

Friendly *Passages*

Supporting Equal Access to Law in Florida

May/June
2015

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

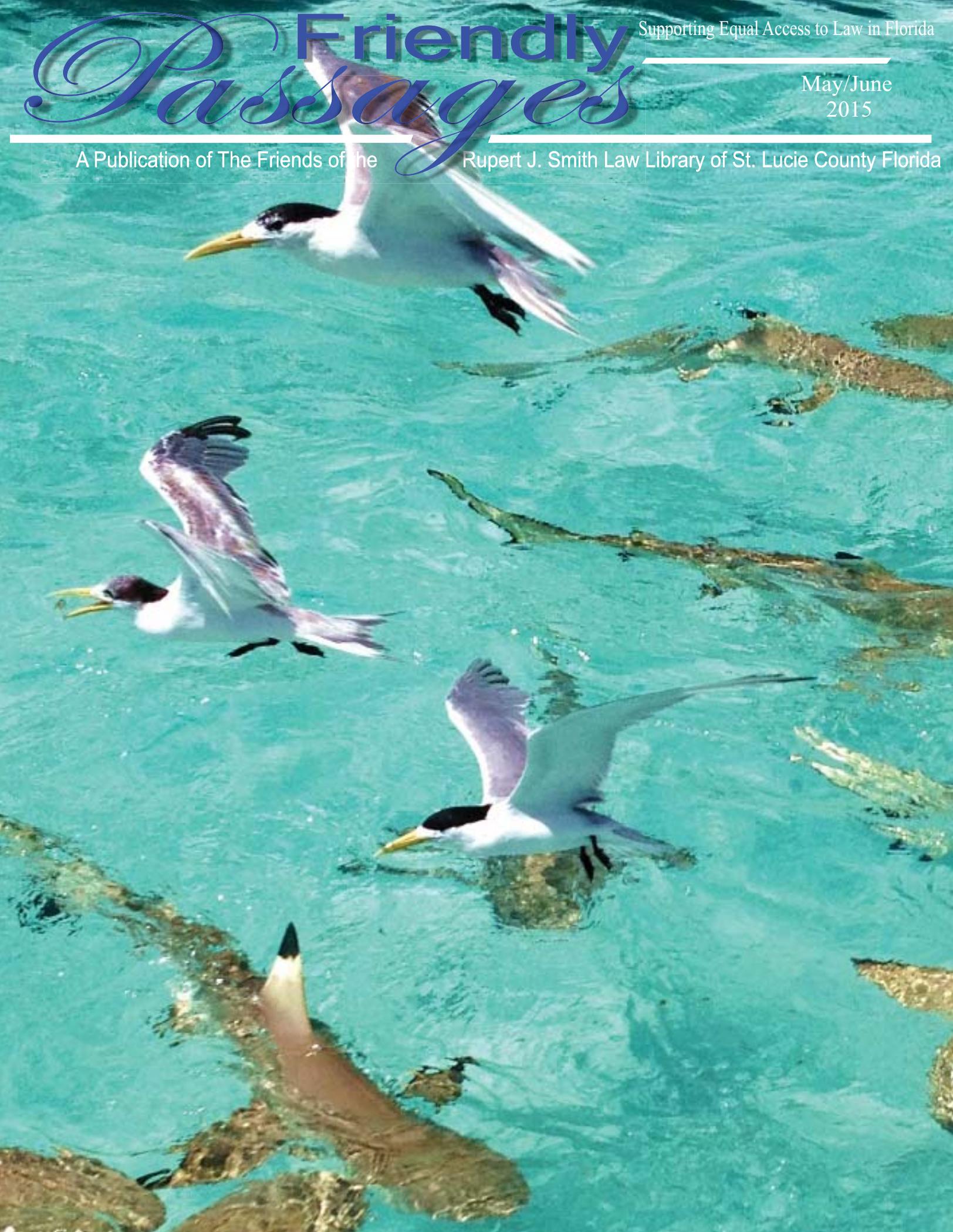


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Published since September 2011 for the purpose of promoting intelligent education of the Bar and general public about law as a basis for growth of justice and the common welfare, while combating the indifference which might hinder such growth.

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On The Cover
"Gulls and Sharks" Photograph. Moorea, French Polynesia. *By Paul Nucci*

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On Behalf of the Publisher

By James T. Walker
President, Friends of the
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We make our own criminals, and their crimes are congruent with the national culture we all share. It has been said that a people get the kind of political leadership they deserve. I think they also get the kinds of crime and criminals they themselves bring into being.

- Margaret Mead

Overcriminalization is a topic that sees increasing attention from pundits and policy-makers. It is an oft-repeated fact that the United States, with but 5% of the world's population, houses 25% of its prisoners, with the highest rate of imprisonment, 716 prisoners per 100,000 in population, or 2.2 million individuals, a rate seventeen times greater than Iceland, twelve times greater than Japan and ten times the rate in Switzerland, only Russia being comparable. One out of every hundred Americans is in jail or prison. See ex. "Six Charts that Explain Why Our Prison System is So Insane." The American Prospect (8/15/13). Such statistics "... seem at odds with the traditional image of America as the land of the free, with unprecedented individual freedoms and liberties, and toleration for minority rights and dissenters." "Over-Criminalization in Florida: An Analysis of Nonviolent Third Degree Felonies", Florida Tax Watch, Center for Smart Justice (April 2014).

Florida's experience mirrors what is happening nationally. Here, the state's overall rate of imprisonment is 524 per 100,000, soaring to 2,615 for African-Americans. There are 103,028 Floridians in prison, 63,620 in jail, 240,000 on probation and 4,538 on parole. The Sentencing Project (2013). The prison population is projected to increase to 106,793 by 2017. Florida Tax Watch, *infra*. It's increased over 400% in the last 35 years. Such population continues to grow, notwithstanding that from 1992 to 2013, violent crimes, for example, actually decreased 60%, from 1,188 offenses per 100,000 population to 476, according to the Florida Department of Law Enforcement.

For those secure in the knowledge that this has nothing to do with themselves, guess again. Just at the federal level, Congress creates approximately 55 new crimes per year, with approximately 5,000 on the books, to say nothing of 300,000 regulatory offenses that are criminally punishable. Whitehead, "The Overcriminalization of America: Are We all Criminals Now", The Rutherford Institute (8/6/12). In **Three Felonies a Day**, Encounter

Books (2011), author Harvey Silverglate, Boston civil rights lawyer, suggests that the average American unwittingly violates daily three laws punishable as felonies. There are presently 1.5 million felons in this state, one out of every ten adults. Florida Tax Watch, *infra*. It is all too easy to visualize ordinary Floridians, either themselves or someone close, being caught up at some time during their lives in the burgeoning world of incarceration, forced to deal with criminal justice issues.

It's a large part of the population needing criminal legal assistance, but receiving little attention. Unmet needs for access to civil justice are now being addressed by the Florida Commission on Access to Civil Justice. There is no equivalent effort being expended on behalf of those with needs arising from their entanglement with criminal justice. The challenges faced by such individuals are well documented by Diamond Litty, Public Defender, elsewhere in this issue of **Friendly Passages**. If they reside in one of the many counties not served by a county law library, there simply is nowhere for them to turn for help if they either do not qualify for, or cannot afford, legal representation.

Here in St. Lucie County, fortunately, the Rupert J. Smith Law Library is available. Of the total number of patrons served by the library during 2014, 27% were lawyers and 73% were non-lawyers, general members of the public. Of the latter group, approximately 50-60% came in needing help with a criminal issue. There was a wide variety of problems they needed assistance with, such as: their public defender might have been off the case and they were wanting to explore post-conviction relief; or they needed to learn what is necessary to seal a record; or were wanting to obtain a modification of parole. If accused with an offense, they were coming in to study a search and seizure question. They may have wanted to learn whether a conviction could be appealed, or how to get a fine reduced. There might have been a problem with their driver's license. Or, they may have simply needed a form. A librarian with legal training was there to help them find the information they were looking for, seven days a week.

That's the thing about a law library. It exists for the benefit of the entire community: "More importantly, a public law library is open to and serves the needs of all persons throughout the county, rich and poor alike. For lawyers, it reduces or eliminates the need to acquire and maintain expensive law libraries without jeopardizing the effectiveness of the individual lawyer's research. For litigants and those interested in the law generally, it provides a vast amount of material at no expense to the individual. In our opinion, the law library fulfills an important and growing need of practitioners, judges, and litigants. It is essential to the administration of justice today, and it is appropriate that its cost be assessed

On Behalf of the Publisher

against those who make use of the court systems of our state.” *Farabee v. Board of Trustees, Lee County Law Lib.*, 254 So. 2d 1,5 (Fla 1971). It little matters whether the patron is powerful or powerless, whether he or she is different, eccentric or utterly unremarkable. All may arm themselves with knowledge of the law, so as wield it as a sword in vindication of rights conferred, or take it up as a shield to protect from the overreaching claims of the unjust. It is irrelevant that the issue claiming attention be trivial or great, popular or unpopular, for as Albert Einstein noted, “In matters of truth and justice, there is no difference between large and small problems, for issues concerning the treatment of people are all the same.” A law library implements and breathes life into law’s finest, most inspiring ideals bearing upon the provision of equal justice for all, through assurance that access of it is open to all. Thank you for your support.



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By The Hon. F. Shields
McManus, Circuit Judge

Making a Change

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All changes, even the most longed for, have their melancholy; for what we leave behind us is a part of ourselves; we must die to one life before we can enter another.

Anatole France, French Novelist, 1844-1924, <http://www.brainyquote.com/quotes>

If you have been reading my articles in *Friendly Passages*, you may have noticed I have been writing about family court frequently. For all of my eight years as a judge, I have been hearing family law cases as part or all of my assignment. So it comes as quite a change in my life to be assigned now only to civil law cases.

Service as a judge can be rewarding. It grants the office-holder the opportunity to try to help people without the burden of trying to make a financial gain from it. This is very liberating. In family court the need for help is very immediate and basic: food, shelter, protection from violence, parenting for children, the necessities of life. Thus, the opportunities to help are presented daily in a very concrete way. Should a judge, or a lawyer, embrace the challenges of this court with a good heart, it is hard to turn away from it.

So, it is that I leave that assignment with the melancholy of which the French novelist, Anatole France wrote: “All changes, even the most longed for, have their melancholy; for what we leave behind us is a part of ourselves; we must die to one life before we can enter another.” I do leave behind part of myself. The change is softened some by having the judge succeeding me nearby to engage me in discussions about family law cases.

Now I am turning toward the civil law court. It was my primary area of legal practice before taking the bench, and the court assignment I initially sought. But as those philosophers, the Rolling Stones, sang, “You can’t always get what you want, but if you try sometimes ... you get what you need.” So I probably needed to sit on the family court bench for a while. It certainly changed my view of what is to be prized in the administration of justice and the practice of law. It is as simple as doing the right thing.

What is not to be prized is measuring the importance of the case by how much money the lawyer can make on it. But that is how we often think about success as lawyers: how big was the verdict, the transaction, or the fee.

With the life experience of family court fresh in my mind, I am relearning the world of the civil jury trial one day at a time. At first, I had some trepidation. Would my knowledge of civil law be sufficiently current? Can I manage a jury docket efficiently? Can I preside over jury trials well enough to bring them to an error-free conclusion? A man who had reason to worry about the future, Abraham Lincoln, is quoted as saying: “The best thing about the future is that it comes one day at a time.” So true! Now that I am several months into the civil jury trial assignment, I feel much more comfortable. Even so, there are always new challenges that can best be faced one day at a time.

Each area of legal practice and judicial assignment has a distinct rhythm. Transactional practice has a different daily schedule than litigation practice. Likewise, each judicial assignment changes the daily activity of the judge. Not only does the schedule change, but the whole experience changes.

In family court, the judge hears several short evidentiary hearings almost every day and occasionally a one or two day trial. The parties are usually present and testifying. They are addressing the judge directly if they do not have an attorney representing them, and

MAKING A CHANGE

often they do not. The judge is very involved deciding the factual dispute as well as the law. The judge may be asking questions, especially when there are not lawyers representing each party. Each hearing requires a unique order with findings of fact. The judge spends a lot of time thinking about the family's needs and writing or revising orders recounting the evidence.

Every day, there are requests for emergency hearings and ex parte petitions for injunctions against violence in the family judge's chambers. There are also phone calls daily to the judge's assistant from unrepresented litigants and some letters telling of the problems of litigants. The judge cannot communicate with these people outside of court, and so there is a constant struggle to assist people to get a hearing without becoming an advocate for one side or the other. Yes, family court is a docket full of personal problems and intense emotions, but it is also a venue where the judge has daily personal interaction with many people. The litigants become very familiar to the judge.

In a civil jury trial assignment, the evidentiary hearings are few but lengthy. Most trials are heard by a jury over four or more days. The lawyers do all of the questioning and present formal arguments. The judge has very little to say during a trial other than to read standard pattern jury instructions and rule on objections. Much of the judge's daily routine is spent reading procedural motions and briefs in chambers. The orders are mostly formalistic and prepared by the attorneys. Unrepresented parties are few. Telephone calls about people's personal problems don't take up the assistant's time. Rather, since many of the lawyers are not appearing regularly in this court, they require more explanation of local procedures than do family court lawyers. There is no personal contact with the litigants.

Thus, the judge's daily life in the two assignments is very different. The family court assignment fully engages the judge in human interaction daily. The feedback is immediate. There is satisfaction in concluding a matter. The civil law assignment is solitary and focused on resolving issues of law. Cases go on for years before being finally resolved. They outlast the judge's assignment. When they do resolve, it is most often by settlement without the judge's involvement. The personal satisfaction of bringing the matter to a meaningful conclusion is absent.

Lawyers have been asking me if I miss family court, or how do I like civil court. Often, the questioner implies that I should be much happier to be in civil court. My answer surprises them. I do miss family court. Nevertheless, I am happy being a judge in any court, and with each passing day, I am becoming reacquainted with the environment of the civil trial practice. I am enjoying the drama in reacting immediately to procedural and evidentiary objections on

which the case's result may depend. I am interested in pursuing legal scholarship and correctly applying the law to each case. I am intrigued by trying to manage the docket in such a way as to get the maximum number of cases to trial or settlement. So, as the novelist wrote, I have died to the life of the family law judge and entered the life of the civil law judge. All and all, the change is good.

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.



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Is a Felony Conviction a Life Sentence?

By Diamond Litt, Public Defender,
19th Judicial Circuit



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A basic tenant of criminal law is that the punishment must be proportionate to the crime, but with the current ramifications of a felony conviction, it is amazing to me that anyone with that stigma ever survives. Please do not misunderstand, I am not in any way advocating that wrongdoers should not be punished or that serious crimes do not deserve serious penalties. However, a conviction for a third degree felony, such as the unauthorized possession or use of a driver's license or identification card, can mean life-altering consequences that one may never overcome.

We know, of course, the "standard" consequences such as not being able to own a firearm and having the right to vote rescinded, but those pale in comparison to the extensive laundry list of consequences that accompanies a felony conviction, a list that few people know of or talk about. For example:

When you were arrested, you were fingerprinted and photographed. That information was provided to the Florida Department of Law Enforcement (FDLE) and to the FBI.

Your arrest record is not private or confidential. Depending on the charge, the disposition of your case and your prior criminal history, you may or may not be able to seal your criminal record.

You will not be able to wipe clean or erase your arrest record with the FBI because the FBI does not seal or expunge arrest records.

Because criminal history records are public, and many landlords obtain the criminal history record of potential renters, you may not be able to rent or lease a house or apartment.

Your arrest record does not disappear or go away just because the judge is withholding adjudication.

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 if you are convicted of a drug charge.

You may not be able to serve in the military, depending on type and number of adjudications/convictions. You cannot serve in the military or become a law enforcement officer if adjudicated delinquent

or found guilty of domestic violence (misdemeanor or felony).

If convicted, you will not be able to obtain State of Florida college financial aid (Bright Futures, Gold Seal Vocational & Academic Scholars).

You will not be able to obtain federal student financial aid (grant, loan, or work assistance) for a period of time, if you were convicted of possession or sale of a controlled substance while receiving the financial aid.

If convicted, you will lose your right to vote, hold public office, be a juror, own or possess a firearm or carry a concealed weapon if you are 18 years or older at the time of the conviction. In some cases, once you complete your sentence, some of these rights will be given back to you (restored). Your right to carry a firearm will not be restored.

You will not be eligible for food stamps if convicted of trafficking drugs.

You may not be able to obtain employment with:
The state or municipality if you were convicted of drug trafficking or convicted of any felony or 1st degree misdemeanor "directly related" to the job;
A county or municipality (if the job is critical to security or public safety);
Law enforcement, correctional or other agency that works with children or elderly;
The public school system, a seaport or airport.

Your photograph may be posted on the Florida Department of Corrections website if you are sentenced to probation or state prison.



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Drone Acquired Evidence

By Tom Steele, Director
The View Catcher

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The sound overhead was different, and not loud. The passersby on sidewalks failed to take notice, but a couple of hundred feet above them was a small 'Unmanned Aerial Vehicle' (UAV/Drone) equipped with an onboard camera being remotely operated by a private investigator. The mission was to ascertain case evidence at a target location within an area which could not be accessed, and could therefore only be seen from above. As the operator maneuvered the UAV to the optimum altitude to deter detection, yet afford a clear and unfettered view, the UAV began to accomplish quite specialized and invaluable tasks that just a couple of years ago would have seemed nearly impossible for investigators to accomplish for their clients' case needs. Upon concluding this mission, quite steady and clear high-definition images were now in the possession of the investigator, and thus would be maintained as evidence to support their client's case at a cost that is quite reasonable indeed.

For skeptics and others resistant to new technology and/or change, the concept of utilizing this technology in such cases can best be equated to the following scenario: "Having a 30 story building standing near a surveillance target, where video and/or still photography could be employed by an investigator to acquire the sought after evidence within that same area."

Truly one of the most universally frustrating elements to any search for 'evidence revealing truth' is barred entry to private land, commercial property or a residential community due to walls, fences, gatehouses, etc., which certainly can prohibit one from viewing sought after evidence that may be in plain view, but only from 'above'.

Small and highly maneuverable drone platforms can be equipped with an array of high quality video and with the advent of UAVs being used by many individuals recreationally, or for legitimate professional and business applications, we are on the cusp of also seeing them as invaluable tools for: the collection of crucial evidence at accident and crime scenes; the recovery/discovery of property; challenging testimony in the course of litigation; aerial surveillance and documentation; and meeting other special investigative needs.

In the practice of civil law, auto accidents are of major concern, for contributing factors to the incident may change or be altered shortly thereafter. In such cases one need only ponder the value of having the ability of calling upon a specialized investigations firm that can perform a thorough overview flight of the scene to record every detailed facet of same from above!

For years private satellites have given the general public unfettered photographic imagery of private properties the world over. Indeed, any concern of photographic intrusion from 'above' must first be couched with the acceptance of this technology. Even with that being said, apparently many cringe at the idea of employing UAV technology as an acceptable platform for the already utilized video/photo devices we depend upon. Fortunately the issue of airspace has already been addressed; to wit: Pursuant to a decision of the Supreme Court of the United States, in United States v. Causby: "... A man does not have control and ownership over the airspace of their property except within reasonable limits to utilize their property. Airspace above a set minimum height is property of the Masses and no one man can accuse airplanes or other such craft within of trespassing on what they own." 328 U.S. 256 (1947).

Not all of us are technical wizards, yet we have access to highly skilled specialized investigators who can provide very technical and sophisticated equipment for specific case requirements when such assets are necessary.

Tom Steele started his career in mainframe software development after receiving a degree in Management Information Systems in the early 80s. From there a string of development assignments took him all over the country until he settled in Tampa and decided to start a telecommunication agency to ride the Internet wave of the mid-90s. Recently he formed a licensed private investigations agency to leverage the drones in aerial surveillance, with a clientele primarily within the legal profession.



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Lender Force-Placed Insurance Practices: A Revelation

By Dennis J. Wall

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



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Lender force-placed insurance (“LFPI”) agreements are found in every commercial activity in the United States. Most people agree in their loan contract documents to pay for force-placed insurance. They just may not be aware of it.

Premiums on insurance force-placed by a lender are paid by the borrower. The borrower ordinarily has at most indirect rights in lender force-placed insurance. In most cases borrowers are not given third-party beneficiary status by Courts, i.e., Courts generally hold that borrowers are not capable of enforcing the LFPI contract.¹

The reason that borrowers have not been given rights to enforce the force-placed insurance contract has to do with the nature of the transaction. LFPI exists because of a loan. Borrowers agree to provide collateral as a guarantee that the loan will be repaid. To protect the collateral in the event of its damage or destruction, borrowers also agree to buy insurance which protects the collateral or “collateral protection insurance.” LFPI agreements are a part of the Uniform Mortgage Instruments issued by Fannie Mae and Freddie Mac, the most commonly used mortgage instruments in the nation.

LFPI is in a generic sense “collateral protection insurance” (although for various reasons some States exclude LFPI on homes from the State’s statutory definition of CPI).² If we do not make the loan payments, or if we do not keep insurance in place, we agree in our loan contracts that the lender may place insurance by force, at our expense, to protect the collateral for the loan. This is true in most if not all loan agreement documents. It is certainly true in mortgage contract documents.

There are charges we do not generally agree to pay, however. We generally do not agree to pay for add-ons, meaning we generally do not agree to pay the additional price for:

- Kickbacks.
- Reinsurance premiums paid to lenders’ affiliates and subsidiaries.
- Agents’ fees for nonexistent agent services.

- Premiums which are really penalties and not charges for actual insurance.
- Other secret charges which an insurance company may pay to our bank in exchange for the bank using the force-placed insurance policies offered by the insurance company.

These kinds of charges are paid to a lender by an insurance company which offers force-placed insurance for sale. Paying these charges allegedly buys the insurance company a place on the lender’s approved list or an exclusive selection when the lender force places insurance.



The focus of this article is on one aspect of the Great Recession: Lender Force-Placed Insurance or “LFPI” in residential mortgages. LFPI is only one aspect of the Great Recession, but it is an important issue. It affects the lives of virtually all homeowners in the United States.

The facts presented here were learned in a forensic investigation into publicly available information over the course of 3 years. What I mean

by “forensic investigation” refers to my examination of the evidence of LFPI practices, which I largely found in Court files. I concentrated on what the parties testified and what the documents displayed. I did not put much emphasis on what the attorneys argued in those cases.

My default rule was to rely on the testimony and documents that came from the most knowledgeable source on any given issue. Whenever the issue involved identifying and describing LFPI practices, and the evidence was available, those sources were the testimony and documents provided by the lenders and their affiliates and subsidiaries, by their mortgage servicers, and by the insurance companies which offer the force-placed insurance policies.

The information is made available by Courts in the unsealed portions of their files:

- Exhibits to pleadings.
- Officially reported and officially unreported judicial decisions.
- Depositions.
- Interrogatory answers.
- Affidavits and declarations.
- Allegations in complaints and answers.

The sources of information do not include trial transcripts for one reason only: **Not one LFPI case has been found which has gone to trial.**

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Lender Force-Placed Insurance Practices: A Revelation

Further, some of the story is deliberately kept a secret by stipulations and other agreements in all of the lawsuits which have been investigated during the past 3 years. Enough of the information has been made public to allow the observations presented here of the business practices at issue in the lawsuits, including the LFPI practices widely alleged in the cases. In the area of LFPI practices, it would probably be too difficult to pursue an investigation of the available sources **except** through the force of litigation. The Courts' powers to compel discovery, and the threat that those powers will be used in a given case, are so far essential to telling the story of LFPI practices.

LFPI CASES: THE COMPLAINTS.

It bears repeating that LFPI ordinarily protects the lenders and not the borrowers; and LFPI is paid by borrowers although it is placed by lenders. LFPI lawsuits uniformly involve complaints which allege "add-ons" not authorized by the loan contract. LFPI complaints that survive motions to dismiss do not present allegations seeking damages on account of, or otherwise challenging, lenders' contractual rights to place insurance on borrowers by force, at the borrowers' expense. The complaints in these cases which survive motions to dismiss seek damages for the **increase** in LFPI premiums allegedly added to the plaintiff borrower's-homeowner's monthly mortgage payment.

The recent practices which caused the Great Recession shaped lending practices in general and LFPI practices in particular. As the Financial Crisis Inquiry Commission found in its Final Report:

The definition of a good loan changed from "one that pays" to "one that could be sold."³

When originators made loans to hold through maturity – an approach known as *originate-to-hold* – they had a clear incentive to underwrite

carefully and consider the risks. However, when they originated mortgages to sell, for securitization or otherwise – known as *originate-to-distribute* – they no longer risked losses.⁴

When lending practices changed, lender force-placed insurance practices changed, too, from producing protection to producing revenue. As one lender's attorneys argued in an LFPI Court case, it is in a lender's best economic interest to receive more revenue than repayment of the principal balance of the loan. "A lender wants a performing loan or asset, not immediate repayment."⁵

In the years leading up to the Great Recession, aggregating mortgage debt became a way of life.

And a way of doing business. Putting mortgage debt in perspective, mortgage debt doubled in the United States in the 6 years between 2001-2007. Mortgage debt rose approximately as much during those 6 years as it had during all the years since the United States was founded. The **increase alone** in the **average** amount of mortgage debt during those 6 years was nearly \$60,000.00.⁶

There is little or no direct evidence to enable us to put an irrefutable monetary value on the part played by LFPI in these developments. There is indirect evidence, however. For example, in the course of following their business practices in selling residential mortgage-backed securities or RMBS, which is a closely related profit center to LFPI:

- Thirteen major banks, including both depository and investment banks, issued \$2 Trillion in residential mortgage backed securities between 2005 and 2008.
- The total settlements, actual and projected amounts combined, between the Big 13 Banks and agencies of the United States in mortgage-securities-related claims and cases, was actual and projected combined, was approximately \$120 Billion.
- That amount represents 2% of the revenue generated in that line of business between 2005 and 2008.⁷

In contrast, the combined total amounts of all commissions, reinsurance premiums, unnecessary insurance, and other alleged LFPI kickbacks in every mortgage simply cannot be calculated. For example, there are no pleadings, testimony, or documentary evidence made public which contain that combined total figure. Further, LFPI cases are usually alleged as class actions. Settlements in all LFPI class action cases which have been located have involved both the payment of

Last Issue's Cryptoquote Answer

R XWZG CRKG RIN'V H QRE MWSG, QGAHLIG
R JWN'V EGV RV. -MHAS XHNJGD

I hope life isn't a big joke, because I don't get it.
-Jack Handey

Lender Force-Placed Insurance Practices: A Revelation

money and the performance of services which have not been reduced to monetary value.

There is nonetheless additional indirect evidence available about the monetary value of LFPI practices in many individual cases. These individual figures give us a picture of the whole.

Commissions. One lender-servicer according to its corporate representative's deposition testimony received commissions on \$400,000.00 in LFPI aggregate premium each year in 2008, 2009, 2010, and projected for 2011.⁸

The total amount of LFPI aggregate premium charged for that period of 4 years by that one lender's force-place insurance companies is \$1.6 Billion.

That same lender was paid 11% commissions by the force-placed insurance carrier during that time. Eleven percent (11%) of \$1.6 Billion is \$176 Million.

One force-placed insurance carrier paid **commissions** to **one** lender's captive insurance agent in the **four years** from 2008 through 2011, totaled **\$176 Million** according to the publicly available deposition testimony of the captive agent's corporate representative and other witnesses.

Reinsurance Premiums. In order to address the larger issue of LFPI practices, it is enough to say that reinsurance is insurance for insurance companies. Like insurance agents' commissions, it is by no means inherently evil or unusual. However, the practice of charging reinsurance premiums is quantitatively and qualitatively different in LFPI cases. In LFPI practices, reinsurance premiums have become another profit center for investors, i.e., another way to generate a return on investment.

As in the case of total "commissions" charged in the combined total of all mortgages, there are no publicly available pleadings, testimony, or documentary evidence located which display a total of all "reinsurance premiums" charged as part and parcel of LFPI practices.

No periodicals or books have been found which disclose this figure.

However, in their application for attorney's fees in an LFPI case, the attorneys represented to the Court that the lender (a different one from the one mentioned earlier) received "more than \$600 million" in "quota-share reinsurance agreements" revenue, i.e., reinsurance premiums, between January 1, 2008 and October 4, 2013.¹⁰

The average of these reinsurance premiums using

these figures would have been over \$100 Million per year, for one lender.

Backdating, and allegations of excessive policy limits and other unnecessary insurance.

Backdating insurance refers to a policy which is issued on one date but which recites that its coverage began on an earlier date. This practice is sanctioned by statute in the area of flood insurance, which is often forced on a homeowner by an investor-lender on one date with a premium backdated to an earlier date when, allegedly, no insurance was in place or insurance was in place but it had insufficient policy limits.¹¹ In this sense, charging premiums for backdated insurance is in the nature of a penalty because backdated insurance to cover events which already happened is simply not insurance. Instead, the sense of the practice of backdating insurance and adding the cost to a monthly mortgage payment seems to derive from the mortgagor's agreement in the mortgage contract to keep insurance in place to protect the collateral that supports the loan, which in the case of a mortgage, is the home.

The allegation of "excessive policy limits" is related to the overall charge of "unnecessary insurance." Once again, the practice of charging premiums for "excessive policy limits" occurs most frequently in the arena of flood insurance. Positions taken in litigation by attorneys representing the Obama administration in LFPI cases, and a minority of several Court decisions in LFPI cases, have urged that the practice is permissible because the National Flood Insurance Act permits mortgagees to charge the maximum amount under the NFIA, which is \$250,000.00, or the unpaid balance of the mortgage loan, whichever is **less**. Persons urging this view effectively interpret the NFIA to mean whichever is **more**. Once again, permitting the practice of excessive policy limits seems to be in the nature of a penalty.

There are no pleadings, depositions, affidavits, declarations, settlement agreements, books or articles, or anything of like kind, which reveal the total amounts of LFPI premiums attributable to backdated insurance, excessive policy limits or other allegedly "unnecessary" insurance.

Several examples of LFPI cases in which these allegations have been made will illustrate the use of these practices, however:

- \$1,575.00 charged on a HELOC or Home Equity Line of Credit with a zero balance.¹²
- An insurance policy was force-placed with a policy limit of \$253,600.00. The annual premium on the LFPI policy was \$5,049.00. The original loan amount was \$159,000.00. That was the only amount the homeowner borrowed.¹³

continued from page 11

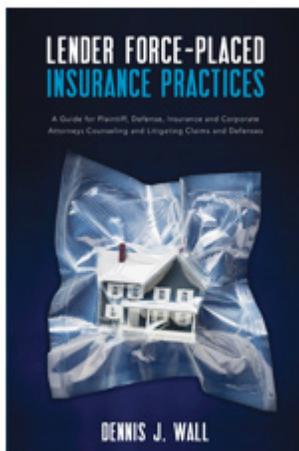
Lender Force-Placed Insurance Practices: A Revelation

- A case which involved two binders of FPI flood insurance:
 - (1) A 90-day binder with a premium of \$893.00 for a policy limit of \$250,000.00.
 - (2) Another 90-day binder, this one with a premium of \$780.90, again with a policy limit of \$250,000.00.

The original amount of the homeowner's loan was \$115,371.00. The unpaid balance was approximately \$113,000.00.¹⁴

In the second part of this article, we will examine claims and causes of action in LFPI cases, along with secrecy stipulations and the emerging affirmative defense of res judicata in recent LFPI cases.

See endnotes on page 25.



Dennis Wall's book on "Lender Force-Placed Insurance Practices" has just been published by the American Bar Association, in April, 2015. He is an experienced litigator and Expert Witness, an "A.V" rated attorney and an elected member of the American Law Institute. Dennis Wall can be contacted by e-mail at DJW@dennisjwall.com or DJW@lenderforceplacedinsurance.com, or by telephone at 407.699.1060 or by U.S. Mail sent to him at Dennis J. Wall, Attorney at Law, A Professional Association, P.O. Box 195220, Winter Springs, FL 32719-



Something You May Not Know About Your Local Legal Aid: Florida Rural Legal Services, Inc. (FRLS)



By Carolyn Fabrizio

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In 1960, a documentary titled *Harvest of Shame* aired on CBS. It was the day after Thanksgiving and Edward R. Murrow stated in his narration, "We present this report on Thanksgiving because, were it not for the labor of the people you are going to meet, you might not starve, but your table would not be laden with the luxuries that we have all come to regard as essentials." The documentary showed many Americans for the first time what it meant to live in poverty. Many of the farmworkers interviewed and included in the documentary were from Belle Glade, Florida. The documentary shed light for the first time, and brought attention to the plight and conditions of migrant farmworkers in the U.S.

Fast forward 6 years. In the summer of 1966, a Florida attorney, Joseph C. Segor started working on a grant application to start South Florida Migrant Legal Services which later became Florida Rural Legal Services. Originally, the program covered 6 south Florida counties where migrant farmworkers were located. The program assisted the migrant farmworkers with many legal problems. FRLS still has a migrant farmworker unit today which provides legal services to farmworkers throughout the entire state.

Migrant farmworkers have unique legal needs. These needs include language barriers, economic barriers, and issues resulting from migrating from state to state for work. In the 19th Judicial Circuit, there remain a large amount of migrant farmworkers that migrate up the East Coast all the way to the State of Maine working. The farmworkers travel in groups, looking for seasonal work, and following agricultural cycles. Migrant farmworkers will pick peaches in Georgia, apples in New York, and pine straw in Maine that is used to make Christmas wreaths. With all of this travel, Florida often remains the farmworker's home base.

FRLS attorneys have developed good relationships with other legal aid organizations in other states so that we can work together to assist farmworker clients. There are many types of legal issues that affect migrant farmworkers. One example is matters involving educational barriers. Most people are not aware that there are school programs in place to assist migrant children. These programs include the right to transfer school credits for the children of migrant farmworkers who often migrate with the parent(s). FRLS will work

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Something you may not know about your local legal aid

to ensure these rights are enforced. Many times when a farmworker will return to Fort Pierce from out of state, there may be payroll issues that need to be resolved from the out of state employer. FRLS staff will work to resolve these issues. FRLS has very strict guidelines as to the status of the clients that we serve. Nearly all farmworkers that are assisted by FRLS are domestic workers. They are either U.S. Citizens, Permanent residents, H2A workers, T Visa holders/applicants, or U Visa holders/applicants. We limit our assistance to this group.

The Migrant Farmworker unit consists of 10 staff members who work tirelessly to cover the legal needs of migrant farmworkers throughout the state. Due to the nature of the work of migrant farmworkers, FRLS staff members must be willing to work odd hours. This is not a 9-5 job. Many migrant farmworkers do not finish work until 6:00 p.m. Therefore, many client interviews are conducted after dinner. The Farmworker Unit refers to themselves as “The Marines of Legal Services”. By protection of law, our farmworker unit has access to farmworker housing. Many times, the housing is adjacent to the fields where the farmworkers are working. The housing may be similar to Army barracks where you may have a building with 150 to 200 beds. Other times, there may be issues arising from private housing of migrant farmworkers. Under certain circumstances, there must be proper signage, special permits, etc. Our staff will make sure that these housing rules are maintained and enforced when necessary. In other housing situations, migrant farmworkers are afforded special rights in their tenancy and the landlord must follow certain guidelines.

There are many issues affecting migrant farmworkers, from the availability of potable water while working, sanitation issues, to safety in farmworker transportation. One example is that women are supposed to have separate sanitation facilities. There have been occasions where there were only sanitation facilities for men. Women would have to either use the facilities marked for men or use the fields if they did not feel safe using the shared facilities. There are protections in place for farmworkers and often, if legal aid is not there, nothing is done.

When Colin Abbott, the managing attorney of the FRLS Migrant Farmworker Unit was asked about keeping up the morale of the Migrant Farmworker Unit, he replied that, *“The need is so great. Often times the greatest impact we have is in assisting one person. This in turn assists the community as a whole.”*

When *Harvest of Shame* aired for the first time in 1960, those who became warriors against poverty and the plight

of the migrant farmworker thought idealistically that these problems would be remedied. Sadly, almost 55 years later, many of the same issues are still being dealt with one farmworker at a time.

If you want more information about FRLS or the FRLS’ Farmworker Unit please contact Carolyn Fabrizio at carolyn.fabrizio@frls.org, Private Attorney Involvement Coordinator or Colin Abbott, Managing Attorney, Migrant Farmworker Unit at colin.abbott@frls.org.

This article was a collaborative effort between Carolyn Fabrizio and Colin Abbott. Carolyn received her JD from Suffolk University Law School in Boston, MA, and has been the Private Attorney Involvement Coordinator for the 19th Circuit through FRLS since 2009. Colin Abbot is the Managing Attorney of the Migrant Farmworker Unit of FRLS. Colin holds both a Canadian LL.B. and American JD and has practiced immigration and criminal law in both Canada and the USA. In 2009, the Florida Supreme Court appointed Colin to serve on the Statewide Florida Bar Standing Committee on the Unlicensed Practice of Law. In July 2014, he was appointed by the President of the Florida Bar to serve to June 2015 as the UPL Standing Committee Chair. Colin also is the Florida Bar liaison for two UPL Circuit Committees that cover several of the major Florida Farmworker communities.



New CLE Programs

We have ordered the following CLE programs from the Florida Bar. They should be available soon!

1837 Sunshine Law, Public Records & Ethics for Public Officers and Public Employees 2015 for 8.0 credits, 4.0 Ethics

1841 Basic Trial Practice 2015 7.0 0.0 E 1814 Probate Law 2014 for 7.0 credits, no Ethics credit

1858 Criminal Law Update for 6.0 credits, 1.0 Ethics

1840 Masters of DUI – 2015 for 8 credits, 2.0 Ethics

1876 Elder Law Annual Update and Hot Topics for 15 credits, no Ethics credit

1836 Annual Civil Trial Update and Certification Review for 15.0 credits, 2.0 Ethics

1911 Guardianship Intensive Program for 8.0 credits, 1.0 Ethics

Rules Of Naval Warfare And The Lusitania Case

By Richard Wires

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World War I was the first major war in which modern technologies and weaponry – telephone and radio communications, submarines, airplanes, and motorized vehicles like tanks – became essential and helped introduce the concept later known as “total war.” Both sides altered their policies in order to win. The naval war between Britain and Germany shows clearly what occurred. Already intense rivals on the transatlantic passenger and cargo routes, they had engaged too in a naval race, each trying to build fleets of the most powerful warships. During the conflict both countries adopted practices evading or ignoring international agreements then in place. The torpedoing of the big British passenger ship *Lusitania* a century ago on 7 May 1915 reveals how the existing “rules of war” were reinterpreted by each side. Unfortunately both a propaganda campaign and official secrecy have helped perpetuate a body of misinformation. And even after a century there is no agreement on answers to key questions.

During the nineteenth and early twentieth centuries international agreements sought to regulate modern naval warfare. Many nations endorsed the Declaration of Paris (1856) concerning treatment of civilian vessels, both passenger and merchant ships and then the subsequent Hague Conventions of 1899 and 1907 with further provisions. Collectively all these accords formed the “rules of war” with respect to wartime naval policies. Such rules never had universal acceptance, however, and lacked provisions for enforcing compliance. Major issues involved the belligerents’ treatment of neutral ships, wartime blockades, and procedures in destroying or seizing enemy merchant ships. Among the so-called cruiser or prize rules were agreements that merchant ships should not be armed, should not falsify their identity, and should not be sunk or claimed as prizes without safeguarding the lives of the vessel’s crew. A warship should warn a merchant ship’s crew to abandon it, if possible taking them aboard, before it then sank the vessel or assumed control of it. Passenger ships were not to be endangered.

With the outbreak of war Britain announced a blockade of Germany using ships patrolling the North Sea and northern English Channel to control passing sea traffic. The blockade also kept Germany’s warships in home

waters. But Britain’s strict enforcement also curtailed the sea trade to the northern neutrals, Scandinavia plus Holland, and angered a number of other neutrals and especially the United States. Anglo-American disputes became frequent during 1914-1917. President Wilson was determined to keep the country neutral, objecting to its merchant ships being stopped and inspected, and to other actions and practices by the British. Americans insisted on their right to unimpeded trade with both sides in World War I.

Germany in turn declared waters around the British Isles to be a war zone in February 1915. But it employed new submarines to enforce the blockade. The Germans’ problem was that submarines or U-boats for (*Untersee* or “underwater”) could not follow practices designed for surface warships. If submarines surfaced to warn enemy merchant ships of their fate they became highly vulnerable. Nor could they take aboard the crew from vessels they planned to sink. Germany also noted other violations practiced by the British.

Early in the conflict the distinction between civilian vessels and naval warships became blurred. The British quickly armed merchant ships, even fishing trawlers for coastal defense, and also used vessels called Q-ships. Merchant ships were told to ram submarines if possible and defend themselves with new deck guns. Q-ships were decoys with cleverly

concealed heavier guns, easily uncovered, ready for a surprise attack on a surfacing U-boat. Submarines following old procedures therefore risked destruction. Britain’s action and tricks changed the “rules” and brought a response from U-boats. Another problem was that with declaration of war the Admiralty had requisitioned the *Lusitania* and listed it officially as an armed merchant cruiser. Admiralty orders now superseded any instructions from its owner Cunard. Since later investigations found the *Lusitania* was carrying munitions, plus other cargo useful in its war effort, it was not the innocent passenger ship many believed. Were its passengers used as hostages to shield the munitions from possible loss? The inability to separate merchant ships and even passenger ships from warships or vessels performing war tasks had important consequences. Soon German U-boats began to sink without warning all types of enemy ships in so-called “unrestricted” warfare.

The *Lusitania* was briefly the world’s largest passenger ship, measured as at about 44,000 tons in displacement,



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Rules Of Naval Warfare And The Lusitania Case

when it entered the lucrative transatlantic service in 1907, quickly winning the Blue Riband for speed. Part of its cost was covered by a British government loan in 1903 and then by mail contracts and yearly subsidies. In return for such help the Admiralty had required construction features for the *Lusitania's* naval use in time of war: a narrower and strengthened hull for speed, additional watertight compartments, improved systems for its propulsion and steering. Its wartime role as an auxiliary cruiser had been planned in advance.

On 1 May 1915 when it left New York for Liverpool, the *Lusitania* carried 1257 passengers and 702 crew. Aboard were 139 Americans and also many Canadians but most passengers were Britons going home. All were traveling despite a warning issued on 22 April by the German embassy that British waters had been declared a war zone. The German statement was widely published in the press, including New York newspapers, but it did not mention the *Lusitania* by name. For six days the *Lusitania* was safe while crossing the Atlantic, then still beyond the U-boats' range; then on 7 May about eleven miles off Ireland's southeast coast, a torpedo struck at 2:10 p.m. Fired from the U-20 it hit the *Lusitania's* starboard side. During the previous days the submarine had sunk several small ships so that its presence was known. After the torpedo struck witnesses reported a second and bigger explosion. The ship could not be slowed quickly and the list prevented the launching of life boats on the port side. It sank bow-first in just eighteen minutes. Of the 1959 passengers and crew aboard, only 761 survived, while 1198 died, though nearly 900 bodies were never found. Among the dead were 128 Americans and some well-known people: millionaire Alfred Vanderbilt, impresario Charles Frohman, writer Elbert Hubbard, and playwright Charles Klein.

Several points are important. One is the owner's endangerment of people on board. Whether the steamship line could have refused government orders to carry some types of cargo is doubtful. But accepting passengers was a different situation. There was a "duty of care" in broad terms. American laws prohibiting carrying passengers on ships transporting hazardous cargoes were violated by Cunard. Because Cunard needed income from passengers it did not acknowledge any danger or acting under Admiralty orders. Questions arose too about Captain William Turner's actions before the attack. Entering the Irish Sea he did not follow Admiralty guidelines: to prepare lifeboats for quick use, close watertight doors, avoid the shorelines, and follow a zigzag course. But zigzagging meant little when a submarine lay in wait rather than pursuing a target. Turner survived but never revealed the exact orders he received from the Admiralty.

Not surprisingly there has been a conspiracy theory: some people have claimed the *Lusitania* was deliberately sacrificed to outrage America and draw it into the war.

A second question has been why the *Lusitania* had no naval escort through dangerous waters. The aging light cruiser *Juno*, one of five protecting the local routes, had been nearby on 7 May. But a little after 2:00 when the *Lusitania* was hit the *Juno* returned to Cobh twenty miles away. Without orders it left for the scene, but then its formal request to proceed was denied, and it returned to port as ordered. Attempts to explain the situation cited the cruiser's age. It was 5500 tons with 450 crewmen, however, and armed with eleven 6-inch guns. Later it and the other ships saw action. Who ordered it back and why? Because the *Juno's* instructions came from high authority conspiracy theorists have blamed Winston Churchill, First Lord of the Admiralty, who wanted some important incident or outrage to get America into the war. But the speculators have no proof.

Big passenger vessels had large cargo capacity. The most important questions involve the cargo the liner secretly carried and its role in the disaster. Since the submarine captain fired only one torpedo, what caused the second explosion, described by witnesses as much bigger than the first? Only a massive hole in its hull might account for the ship's sinking in eighteen minutes. The official British enquiry in 1915 blamed a second torpedo; the U-20's captain and log confirmed only one was fired. Some people have even denied there was a second explosion. Investigators have ruled out the likelihood that the torpedo caused a boiler explosion or spontaneous combustion of coal dust; they are divided on whether gun cotton or aluminum powder used in some artillery shells had been responsible. Small gun ammunition would not have exploded with such enormous force.

What dangerous cargo was being transported? In several ways cargoes of war materiel could be hidden. Items might raise no concerns: an example was the *Lusitania's* cargo of dairy products and animal fats apparently consigned to a British weapons research center. The items were not refrigerated so were not foodstuffs; grease and oils are important as lubricants for weapons. Preliminary manifests were frequently incomplete. Supplementary manifests could then be submitted just before or after departures so that timely objections were impossible. Some investigators have concluded there was misdescribed or undeclared war materiel: large quantities of ammunition for small arms, cases of non-explosive artillery fuses, and boxes of supposedly empty shells. A supplementary manifest, submitted after the ship's departure, added some information. The artillery shells may have been already charged, not empty, and their total number in many boxes was substantial. Perhaps the cargo included gun cotton (nitrocellulose) used to propel shells from large guns. Both charged artillery shells and gun cotton are highly dangerous and could well have exploded

Compassionate Immigration, Terrorism, and Gender

How Women and Girls Are Disproportionately Harmed By Terrorism-Related Bars to Asylum Part 2 of 2



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

By Ashley Walker

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WHAT EFFECTS DO THE TERRORISM-RELATED BARS TO ASYLUM HAVE UPON WOMEN AND GIRLS, AS PARTICULARLY VULNERABLE MEMBERS OF THE POPULATION?

Many scholars and NGOs have done excellent work examining the unintended consequences that these policies have on victims of terrorism who are branded as terrorists.¹ However, there has been comparatively little research into the effects that the terrorism-related bars have upon women and girls as particularly vulnerable members of society. This is partly because counter-terrorism policies tend to target men, and consequently, they bear the brunt of these policies' direct impacts. But there are a number of collateral impacts that counter-terrorism policy has upon women, which may be "indirect, unintended, or hidden."² For example, many women have been barred from asylum relief for providing material support to terrorism and they are affected by this bar in a variety of specific ways. "Material support" often takes the form of providing food or other necessities to family members, and since women frequently are responsible for domestic tasks, they have been disproportionately affected by this policy.³ Women are also more likely to be victims of certain types of terrorist activity, and thus to be blacklisted for asylum relief. Rape victims who have been forced into domestic servitude by armed militants, for example, fall into this sad category since men are comparatively less likely to be targeted for this treatment.

The material support provision has been interpreted to treat minimal contributions, such as a small number of coins, a bed for the evening, or a loaf of bread, as the equivalent of financing a terrorist organization for many years.⁴ It has also been interpreted to cover non-violent speech and other forms of political activity, including writing for a student newspaper or attending a non-violent rally.⁵ Medical care, food, and laundry service qualify as well.⁶ Under the Patriot Act, the burden is on the applicant to demonstrate that he or she "did not know, and should not reasonably have known, that [his or her provision of material support] would further the organization's terrorist activity."⁷ If it is ruled that an applicant should have reasonably known that her support would aid a terrorist organization or an individual who may engage

in terrorist activity, she is inadmissible, deportable, and barred from immigration relief.⁸

As previously mentioned, there is no statutory exception under immigration law for activities that are *de minimus* or triggered by physical violence or duress. Thus, the law construes any coerced support to a non-State armed group as "material support" to terrorism. This is particularly harmful to women and girls, as it fails to recognize that they may be more vulnerable to forced domestic service and sexual assault.⁹ This has also led to a significant number of previously-victimized female asylum seekers having their applications denied or placed on hold. In 2005, a Liberian woman who was applying for refugee resettlement to the United States had her refugee resettlement application placed on hold when DHS averred that because she was raped and held hostage by rebels, she had given material support to a terrorist organization.¹⁰ Women are generally far more likely to provide care for family members, which may make them more likely to be excluded from asylum relief if their families are linked to any sort of counter-governmental activity. For example, a woman from Ethiopia had her asylum application delayed for three years because she had, at one point, brought food and water to her son, who was in prison for "political reasons."¹¹

Women are also in immigration detention in far greater numbers than in the past, due in part to these issues.¹² The immigration law and policy changes after September 11th have led to a significant increase in the number of women in immigration detention facilities, and their conditions of confinement are often extremely poor and under-resourced.¹³ It is more common now to detain immigrants in prison-like facilities, in part because of the "post 9/11 trend toward a penal approach to immigration."¹⁴ The women often have limited access to family members, which may cause additional societal problems, since studies indicate that the "majority of the women in custody are mothers of children under ten years of age."¹⁵



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Rules Of Naval Warfare And The Lusitania Case

when the torpedo struck. That there were munitions aboard is now clear. Only their type and amount is still in debate.

In the aftermath of the sinking the British mounted a propaganda campaign aimed at Americans that obscured their own activities and stressed German barbarism in attacking a supposedly innocent ship. The message proved effective in the United States despite its concealment of the truth. People saw the attack and deaths as a fact which Germany was not able to refute or explain at the



time. But American protests after the torpedoing of the *Lusitania* induced Germany to adopt a more “restricted” policy. Passenger ships would not be attacked and ships of neutral countries would be respected. The change worked for a while.

Britain’s enquiry into the *Lusitania*’s sinking was partly secret, blaming the loss on a second torpedo, but many criticized the Admiralty and its head Churchill. Their transparent effort to place full responsibility on Captain Turner was regarded as self-serving and not convincing. In America when lawsuits against Cunard were heard jointly in 1918 the court blamed Germany. Seven years later the German government paid \$2.5 million to settle claims. In all these investigations and hearings the findings followed what officials maintained and their propaganda endorsed. Awkward questions were never answered.

From the beginning the wreck’s location was known. The

ship’s remains are very fragile and lie in just under 300 feet of water, but murky conditions and currents make diving difficult, and the *Lusitania* rests on its starboard side fully concealing the holes made by the explosions. For many decades officials managed to prevent most diving at the wreck. Meanwhile some divers salvaged small pieces. In the 1980’s things changed. Improved diving equipment and technology made closer inspection feasible. A British court also ruled the government had no claim to items found outside British waters. Finally a well-equipped diving operation sponsored by the National Geographic Society carried out extensive inspections and produced a television documentary. That the ship had been transporting munitions was no longer debated, and in 2014 Britain warned divers of explosives aboard the *Lusitania*, but exactly what occurred after the torpedo struck remains unclear.

With its military situation worsening Germany in February 1917 resumed unrestricted submarine warfare. That decision coupled with the notorious Zimmermann telegram case caused America to declare war on 6 April 1917 nearly three years after the sinking.

The loss of the *Lusitania* gave rise to misinformation and uncertainties that persist in 2015 a century later. Much of the misunderstanding arose from what intelligence services call “disinformation” or the deliberate circulation of falsehoods to obscure and confuse. But books and articles in Britain acknowledge at least some of the findings. Now the anniversary may finally help put the tragedy in a more balanced historical context.

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.”



Library Holiday Schedule

Friday July 3rd - Closed

Saturday July 4th - Closed

Sunday July 5th - Closed

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Compassionate Immigration, Terrorism, and Gender

They also often lack legal representation and may not have access to proper gender-appropriate health care (including gynecological care, prenatal care and sanitary pads).¹⁶ Women in these facilities are additionally at an increased risk for sexual assault.¹⁷

Children are not immune to these immigration-related developments, and therefore, neither are their mothers. This is because the Department of Homeland Security has applied many of the terrorist-related bars to children, or to adults who were children when the conduct in question occurred. One example comes from the story of Martine, a 12 year old girl from the Democratic Republic of the Congo who was kidnapped by armed rebels and forced to become a child soldier.¹⁸ She remained a captive for three years, and witnessed the death and injury of many of her fellow child soldiers.¹⁹ She was forced to provide domestic labor and was frequently raped by adult soldiers.²⁰ After her release from the rebel army with the help of a local NGO, Martine became a counselor for other girls in similar situations, who were often stigmatized by their communities as a result of their sexual abuse.²¹ She traveled to the United States and to Europe to educate others about the unique predicaments of girl soldiers and to urge prosecution of the rebel soldiers for the sexual abuse that they committed.²² It became too dangerous for Martine to return to the Congo, after news of her activities got back to her homeland and it became widely known that she was speaking out against the rebel group.²³ However, her application for asylum relief has been placed on indefinite hold because she is a former soldier.²⁴

CONCLUSIONS AND STEPS FOR MOVING FORWARD

The terrorist-related bars to asylum often lead to tragic and unintended results for victims of terrorism. Until they are changed to include an exception for acts caused by physical violence, coercion and other forms of duress, victims will continue to be labeled as terrorists and excluded from asylum relief. In order to right this wrong, Congress should consider adding such an exception to the law, as well as an exception for *de minimus* support. The definitions of “terrorist activity” and “terrorist organization” should also be reexamined, as they are currently overly broad and cause many individuals to be identified as terrorists despite never having participated in terrorist activity.

Women and girls are often particularly vulnerable members of the population, and therefore, they are affected by these policies in unique and tragic ways. They are more likely to provide “material support” in the form of food or shelter to family members who may

be linked to terrorist organizations, and thus, they are likely to be denied asylum relief despite never having participated in terrorist activity themselves. They also are more likely to be sexually assaulted or to be coerced into domestic servitude with rape and other forms of physical violence. The Department of Homeland Security should acknowledge these exceptional challenges that women face in war-torn and terrorist-controlled societies, and they should not be unfairly targeted because they face unique risks as a result of their gender.

There is a path for moving forward, and with compassion and thought, we can change our immigration laws and policies to better protect those women who have been victims of terrorist attacks. If they are eligible for asylum relief, their victimization should not prevent them from seeking refuge in the United States.

Ashley Walker is a second-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.

See endnotes on page 25.



Law Day Reception - 2015

Photos and Details on pages 22 and 23



Enhanced Services Keep Coming to the St. Lucie Clerk's Office

By Joe Smith

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Since first being elected as St. Lucie County's Clerk in 2008, I have made it my priority to provide attorneys and the general public with the best quality service possible. Over the years, we've streamlined services, cross trained our departments, and launched new programs focused on giving our customers added convenience at a reduced cost. We've moved several services to the web, including foreclosure & tax deeds auctions and juror check-in, and we began offering a live chat platform to speak directly with a deputy clerk. We also opened the circuit's first Self-Service Center, giving pro se litigants a gateway to the courts for many county civil and family cases. The added service also provides customers the opportunity to use the e-portal to file their cases electronically.

While these added services are big steps toward creating additional transparency within our courts, there is one initiative Clerks throughout Florida will launch later this year that will revolutionize the way we think about public access to the courts. Just last year, after much deliberation, the Florida Supreme Court finally lifted the 10-year moratorium banning Clerks from posting court records online. Soon afterwards, we started developing and evaluating pilot programs to give the public convenient access to view documents while protecting the privacy of victims and confidential case information. I'm happy to report that by the end of 2015, nearly all Clerks in Florida are expected to have most of their records available on their websites for the world to see.

In anticipation of this change, the St. Lucie County Clerk's office is now offering attorneys free access to view all of their case documents through a secure Electronic Access Account. Later this year, we will also remove the majority of fees associated with pulling and downloading custom reports. While this action increases the expense of our daily operations, it's important to me that you and the general public have convenient, free access to your public records. Once we are in the pilot phase later this summer, we will be asking for the public's help to test the system. If you are interested in being part of this innovative program, please send your request to news@stlucieclerk.com.

In addition to these exciting changes, my team of caring and knowledgeable professionals have been incredibly busy implementing new services designed to safeguard taxpayer dollars, increase revenues for the state and county, and close longstanding cases in our justice system.

Operation Green Light

On April 18, the St. Lucie Clerk's office participated in a statewide initiative to allow citizens with cases in collections to pay their court fees and fines without getting charged the 40 percent collection surcharge. The event was designed to increase revenue for the state and local governments while closing longstanding cases and saving the public thousands of dollars.

Just in St. Lucie County, the event generated \$148,938 and saved customers nearly \$58,000 in collection agency fees. Throughout the whole state, more than \$4.9 million were collected, emphasizing the critical role Clerks play in funding our government. The DHSMV and Tax Collectors collected additional revenues through driver's license reinstatements and other services. Our office also partnered with numerous judicial and social service agencies to promote awareness of Operation Green Light, which was one of the most publicized events ever produced by the Florida Court Clerks and Comptrollers (FCCC), the governing association of the state's elected Clerks and Comptrollers. Stories were published and aired in all media markets throughout the state in the three weeks leading up to and on the day of the event. In St. Lucie, we mailed out 2,500 postcards, displayed posters and distributed more than 3,000 fliers at the courthouses.

More than 360 cases were paid by customers, many of whom haven't been able to drive legally for years. They were very grateful for this one-time opportunity. I had the chance to speak with several customers who felt the weight had been lifted off their shoulders, allowing them to start fresh. The residual efforts of this event will also benefit our economy by allowing citizens to get back on the road, easily transport to and from work, and continue as regular contributors to our community.

Those who attended the event in person had the opportunity to see our beautifully renovated offices at the South County Courthouse in St. Lucie West, which just opened on April 13. The branch office now has seven cashiers dedicated to providing services for traffic and county civil courts. Attorneys also have a private area in the lobby with a desk and a computer to view documents.

New Audit Services

Behind the scenes, the Clerk's office is working hard to protect our most vulnerable citizens. We recently expanded our guardianship audit function to better identify fraud, waste and financial mismanagement. Our team of professionals has been conducting advanced audits to identify and investigate gross mismanagement in the county's guardianship cases. The new services ensure that wards are not taken advantage of and that guardianship expenses are properly accounted for. Since the program began in February, the audit team has performed more than 32 advanced audits on guardianship accountings

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Enhanced services keep coming to the St. Lucie Clerk's office

and has identified more than \$702,758 of questionable expenses paid by guardians.

In addition to auditing guardianship cases, my office is also responsible for safeguarding all the public funds for county citizens. Recently, the Clerk's office partnered with the Board of County Commissioners to enact the Internal Audit Charter, initiating an independent internal auditor and advisory committee. The auditor will work closely with county and Clerk department heads to identify risks and improve their procedures. The program is part of an effort to ensure the two government entities operate as efficiently as possible. The initial audits will be done on departments that are deemed high risk, such as those that have complex operations and a strong financial impact on the county.

All members of the public, including county and Clerk employees, can anonymously report for investigation any suspected fraud, waste or abuse to the internal auditor as well as guardianship fraud to our guardianship auditors by emailing fraud@stlucieclerk.com.

Coffee with the Clerk

Two months ago, I launched a new program to improve dialogue between law firms and the Clerk's office. Once a month, I bring coffee and donuts to a local law firm to discuss ways the Clerk's office can improve its services for attorneys and paralegals. My team and I also share the latest changes to our court operations and how they impact you.

During our most recent meeting with the team at Steinger, Iscoe and Greene, we shared some news about e-filing features, including the e-service function, which many attorneys enjoy having. The firm also gave great feedback on the turnaround time for summons in civil cases, which our office normally processes the same day as their filings.

As you know, professionals in the legal community are our primary customers, and it's vital we have open dialogue to continue to maintain our 99 percent customer satisfaction rating. If you would like to schedule a meeting at your office, please email Kristen Garrison at garrisonk@stlucieclerk.com.

Domestic Violence Awareness Month

Many people are aware that one in four women are victims of domestic abuse. What many don't know is that domestic violence can lead to other common emotional traumas such as depression, anxiety, substance abuse and posttraumatic stress disorder. In addition to the

immediate physical and mental hurt, there are residual negative effects impacting every aspect of society, including an increased need for emergency and social services, decreases in workplace productivity, turmoil at schools, and more cases overwhelming the justice system. Domestic violence eats away at the core of our community.

To help create awareness of this critical issue, I had the privilege as FCCC president to lead a statewide campaign promoting awareness of domestic violence services provided by our elected Clerks. During Domestic Violence Awareness Month last October, our offices partnered with social service agencies in our communities to encourage victims of domestic abuse to seek help.

In St. Lucie, we partnered with local law enforcement and social service groups, including SafeSpace, a certified domestic violence shelter, to promote our services. Our deputy clerks donated supplies for the shelter and wore purple wristbands to drive attention to the cause. We also produced an award-winning video public service announcement for social media to encourage victims to access our free court packets for filing domestic violence injunctions against abusers. It was well received and helped increase downloads and injunction filings during the final quarter of 2014.

I also had the privilege of serving as honorary chair of the Walk a Mile In Her Shoes fundraiser benefiting SafeSpace. I was joined by nine of my deputy clerks who helped raise an additional \$500 for the charity.

The services are just some key examples of what your Clerk's office is doing for you and your community. For the past seven years, we've made lasting improvements by embracing technology and focusing on an attitude of always providing Amazing Customer Experiences for each citizen who walks through our doors. Even after my role as FCCC president draws to a close in June, I will continue to work closely with other Clerks throughout the state to share best practices and develop quality services for St. Lucie County citizens and all Floridians. My goal is to ensure your experience with the Clerk's office is a positive one.

To receive regular updates about the Clerk's office and important news affecting you, sign up for our monthly email newsletter, the Clerk's Chronicle. You can subscribe at www.stlucieclerk.com under the Contact Us menu.

On behalf of all the hard-working and dedicated professionals I am honored to call colleagues, it remains our privilege to serve you.

Sincerely,

Clerk Joe Smith

Clerk of the Circuit Court, St. Lucie County

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Is a Felony Conviction a Life Sentence?

You may be denied or lose your occupational or business license, e.g., certified nurse assistant, licensed practical nurse, registered nurse, EMT and paramedics, if your civil rights are not restored.

After review, 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? The more daunting question is probably, how am I ever to be employed? There isn't a speech I give or a presentation delivered that I don't try, in some way, to weave in the warnings of being arrested and the aftermath that follows. I am so very proud to be a part of the criminal justice system, particularly in the 19th Judicial Circuit. I believe in every fiber that the jury system works. However, I am saddened by the fact that so many clients we represent have such an uphill battle that they may never overcome. The obstacles they will incur, even though prompted by their own wrong doing, are sometimes insurmountable. There are so many who have good intentions but just finally "gave up." In asking ourselves why recidivism is so high, an average 48%, I think we have our answer, at least in part.

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



Poet's Corner

The Pastel By Paul Nucci

I have to draw the line somewhere
I have seen and I must tell
A blank page dares me.

All will grow from this one stroke
Though hundreds have been drawn before
A blank page still scares me.

I begin with a line, the hardest line
An opening line, scratching across the paper
So close in hue; the essence of the work.

And now this line is two. Framing an idea
The hand is moving. The muse creeps up to peak.
I have seen and have to say

As the dust trickles down the lines blur.
A wisp of breath clears the path.
It's not too late to change. To add. To move. To save.

Soon the lines are drawn.
The dust is only one color
But there's no going back now

I begin with a shape...round or square
I have to draw the line somewhere
Large and small, I place them all
and still more dust

I begin with a color
Sienna, crimson, umber,
Colors grab my fingers and crawl up my arm
Dust falls. Hours pass
Colors fall into one another

Standing back, I begin to hear it sing
The line I drew is hidden now
Covered with shapes and colors
But it is still there somewhere

Dust falls. Hours pass.
The singing grows louder
Some will see what I have shown

Is it done? I'm not sure. Should I go on?
The muse only smiles. I sign my name
I have to draw the line somewhere

[Email this article to a friend...](#)

Paul Nucci is a musician and artist from St. Petersburg, Florida. His artwork and articles about "The Arts and the Law" can regularly be found in "Friendly Passages".

Law Day Reception - 2015

The Friends of the Rupert J. Smith Law Library and the SLC Bar Association sponsor an annual Student Art Contest in honor of Law Week. This was the 11th year.

The national theme this year was “Magna Carta: Symbol of Freedom Under Law”.

The Reception for the winners and honorees was held on Monday May 4th in the downtown Ft. Pierce Courthouse.



Dr. Diane Float’s private orchestra students of Community Music School of Tradition, provided entertainment.



The community leader honorees were Dr. Edwin Massey, President IRSC and Carolyn Fabrizio, Florida Rural Legal Services.



Our new Federal Judge, the Honorable Robin Rosenberg delivers the keynote address.



Back: James Walker, Esq., RJSLL President, Judge Mark Klingensmith, Superintendent Genelle Yost, Jade Ortiz, (Allapattah 8th grade) , Dr. Edwin Massey, President of IRSC, Isabella Moreno, (LPA 7th grade) , Yingying Zhang (LPA 12th grade), Breyale Jenkins (LPA 11th grade), Maddie Stromack (LPA 9th Grade), Kim Cunzo, Esq., Art Contest Chair, Commissioner Paula Lewis

Front: Carolyn Fabrizio, Florida Rural Legal Services coordinator, Shadalou Fernandez (FKS, 5th grade) , Josiah Fullwood (FKS, 2nd grade), Chase Wu (FKS 2nd grade) , Kamali Budwah (FKS 5th grade) , Littermin Joseph (FKS 5th grade), Tristen Dorey (Allapattah, 7th grade)

Law Day Reception - Art Contest Winners 2015



Tristin Dorey, Allapattah, 7th grade, second place middle school winner, with his family.



Shadalou Fernandez (FKS, 5th grade) is congratulated by Kim Cunzo.



Isabella Moreno, (LPA 7th grade), Yinging Zhang (LPA 12th grade), Breyale Jenkins, the 2015 first place winner for high school, 11th grade at LPA, stand in front of their winning entries.



Friends President Jim Walker is assisted with awards by Superintendent Gennelle Yost.



Breyale Jenkins, the 2015 first place winner for high school, 11th grade at LPA, with her family. Breyale has submitted winning entries many times in the 11 year history of the Student Art Contest



Jade Ortiz, (Allapattah 8th grade) with her mother.



Dr. Edwin Massey, Judge Burton Conner, Judge Klingensmith, Robert Schwerer



Josiah Fullwood, second place winner, elementary, 2nd grade FKS, with his mother

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The Annual Justice Alto Adams Writing Competition

Attention all Florida Law School Students

The Friends of the Rupert J. Smith Law Library invite all students currently enrolled in an accredited Florida Law School to compete in the first Annual Justice Alto Adams Writing Competition.

Papers should be a scholarly endeavor and must have a legal theme on a topic of your choice. The papers will be judged on legal reasoning, the difficulty or novelty of the legal issue addressed, general standards expected of serious work, and include a reference to a recognized citation system as well as the Fla.R.App.Pro. Rule 9.800. The paper must be long enough to accommodate a well-treated topic but not exceed 5000 words. A student may submit a work that has been written as a school assignment but nothing that has been previously published.

Your papers should be double spaced and submitted electronically by email to lucielaw@bellsouth.net with the subject line "Justice Alto Adams Writing Competition 2015" no later than September 15th, 2015. The winner will be awarded \$500 and published in "Friendly Passages" magazine which is electronically circulated to most members of the Florida Bar.

Please email Jim Walker at JimW@jimwalkerlaw.com with any questions.

We look forward to receiving your participation!

Lender Force-Placed Insurance Practices: A Revelation

(Endnotes)

¹ The prevailing rule is stated in the text, although that is changing a bit in several recently published cases. The holdings of those recent cases are interesting but are not a part of the focus of this article.

² In Florida, for example, residential mortgages are expressly exempted from the statutory definition of “collateral protection insurance” in the Florida Insurance Code. See Fla. Stat. § 624.6085 (2014).

³ Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States, p. 105 (January, 2011) [hereinafter “FCIC”].

⁴ FCIC, *supra*, p. 89. [Italics in original.]

⁵ Reply in Support of Defendants’ Motion to Dismiss, *quoted by the Court in McKenzie*, No. C-11-04965 JCS, 2012 WL 5372120, *11-*12 (N.D. Cal., October 30, 2012) (Spero, USMJ).

⁶ FCIC, *supra*, p. 7.

⁷ These figures were calculated by the author based on reporting by The New York Times: See Jessica Silver-Greenberg and Peter Eavis, “Wall Street Predicts \$50 Billion to Settle U.S. Mortgage Suits,” p. A1, col. 3 (New York Times Nat’l ed., Friday, Jan. 10, 2014). The author alone is responsible for the calculations presented here.

⁸ Deposition of Corporate Representative, pages 108-09, taken on Sept. 28, 2011 in *Williams*, (S.D. Fla. Case No. 1:11-CV-21233-Altonaga/Simonton), filed as Document Number 70-1 in *Kunzelmann*, (S.D. Fla. Case No. 9:11-cv-81373-DMM). See in addition Deposition of another Corporate Representative, also taken in the *Williams* case on Sept. 28, 2011, pp. 40-43, filed as Document Number 70-1 in *Kunzelmann*; and Deposition of a senior Vice President taken in *Kunzelmann* on May 23, 2012, p. 157, Document Number 70-4.

⁹ Sept. 17, 2012 Response to Interrogatory Number 1, at page 1, in Plaintiff’s First Set of Interrogatories, Document Number 110-2 filed on October 18, 2012 in *Kunzelmann*, (S.D. Fla. Case No. 9:11-cv-81373-DMM).

¹⁰ See Document Number 59, page 15, filed on Sept. 6, 2013 in *Salvatore Saccoccio*, (S.D. Fla. Case No. 13-cv-211107-FAM).

¹¹ 42 U.S.C.A. § 4012a(e)(2).

¹² *Hofstetter*, No. C 10-01313 WHA, 2010 WL 3259773, *2 (N.D. Cal. Aug. 16, 2010).

¹³ *Selman*, No. 12-0441-WS-B, 2013 WL 838193, *1 (S.D. Ala. March 5, 2013). So, in this case, an insurance policy with corresponding premiums was placed by force with a policy limit approaching \$100,000.00 in excess of the unpaid balance of the mortgage. The premium was charged to the borrower, in accordance with the nature of LFPI.

¹⁴ *Morris*, No. 2:11cv474, 2012 WL 3929805, *2-*3 (W.D. Pa. Sept. 7, 2012).

Compassionate Immigration, Terrorism, and Gender

(Endnotes)

¹ See, e.g., “Denial and Delay: The Impact of the Immigration Law’s “Terrorism Bars” on Asylum Seekers and Refugees in the United States” and “Combating the Terrorism Bars Before DHS and the Courts”, *infra* at footnotes 6 and 11.

² *A Decade Lost: Locating Gender in U.S. Counter-Terrorism* at 102.

³ *Id* at 100.

⁴ “Denial and Delay: The Impact of the Immigration Law’s “Terrorism Bars” on Asylum Seekers and Refugees in the United States” at 6.

⁵ *Id*.

⁶ *Id*.

⁷ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

⁸ *Id*.

⁹ *A Decade Lost: Locating Gender in U.S. Counter-Terrorism* at 100.

¹⁰ *Id* at 100.

¹¹ *Id*.

¹² *Id* at 103.

¹³ *Id*.

¹⁴ *Id*.

¹⁵ *Id* at 103.

¹⁶ *Id*.

¹⁷ *Id*.

¹⁸ “Denial and Delay: The Impact of the Immigration Law’s “Terrorism Bars” on Asylum Seekers and Refugees in the United States” at 32.

¹⁹ *Id*.

²⁰ *Id*.

²¹ *Id*.

²² *Id*.

²³ *Id*.

²⁴ *Id*. This information is of 2009, the date of the Human Rights Watch report. I was unable to find further information on Martine’s current whereabouts.