Friendly Passages

Supporting Equal Access to Law in Florida

November/December 2012

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

In This Issue

My Most Important Work As a Trial Judge

By the Hon. Burton C. Conner

Of all the work I did as a trial judge, the work in juvenile court was the most important. I had the good fortune of having an extended exposure to juvenile court. During my nineteen years as a trial judge, I spent almost nine years as a juvenile judge.

There are three components to the juvenile division because there are three chapters of Florida Statutes addressing juvenile court jurisdiction: Chapter 39, dealing with Dependent Children (children abused, abandoned, or neglected by their parents); Chapter 984, dealing with Children in Need of Services (runaway, truant, and ungovernable children); and Chapter 984, dealing with Delinquent Children (juveniles charged with crimes). However, there is little legislative funding or executive resources devoted to Children in Need of Services, so the only petitions that get filed in the juvenile division regarding Chapter 984 are petitions dealing with truant children, which is a very small segment of the overall caseload. My experience is that judges in the juvenile divisions of the Nineteenth Circuit divided their time almost evenly between Dependency cases and Delinquency cases.

The remarkable thing about juvenile court is that you deal with a slice of life that most attorneys and the public are unaware of and hear little about. It is astounding and sobering to learn the miserable environments far too many children in our society experience. It is quick and easy for most people to simply conclude the core problem presented in juvenile court is the deterioration of family values in our society. Although the observation is correct, it seems to me the observation simply identifies the symptom, not the causes. Despite all my years of experience in juvenile court, I do not profess to have a clear understanding of the causes for the deterioration of family values. Too many single moms and uninvolved dads is a key factor. Too many children (persons under the age of 18) having babies is a key factor. (You would be shocked to know how often 13 and 14 year old girls deliver babies.) Drugs and alcohol are key factors.

It is easy to blame the parents, but the problem runs deeper. Poverty, a welfare system that does not lead to jobs, and an overloaded education system are key factors to the deterioration of family values. Our health care system for children is inadequate; another key factor. We all bear responsibility for those factors. It is a mistake to put all the blame on the parents. The steady deterioration of family values is well documented and has been going on for well over thirty years. Yet, as a society, we have failed to stem the tide. All of society bears responsibility for that.

I agree that simply throwing money at the problem is not going to work if parents are not going to take responsibility for their actions and focus more attention on their children. But on many scales of measuring percentage of tax dollars spent on children, Florida frequently ranks in the bottom 40's out of 50 states. Because Florida has the fourth largest state population in the nation, something is dramatically wrong with how we set our priorities for spending tax dollars.

I have often wondered what life would be like if we structured our government so that every child had a vote in all elections. The elderly are often extremely vulnerable as they grow old, but the elderly are a very significant voting force -- a voting force that all politicians respect and woo to some extent. Unfortunately, children don't have voting clout; in elections, children have no voice for themselves. Politically, others must speak for children. Look around, and it is obvious that those who speak for children are not being sufficiently heard by elected officials.

Fortunately, we have structured our court system in a manner where the child has a voice. It is rare that a child in Delinquency Court does not have an attorney. In most cases, a child in Dependency Court has a guardian ad litem to speak for him or her.

Why do I feel juvenile court was my most important work as a trial judge? Because my perception was that if I somehow contributed to solving a problem that pertains to a child, the ripple effect is potentially multi-generational. I never had that perception in the other divisions of the court, including family court. I think what caused me to realize the rewards of an assignment to juvenile court was a quote I heard from a speaker at a juvenile court educational event, "You can count the number of seeds in an apple, but you can never count the number of apples in a seed."

The Honorable Burton C. Conner is the chair of the Board of Trustees of the Rupert J. Smith Law Library of St. Lucie County. He was a circuit court judge in the Nineteenth Judicial Circuit for fourteen years. He was appointed to the District Court of Appeals, 4th District in 2011. We thank him for his regular contributions to "Friendly Passages."

Expenditures on Education

According to a report compiled by the 2010 US Census, Florida is 44 out of 51 (the tables include the District of Columbia) in spending per student. The national average is $10,615 but Florida spends only $8,741 per student. More startling is our ratio of how much we spend on education compared to our income. We rank 49 out of 51 when we compare how much we make versus how much we spend on education. A disproportional amount comes from Federal rather than state sources too.

Is spending the answer? Not necessarily. Utah is the poster child, often ranked at the bottom, or very close, in spending. Conversely, they are usually in the middle when ranking performance. Overall, there is a correlation between spending and performance. Critics are quick to point out states that outspend but don't out perform, but often the big spenders are in areas where the cost of living is the highest – Alaska and New York are examples.

When looking at international statistics on per student spending, the US spends 50% more than second place, the UK. France, Finland, Canada, Australia and the UK all spend between $5500 and $5850, very tight grouping. Finland clearly outranks all other countries, including the United States, in performance. Again, this might say more about how far the dollar (or Euro) may go. The US holds its own with literacy rates but falls down in Math and Sciences placing 9th and 8th respectively.

These statistics were take from 2010 U.S. Census web page. For more information, see : http://www.census.gov/compendia/statab/cats/education.html

Compiled by the editor

Florida's Guardian ad Litem Program

The Florida Guardian ad Litem Program is a partnership of community advocates and professional staff providing a powerful voice on behalf of Florida's abused and neglected children.

For more information: www.guardianadlitem.org

On Behalf of the Publisher

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

"No people will timely surrender their liberties, nor can be easily subdued, when knowledge is diffused and Virtue is preserved... On the Contrary, when People are universally ignorant, and debauched in their Manners, they will sink under their own weight without the aid of foreign invaders." -- Samuel Adams, to James Warren (1775)

George Orwell's classic, *1984*, tells the story of a triumphant Party bent on erasing any trace of dissenting thought. It does so by destroying knowledge: By 2050, earlier, probably --all real knowledge of Oldspeak will have disappeared. The whole literature of the past will have been destroyed. Chaucer, Shakespeare, Milton, Byron --they'll exist only in Newspeak versions, not merely changed into something different, but actually changed into something contradictory of what they used to be. Even the literature of the Party will change. Even the slogans will change. How could you have a slogan like 'freedom is slavery' when the concept of freedom has been abolished? The whole climate of thought will be different. In fact there will be no thought, as we understand it now. Orthodoxy means not thinking -- not needing to think. Orthodoxy is unconsciousness.

Orwell drew inspiration for his work from real life precedents. During the Nazi occupation of Poland in WWII, for example, the Germans decreed that education of Polish children would not be permitted to progress beyond the third grade. Heinrich Himmler wrote: "The sole goal of this schooling is to teach them simple arithmetic, nothing above the number 500; writing one's name; and the doctrine that it is divine law to obey the Germans. I do not think that reading is desirable." Universities and high schools were all closed. It was an Orwellian nightmare vision of imposing ignorance in service to tyrannical order.

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CRYPTOQUOTE

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

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.

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On Behalf of the Publisher

There is a different vision underlying the foundational values of our own country. Ours is a tradition of reverence for knowledge and education. There is awareness that in a free society liberty is secured only through acquaintance by each member with the rights and remedies conferred by law. James Wilson said in "Of Study of the Law In the United States"(1790) that, "Law and liberty cannot rationally become the objects of our love, unless they first become the objects of our knowledge." Early Americans understood this means that the law must be made readily accessible to everyone, as affirmed by James Madison in a letter to one W.T. Berry (August 4, 1822): "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors must arm themselves with the power which knowledge gives."

A free society, built upon ideals of equal justice for all, must insist that the law is easily available to everyone. The law must not be hard for people to find. Help must be provided in navigating its complexities, without obstruction by such artificial barriers as cost. Law libraries, staffed by trained professionals, make that possible. They provide a range of printed and electronic materials. They house the material that a legal professional might rely on, including special copyrighted manuals and electronic data bases too costly for "Main Street" lawyers to buy on their own. For lay users there are rich collections of simple, easy to read guides. A professional law librarian shows where these resources are found and how to use them.

No other portal is as effective as a law library in connecting people with what they need to know about the law. On a typical day at the Rupert J. Smith Law Library, for instance, people show up to look for forms to use in a child support case. Some are looking for forms and guides to use for modification of probation. Others want to find cases using statutory annotations. One patron comes in to get a basic understanding of the probate process, before seeking out a lawyer. An attorney shows up looking for on-line access to law review articles discussing an esoteric issue.

We Invite Your Comments

Help us make Friendly Passages better! Email your comments, suggestions, and ideas for articles that would be of interest to you to: nora@everlove.net
Look for letters in future editions. We hope to see you there.

Another wants to examine labor decisions issued by the Public Employee Relations Commission. A property owner seeks to check out city zoning regulations to see if a mobile home can be put on the property. The things they want to learn about are as diverse as the tapestry of everyday life. The law library is where they come to do it.

Law libraries are worth standing up for, institutions maintaining our way of life by allowing people to "arm themselves with the power which knowledge gives." Find out where the local law library is located. Use it. Tell others about it. Mr. Madison would be pleased. Thank you for your support.

Lawyer's Life Caption Contest

We have a few of our own but we'd like to hear some of yours. Send your bubble to nora@everlove.net. We'll publish the best ones in the next issue.

LAST ISSUE'S CRYPTOQUOTE

PBF'Y XFYUNRUNU JXYS CFHYSXFM XF YSU VBFKYXYWYXBF. YSCY QWKY ZU QCXFYCXFUP, RBN XY XK YSU BFEH KCRUMWCNP BR BWN EXZUNYXUK. - CZNCSCQ EXFVBEF

Don't interfere with anything in the constitution. That must be maintained, for it is the only safeguard of our liberties.
-Abraham Lincoln

Trial Practice and Civility: In Pursuit of Good Manners

By the Hon. Mark W. Klingensmith

"To survive a war,
you gotta become war"
– John Rambo [1]

Anyone who has been in my courtroom has probably seen the deskplate that sits at the front of my bench that reads "Civility and Professionalism – anything less will not be tolerated." This was a gift I received shortly after my investiture from the local chapter of the American Board of Trial Advocates.

Over the years, I have seen numerous examples of "Lawyers Behaving Badly." Some of the more egregious examples have included: the filing of questionable motions to force an out-of-town attorney to travel to distant hearings; propounding frivolous objections to discovery requests for the purpose of delaying an opponent's ability to prepare; objecting to deposition questions to coach a witness on how to answer difficult questions; and in a more extreme example, fights between lawyers (both figuratively and literally). The most common example I see as a judge of lawyers lacking professional courtesy is the filing of *ex parte* motions to compel without ever attempting to contact opposing counsel to secure the requested discovery.

"The most common example I see as a judge of lawyers lacking professional courtesy is the filing of ex parte motions to compel without ever attempting to contact opposing counsel to secure the requested discovery."

Many lawyers who routinely employ the more extreme tactics referenced above approach the practice of law, especially in the context of litigation, as nothing short of "war," and subscribe to the mindset expressed by the John Rambo movie character in the quote above. It has also been my experience that the same attorneys who act like "Rambo" outside the courtroom typically become "Miss Manners" when appearing in front of a judge.[2]

The latest effort to address the ongoing problem of declining professional courtesy and attorney civility comes in the form of a joint resolution that will be promoted by 35 Voluntary Bar Associations throughout South Florida. This resolution was endorsed by bar association presidents and chief judges of the state and federal circuits in support of the Supreme Court's amended Oath of Attorney Admission that took effect on September 12, 2011. As everyone should now be aware, the amended oath adds a pledge of "fairness, integrity, and civility" in all communications to attorneys and the court.[3]

This resolution has particular significance to the attorneys of the 19th Circuit because Chief Judge Steven Levin is one of the chief judges who were signatories to the resolution.

The anticipated effect of this resolution is to express the intention of the various Voluntary Bar Associations to actively work together to promote the oath of civility across the respective counties they serve, and to do so in a manner that is most likely to improve civility awareness and adherence to accepted standards of professional courtesy by their members and nonmembers.

Unfortunately, the decline in lawyer civility is not a recent trend. In 1971, Chief Justice Warren Burger publicly condemned what he saw as the growing problem of the lack of civility among attorneys in a speech to the America Law Institute, and in particular, the growing problem of discovery abuse. In response some years later, the ABA adopted the model rules of professional conduct, which was adopted in some form by no less than 37 jurisdictions throughout the United States, including Florida.

However, many attorneys assume that "professionalism" is the functional equivalent of "ethical conduct." They see their obligations to fellow attorneys, and their standard of conduct before the court, to be governed only by those disciplinary codes that may subject them to Florida Bar sanctions should they be transgressed. To change that way of thinking, local bar associations and legal groups have been concerned with compelling behavior that the disciplinary codes do not necessarily mandate, including civility, good manners, professionalism, and common courtesy. This has included the adoption of various local rules of etiquette and standards of professional conduct and courtroom decorum to be enforced by the courts themselves.

These "local" efforts first started when the Seventh Circuit became the first federal circuit to promulgate such a code. In 1992, it formally adopted the recommendation of the Committee on Civility of the Seventh Federal Judicial Circuit, and promulgated its own Standards for Professional Conduct of Litigation.

In 1993, the Trial Lawyers Section of The Florida Bar formed a professionalism committee to prepare practical conduct for trial lawyers. After reviewing numerous model guidelines from Florida and around the country, the committee determined that the guidelines prepared by the Hillsborough County Bar Association were the best model for the entire state. In 1995, the Florida Conference of Circuit Court Judges approved the "Guidelines for Professional Conduct." In doing so, they recognized that these Guidelines did not have the force of law, but that trial judges had the right to consider any issues raised by them on a case-by-case basis.[4]

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Trial Practice and Civility: In Pursuit of Good Manners

Since their endorsement by the Conference, the Guidelines have been followed by lawyers throughout the state and have been approved by administrative order in many circuits. Some courts and organizations in Florida have developed their own statements (sometimes referred to as "codes" or "creeds") that deal with professionalism concerns. Each of these codes urge practitioners to carry their conduct to a level above mere compliance with the mandatory ethics regulations. Other examples of these codes include: The Florida Bar "Creed of Professionalism" (adopted by the Executive Council of the Trial Lawyers Section of the Florida Bar and approved by the Florida Conference of Circuit Judges);[5] Florida Standards for Imposing Lawyer Sanctions; Procedures for Ruling on Questions of Ethics; Ideals and Goals of Professionalism (aspirational guidelines adopted by the Florida Bar Board of Governors, May 16, 1990);[6] and the Palm Beach County Bar Association "Standards of Professional Courtesy."[7]

"Perhaps the increased focus on the billable hour and the emphasis on profitability, or the increased competition for clients in an ever-growing legal community are to blame for the rise in incivility."

The U.S. District Court for the Southern District has adopted its own local rule, Rule 11.1(c), stating, "The standards of professional conduct of members of the Bar of this Court shall include the current Rules Regulating The Florida Bar. For a violation of any of these canons in connection with any matter pending before this Court, an attorney may be subjected to appropriate discipline.[8] Rule I.A. of the Southern District's Rules Governing Attorney Discipline, states that "Acts and omissions by an attorney admitted to practice before this Court . . . which violate the Rules of Professional Conduct, Chapter 4 of the Rules Regulating The Florida Bar shall constitute misconduct and shall be grounds for discipline." As one can see, this local rule does not define the standards of conduct to be limited to the Bar Rules alone.

On January 26, 2007, the St. Lucie County Bar Association (SLCBA) adopted its own Standards of Professional Courtesy. In its Preamble, the SLCBA recognized a lawyer's obligation of compliance with the Rules Regulating the Florida Bar, in keeping with the long tradition of professionalism among and between members of the SLCBA:

> In the final analysis, a lawyer's duty is always to the client. But in striving to fulfill that duty a lawyer must be ever conscious of his broader duty to the judicial system that serves both attorney and client. To the judiciary, a lawyer owes candor, diligence and utmost respect. To the administration of justice, a lawyer unquestionably owes the fundamental duties of personal dignity and professional integrity. Coupled with those duties is a lawyer's duty of courtesy and cooperation with fellow professionals for the efficient administration of our system of justice and respect of the public it serves.[9]

In April 2009, the Martin County Bar Association and the Justice Major B. Harding Inn of Court adopted its own Standards of Professional Courtesy[10] and Guidelines of Professional Conduct.[11] In the Preamble to the Standards, the Martin County Bar Association emphasized that they represented the expectations of local judiciary:

> Compliance with the standards, unlike the "Oath of Admission" and the "Rules of Professional Conduct" adopted by the Florida Supreme Court, is intended to be voluntary. They have received the approval of the Board of Directors of the Martin County Bar Association. The judges of the Nineteenth Judicial Circuit, who expect professional conduct by all attorneys who appear and practice before them, have also endorsed them.

On October 13, 2009, Judge Gary Sweet issued a standing order for his division that the Trial Lawyer Section Guidelines for Professional Conduct were specifically adopted by his Court, thus placing the attorneys and parties appearing in his court on notice of his intention to enforce the Guidelines as rules of practice in his court through the possible imposition of sanctions.[12]

In amending the Oath, the Court noted: "In recent years, concerns have grown about acts of incivility among members of the legal profession."[13] After the amendment was announced, some attorneys told me that it is somewhat of an embarrassment to the profession that the Supreme Court felt the need to actually rewrite the Oath to include a provision on something that most of us learned in kindergarten.

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Trial Practice and Civility: In Pursuit of Good Manners

Some attribute the rise of incivility to lack of mentoring for young lawyers. Others assert that the increased emphasis on a paperless practice makes it easier to say something nasty to opposing counsel by e-mail than in person. Perhaps the increased focus on the billable hour and the emphasis on profitability, or the increased competition for clients in an ever-growing legal community are to blame for the rise in incivility. Maybe lawyers are simply mimicking the aggressive, take-no-prisoners approach to the practice as seen on television and the movies.

Regardless of the cause, we must remember that it is a privilege to practice law, and all of us must be vigilant to ensure that the standard of practice here does not deteriorate to the level seen in some of our sister circuits. Attorneys are reminded to become familiar with each of these codes of conduct, and to adhere to the spirit and the letter of these pronouncements -- in and out of the courtroom. The judges of every Circuit, including this writer, should expect nothing less from the attorneys who handle cases before us.

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1 Rambo: First Blood, Part II.

2 A note to "Rambo litigators": judges know who you are, and in the long run, I believe your actions are ultimately doing a disservice to your client.

3 "To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications."

4 http://www.flatls.org

5 http://www.sunethics.com/creedprofm.htm

6 http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/F25F0275EE5AC973852571C6006F039F/$FILE/3IdealsAndGoals.pdf?OpenElement

7 http://www.palmbeachbar.org/spc.php

8 See *United States v. Miranda*, 936 F. Supp. 945 (S.D. Fla. 1996).

9 http://www.slcba.org/pdf/SLCBA_Code.pdf

10 http://www.martincountybar.org/pdf/s1.pdf

11 http://www.martincountybar.org/pdf/s2.pdf

12 http://www.circuit19.org/judges/sweetg/Standing%20Order%20.%20Guidelines%20for%20Professional%20Conduct.pdf

13 In Re: Oath of Admission to the Florida Bar, 2011 WL 4008136, No. SC11-1702 (Sept. 12, 2011).

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

Upcoming Bar Events

St. Lucie County Bar Association

Wednesday, December 5th at 5:30 p.m.
Holiday Party at the Pelican Yacht Club

Wednesday, December 12th at 1:00 p.m.
Ask-a-Lawyer Event at the Riverwalk Center

Friday, January 4th at noon
Regular meeting at Cobb's Landing

More details at:
http://www.slcba.org

Port Saint Lucie Bar Association

Wednesday, November 14th at noon
Spiro's Taverna
1738 SW St. Lucie West Boulevard

Wednesday, December 12th at noon
PSLBA Holiday Luncheon

Wednesday, January 16th at noon
Regular monthly meeting

More details are available at
http://pslba.org

Martin County Bar Association

Friday, November 16
Regular Monthly Meeting
MCBA Holiday Kick-Off
Monarch Country Club

Friday, December 21
Regular Monthly Meeting
Speaker: Chief Judge Steven Levin
Monarch Country Club

Friday, January 18
Regular Monthly Meeting
Judge Daniel T. K. Hurley
US District Court, Southern District
Monarch Country Club

More details are available at
http://www.martincountybar.org

Exploring One Man/ One Vote

By Robert Brammer

"One person, one vote" seems so familiar and fundamental that we could easily forget how short a time it has been with us. The standard has only been with us since the second half of the 20th century, and the road to its establishment was long and arduous. The events that lead up to *Baker v. Carr* and *Reynolds v. Simms* were similar. Shifts in population from rural to urban areas meant that, absent significant legislative redistricting efforts, voters in urban areas had their votes diluted, because so many of those voters found themselves clustered into a single legislative district.

The first case to answer the challenge posed by these districts was *Baker v. Carr*, 369 U.S. 186 (1962). Charles Baker filed suit after discovering that Tennessee had not redrawn its districts to take into account shifts in population for approximately sixty years. The major question in *Baker* was whether questions of legislative apportionment were even justiciable. Recognizing the inherent limitations of judicial power, Justice Brennan used a factor test to determine whether this was a political question, ultimately concluding that this was a matter that was justiciable. Some of the factors Justice Brennan examined included the potential for inter-governmental conflict, whether there was a compelling need for compliance with a prior political decision on the matter, whether there was a strong potential for embarrassing inter-departmental conflict, whether the matter was textually committed to another branch, and most importantly, whether there were judicially discoverable standards for resolving the matter. Ultimately, the matter was found justiciable, and remanded to the District Court. Justices Frankfurter and Harlan dissented, believing the controversy was a political question and that the exercise of judicial restraint was appropriate in light of the significant separation of power issues inherent in such a case.

With *Baker* establishing that legislative redistricting cases are justiciable *Reynolds v. Simms*, 377 U.S. 533 (1964) picked up where *Baker* left off. In *Reynolds*, voters in urban Alabama counties were under-represented by comparison to rural counties. The District Court responded by allowing Alabama to construct an alternate apportionment scheme, and when that failed, the District Court implemented its own apportionment plan. Chief Justice Warren authored the majority opinion stating that the Fourteenth Amendment's Equal Protection Clause requires "substantially equal state legislative representation for all citizens." The Court allowed some leeway for legitimate competing interests in constructing these districts, including combating gerrymandering. Still, the Chief Justice made it clear that absent a few limited exceptions, "legislators represent people, not trees or acres." Justice Harlan dissented, claiming the Court misconstrued the original intent of the Equal Protection Clause to apply to voting rights, and in doing so, abandoned the principles of federalism by encroaching upon a domain properly reserved to the states.

The debate over how we vote and whether our vote has been properly counted is far from settled. The redistricting process, particularly the proper standards for its review, are still a matter for debate. More recently, we have argued the balance between promoting access to the franchise and ensuring the integrity of our elections, pitting voter ID laws and registration requirements against inclusiveness. Despite these differences of opinion, we share a common belief that, as Chief Justice Warren stated in *Reynolds,* "the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." As we prepare for the November election, we should remember not to take this hard-earned right for granted.

Robert Brammer is a former staff member of the Rupert J. Smith Law Library and a regular contributor to "Friendly Passages." He is currently a Legal Reference Librarian at the Law Library of Congress. His views do not necessarily represent the views of the Law Library of Congress.

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By e-mail, you can reach the editor at nora@everlove.net.
We thank our authors and other contributors for making this issue a success!

Come to the next Friends Meeting!

Thursday December 6th at 5:30 p.m. All meetings are at the Library and refreshments are provided. We look forward to seeing you!

HELP WANTED

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

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

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

We look forward to hearing from you.

What's New At the Law Library?

Don't forget that we have a large collection of Florida Bar CLE discs at the library. These can be checked out for one week and are free. If you are in South County, you can return them to the small law library in St. Lucie West but ONLY ON FRIDAY MORNINGS when the library is staffed.

Advanced Labor Topics	1198C	12/10/2012	9.0	1.0
Florida Law Update	1212C	12/23/2012	7.0	1.0
Master Seminar on Ethics	1259C	12/24/2012	4.0	4.0
Survey of Florida Law 2011	1377C	12/28/2012	12.5	4.0
Affordable Care Act (ACA)	1243C	1/27/2013	7.0	1.0
2011 ELULS Annual Update: Power to the People	1285C	2/11/2013	16.5	1.5
37th Annual Public Employment Labor Relations Forum	1288C	3/22/2013	12.0	1.0
Technology Essentials for the Extraordinary Lawyer	1388C	3/23/2013	6.50	1.0
Annual Ethics Update 2011	1298C	4/21/2013	5.0	5.0
Case Law Update 2011: Family Law	1304C	5/2/2013	2.5	0
Bankruptcy Law & Practice: View from the Bench	1302C	5/3/2013	4.5	.5
The Tax Section's "Best of the Best" Seminar				
Presentations	1414C	5/14/2013	8.5	0
Agricultural Law Update	1306C	5/18/2013	5.0	1.0
Elder Law Annual Update and Review Course	1321C	7/13/2013	16.5	1.5
Civil Trial Certification Review 2012	1310C	7/26/2013	17.0	3.5
New Rule 2.526: Digital Accessibility of Documents				
Electronically Transmitted to Florida Courts	1468C	8/1/2013	1.0	0
Advanced Appellate Practice and Certification				
Review 2012	1318C	8/2/2013	7.0	0
12th Annual Labor and Employment Law Certification				
Review Course	1323C	8/16/2013	18.0	0
Masters of DUI 2012	1316C	8/16/2013	8.0	1.5
Estate Planning - Leaping Into the Future	1301C	8/29/2013	8.0	1.0

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State Civil Trial Court Orders-Florida
State Briefs Plus
American Law Reports (ALRs)
American Jurisprudence and other Am Jur titles
Causes of Action
Construction Practitioner Core
Couch on Insurance
Federal Analytical Library
Fletchers Cyclopedia of Encyclopedias
Form Finder Advantage
Immigration Practitioner Primary
Municipal Law Practitioner Core
Norton Bankrutpcy
Personal Injury Damages library
Real Property
Social Security Gold Library

The Nobel Peace Prize

By Dr. Richard Wires

Alfred Nobel (1833-1896) was a chemical engineer and industrialist born in Sweden who discovered how to use nitroglycerin in a relatively safe product he called "dynamite" and who bequeathed his huge fortune to endow the now famous Nobel Prizes. From his business headquarters in Paris he oversaw wide interests. Though often criticized for military uses of his explosives, he emphasized their importance in construction work, considering himself to be a pacifist and an idealist. Over the years the quiet bachelor supported efforts to promote world peace and followed new developments in literature and the sciences. His will provided for five annual prizes: in physics, chemistry, physiology or medicine, literature, and peace. (The Economics Prize was added in 1969.) Five institutions which he had not consulted were charged with choosing the recipients: four in Stockholm, one in Oslo. It took years to resolve legal issues and establish the will, written by himself, and to create the oversight structure and regulations that govern awards. Nobel Prizes were first given in December 1901.

Nobel's bequest of about $10 million or well over $300 million in today's value, along with the whole prize system, is managed by the Nobel Foundation with current assets between $400 and $500 million. A set percentage of investment income finances the prizes, which vary in amounts, but relative to living costs have always been substantial. Since 2001 each prize has come to $1.5 million or more. When a prize is shared the financial awards need not be equal. Many countries exempt the prize money from income taxes.

2011 Nobel Prize Award Ceremony

Certain rules apply to all prizes and others govern each award. General regulations prohibit posthumous prizes, permit reserving a decision for one year and then awarding the prize late, require a prize to be awarded at least once in every five years, and allow designation of joint laureates. But some exceptions have occurred. Nobel's will set rather broad limits for the Peace Prize: "the person who shall have done the most or the best work for fraternity between the nations and the abolition or reduction of standing armies and the formation and spreading of peace conferences." Like many others he believed that voluntary agreements, international laws, supranational courts, and arbitration procedures could prevent much armed conflict. The Peace Prize is unusual in that a five-person committee of the Norwegian parliament chooses winners, institutions and organizations were deemed to be eligible, a maximum of three recipients may share a prize, and bestowal occurs in Oslo in ceremonies concurrent with those in Stockholm for the winners of other prizes. A substantive difference is that the award recognizes recent achievements or even groundwork that may promise some future benefit. The other prizes generally honor cumulative accomplishments or seminal discoveries where time has confirmed their value. But the award for peace is often a gamble.

An inherent problem affecting the Peace Prize is conflicts in basis and attitudes. One involves the difference in how idealists and realists perceive the world and its affairs. The former believe that good will, reason, and compromise can prevail; the latter think strength, security and self-interest determine nations' policies. Because the award values the role of international cooperation, perhaps with national sovereignty losing ground, highly nationalistic regimes have little respect for the prize. Nor have systems based on an ideology like communism looked on the award with favor. They may use similar terms, like world harmony and peace, but their aims are different. It should be noted too that settling international disputes often leaves both sides feeling cheated. For these and other reasons support has been weak.

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Peace Prize Winners Mother Teresa and Nelson Mandela

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The Nobel Peace Prize

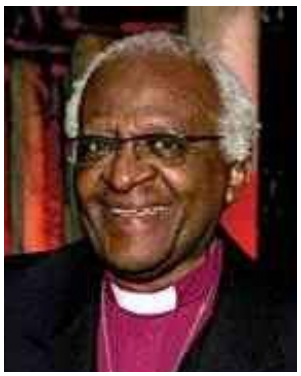
Selection begins with nominations, due on time in early February or held for a year, but solicited by invitation. Asked to submit names are members of parliaments, international organizations, certain academic and professional associations, previous laureates, and some individuals with special credentials. Committee members may also nominate candidates. From only a few submissions in early years there are now hundreds. Names of the nominees remain officially secret but are readily known. Some nominations have no realistic chance. A leftist member of Sweden's parliament even proposed Hitler in 1939 for the satirical effect. The nomination was quickly withdrawn but had become part of the official records. Stalin was nominated in 1945 and 1948 for winning World War II. Each nominee's achievements must be investigated and evaluated by committee members, their staff, and outside experts to establish a short list for final study and discussion. What happens in deliberations is seldom known.

Nobel winners are announced in mid-autumn and all awards are bestowed on 10 December. The occasion commemorates the benefactor's death. Precedence in all official matters follows the prizes' listing in his will: the order is important in Stockholm where four awards are presented. Each winner receives a medal, a diploma, and the assigned prize money. Many laureates did not attend the early ceremonies, travel in winter a hardship, but with air services most laureates now appear. At times the smaller ceremony in Oslo has outshone the principal one. Much depends on the relative popular interest in all prize winners. There have been nineteen years for which no Peace Prize laureate was named, a sixth of the time, with big gaps during the World Wars when all prizes were suspended. Although lack of a prize between 1939 and 1943 violated the rule, (Germany having occupied Norway) the Foundation excused the lapse as a necessary exception. During occasional two-year gaps in 1923-1924, 1955-1956 and 1966-1967, world conditions made choosing hard. The prize has been shared about a third of the time, mostly by two winners but twice by three, and sometimes with a person and an organization as co-winners. About a hundred people and twenty institutions or groups have received the prize. Most laureates have come from Western Europe and North America but diversity has slowly increased.

This Just In...

The Nobel Peace Prize has been awarded to the European Union, "for over six decades contributed to the advancement of peace and reconciliation, democracy and human rights in Europe."

Recognition of efforts to promote peace by individuals, institutions, and organizations began with popular and respected choices. In 1905 the peace activist Bertha von Suttner who had known Nobel became the first of now fifteen women laureates. Theodore Roosevelt (1906) was honored for brokering the Russo-Japanese peace and Woodrow Wilson (1919) for proposing creation of the League of Nations. Many prominent political figures of the 1920's won for working out international accords: Aristide Briand, Frank B. Kellogg, Austen Chamberlain, Charles Dawes and Gustav Stresemann. Early laureates among institutions include the Institute de Droit International (Institute of International Law) in 1904 and the Bureau International Permanent de la Paix (Permanent International Office for Peace) in 1910. Others followed. But economic depression together with nationalist extremism in countries like Nazi Germany and tight ideological conformity in the Soviet Union brought loss of confidence in collective security and many institutions. With new beginnings following World War II, came prizes for those rebuilding frameworks; George C. Marshall (1953) won for his economic initiative, Dag Hammarskjold (1961) won posthumously for work with the United Nations. Over the years most institutions and organizations connected with the League of Nations or the United Nations have been recognized but perhaps just because they are international. Whether some have truly exceptional records, for example the International Labor Organization (1969) and the International Atomic Energy Agency (2005), may well be questioned by outsiders. Meanwhile there was a trend toward winners paired for their efforts to end local conflicts or strife. For the Vietnam settlement Henry Kissinger and Le Duc Tho shared the 1973 award but the latter declined to accept it; Willy Brandt won in 1971 for fostering cooperation in a divided Germany; in 1976 two women were honored for promoting peace in Ireland; Nelson Mandela and Frederik Willem de Klerk were chosen in 1993 for arranging internal peace in South Africa. Twice the prize recognized Middle East leaders, in 1978 and 1994, the first for improving Egyptian-Israeli relations. The other award has been much criticized, to Yasser Arafat, Shimon Peres, and Yitzhak Rabin, showing the pitfall of acting too quickly.



Past Peace Prize Winners Aung San Suu Kyi and Archbishop Desmond Tutu

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The Nobel Peace Prize

From the beginning humanitarian work by individuals and organizations has been associated with peace efforts. In 1901 the first winner was Henri Dunant, the Swiss founder of the International Committee of the Red Cross, which itself won in 1917, 1944 and 1963. From the early mid-century awards to groups helping refugees and victims of hardship or persecution have been frequent. Among recipients have been social workers like Jane Addams (1931) and Mother Theresa (1979), UNICEF or United Nations Children's Emergency Fund (1965) and Medecins sans Frontieres or Doctors Without Borders (1999). Crusaders for social justice form a related group. Examples are Martin Luther King, Jr., in 1964, victims' spokesman Elie Wiesel in 1986, and advocate for indigenous peoples Rigoberta Menchu in 1992. The decision to honor Jimmy Carter in 2002 recognized his many activities. Awards to humanitarians, individuals or organizations are seldom controversial. Some, like the 2007 Prize shared by Al Gore and the Intergovernmental Panel on Climate Change, were very popular.

A tendency toward political activism has been evident in several selections. But choosing political dissidents is a provocative and divisive practice. The delayed 1935 Prize went to a German journalist and peace activist, Carl von Ossietzky, seriously ill and imprisoned by the Nazis when honored in late 1936. An international group of anti-Nazis pressed the candidacy gambling that Berlin would be shamed into leniency. Supporters hoped that the recent Berlin Olympics had made the regime publicity conscious. But Ossietzky was not freed to attend the Nobel ceremonies, which Germany boycotted, and a 1937 law prohibited anyone from accepting Nobel Prizes. When three scientists were later named as laureates, two refused and the other jailed, though all got their medals after the war. The tactic was tried again in 1975 when dissident Andrei Sakharov became the first Russian citizen to win the prize. Soviet authorities denied him permission to travel to Oslo. That the committee knew what it had gambled is clear: its chairman mentioned the Ossietzky award in his presentation address. More recent cases of honoring dissidents show the same pattern: the Dalai Lama of Tibet in 1989, Aung San Suu Kyi of Myanmar (Burma) in 1991, Liu Xiaobo of China in 2010.

Most criticisms of the Peace Prize fall into two categories: the criteria and the selections. Many critics think the prize has moved too far from concerns with peace. The long attention to humanitarianism may be understandable as a related field. There is no justification for political activism, however, though committees have periodically engaged in it. Recognizing dissidents like Sakharov or Liu Xiaobo are well known examples; honoring Barack Obama (2009) rested on popularity and not proven accomplishments. Other choices for laureates are criticized for varied reasons. Observers think that members have sometimes let Norwegian or personal interests affect their choices. There are also apparent instances of "passing around" the prize for balance or correctness. Should international agencies be specially commended for just routine performance? Critics also cite notable omissions among the winners. Sometimes mentioned are Eleanor Roosevelt and John Paul II. More telling is the failure to honor French educator Pierre de Coubertin who founded the International Olympic Committee and Indian leader Mohandas Gandhi who became a worldwide inspiration. Two adjustments might improve the selection system. There should be a stronger sense of scale: local or national achievements are relatively less significant than efforts of global importance and impact. Awards that are too localized lower the prizes' stature. A greater concern with perspective would also be helpful. The hurried choice of a winner for some recent activity that may soon unravel or prove disappointing lessens respect for the award. Letting a certain amount of time lapse would avoid such awkward prizes. Any changes would of course evolve slowly, but whether the committee members are prepared to make them currently seems doubtful.

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 Unversity'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.

For More Information...

Detailed information about Nobel and the variations among the prizes appears in the author's The Politics of the Nobel Prize in Literature: How the Laureates Were Selected, 1901 – 2007 (Edwin Mellen Press, 2008).

On The Cover

"Pears" Pastel 18" x 24" by Paul Nucci

Do You have original art or photographs that you think would enhance "Friendly Passages"? Send them to nora@everlove.net.

To Residue Or Not To Residue, That Is The Question

By Patrick Kennedy

Like many attorneys and the population in general, if you followed the presumption that life insurance proceeds were protected from creditors you would be right - until now.

A recent First District Court of Appeal has turned that presumption on its head. In Morey v. Everbank, 93 So.3d 482 (Fla. 1st DCA 2012), the decedent executed a revocable trust ("Carl W. Morey-Trust") in 2000 and named the trust as the beneficiary of his two purchased life insurance policies. Four years later he amended his trust declaration and created a sub-trust ("Morey Family Trust") that would receive the residue of the estate for the benefit of Morey's daughters after payment of all obligations of the estate. Morey never changed the beneficiary of the life insurance policies.

After the Mr. Morey's death, the trustee filed a petition to have the insurance proceeds deemed unavailable to creditors based on Florida Statute 222.12(1) ("…and the proceeds thereof shall be exempt from the claim of creditors of the insured unless the insurance policy or a valid assignment thereof provides otherwise.") but the court determined that the language in Florida Statute 733.808 states that insurance proceeds payable to a trust "shall be held and disposed of by the trustee in accordance with the terms of the trust as they appear in writing on the date of the death of the insured." Hence, Florida Statute 222.12(1) exempts life insurance from a decedent's creditors, but if those insurance proceeds are paid to the trust, then the terms of the trust govern whether the proceeds are available to creditors.

Although the issue of this case was primarily about the interpretation of the statutory exemption created for insurance policy proceeds against creditors, the underlying issue that estate planners should be aware of is the significance of the overall intent created by the wording of trusts and the interpretation of it. Was Morey really trying to provide for obligations of his estate or for his children? A few more questions should be asked:

- Did the amendment and restatement reaffirm the original intent of settlor?
- Was it understood that creating the sub-trust created the intent to provide for his daughters?
- Did Morey understand that life insurance proceeds might be used to satisfy obligations of the estate because of the way the trust was worded?
- Did the attorney make sure to ask if this was still Morey's intent?

If you have a trust, it's time to review and consider removing language directing trustees to pay estate obligations. This ruling should cause a new set of questions to be asked by attorneys. Also, be conscientious because programs like HotDocs and Westlaw Form Builder may have one of the trust questions defaulting to provide for all obligations of the estate before the residue is given to beneficiaries. Creditors may try to use this new ruling as a way of gaining access to insurance proceeds that were intended for the family. DRAFTERS BEWARE!

Patrick Kennedy graduated from Brigham Young University with a Bachelor's of Science in Sociology. Later he earned both his Law and Masters of Business Administration degrees from Stetson University College of law. He now practices law with Alvarez Legal Group in Tampa

The Uneven Road to Electing the First Presidents

By Nora Everlove

Could you have voted for the first American President in 1792? Are you a white male owning property and over twenty-one years of age?

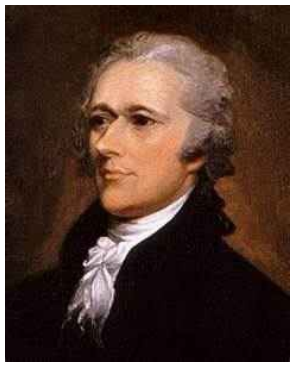
The election of 1792 - The first rigged presidential election

The Electoral College has always been hard to understand. From the beginning, it was a bone of contention that was finally settled by the "Committee of Eleven on Postponed Matters." Each state received one elector for every legislator -- one for each senator and one for each representative – and each elector had two votes. In the beginning the state legislatures chose the electors with the exceptions of Pennsylvania and Maryland where the electors were chosen by popular vote.

Initially, the presidential candidate with the most votes became president and the runner-up became vice president. In cases of a tie, the House of Representatives voted to decide the election.

George Washington ran unopposed in 1788 and won unanimously. With Washington's re-election in 1792 a fete de complete, Alexander Hamilton was afraid John Adams would be the unanimous choice for vice-president. With the old voting system in place, this would accidentally leave the presidential election in a tie, and Adams could conceivably become president. To prevent this from happening, Hamilton solicited votes for other candidates, really non-candidates, so Adams would be the runner up with fewer votes than Washington. Hamilton's scheme worked a little too well and Adams wound up with about half as many votes as Washington when he clearly had more support from the electorate. It was a hard embarrassment for Adams to be re-elected with so few votes. Even though they were both Federalists, the feuding between Hamilton and Adams was notorious. Their only common denominator was their mutual respect of Washington.

Aaron Burr



Alexander Hamilton

Thomas Pinckney

Dewitt Clinton

The election of 1796 and the split ticket

Because of our quirky election system, a "split ticket" was elected in 1796. The Federalists ran John Adams for president with Thomas Pinckney. (Pinckney was the first Southern VP candidate specifically selected in hopes of carrying the south.) Meanwhile the Republicans ran Jefferson for president with Aaron Burr as his running mate. Still, the president was the man with the most electoral votes, while the vice president was selected as the man with the second most votes. Adams had the most, followed by Jefferson. Hamilton was less successful manipulating this election but he attempted to throw support to Jefferson, not of Hamilton's party, in hopes of actually electing his fellow Federalist, Pinckney. Pinckney finished third despite Hamilton's Machiavellian tactics. Generally considered a brilliant mind and brilliant administrator, Hamilton could be treacherous.

The Election of 1800 – the House of Representatives must decide

The same players came to the election of 1800, Adams, the incumbent, with Pinckney vs. Jefferson with Burr. The Republicans failed to deflect any votes from Burr and the election ended in a tie between Jefferson and his running mate, Burr. The decision was thrown to the House of Representatives which was controlled by the Federalists. Interestingly, the incoming House would be two-thirds Republicans and the outcome would have been much simpler. After nineteen ballots the candidates were still tied. Given a choice between Burr and Jefferson, most of the Federalists supported Burr. Jefferson was just too vocal in his opposition to the Federalists even as the vice president to a Federalist President. He was considered too much of a Francophile as he continued support the increasingly violent French revolution. On the twentieth ballot, the Federalists from Maryland and Vermont abstained from voting finally giving Thomas Jefferson a majority. Their tacit support solved the obvious short-comings of the electoral system.

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The Uneven Road to Electing the First Presidents

The election of 1804 – Separating the vote for President and Vice President

Finally, the Twelfth Amendment to the Constitution created a separate vote for the President and the Vice President (although it would still be possible to have a president from one party and a vice president from another). The Twelfth Amendment was ratified just a few months before the election of 1804, when Jefferson, riding high on the Louisiana Purchase, lowered federal government spending and the repealed whiskey tax, won in a landslide victory. Poor Pinckney lost his third but not his last presidential election. He was back in 1808.

The election of 1808 and overcoming your own party candidates

James Madison's biggest challenge came from within his own party, now called the "Democratic Republicans." James Monroe and George Clinton gave him a run for his money early in the campaign. Eventually receiving two-thirds of the electoral votes in the presidential election, he slammed Charles Pinckney of South Carolina. Pinckney did not even carry the South. No "favorite son," Pinckney received only three of the eleven South Carolina electoral votes.

Ironically, he swept most of New England. Because of Jefferson's Embargo Act of 1807, anyone would have gotten more support in New England. The Embargo Act severely hurt the Yankee traders although it probably helped New England's manufacturing. And so, Madison, the Father of the Constitution, became the fourth president of the United States.

The election of 1812 -- the first close popular election

Finally, we have a close popular election even if the electoral vote doesn't show the dead heat. Madison won re-election by less than 8,000 votes. The Federalists ran DeWitt Clinton, a nephew of the deceased vice-president, George Clinton, (opposing party, Democratic Republican). DeWitt Clinton was largely responsible for building the Eerie Canal. He was seen as very pro-business and generally progressive in a time of growing commerce and dramatic invention. Madison was regarded as pro-agrarian to the detriment of the North. The War of 1812 began a few months before the election and he was considered weak in defending our New York/Canadian border. Madison faced a mounting discontent from much of the nation because he was the last in a continuous line of Presidents from Virginia, the single term of John Adams being the only exception. (We were still to elect Monroe and he ended Virginia's monopoly on the Presidency.) By this time, Virginia no longer had the largest population. In 1810, Pennsylvania tied Virginia in electoral votes (23) and New York had the most (26). A pattern of political divisiveness drawn upon regional lines was apparent. Despite the obstacles to his reelection, Madison managed to remain president.

Rules of Engagement II: The Use of Courts-Martial for Prisoners of War

by Hugh J. Eighmie II

Earlier this year I was asked to write an overview of the Military Justice System for *Friendly Passages* which I enthusiastically complied. After the article was published I received an overwhelming response to the article, and again I was asked to write an additional article on the same subject. Therefore I am writing a two part addendum to my original article, part II in this issue and III to run in the next.

During times of war, hostilities between countries and their respective armies often result in the capture of enemy forces. These captured enemy military members are known as Prisoners of War (POW). Unlike a civilian prisoner who has been convicted of a crime(s), POWs are not criminals but captured enemy forces. Therefore, POWs are afforded a certain status which will be explained further.

In ancient times, combating armies would kill most of the enemy and there would be few surviving enemy forces. However, for those who did survive, the conquering army/country would enslave the captured soldiers as the spoils of war. Life of an enslaved soldier would often be greater in misery than if killed by the war itself.

Over the evolution of the history of war, the treatment of prisoners has been a topic that was dealt with on various occasions. During the American Civil War, the treatment of prisoners was nothing short of deplorable by both the North and South. Starvation, illness, and massive injuries were the norm in the treatment of prisoners of war by both sides. The North considered the prisoners as traitors deserving of harsh punishment, and the South considered their prisoners as aggressors deserving of abuse and mistreatment.

Defendants in the Dock
Nuremburg Trials 1945

Then at the turn of the 20th century, there was a move to create rules on the treatment of prisoners and, further, when punishment was warranted, a structured justice system to appropriately meter out that punishment. The Hague and Geneva Conventions (or treaties) were drafted in order to establish rules on the fair treatment of POWs which speaks to the issue of outlawing the torture of prisoners and court-martialling prisoners in lieu of physically punishing those POWs.

The Hague and Geneva conventions were put to the test then during the 20th century during World Wars I & II, the Korean War, Vietnam War as well as other armed conflicts various countries found themselves involved with from time to time. Unfortunately, not all countries were signatories to the conventions and therefore did not follow the rules the conventions advocate. There was no greater example of this mistreatment than by the empire of Japan, who did not sign either convention, during World War II. The movie, *Bridge on the River Kwai,* is a fictional story of the treatment of allied prisoners by the Japanese where the allied officers refused to perform labor as this is a violation of the Geneva Convention. This leads to the Japanese captors to brutally punish these officers who refuse to work on the bridge. Because Japan was not a signatory to the conventions, a point the Japanese captors were keenly aware of, the prisoners were not afforded court-martial trials for their alleged crimes.

Holding POWs for their crimes during times of war or armed conflict was exemplified during the Trials at Nuremburg. Here 24 top level Nazi party officials and members of the German military were charged with war crimes and crimes against humanity, and military tribunals were used to prosecute them for those crimes. The Allied countries participated in the prosecution and judging of the defendants which lasted over 1 year and ended in a majority of convictions and death sentences.

During the Nuremburg Trials, defense attorneys used the "I was ordered to…." defense which posed the question, "When a government orders their military to perform acts considered violations of international law, can then the defendants use 'I was ordered to perform those acts' as a defense?" The answer was clear, no. While soldiers are trained to follow the orders of superiors, no one can be ordered to commit a crime. Crimes against humanity and genocide cannot be defended even when their government demands such horrible acts.

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The Use of Courts-Martial for Prisoners of War

The World War II tribunals lead to major revisions of both the Hague and Geneva Conventions during the late 1940's. These revisions embodied the lessons learned from the Nuremburg Trials so that horrible acts would never again be perpetrated.

During the Vietnam War, court-martials were used to prosecute military members of North Vietnam for crimes committed against U.S. forces. During these trials, the defense of military necessity was used to defend those accused of torturing and killing prisoners. The defense of military necessity was not recognized in prosecutions of Confederate captors for mistreatment of Civil War prisoners, and equally was not recognized during those prosecutions of North Vietnamese captors who tortured our POWs.

In other words, just because killing prisoners may be the quickest way and militarily necessary, it is not a recognized defense when charged with those killings and tortures.

Finally, we currently see military tribunals and court-martials are being used for the detainees held in Guantanamo, Cuba. Although those detainees are not strictly considered POWs as they are not members of a recognized country's military, for purposes of trying these detainees, the United States is using the court-martial as a vehicle to prosecute them for their crimes against the United States.

Those detainees are afforded the rights and privileges found in the Hague and Geneva Conventions. Therefore, they get an appointed defense attorney who has the power of subpoena to order the appearance of witnesses and to fully cross examine all witnesses against the detainee. The lingering question for those detainees and the United States government is how long can a detainee be held without formal charges being brought and a court-martial being convened to prosecute those charged. Because the detainees do not strictly fall under the Geneva Conventions due to their status of not being part of a particular country's military, there is no clear answer to this question. It appears that the administration is content to allow these military tribunals to convene on an ad hoc basis.

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The Use of Courts-Martial for Prisoners of War

As we can see through the evolution of the Conventions and the application of the military tribunal or court-martial system to the issue of prisoners of war and the prosecution of those prisoners, the law in this area continues to evolve in an effort to provide fairness when punishing prisoners of war.

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

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(1) The Department of State shall:

(a) 1. Through a continuous revision and publication system, compile and publish electronically, on an Internet website managed by the department, the **"Florida Administrative Code."** The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication; owever, the department shall retain responsibility for the code as provided in this section.
The electronic publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

(b) Electronically publish on an Internet website managed by the department a continuous revision and publication entitled the **"Florida Administrative Register,"** which shall serve as the **official publication** and must contain:
1. All notices required by s. 120.54(3)(a), showing the text of all rules proposed for consideration.
2. All notices of public meetings, hearings, and workshops conducted in accordance with s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.
3. A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of
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