed. A laboratory technician again testified about the blood splatter discovered on the defendant's wrist watch. But the perfunctory prosecution seemed to rely heavily on the jury drawing the conclusions it expected. Bailey did not call Sheppard. He realized the pitfall in letting the jury hear his story and exposing him to questioning. But his forensic experts disputed claims about the blood splatter and implied the real killer was left-handed. As further deflection from his client he called the mayor's wife, Esther Houk, suggesting her anger over the victim's alleged affair with her husband. His summary emphasized the absence of reliable evidence and the existence of reasonable doubt. The jury deliberated only one day, 16 November, initially favoring acquittal, 8-4, but the minority did not persist. Did the jurors have sufficient doubts, believe the time served was long enough, or want the case finally closed?

Things went badly for Sheppard after he was freed. While out on bond he married a German woman named Ariane Tebbenjohanns who had written to him; her older sister Magda had been married to and died with Nazi Germany's Propaganda Minster Josef Goebbels. They divorced now. Though he first resumed his surgical work, before long Sheppard had to quit, both his drinking and barbiturate habits severe. In 1969 he started appearing as a professional wrestler, even letting himself be called "Killer Sheppard" in the billings for matches, and his coach's daughter became the third Mrs. Sheppard. That career soon ended. Sheppard died of liver problems at the age of forty-six in 1970.

One more jury considered the murder case. In 1997 Sheppard's son in his father's behalf filed a civil suit alleging his wrongful imprisonment by Cuyahoga County. The bodies of both the late Sheppards were exhumed for analysis. During an eight-week trial in 2000 the whole matter was argued again. The plaintiff called Eberling the real killer, allegedly during a sexual assault, with Eberling's weapon the dented flashlight. But the county's attorneys said the evidence had cleared him. They now believed a table lamp had been the weapon. After rejecting the lawsuit 6 of the 8 jurors said they thought Sheppard had committed the murder. An Ohio appellate court later ruled the case should have been dismissed given both the late filing and Sheppard's death.

In its nearly unanimous decision the Supreme Court made clear that the atmosphere surrounding his trial had deprived Sheppard of his legal right to due process. Such an environment had been created through media excesses, the clashing of egos, and inflamed public opinion, conditions perhaps best counteracted by a change of venue. Such situations would also occur in other later prosecutions. In circumstances and a trial that were less heated would Sheppard still have been found guilty of a second-degree murder? Probably–though not certainly.

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."

Cryptoquote

PE PG HAEEAX EF XPGV GBRPSN B NLPYEJ DBS EMBS EF KFSTADS BS PSSFKASE FSA.

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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.

continued from page 9

Currently, various "carrot" strategies exist to encourage continued Latin American participation, including additional economic assistance for eradication of drug fields.[25]

However, efforts at drug eradication in Latin America have largely failed because of what is referred to as the "balloon effect." This is a situation that occurs when one country is targeted with eradication, and drug cultivation in neighboring countries expands, much like displacement of air to other parts of a balloon when squeezed.[26] For example, while the U.S. claimed eradication victories in Colombia, cocaine production in Peru and Bolivia increased to meet demand.

Supplying drugs to the U.S. is a lucrative endeavor. As such, cartels fight over territory and smuggling routes, and extreme violence and crimes continue largely unabated.

Arguably, no Latin American nation has suffered more from drug war violence than Mexico, our closest southern neighbor. Drug cartels in other Latin American countries, most notably Colombia, Peru, and Bolivia, employ various Mexican cartels to import their drugs into the U.S. Huge drug transportation networks have developed.

Mexico, which has long sought to appease the United States in its quest for American dollars, is in a state of chaos in many areas of the country. Rival gangs fight one another, as well as local and state law enforcement and politicians, for territorial rights over area and key smuggling routes.[27]

Despite law enforcement efforts, Mexican cartels have grown so prodigiously that they now operate throughout the United States.[28] According to the Washington Post,

> There is no disputing that Mexican cartels are operating in the United States. Drug policy analysts estimate that about 90 percent of the cocaine, heroin, marijuana and methamphetamine on U.S. streets came here courtesy of the cartels and their distribution networks in Mexico and along the Southwestern border.[29]

As a sign of just how far illegal Mexican cartels have infiltrated our country, in 2013 Chicago named cartel kingpin Joaquin "El Chapo" Guzman its first Public Enemy No.1 since Al Capone.[30]

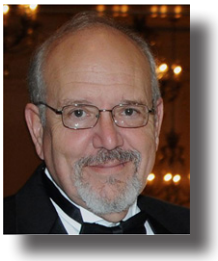
Despite all the resources engaged and financial costs incurred by the U.S., Latin American eradication efforts as part of its overall strategy of prohibition have failed. The costs of cocaine, heroin, and marijuana have decreased, while potency has increased. Illicit drugs are more plentiful and available than ever. The lucrative black market that prohibition created continues to spawn and expand criminal enterprises willing to assume the risks associated with illicit drug trafficking in order to share in the enormous wealth available. Such wealth makes it easy to see why there is an inexhaustible supply of other entrepreneurs quickly willing to replace drug sellers and traffickers taken off the street.

An end to drug prohibition will mean a reduction in the black market by making drugs legal and available. It will allow for establishment of standards and appropriate regulations for use. Governmental revenues will increase from taxes levied for drug production, sales, and consumption. Ending prohibition will free law enforcement efforts to concentrate on violent crimes such as murder, aggravated assault, rape, child abuse, and robbery, thus keeping our communities safer. Most importantly, however, it will end the draconian process of sending masses of Americans to jail for non-violent personal possession of drugs, branding them felons, and destroying countless families in the process. Drug use will be dealt with as a health issue by medical professionals and not the criminal justice system. However, although a decided majority of the American people views the drug war as a failure, there still are huge forces at work within the prison industrial complex to maintain the status quo.

The prison industrial complex ("PIC") is defined broadly as the overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to economic, social and political problems. It includes corporations

continued on page 22

Great Oratory and Rhetoric



How great orators elevate rhetorical devices and personal style to an art form that has the power to persuade and motivate.

By Paul Nucci

Part One of Two

I'm taking a break from my usual *Arts and the Law* beat to look at a different art form; oratory. Great oratory, like other art forms, has the power to motivate and inspire people. At its noble best great oratory and its supporting discipline, rhetoric, has played an important role throughout the history of civilization.

Some of our greatest modern orators like Franklin Roosevelt used their oratorical gifts to calm a nation in the face of the Great Depression. John F. Kennedy laid the inspirational groundwork for the Missions to the Moon. Dr. Martin Luther King became the voice of the civil rights movement. On a lower plane, no one would deny the impact of Steve Job's Apple product introductions. It is my hope that this article will generate a renewed interest and respect for an art form that seems to grow in use while declining in understanding and quality.

What makes some orators great? After all, we all use language to convince others. We all can put one word after another. How do some people select the perfect words and deliver them in such a way as to bring others around to their way of thinking? Some great orators rely on the strength of their argument to bring forth memorable speeches. Others rely on personal charisma and style to attain great oratory. The most memorable oratory comes from those individuals that combine both. Some orators are made successful by the times, others are victimized by them. Like all art forms there is an indefinable quality that transcends our ability to analyze or codify.

In this article I would like to examine two aspects of the art form. In part one I'll look at the content of great oratory: the words and phrases that elevate ordinary speech into art. In part two, I'll look at an individual's personal charisma and delivery style, which can magnify the well- chosen phrase into a powerful tool.

One cannot discuss the art of oratory without discussing rhetoric. Oratory is based on the use of rhetorical devices and presentation style. As I began to examine rhetoric, its history and use, I was struck by the depth of the subject. I barely scratched the surface. In our time, we think of rhetoric as empty political speech. Of course, that's part of it. But I wasn't aware of the role rhetoric has played in the great civilizations of the past as well as our own. Rhetoric was and is still a part of our higher education, though often disguised as creative writing. We hear rhetoric every day without realizing it, and use it in our own speech. Have you ever heard of a rhetorical question? You just did. Rhetorical devices are at the core of our love of music (lyrics), literature, and poetry. Advertising relies heavily on rhetoric as does religion, business, the law, sports, and virtually all other endeavors of society that use words to inform and persuade others.

Rhetoric has its origins in Mesopotamia. Some of the earliest examples of rhetoric can be found in writing as far back as 2285 BC. In ancient Egypt, rhetoric existed since at least the Middle Kingdom period (ca. 2080–1640 BC). The Egyptians held eloquent speaking in high esteem, and it was a skill that had a very high value in their society. The Egyptian rules of rhetoric also clearly specified that knowing when not to speak is an essential, and respected, rhetorical knowledge. Their approach to rhetoric was thus a balance between eloquence and wise silence. Sadly, this tradition seems to have been lost. In ancient China, the use of rhetoric dates back to the Chinese philosopher, Confucius (551-479 BC), and continued with later followers. The tradition of Confucianism emphasized the use of eloquence in speaking. The use of rhetoric can also be found in the ancient Biblical tradition.

The Greeks saw rhetoric as an extension of the political process. Rhetoric was developed and codified to ensure complete examination of political questions of the day through a defined process. Early proponents saw no reason to educate other elements of society in the use of rhetoric. Eventually, rhetoric became viewed as more than a civic art by several of the ancient philosophers. Aristotle and Isocrates were two of the first to see rhetoric as important in all walks of life. In *Antidosis*, Isocrates states, "We have come together and founded cities and made laws and invented arts; and, generally speaking, there is no institution devised by man which the power of speech has not helped us to establish."

I was surprised to find no clear agreement as to the definition of Rhetoric. Merriam Webster's Dictionary calls it: "language that is intended to influence people and that may not be honest or reasonable…: the art or skill of speaking formally and effectively especially as a way to persuade or influence people." Interestingly, they list several synonyms: bombast, fustian, gas, grandiloquence, hot air, oratory, verbiage, wind. I prefer the term "verbal artistry."

continued on page 16

continued from page 15

Great Oratory and Rhetoric

In his book, *A Handbook of Rhetorical Devices*, Robert A. Harris presents sixty common rhetorical devices and provides examples of their use. Their Greek names attest to their origin and codification. Many are familiar, like Simile and alliteration, but many more were totally new to me. Many certainly will apply to the written word as well as the spoken word.

Alliteration	Apophasis	Conduplicatio	Epizeuxis	Metanoia	Polysyndeton
Allusion	Aporia	Diacope	Eponym	Pleonasm	Procatalepsis
Amplification	Aposiopesis	Onomaton	Exemplum	Metonymy	Zeugma
Anacoluthon	Apostrophe	Distinctio	Metabasis	Onomatopoeia	Pleonasm
Anadiplosis	Appositive	Enthymeme	Hyperbaton	Oxymoron	Sententia
Anaphora	Assonance	Enumeratio	Hyperbole	Parallelism	Simile
Antanagoge	Asyndeton	Epanalepsis	Hypophora	Parataxis	Symploce
Antimetabole	Catachresis	Epistrophe	Hypotaxis	Parenthesis	Synecdoche
Antiphrasis	Chiasmus	Epithet	Litotes	Personification	Understatement

Take a look a few of these and you'll soon notice that we use these devices constantly and unconsciously. (Note: I successfully fought an overwhelming urge to plant a few bogus devices with an equally bogus definition and examples just for fun).

We have many celebrated orators throughout history, but I want to single out Winston Churchill. Not because he was history's greatest orator, though some would say so. Winston Churchill was a student of rhetoric. While still a young man he wrote an unfinished series of essays entitled "The Scaffold of Rhetoric," in which he dealt with principles of rhetoric. He understood the power of oratory and used it in a way that grows rarer every day. He wrote his own speeches. Winston Churchill's oratorical ability may even be credited with saving Great Britain from defeat in war. His defiant manner and dogged resoluteness was the perfect platform for delivering the most unifying and encouraging words imaginable. It is important to note that while Churchill's style was well suited to his war speeches, it was less successful in peacetime. The fact that he was voted out of office in the last months of World War II underscores that point.

I recently re-read many of Churchill's war speeches in awe and reverence. It would be hard to overestimate the value and affect these speeches had to an England enduring nightly aerial bombardment from Germany. So great was their impact, that many people claimed to have personally heard some of the speeches that were not actually broadcast. Beyond the immediate purpose of the speech is a sense that here is a man that embodies England herself: her traditions, her culture, her pride. You cannot read these speeches without concluding that here is a culture that must be preserved at all costs.

FDR and JFK consistently rank among the top modern orators.

It is interesting to note that not every wartime speech was well received. It was popularly believed that Churchill was perhaps the worse for drink while delivering "their finest hour" speech. It may actually have been his lifelong difficulty in pronouncing the letter "s' or the fact that he had a cigar in his mouth while delivering the speech that gave that impression.

Here are some famous excerpts of Churchill's wartime speeches and a brief explanation of the rhetorical devices he employed.

We shall not flag or fail. We shall go on till the end. We shall fight in France….We shall never surrender.

Anaphora - the repetition of the beginning of phrases, clauses, or sentences.

I have nothing to offer but blood, toil, tears and sweat. We have before us an ordeal of the most grievous kind. We have before us many, many long months of struggle and of suffering.

Allusion

What kind of people does he think we are? Doesn't he know that we will never surrender!

Rhetorical Question…

Never have so many owed so much, to so few.

Tricolon - (sometimes called the 'Rule of Threes') is really more of a general principle than a rhetorical technique, but it is very effective. For some reason, the human brain seems to absorb and remember information more effectively when it is presented in threes.

There are countless other examples of Churchill's speeches that demonstrate the power of the right words, presented by the right person, at the right time. (That's a Tricolon!)

continued on page 17

continued from page 16

Great Oratory and Rhetoric

What is the relevance of rhetoric in the age of sound bites, tweets, and the agenda-based media? There is a famous example of the threat to rhetoric by technology. In the early days of computerized grammatical analysis, someone entered the famous opening of Lincoln's Gettysburg Address: "Four-score and seven years ago…" The computer instantly changed the opening to, "Eighty-seven years ago". Accurate? Yes. Stirring? Hardly.

Beyond the clever use of rhetorical devices there are several factors in an orator's success.

The strength of the argument.

Often the strength of an argument is enough to persuade others.

Abraham Lincoln is today considered one of our greatest orators, but in his day he was scorned as a buffoon in both appearance and demeanor. In the period before the War Between the States, Lincoln was dismissed by the eastern establishment and newspapers as a ridiculous choice for President. Though we have no recording of his voice, we know from reports of the time that Lincoln did not possess a powerful voice or stage presence. In an attempt to improve his image, Lincoln delivered a series of speeches in eastern cities. In New York City, he spoke at the Cooper Union. Mindful as he was that he was seen as a country bumpkin and political hack, Lincoln carefully delivered his own views on slavery and a closely reasoned argument that although they did not include abolishment of slavery in the Constitution, the founding fathers clearly opposed slavery. Pro-slavery forces were making much of the fact that the founding father's exclusion of slavery from the Constitution amounted to an endorsement. One by one, Lincoln detailed the public speeches, voting records and personal writings and actions of each delegate to the Constitutional Convention. When he had finished it was clear that the framers had overwhelmingly opposed slavery and acted to end it. Their exclusion was no endorsement, but an acknowledgment of the political reality that no constitution that included abolishment of slavery would have been ratified. In this one speech, Lincoln convinced the eastern establishment of his fitness to be President. The endorsements and fundraising that resulted turned the tide for his campaign. As H.L. Mencken put it, "The Cooper Union speech got him the Presidency".

Sometimes timing is everything.

While this is an example of the strength of the argument's importance, it bears noting that the right time and place played a huge role in its success. The same speech delivered ten years earlier or in Charleston South Carolina would have produced far different results. Sometimes orators seize the moment to twist rhetoric for less than noble purposes. Adolph Hitler took the frustration of the German people after defeat in World War One, and applied his own qualities of persuasiveness to deliver the message that resonated.

In part two, I'll look at how personal style and charisma can make the difference in how oratory is effective.

Paul Nucci is an artist and musician. As well as occasional contributor of articles on the arts and the law, Paul is the graphic designer of Friendly Passages. He resides in St. Petersburg, Florida.

Poet's Corner

The Walk
By Andrew Everlove

I see a line of men standing beneath sodium lights
That spread into the distance like
High pressure halos shining in the sky at night

In the wind we shuffle closer, but no nearer
To these strangers, no stranger
Than any of the faces seen within my mirror.

It's beautiful and it's cold. Life is lonely.
It's a promise unmade:
Something so beautiful that it's ugly.

This life is harsh and it has no sympathy
But the line is always moving
So I take a step further and I count it a victory.

Library Holiday Schedule

November 11. Veteran's Day
November 26, 27, 28, & 29. Thanksgiving
December 24, 25, 26, 27. Christmas
December 31 through January 3. New Year

I'm Seeing Red!

Louboutin v. Yves St. Laurent

By Adrienne Naumann

If a client ever asks you whether a color qualifies as an enforceable trademark, the answer is a qualified yes. Color must be part of the product design or packaging; product design or packaging is known as "trade dress" under United States law. For example, the green-gold color of a marketed ironing board pad is trade dress because the color acts as product design. Trade dress is eligible for trademark protection in the United States under certain conditions. Trademark Manual of Examination Procedure 1202.02 ET seq. [January 2015]. In addition to the ubiquitous requirements for trademark enforceability, the trade dress color must not be functional. This requirement means that the trade dress color must exclusively designate a source of goods and not have a utilitarian purpose. *See* Inwood Laboratories, Inc. v. Ives Laboratories, Inc., 456 U.S. 844 (1982) (functional features are protected exclusively under U.S. patent law). The color also must not (i) affect the quality and cost of goods or (ii) undermine competition in a non-reputation related manner.

Although these requirements are well established, a New York federal district court recently concluded that color was not eligible for trademark protection in the fashion industry. Consequently, in Christian Louboutin S.A. et al v. Yves Saint Laurent American Holdings, Inc. et al, 696 F.3d 206 (2d Cir. 2012) [hereinafter Louboutin]) the appellate court confirmed that under Qualitex Co. v. Jacobson Products Co., 514 U.S. 159 (1995) a color as trade dress is eligible for trademark protection if it (i) distinguishes goods and (ii) identifies the source of goods or services (iii) without serving another significant function. Most importantly, however, the appellate court explicitly held that apparel bearing a color is eligible for trademark status if the color otherwise meets trademark law requirements for trade dress.

Litigation history and district court proceedings

For over twenty years Louboutin sold shoes with a red lacquered outsole. This outsole was usually part of the total shoe in combination with a contrasting color on the upper shoe portion. Louboutin also occasionally produced a monochromatic red upper shoe portion combined with a red outsole. In 2008, Louboutin obtained a U.S. federal trademark registration for "The Red Shoe Mark" [hereinafter the Mark]. Prior to the litigation, U.S. Federal Register Certificate No. 3,361,597 for this mark read in relevant part as follows:

"The color red is claimed as a feature of the mark. The mark consists of a lacquered red sole on footwear."

In 2011 Yves St. Laurent [hereinafter YSL] distributed monochromatic shoes, including red monochromatic shoes. Louboutin filed a lawsuit for trademark infringement against YSL. Louboutin also requested a preliminary injunction to prevent YSL from marketing monochromatic shoes, including red outsoles, in any shade of red identical or similar to that of the Mark. YSL contended that the Mark was merely either an ornamental or a functional feature, and therefore it did not qualify as a trademark. The district court found that in the fashion industry, color marks are inherently functional and such registered marks are most likely invalid. The trial court then denied Louboutin's motion for a preliminary injunction, based upon its finding of aesthetic functionality of the Mark.

Appellate court decision

The appellate court initially reviewed the history and current status of distinctiveness, utilitarian functionality and aesthetic functionality according to U.S. trademark law. The court relied upon Qualitex, which held that a mark is aesthetically functional if the mark's design places competitors at a significant non-reputation related disadvantage. Aesthetic functionality occurs even if a specific trade dress does not (i) include a utilitarian use in the traditional sense or (ii) affect cost or quality. Instead, trade dress is aesthetically functional if a particular non-functional feature is sufficiently important to a product's commercial success, that fair competition requires its imitation in the absence of a patent or copyright registration. An example is a particular floral design on china dishes that has no utility, does not affect cost, quality or reputation, but nevertheless removes a significant competitive feature from the market place.

continued on page 19

continued from page 18

I'm Seeing Red!

Nevertheless, the appellate court did not address aesthetic functionality or utilitarian functionality in detail in its analysis of the Mark's trademark eligibility. Instead, the appellate court concluded that the Mark was not strictly ornamental because customers identified the red outsole as trade dress that indicated the shoe source. In particular the Second Circuit found that the red outsole, although not inherently distinctive, had acquired secondary distinction as evidenced by (i) customer surveys and (ii) large ongoing expenditures for advertising and marketing. Therefore this acquired distinctiveness was sufficient to confirm that the red shoe insole qualified as an enforceable mark.

However, the appellate court also observed that customers recognized the red outsole as associated with Louboutin only when there was a contrasting color on the upper shoe portion. Based upon this finding the appellate court modified the district court's order: It granted a preliminary injunction against YSL, but only for shoes with a red lacquer red outsole and contrasting upper shoe in a color other than read. Therefore YSL could continue to produce and sell monochromatic red shoes. The Mark registration has since been amended to require that the red shoe outsole contrast with the color of the shoe upper component. U.S. Registration No. 3,361,597, at tsdr.uspto.gov.

Most significantly from a commercial perspective the appellate court addressed why these criteria for trademark status also applied to the fashion industry without exception. It then explicitly held that a color is trademark-eligible even if trade dress comprises an actual apparel item.

Analysis and conclusions

The appellate court concluded that it need not address functionality and consumer confusion because the modified mark would be restricted to red outsoles and a contrasting upper shoe cover. With this modified mark registration, there was no infringement and therefore no need to address any affirmative defense of functionality. One could argue that Louboutin's shoe color design could qualify for copyright protection as visual art in addition to characterization as trade dress. One may also wonder why Louboutin did not originally protect its shoe design under U.S. copyright law as visual art, in additional to or in place of trademark law. The Second Circuit did not address this question.

Perhaps the Louboutin's shoe design cannot qualify for copyright protection because it does not display sufficient originality and creativity. It could also be that the copyright office examiner would find a shoe outsole in any single color as strictly functional under copyright law standards (and not under the standards of functionality for patent and trademark law), and therefore not eligible for copyright registration. Because U.S. trademark law does not require originality and creativity, as does the U.S. copyright statute, these qualities were not obstacles to Louboutin's trademark registration.

After this Second Circuit decision, there is clearly a legal remedy for imitation of clothing and apparel related accessories if (i) their features qualify as trade dress and (ii) the trade dress qualifies as an enforceable trademark. Not surprisingly, this decision was very high profile in the popular press and in the apparel industry. It also experienced an immediate practical effect because a significant apparel industry is located in New York City where the lawsuit originated. Furthermore it addresses the long standing criticism that U.S. law does not protect apparel and related accessory design. As a result, in the Second Circuit, a shoe design is eligible for trademark protection and provides some relief from this absence of protection.

Adrienne B. Naumann has practiced intellectual property for almost twenty years in Chicago. She graduated from Chicago-Kent College of Law with high honors. She attended the University of Chicago where she received her bachelor's degree and the University of Illinois where she received her master's degree. Ms. Naumann provides trademark, copyright and patent applications as well as supporting areas of law. http://home.comcast.net/~adrienne.b.naumann/IP/

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Bird's Eye View: Law School Prep and Advice

By Ashley Walker

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

In the past few months, I've found myself fielding a number of unexpected questions regarding law school and the applications process. These have mostly come from prospective students, current undergraduates who are considering a legal education and want to know how best to prepare themselves. However, I have also received inquiries from those in their mid-careers, some of whom are attorneys and some who are employed in other professions. They have seen recent articles regarding the future of the legal profession, and they are concerned for the sake of their sons, daughters, and friends who are considering law school.

As a disclaimer, I should say that I am by no means an expert on the legal profession, nor can I fully respond to many of the concerns that one may feel regarding the future of the profession. However, as a current law student, I have considered many of these questions very recently, and so I offer a bit of advice in the hopes that it may be helpful to some out there.

Taking the LSAT

Taking the LSAT can admittedly be a stressful and intimidating experience. Most of our Friendly Passages readers have taken the LSAT, and so it will not come as a surprise to hear that it is often the most challenging component of the law school applications process for prospective students. I'll attempt here to clear up some myths regarding the LSAT, while mentioning that the best information comes from lsac.org, the official website for the administers of the test.

True or False*:*
You can only take the LSAT once.

Answer*:* This is false.

While it is highly recommended that you sign up to take the LSAT when you are ready for it, so that you have a good chance of doing your absolute best, many students do take the test more than once. As one example, I took the test three times and was fortunate enough to be admitted to several highly selective law schools.

It should be noted that students may only take the LSAT three times within a two year period, unless they are granted an exemption. Furthermore, when one is applying to law school, all of her scores from the last five years will be reported to each school to which she is applying. However, in June 2006, the American Bar Association revised a rule that required law schools to report their matriculants' average LSAT score if they had taken the test more than once. Law schools can now report their matriculants' highest score instead. LSAT scores play a major role in the determination of a law school's rank in reports such as that which is published by U.S. News and World Report. Since 2006, many law schools have chosen to consider only a student's highest score during the admissions process.

Therefore, if you have taken the LSAT and are dissatisfied with your score, you can take it again if you choose. You should only take the LSAT again, however, if you are confident that you will improve your score. If you have consistently been testing much better (>5 points) on practice tests than you did on the actual test, it may be well worth it to take it again. However, if you are getting the same score (or less) on practice tests that you did on the real test, it may not help you to take the test again. It is an expensive and stressful experience, and one that I do not recommend having more often than is necessary.

True or False: The LSAT is the only credential that law schools consider, and if my LSAT score isn't very good, I'll never be a good attorney.

Answer: This is false.

While the LSAT score is an important part of a student's application, schools also consider an applicant's undergraduate GPA, personal statements, letters of recommendation, work experience, and extracurricular activities. Many law schools are also seeking to expand the traditional applicant pool to increase economic, racial, and experiential diversity among their student bodies. It is a good idea to apply to a variety of different law schools to increase one's chance of success in the admissions process, of course, and if an applicant is not admitted to any schools that he wishes to attend in one application cycle, he can consider waiting and applying again the following year.

Hopefully this goes without saying, but an LSAT score is also not an accurate measurement of one's future success as an attorney. After a student gets into law school, most potential employers for summer internships and permanent jobs will never ask about LSAT scores (or about an applicant's SATs, for that matter).

Should I go to Law School? If so, when?

True or False*:* I should go straight to law school after college, since I feel like I'm already good at school and don't want to get a job yet.

Answer*:* This may be true or false, depending on the student.

I'm biased here. But really, just about the best piece of

continued on page 21

continued from page 20

Bird's Eye View: Law School Prep and Advice

advice that I can possibly give is to take some time off between college and law school. Many law students who chose to work for a year or two after college tend to be less stressed and better equipped to deal with the pressures of law school. This is partly because preparing for courses in law school is much more like working at a full-time job than college is. For most students, especially in 1L year, law school requires them to commit to a rigid schedule with several hours of preparation every day. In college, it is much more likely that they were able to work just a few hours per week to get As and Bs, but this will generally not be a successful approach to exam preparation in law school.

Working before law school is also a good way to gain relevant experience and to evaluate whether the legal profession is truly of interest to potential applicants. I worked as a paralegal in Washington, D.C. for three years before law school, and I am very grateful that I was able to have this experience. Part of my time was spent at an immigration law firm, where I was able to use the language skills I'd gained during college to help clients. I also found immigration work to be highly fulfilling, which has helped to shape the direction of my studies while in law school. Though I may not choose to practice immigration law after I graduate from law school, the skills that I gained from working directly with clients are transferrable to a variety of legal fields.

Some students choose to go straight to law school after college, and many of them are very successful as law students. However, a majority of students now choose to work for a year or more after college, in order to gain additional experience and to decide whether law school is the correct path for them. The average age of students in my incoming class was 25, and a substantial number of students were in their 30s or 40s.

True or False:
The legal profession is in shambles. If I go to law school, I will never find a job.

Answer*:* Most experts agree that the profession is changing. But this is not necessarily a bad thing.

According to a recent peer-reviewed study by labor economists Michael Simkovic and Frank McIntyre, a law degree increases the present value of lifetime earnings in the U.S. by $1,000,000 compared to a bachelor's degree.[1] Average salaries for attorneys vary across the United States, with higher average salaries in large cities and lower salaries in rural areas. The national average has been cited by the Bureau of Labor Statistics as above $130,000. Unemployment rates among experienced lawyers are also lower than for most other high-income occupations. Bureau of Labor Statistics data also shows that attorney employment has grown slightly faster than other occupations, with attorneys making up a growing share of the work force in the past decade.

While future salary may be an important consideration when choosing one's future career, it is far from the only consideration. A career in the legal profession can also allow one to make a real, measurable difference in the lives of those in need. An attorney does not need to work for Legal Aid full-time in order to make a difference; providing pro bono services or supporting legal advocacy initiatives in the community are also crucial ways to offer support.

continued on page 23

Where Do Law Graduates Find Jobs?

The ABA compiles statistics on what happens to recent law school graduates. They do a remarkable job tracking and can account for 97+ percent of 2012 and 2013 graduates. (2014 and 2015 are not available yet.) Many graduates might be considered "underemployed" because they are not practicing law but hold positions that prefer a JD rather than requiring passing the bar. Only 62.2% of 2013 graduates are employed in positions that required passing the bar. This number is slightly lower than 2012. Most distressing, nine months after graduation, 11.2% of all 2013 graduates were unemployed and still seeking employment. Again, this number is bit more depressing in 2013 and 2012. There has been a lot written and reported on how many lawyers are flooding into the market but there was only a .1% increase in graduates between 2012 and 2013. Only 412 more law students graduated in 2013 than in 2012 nationwide. At the very least, you can conclude the economic recovery is not fueling a need for more lawyers. The graph below shows just the graduates who are employed as lawyers. It does not include the 35% are not practicing law or are unemployed all together.

	Class of 2012		Class of 2013	
	total number	% of all grads	total number	% of all grads
Jobs that require passing the bar	28,873	62.30%	29,109	62.20%
solo practitioner	1050	2.30%	2068	2.30%
law firms 2-500+	18,214	39.30%	18,545	39.60%
Business & Industry	6881	14.90%	7130	15.20%
Government	4654	10%	4954	10.60%
Public Interest	2715	5.90%	2227	5%
Clerkships	3389	7.30%	3447	7.40%
Education	1031	2.20%	973	2.10%

All statistics are taken from www.americanbar.org

continued from page 14

that contract prison labor, construction companies, surveillance technology vendors, companies that operate prison food services and medical facilities, private probation companies, lawyers, prison guard and law enforcement unions, and the media and lobby groups that represent them.

The drug war policy of harsh drug sentencing has fueled the meteoric rise of the PIC. States have increasingly turned to private companies to run their jails and prisons. "Prison profiteering" has become big business, to the tune of billions of dollars of yearly profit. The burgeoning prison population has led to increased prison construction, maintenance, and administration. Nearly every aspect of prison life is looked act through a pecuniary lens, which can turn out to be extremely lucrative. In return for building and running prisons, prison profiteers seek assurances of high occupancy rates from government. Not surprisingly, these companies routinely lobby for incarceration for minor offenses, three-strike laws, and laws that make reductions in lengths of sentences more difficult.[31]

Prison privatization creates a symbiotic relationship between prison profiteer companies and politicians who award them contracts. One writer has aptly observed,

> When combining the potential for enormous corporate profit with a politician's need to be reelected, a toxic foundation is laid that portends legislative initiatives sponsored by representatives who use "tough on crime" campaign rhetoric, while simultaneously accepting lucrative contributions from a private prison lobby intent on increasing the stream of U.S. prisoners… Further, corporations that produce products that U.S. citizens consume view prison labor as a profitable enterprise, similar to "third world labor power exploited by U.S.-based global corporations."[32]

The resulting need to fill prison beds has kept prison populations high, and many poor communities, especially African-American neighborhoods, in a constant state of devastation. One in three African-American males will serve prison time in his lifetime.[33] Most African-American males in prison today are incarcerated for non-violent drug crimes. The prison diaspora of African American men from their homes has led John McWhorter, a senior fellow at the Manhattan Institute, to observe,

> It has become a norm for black children to grow up in single-parent homes, their father away in prison for long spells and barely knowing them. In poor and working class black America, a man and a woman raising their children together is, of all things, an unusual sight. The War on Drugs plays a large part in this.[34]

Changing the Drug Paradigm

The drug war, by many standards, is a policy that has failed. But what would happen if drugs were legalized? Would that not just lead to anarchy and chaos? Rampant crime? A nation of addicts?

In 2001, Portugal was facing a heroin addiction crisis and an associated HIV epidemic. Portugal heard loud and vocal opposition when the country debated legalizing drugs as a different approach to the drug war model in place. There were dire predictions about horrible consequences that would happen if drugs were legalized. Nevertheless, Portugal made the decision to legalize illicit substances, changing its view on drug use from a criminal problem to that of a public health issue.

Currently, in addition to substance abuse treatment and counseling, the Portuguese government offers clean syringes and condoms to heroin addicts.[35] This has led to a drastic reduction in HIV infections. Since decriminalization, Portugal has seen unanticipated decreases in adolescent drug use and the street value of drugs.[36] There have been further reductions in opiate use and related deaths and infectious diseases of all types.[37]

In the fifteen years after decriminalization, health experts in Portugal, the country that decided to treat addicts rather than punish them, has seen addictions decrease by half.[38]

Closer to home, information has been gathered on Colorado and Washington in the several years since those two states legalized marijuana.

continued on page 23

continued from page 23

The Drug War—Time To Waive The White Flag

In Washington, a July 2015 report by the Drug Policy Alliance[39] finds marijuana-related convictions down 81%. The state is now saving millions of dollars in law enforcement resources that previously were used to enforce marijuana laws. Since decriminalization, violent crime has decreased and other crime rates have remained stable. Washington has collected nearly $83 million in marijuana tax revenues. These revenues are funding substance abuse prevention and treatment programs, youth and adult drug education, community health care services, and academic research and evaluation on the effects of marijuana legalization in the state. Youth marijuana use and the number of traffic fatalities remained stable in the first year that adult possession was legalized.

Colorado has similar results. According to a January 5, 2015 status report, also published by the Drug Policy Alliance,[40] since legalization in 2012, marijuana arrests for possession, distribution, and cultivation have fallen 95%. This represents 37,000 individuals who will not have to bear the stigma of arrest and the potential for conviction.[41] It also represents countless work hours freed up for law enforcement to pursue other crime. Colorado's first ten months of legal marijuana sales resulted in nearly $40 million in tax revenue. Violent crime decreased in Denver during the first 11 months of 2014. Statewide traffic fatalities continue to decline. The increased revenue has allowed the state to allocate more than $8 million to fund youth education and drug prevention efforts.[42]

The foregoing shows that abolition of the drug war will not result in calamity, or make us less safe. The drug war, a well-intentioned failure, must end. After more than four decades, we have not succeeded in reducing drug use or availability, only in imprisoning fellow citizens in record numbers. The vast resources expended on the drug war may be better spent on many other pressing problems. However, abolition will not happen until our politicians are brave enough to stand up, take charge, and change the direction of a failed policy.

T. Charles Shafer, Esq., practices law in Fort Pierce. For over 26 years he has travelled throughout Florida, vigorously defending citizens accused of crimes. He is a proud member of the NORML (National Organization for the Reform of Marijuana Laws) Legal Committee. To contact, visit his website at www.tcharleslaw.com.

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

continued from page 21

Bird's Eye View: Law School Prep and Advice

The legal profession is changing, however, and fewer law school graduates are working as attorneys than in the past. According to Simkovic and McIntyre's analysis of U.S. Census data, approximately 40% of U.S. residents with law degrees do not practice law. Law school graduates often work instead in leadership roles in business and in the government.[2]

The cost of law school is also a very real consideration. Many students graduate with loans that add up to $250,000 or $300,000, which is often cited as a reason that so many choose to practice law at large firms rather than work at governmental agencies or for the public interest. However, many law schools also offer Loan Repayment Assistance Programs, which subsidize -- or cover completely -- a graduate's loan payments for the first ten years. In order to qualify, the graduate must work in the public interest in some degree, whether for the government or at a non-profit organization. Furthermore, the federal Public Service Loan Forgiveness program forgives the remaining balance on an individual's federal loans after he has made a total of 120 loan payments while working full time for a qualifying employer.[3] Therefore, if a graduate works in the public interest for ten years, his loans can be subsidized or paid for by his law school for the first ten years, and then forgiven after the ten year mark is up. Of course, taking on debt should not be done without considerable thought and research, but fortunately, there are financially sustainable ways in which students can attend law school and still pursue public interest careers. Students should also consider attending public universities (including the many excellent law schools in Florida) to keep costs down, and apply for scholarships from outside the university to supplement any aid that may be offered by the school itself.

Ashley Walker is a third-year law student at Duke University. Before coming to law school, she was 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. While in college, she participated in Arabic language study abroad programs and held internships in Fez, Morocco, Cairo, Egypt, and Jerusalem, Israel. Subsequently, she was a paralegal with Cleary Gottlieb Steen & Hamilton, LLP, working primarily on antitrust litigation and securities.

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

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