Friendly Passages
Supporting Equal Access to Law in Florida
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Promoting Access to Courts and the Administration of Justice

By The Hon. Joe Negron, the Florida Senate

The convening of the Legislature on January 10 marked an early start to the 2012 Regular Session to accommodate the decennial process of redrawing state and congressional districts using new census data. However, it also marked an early start to tackling a wide variety of policy and fiscal issues facing the people of this state.

An issue particularly significant to readers of *Friendly Passages* and to me is fostering access to courts. Grounded in the State Constitution, the right of access to courts guarantees citizens that the courts of this state will be open and available for redressing injuries. That right is jealously safeguarded by the Judiciary, the Legislature, and the Executive, as it should be. Nevertheless, there are factors affecting the efficient and effective operation of state courts system. Most notably, the budget constraints stemming from the global economic recession have created annual revenue uncertainty for the courts.

Last budget cycle, the Legislature was able to maintain the previous year's level of funding for the courts by relying heavily on trust fund sources rather than ever-limited general revenue. That reliance on trust funds comes with a price. Almost 80 percent of the revenue for the key trust fund supporting the courts is derived from filing fees in mortgage foreclosure actions. When foreclosure filings were soaring, that funding mechanism provided a viable way to address court budget needs until more long-term funding mechanisms could be developed. As mortgage foreclosures slowed, however, while lenders and loan processors came to grips with the volume of delinquent loans and problems in documenting the right to foreclosure on those loans, the courts faced a severe cash-flow problem. There simply was not enough incoming filing-fee revenue to generate the cash necessary to support the Legislature's appropriation to the courts. As a result, during the last quarter of the 2010-11 fiscal year, the courts had to secure $33 million from the Governor and Legislature to support the trust fund and sustain court operations. At the start of the current fiscal year, the chief justice of the Florida Supreme Court had to seek a $54 million cash transfer to prop up revenue in the trust fund.

Recognizing that this kind of revenue instability creates a distraction from the core mission of the state courts system, the Legislature asked the courts, working with the clerks, to develop long-term recommendations for stabilizing revenues. Their recommendations call for the state courts system to receive a specific share of the fines, fees, and costs generated by the system – before that revenue is transferred to general revenue and directed toward non-court-related uses. Although the Legislature is receptive to the proposal, implementing it will not be an easy task, because, quite frankly, the state needs every dime that comes into general revenue to fund a wide variety of policies and programs. Further, at least in the near term, the revenue forecast remains uncertain. The fall estimate showed a budget shortfall of about $2 billion (taking into account revenue declines and increases in program costs) for the coming fiscal year, as well as budget shortfalls through 2015. Despite these challenges, I believe the proposal from the courts and clerks will receive fair and thorough evaluation and debate during the 2012 legislative session.

One positive outgrowth of the revenue challenges facing the state courts system is that they have served as a reminder to policymakers that the Judiciary is – and should be treated like – a co-equal branch of government.

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A Message from the President

Access to Legal Knowledge

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

A nation of well informed men who have been taught to know and prize the rights which God has given them cannot be enslaved. It is in the region of ignorance that tyranny begins.

-- Benjamin Franklin

In 1821, a German Jewish poet, Heurich Heine, authored the play, "Almansor", in which he wrote, "Where they burn books, they will also ultimately burn people." Heine was prescient beyond imagination. On May 10, 1933, his was among 25,000 other works stacked in a Berlin square and burned in front of a crowd of 40,000. It was a Nazi celebration presided over by Joseph Goebbels, who thundered, "No to decadence and moral corruption!"

The Nazis well understood the connection between knowledge and freedom. So likewise did early Americans, when James Madison said, "The advancement and diffusion of knowledge is the only guardian of true liberty." It's not hard to see why. Rights of which there is no awareness can be neither defended nor vindicated. They are soon lost or taken away. A free society must value, promote and encourage every possible means by which its members may acquaint themselves with their legal rights and inform themselves of their legal remedies.

No resource is better positioned to serve such objective than is a law library, staffed with trained professionals. This is especially true of the Rupert J. Smith Law Library, the premier learning center on the Treasure Coast. It offers as many as 40,000 volumes of material to the public, with online access to twice that number again. It's open seven days a week, including evening hours, to serve the public's need for legal knowledge. There is card access twenty-four hours a day for the Bar. Its utility is measured by a 17% increase in the number of patrons during 2011. Seventy-six percent of all the users were lay members of the general public.

Places like this exist to the end that the legal community and general public at large enjoy protected access to legal knowledge and all may secure to themselves the benefits of equal justice under law. They are essential to our democratic way of life. Thank you for your support.

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Promoting Access to Courts and the Administration of Justice

The other integral component to Florida's right of access to courts is the right to have justice administered without sale, denial, or delay. Improving the administration and accuracy of criminal justice is a key mission of the Florida Innocence Commission, on which I have been serving. That commission has been looking at the root causes for why individuals are wrongfully convicted of crimes. What we found is that eyewitness misidentification is one of the leading causes of wrongful convictions. Last session I sponsored legislation (SB 1206, 2011 Reg. Sess.) to provide for minimum statewide statutory standards governing photo or in-person lineups by law enforcement agencies. Unfortunately, the legislation garnered resistance from sectors of the law enforcement community and did not pass. The commission is continuing to work on the issue, last June adopting its own recommendations. Those recommendations include that, if resources are available, agencies shall have an independent administrator who does not know who the suspect is, to prevent even inadvertent signaling to a witness during a photo or live lineup.

Reaching consensus on what seems like an indisputable goal of preventing wrongful convictions has been surprisingly difficult. The commission has continued to face resistance from some in the law enforcement community as it tries to tackle other important factors affecting wrongful convictions, including whether interrogations should be electronically recorded and what the consequences should be for failing to do so. The perspective of the law enforcement community is critical and is certainly to be respected, but ultimately the Legislature and the Supreme Court have responsibility for putting in place the statutory and rule framework that governs the administration of justice and prevents injustice. My hope is that the commission will put forth the strongest and best recommendations to meet that goal based on the strongest and best information available.

Senator Negron serves the 28th district, which consists of Martin County and parts of Indian River, Okeechobee, Palm Beach, and St. Lucie counties. During the 2012 legislative session, he can be reached in Tallahassee at: 306 Senate Office Building, 404 South Monroe Street, Tallahassee, FL 32399-1100; (850) 487-5088.

Major Changes Coming to Trust Accounting Rules

By William R. Cronin III

There currently are two sets of changes pending to the *Rules Regulating Trust Accounts* found in Chapter 5 of the Florida Bar's *Rules Regulating the Florida Bar* that attempt to clarify the rules and address the numerous discipline cases arising out of trust account violations. The first set of changes was filed with the Florida Supreme Court on October 15, 2010. It is included, along with other rule changes, in the *Petition to Amend the Rules Regulating the Florida Bar – Biannual Filing 2010*. The changes propose to:

> Prohibit non-lawyers from signing trust account checks;
>
> Forbid lawyers from signing blank checks or using signature stamps;
>
> Require that a client or a matter be identified on checks;
>
> Delineate the documentary support necessary for electronic transfers. This includes requirements that electronic transfers contain the name of the authorizer, name of recipient, confirmation from bank, and time the transfer was completed;
>
> Define "lawyer" and "law firm" when used within the rule; and
>
> Allow the chair or vice chair of a grievance committee to make an audit request more expeditiously, rather than by vote of the full committee, when a delay could jeopardize client funds.

The last activity on the docket was October 3, 2011 when the Court heard oral arguments regarding various changes to the rules in the petition. Among the trust account rule changes, the issue of non-lawyers signing checks received the most attention. Chief Justice Canady expressed his concern that "this proposal could produce an undue burden on solo practitioners" if they could not delegate check signing.

In response to a testifying bar member's contention that small firms and solo practitioners were opposed to the measure, Justice Pariente recounted her surprise to have learned that in current practice, based on long-standing ethics opinions, non-lawyers could sign trust account checks. Justice Lewis suggested a middle way—adding a requirement that non-lawyer employees who sign checks be bonded.

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Latest Brown Bag Lunch Series of CLE Lectures at the Law Library

Cynthia Angelos will present "Civility in Discovery Practice: Enhancing Our Public Image" on April 19 at the Rupert J. Smith Law Library. In this day of "Aggressive Representation," civility is more important than ever. This will be comfortable, in an informal setting, lunching while you learn in the law library's large conference room. CLE accreditation is pending. We are very grateful that Ms. Angelos is helping us fulfill our educational mission by providing excellent CLE opportunities locally.

A fee of $25.00 includes your delicious lunch. Please RSVP to the law library, 772-462-2370, because space is limited. The fee may be mailed or paid at the door. We look forward to seeing you.

New Hours! The Rupert J. Smith Law Library is now open seven days a week.

We are open:

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

At the South County Law Library, we are now staffed:
Fridays from 9:00 a.m. to 1:00 p.m.

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

The main branch is located at:
221 South Indian River Drive
Fort Pierce, Florida 34950
772-462-2370
Website: http://www.rjslawlibrary.org

Our South County Branch is located at:
250 Northwest Country Club Drive
Port St. Lucie, Florida 34986

The American Jury Trial: What Makes Us the Greatest Country In The World, Part 2

by The Hon. Burton J. Conner

In the last installment I described the transformation people undergo when they appear in the courtroom in response to a juror summons. They typically start out with great reluctance to serve, sometimes almost with hostility. However, as they begin to absorb the importance of the task we are asking them to perform, they decide it is important to participate, and if they are actually chosen to serve, they work hard to do the job right.

The transformation occurs in the best way possible when the judge and the lawyers treat the prospective jurors with respect and politely woo them with the importance of the job. Judges and lawyers must do everything they can to not waste the jurors' time, and to keep them waiting outside the courtroom as minimally as possible. Judges and lawyers who take the attitude that jurors are there to serve at the pleasure of the judge and the lawyers do a tremendous disservice to the morale of jurors. It is extremely important to explain to jurors why they are asked to step out of the courtroom from time to time, and why bench conferences out of their hearing are necessary. When people are given an explanation as to why they are kept waiting, they accept it more easily. It is simply common courtesy to explain the reason for waiting.

"..... the most awe-inspiring aspect of the jury trial phenomenon is that our system of justice allows everyday citizens to directly participate in government."

One of the best recent changes in how civil jury trials are conducted occurred when we began allowing jurors to ask questions of the witnesses. Although there was considerable reluctance and fear with many judges and lawyers that jurors would ask inappropriate questions, thereby slowing down the trial and running the risk of creating errors or grounds for mistrial, experience has proven that the new approach results in a better trial. Although it is true that with some regularity jurors ask questions that are inappropriate under the rules of evidence, I can tell you that it was not uncommon for me to hear an attorney say at a bench conference concerning juror questions, "I wish I had asked that question," or "that's a very good question."

The reason it is a good idea to allow jurors to ask questions is this: because lawyers have worked so closely with the case over many months while preparing for trial, lawyers are prone to forget how the first time listener might process information. Allowing jurors to ask questions gives the advocate an opportunity to get a read-out from the jurors about what is important to them. That benefit is increased because now, thanks to another innovation, we give jurors some of the substantive law instructions upfront in the case, rather than waiting until just before they go into the jury room. When jurors have some understanding of what law they are to apply before they hear the facts, they can more intelligently figure out what questions need answered to help them make the decision at the end. If the lawyer did not ask for the information the jury wants, the jury should be allowed to ask the question eliciting the information (within the bounds of the rules of evidence).

There are due process issues surrounding allowing the jury to ask questions in criminal cases. It is not a general practice to allow jurors to ask questions in criminal cases. It will be interesting to see if the law evolves to allow jurors to ask questions in criminal cases in the future.

Although some effort has been made to simplify jury instructions and use more "plain English," much more needs to be done in that regard. Allowing the jurors to have a set of the written instructions in the jury room has been very helpful.

To me what is the most awe-inspiring aspect of the jury trial phenomenon is that our system of justice allows everyday citizens to directly participate in government. In an orderly society, one of the functions of government is to resolve disputes. Sometimes those disputes are between citizens, and sometimes those disputes are between citizens and the state. When a citizen is selected to serve on a jury, he or she is performing a governmental function (resolving disputes in a peaceful manner); not some elected or appointed official.

I routinely told jurors I considered them to be fellow judges working on the case with me. My job was to call the "balls and strikes" on matters of law and procedure, but the jury/judges had to do the heavy lifting: They had to decide: 1) what do these words mean (the law as expressed in jury instructions), and 2) how do they apply to a set of facts? I can conceive of no system of justice that could be more fair than ours: using everyday citizens with diverse talents and backgrounds to unanimously decide what the outcome of a case should be. That is what makes us the Greatest Country in the world, and the Greatest Republic of all time.

Editor's Note: The Honorable Burton Conner is the Chair of the Board of the Trustees of the Rupert J. Smith Law Library of St. Lucie County. He was a circuit court judge of the Nineteenth Judicial Circuit for fourteen years. He was appointed to the Fourth District Court of Appeals in 2011.

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Major Changes Coming to Trust Accounting Rules

The Justices were concerned over the burden it might be placing on small firms but recognized the need for direct accountability in the management of trust accounts. A Florida Bar staff member contacted for this article who was involved in the drafting of the petition felt confident that the rule would be added to ban non-lawyers from signing trust account checks. The Court's decision should be issued in the near future.The second set of changes was recently presented to the Bar's Board of Governors by the Disciplinary Procedure Committee, which had been working on the trust account proposals for over a year. As the "Florida Bar News" has previously reported, these changes likely will be voted on at the Board's March 23, 2011 meeting in Pensacola.The rule changes proposed by the Committee in their *Amendment Review Agenda* include:

> Reaffirming the 2010 biannual filing petition presently before the Court that all trust account checks must be signed by a lawyer;
>
> Adding a new subdivision to the rule which sets forth record requirements for wire transfers;
>
> Adding another new subdivision to delineate each lawyer's responsibility within a firm by requiring a trust account plan that would be distributed among firm attorneys; and
>
> Adding an appendix to the rules with a form to comply with the new trust account plan rules.

The Committee's agenda justifies the changes by citing the need to amend the rules to comply with the conditions of modern electronic banking and to delineate responsibility and accountability in order to reduce trust account theft fraud. The Disciplinary Procedure Committee still is accepting comments and the proposed amendments have yet to be filed with the Florida Supreme Court as of this writing. To view documents discussed in this article, please visit: www.everlove.net/TrustAccountRules.

Bill Cronin is an information manager for Everlove & Associates, Inc. He has consulted with small and large law firms in Tampa for the last fifteen years.

Join Us in Celebrating Law Day!

Law Day Celebration – Tuesday, May 1, Fort Pierce Courthouse.
Key Note Speaker Honorable Jonathan D. Gerber, 4th DCA
Superintendant Michael Lannon and Executive Director Norman Penner to be honored

Annual Student Art contest display and winners announced

This year's Law Day theme is: No Courts, No Justice, No Freedom.

No Courts, No Justice, No Freedom, underscores the importance of the courts and their role in ensuring access to justice for all Americans. *"All of us must have and protect our right and our freedom to use courtrooms when we need to. That courtroom must be open to protect families. That courtroom must be open to validate and protect contracts for business. That courtroom must be open to keep the wheels of justice turning. That courtroom must be open to defend our individual rights to prove again and again that we continue to be a free society. All of that takes more money ... not less and less money for our courts."*
-- American Bar Association President Wm. T. (Bill) Robinson III

Our keynote speaker is the Honorable Jonathan D. Gerber, District Court Judge for the Fourth District Court of Appeals, and he will discuss this theme at the May 1st Law Day Reception.

Michael Lannon, Superintendant for the SLCSB will be honored for his contribution to the community and his continuing support of the student art contest. Ms. Carol. Hilson, Chair, SLCSB, will present his award to Dr. Lannon.

A second honoree is Norman Penner, Executive Director for the Boys and Girls Club of St. Lucie. His award will be presented by the Honorable Burton Conner, District Court Judge for the Fourth District Court of Appeals.

Dr. Lannon will announce the names and present the cash prizes to our student art contest winners. For the first time, there will be multiple winners in each category. With as many as 400 entries, it is too difficult to pick just one! All of the art will be on display. Please leave a few minutes to pick your favorite.

Please join us at 5:30 on Tuesday, May 1 in jury assembly room in the Fort Pierce Courthouse. Refreshments will be provided.

The "Lifeboat Ethics" Case

By Dr. Richard Wires

The recent disaster involving the *Costa Concordia* recalls to mind how some requirements for maritime safety resulted from the sinking of the *William Brown* in the mid-nineteenth century. In March, 1841 the small American-owned sailing ship left Liverpool bound for Philadelphia with a multinational crew of 17 and carrying 65 passengers. The passengers were emigrants, Irish and Scottish, traveling in cramped conditions. At the time hundreds of sailing vessels of different sizes, many aging and poorly equipped, plied the route despite dangerous seas during late winter months. On 19 April under full sail and amid an ice floe the *William Brown* struck an iceberg and sank southeast of Newfoundland near where the *Titanic* was later lost. The incident raised extensive concern about "lifeboat ethics" and the principles for saving passengers. While most navies already followed the practice that the captain be the last to leave his ship, the notions that passengers should be saved before crew members and that women and children be given priority among the passengers were still novel, neither shipping lines nor crews feeling any special responsibility for the passengers who had bought passage.

Holmes was found guilty of manslaughter, sentenced to six months in prison, and fined the sum of $20.00. Clearly the core issues had been conveniently sidestepped.....

Because there were yet no legal requirements about the number and capacity of lifeboats, vessels like the *William Brown* were then common, lacking the means to get everyone off if the ship began to flounder. This vessel carried only one longboat and the captain's small boat. Nor were there plans or drills on what to do: the practice was *sauve qui peut* in a scramble. Using the small boat in the *William Brown's* captain, some of the crew, and one passenger reached the Canadian shore safely. Meanwhile in the longboat were 34 passengers and 10-11 members of the crew or 44-45 people in all. Thus the first lives lost: not one of the crew but 30-31 passengers were left behind to drown. Soon the undisciplined crew on the longboat, with the first mate supposedly in charge of things, thought the boat in danger from overcrowding. Through various decisions they forced 16 passengers, 14 men and 2 women, over the side to die in the freezing water. Just a few hours later another American vessel east-bound to France sighted the longboat and took its occupants to Le Havre where the survivors told their stories.

There was an immediate international uproar despite the efforts of shipping interests and governments first to contain and then to manage the furor. Also in contention was whether America, Britain or France had jurisdiction in the case. The first two countries sought control in order to squelch the matter or at least delay any action. But eventually there was a trial in America, *United States v. Holmes,* in which one Swedish seaman was made the scapegoat. He alone was charged with manslaughter. In addition the sailor was accused of stealing a $3.00 quilt from the shipping company which the heroic Holmes had used as a sail and then flag to attract the rescue ship. But the federal grand jury refused emphatically to indict him on such a ridiculous charge. At issue in the trial was the question of "lifeboat ethics" and the defense of "necessity" in lieu of any fixed rules and practices. Holmes was found guilty of manslaughter, sentenced to six months in prison, and fined the sum of $20.00. Clearly the core issues had been conveniently sidestepped, the captain's role and negligence, the actions of other crewmen, and above all the responsibility of the shipping companies. People everywhere debated the issues. The focus was less on having ships carry a sufficient number of lifeboats than on choosing who to save; in dispute were who should enter the lifeboats first and how an endangered lifeboat might be lighted to make it safer. Some said that in such cases the principle of necessity should prevail and release free those making the hard decisions from later liability. But what basis and method of choosing was fair? One common argument was for instituting some sort of lottery would be the best procedure for both initial loading and subsequent actions. Not surprisingly some believed that those who had paid the highest passage should be given precedence.

In the end, widespread outrage and public opinion shaped a consensus on some matters and within several decades a number of our current practices were put into effect. Ship owners and crews were made responsible for passenger safety; captains had to remain aboard and exert command during all rescue efforts; priority in boarding lifeboats went to women and children.

Other factors also caused speedy changes. Particularly important was that steamships were quickly supplanting sailing vessels, carrying more passengers and also competing for emigrants. Assertions of better safety became a marketing point, especially with the wealthy now traveling for pleasure but basic problems and issues continued to be ignored or minimized. The *Titanic's* loss in 1912 shows that the ship lacked enough lifeboats, and class distinctions influenced who would be saved. Further reforms followed, although the recent episode involving the *Costa Concordia* demonstrates that rules mean little unless they are enforced.

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Brown Bag Lunch Series of CLE Lectures begins at the Law Library

Many thanks to Harold Melville for making our first lecture of the "Brown Bag CLE Lunch" series such a success. On February 14, he spoke on "Conflicts of Interest" at the Rupert J. Smith Law Library. Twenty attorneys attended, had a great lunch, earned one CLE credit and learned a lot! Come to our next one on April 19.

When A BLEAK HOUSE Is Not A Home: Happy 200th Birthday, Charles Dickens!

By Jonathan Coleman

"It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past." Holmes, The Path of the Law, 10 Harv. L.Rev. 457, 469 (1897).

Tuesday, February 7, 2012 marks the 200th anniversary of the birth of Charles Dickens, the greatest (at least, most commercially successful) writer of the Victorian age. (To those who truly love Victorian literature and have not explored the serial novels of Anthony Trollope, they are highly recommended).

Dickens indisputably dominated the literary world of his day. His admirers included Poe, Tolstoy, and Queen Victoria and his legacy continues unabated. Who among us has not read "A Christmas Carol" or at least seen any of its numerous stage, screen or television adaptations? Who was not assigned one of the master's works (Great Expectations, David Copperfield, A Tale of Two Cities?) in high school? Who has not at least once uttered the mournfully porridge-related plea of Oliver Twist: "Please sir… may I have some more?"

It is particularly appropriate to talk of Dicken's "legacy" in connection with one of his lesser-read but finest novels, the weighty Bleak House (1088 pages in the 2003 Penguin Classics paperback). Its plot-driving motor of the novel is – a legacy. The estate litigation in Bleak House is a series of related lawsuits collectively styled *Jarndyce v. Jarndyce*, a case so old that nobody, truly, even remembers exactly what is involved. Dickens sets the tone of this murky confusion at the outset in a prologue which explains: "At the present moment … there is a suit before the court which was commenced nearly twenty years ago, in which from thirty to forty counsel have been known to appear at one time … which is (I am assured) no nearer to its termination now than when it was begun." And thus begins Bleak House.

The *Jarndyce* litigation frames a dizzying array of characters, minor and major, with all the flaws, tics, and virtues (often, commingled) that one expects of Dickens. Without giving away the story, it is impossible not to appreciate the wit and satire involved in crafting names to match personalities, including a plot line by which an early misadventure in Lady Honoria Dedlock's past - a moral lapse - is at complete odds with both her Christian name and her social station. Miss Flite is an eccentric elderly person who owns a large number of – little birds. Mrs. Snagsby is a highly curious, and suspicious, wife. Smallweed is an evil moneylender. Other personalities include Nemo (Latin for "nobody"); the Jellyby family and its youngest member, little Peepy Jellyby, and the irresponsible, amoral Skimpole clan.

Bleak House, published in twenty monthly installments between March 1852 and September 1853, is a scathing indictment of the inefficiency and wasteful expense of the English court system. It was born of Dicken's own experience not only as a law clerk in Chancery, but as a private litigant seeking to enforce a copyright on his early books. It is reported that Dickens's harsh criticism of the slow and Byzantine court process in Bleak House and elsewhere (more on that later) helped spur, at least in part, England's legal reform acts in the 1870s. One is also left to wonder whether any human currently alive could write anything that might spur a similar revamping of the expensive, tedious, and inefficient American justice system. Alas.

"Bleak House,.... was born of Dicken's own experience not only as a law clerk in Chancery, but as a private litigant seeking to enforce a copyright on his early books."

Dickens was, first and foremost, a social reformer, a point made repeatedly in his works other than Bleak House. He had great sympathy for the underclass(es) and downtrodden, and Bleak House's assortment of orphans, crooks, and invalids is no exception. Its detailed and interconnected plot lines give us some insight into the miserable conditions that existed two hundred years ago; disease runs rampant. Esther Summerson, an illegitimate child, contracts yet survives an unidentified disease (smallpox?) which nevertheless permanently disfigures her, and ruins her beauty. As we know, for a poor Victorian girl, this was usually her only asset. When Richard Carstone collapses because of stress related to the *Jarndyce* litigation, he is diagnosed with the last stages of fatal tuberculosis. Little Jo, a homeless street sweeper, dies of pneumonia (complicated by his own earlier bout with smallpox); Nemo takes an overdose of opium; Krook (no explanation needed), who smells brimstone, actually dies of spontaneous human combustion (one hears so little of this, these days). Even Hortense, a French maid, brings about death, but not through bacterial or viral means: she is a simple murderess. Victorian England, in short, was a perilous time.

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Bleak House is also noteworthy for buffs of crime and detective fiction. It has been described as the first novel in which a detective plays a significant role. The police character, Inspector Bucket, was likely based on a real Scotland Yard inspector named Charles Field; Dickens wrote several journalistic pieces about Inspector Field and other detectives in a monthly periodical named *Household Words* (where Dickens also published pieces attacking the Chancery system). The Inspector Bucket/Field real-life amalgam is not the only example of reality invading art: the French maid, Hortense was based on an actual Swiss murderess-maid named Maria Manning. A French murdering maid, one supposes, was much more believable to Dickens's contemporary audience. And perhaps today, as well.

This writer is painfully aware that lengthy Victorian novels by Dickens and Trollope are no longer in fashion with the "point and click" Internet generation, populated by individuals of good faith, but increasingly short attention spans. For those interested in Dickens, his novels hold great reward, and his 200th birthday has kicked off a flurry of easily-accessible activity, including the on-line exhibition "Charles Dickens at 200" at the Morgan Library and Museum (www.themorgan.org); a brand new biography by Claire Tomalin, entitled Charles Dickens – A Life; a "Year of Dickens" at the Philadelphia Free Library (www.freelibrary.org/dickens); and www.readingcharlesdickens.com at the Dickens Reading Project. Enjoy.

Editor's note: Jonathan Coleman is a partner in the Tampa office of Johnson, Pope, Bokor, Ruppel and Burns, LLP, practicing in the areas of securities and complex commercial litigation and arbitration. He graduated from UF with Order of the Coif honors. He studied at the Institut d'Etudes Euopéennes and the Université de Paris-IV (Sorbonne). After law school he earned a masters and a doctorate in History at UNC-Chapel Hill. He taught in the French Language and European History departments. Currently, in addition to practicing law he teaches Securities at St. Petersburg College. Lucky students!

The "Lifeboat Ethics" Case

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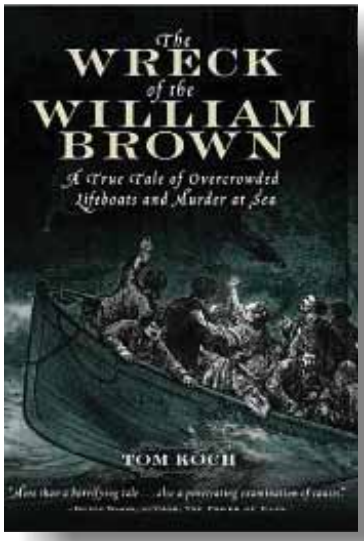
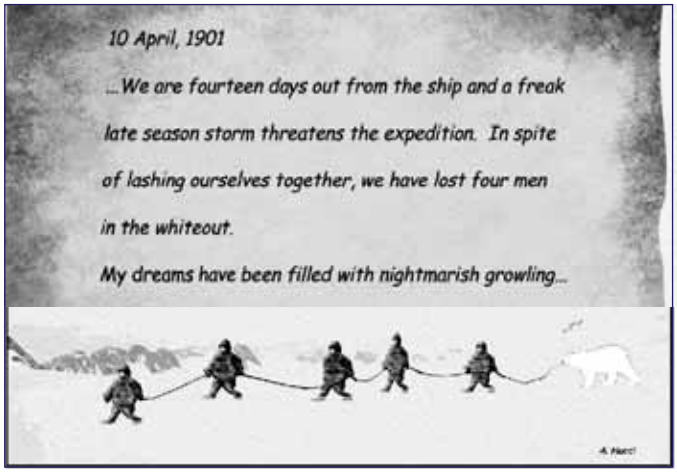
About the Author:
Richard Wires holds a doctorate in European History and a law degree. He served with the Counter-Intelligence Corps in Germany and is Professor Emeritus of History at Ball State University, where he chaired the department and later became Executive Director of the University's London Centre. His research interests include both early spy fiction and actual intelligence operations. Among his books is the *Cicero Spy Affair: German Access to British Secrets in World War II*. Maritime history is a longstanding hobby.

Recommended Reading:

For further details see Tom Koch, *The Wreck of the William Brown: A True Tale of Overcrowded Lifeboats and Murder at Sea.*





The Eastern State Penitentiary

By Robert Brammer

The 2011 American Association of Law Libraries Conference was held in Philadelphia, the location of the historic Eastern State Penitentiary. Eastern State was decommissioned in 1970, and is now a museum that is open for tours. During a break in the AALL programs, we braved a blistering summer heat wave to take a tour of Eastern State.

Eastern State has a rich history and has housed many notable inmates, including Al Capone. But Eastern State is most significant because it is a well preserved example of the "Pennsylvania System," providing an interesting glimpse into the history of corrections reform. The design of Eastern State was influenced by the Philadelphia Society for Alleviating the Miseries of Public Prisons, which was founded by Dr. Benjamin Rush. Prior to the creation of the Society, correctional practices typically dictated capital punishment for serious crimes, and severe, humiliating, and painful punishments for lesser crimes. Jails were primarily used to house prisoners awaiting trial or sentencing, and afforded the sheriff and jailer the opportunity to charge inflated fees to enrich themselves at the expense of their prisoners. Far from creating an environment conducive to moral reformation, prisoners, including men, women, and children were all housed together. These prisoners were able to barter with their captors for just about anything, to the extent where they could even trade their clothes, in the dead of winter, for liquor.

The Society believed one of the primary causes of crime was environment, and they believed the solution was to house inmates in solitary confinement. It was thought that solitary confinement would allow prisoners the opportunity to reflect on their crimes and undergo a process of moral reformation. Eastern State took great pains to minimize contact between prisoners, housing each prisoner in a thick, concrete cell with a wooden door. Meals were provided through a hole in the cell door, and each cell opened to a small, private exercise yard. Whenever prisoners were transported outside of their cell, a hood was placed over them to ensure they had no opportunity to devise an escape plan or have contact with other prisoners. The only reading material provided to the prisoners was a Bible. The Pennsylvania system did not influence the design of penitentiaries in many other states, but was influential in South America, Europe, and Asia. Eastern State finally abandoned the Pennsylvania System in 1913.

"Our forebearers also maintained a belief that correctional facilities could devise practices by which criminals could be reformed and, upon release, become productive members of society."

Many pundits and politicians decry the current state of corrections in the United States, suggesting we would more effectively deter crime if we looked to the practices of our forebearers, who doled out punishments that were severe and swift. These sentiments run so strong that they have even created celebrities, such as the self-styled "America's Toughest Sheriff," Joe Arpaio. Eastern State, and its system of isolation, is just one example that suggests the history of corrections is far more complex than these arguments would imply. A survey of the history of correctional practices demonstrates that our forbearers did not just seek to simply punish criminals for their misdeeds. Our forebearers also maintained a belief that correctional facilities could devise practices by which criminals could be reformed and, upon release, become productive members of society.

Robert Brammer *is a member of the Florida Bar, and is currently employed as a reference librarian at the Stetson University College of Law. He earned his J.D. from Wayne State, his M.L.S. from Florida State, and his B.A. from the University of Kentucky.*

CRYPTOQUOTE

Q ZQHSMK TW Q GMKWBO HPB HKTRMW Q 10,000-HBKY YBVNEMOR QOY VQZZW TR Q "JKTMC." - CKQOD FQCFQ

For the impatient, e-mail your answer to `nje@lucielaw.com` for confirmation. For the patient, the decoded quote will appear in the May/June issue.

The Innocence Project and Changing Police Procedures

By Sergeant Joshua D. Stone

If you have ever seen a cop show on television, you may have seen how photo arrays or line-ups are conducted. During the course of the investigation, a detective will sometimes show a group of photos to a victim to identify the suspect. Or, a victim or witness might look at five or six live, scary people from the safety room with a two way mirror. The investigator will always ask if the victim or witness recognizes any of the people they are viewing as the suspect. This is how photo arrays and line-ups have been conducted for decades and it has been an effective method for law enforcement. Unfortunately, sometimes the person identified is not the real bad guy.

Since the Innocence Project began keeping records, 179 people have been convicted in the United States based on eyewitness misidentifications and later found to be innocent through DNA testing. In 38% of these cases, the person was misidentified by multiple witnesses. In 50% of the cases, the eyewitness identification was the back bone of the case against the accused. And, in 48% of the cases where the real perpetrator was later identified, the real perpetrator was able to go on with life and continue to offend.

Researchers have concluded that there are many procedures that criminal justice professionals can implement to reduce the likelihood of witness misidentifications during photo arrays and line-ups. These include:

- Using a blind administrator. A blind administrator is someone who administers a photo array or line-up and does not know the identity of the suspect being sought in the particular case for which the photo array or line-up is being administered.
- Creation, composition and utilization of the photo array or line-up, including documenting how the witness indicated any positive identification had been made;
- The addition of a disclaimer prior to conducting a photo array or line-up. This disclaimer would inform the witness that the person or persons they are about to view may not be the suspect in the crime to which they are a witness, and law enforcement will continue to investigate the case regardless if they are unable to make an identification.
- Instructing the witness not to look for or request guidance from the photo array or line up administrator during the process.
- Obtaining a confidence statement from eyewitnesses. Immediately following the identification of a person during the photo array or line-up, the witness should be asked to articulate, in their own words, how confident they are in their choice during the identification.
- Video recording the photo array or line-up process. This can help protect the administrators of the process as well as innocent persons by showing there was no impropriety during the photo array or line-up presentation to the witness. The recording of the photo array or line-up process can also provide useful evidence in court, showing the legitimacy of the photo array or line-up process to juries.

In March 2011, the Florida Department of Law Enforcement, the Florida Sheriff's Association, the Florida Police Chief's Association and the Florida Prosecuting Attorney's Association all endorsed standards on how to conduct photographic or live line-ups in eyewitness identification. These standards recommended that every Florida law enforcement agency have a written policy regarding photographic or live line-ups and that the policy needed to address the following, at a minimum:

- Standard instructions to be used to instruct the witness prior to a photographic or live line-up, which include indications that the person of interest might or might not be in the photo array or line-up, that the witness is not required to make an identification, that it is as important to exclude innocent persons as it is to identify the perpetrators and that the investigation will continue with or without an identification;
- Directions to the investigator conducting the photographic or live line-up to avoid any conduct that might directly or indirectly influence the witness's decision; and avoid comments or actions that suggest the witness did or did not identify the suspect;
- How to discern the level of confidence in an identification as expressed by the witness;
- How to document the procedure and outcome of the photographic or live line up, including noting the witness's response and exact words;
- Directions to the investigator conducting the photographic or live line-up to avoid any conduct that might directly or indirectly influence the witness's decision; and avoid comments or actions that suggest the witness did or did not identify the suspect;

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The Innocence Project and Changing Police Procedures

- The methods of presenting the line-up; and required training on the agency policy by any agency personnel who will be administering a photographic or live line-up.

Many law enforcement agencies across Florida have already begun implementing the recommendations of the Innocence Project. These law enforcement officials are subscribing to more reliable professional practices that are based on years and years of research. Hopefully, the data gathered by the Innocence Project will begin to reflect the improvements in the reliability of eyewitness identifications.

Editor's note: Joshua Stone *is the Professional Standards Sergeant for the Gulfport Police Department in Gulfport, Florida. He has worked in law enforcement for eleven years, and has a master's degree in Criminal Justice Administration from the University of South Florida.*

The Lighter Side of the Law

Coming to the library for the first time?
We are located at 221 South Indian River Drive in downtown Fort Pierce.

We are just South of the Clerk's new building and in the Courthouse campus. W are the only entrance on Indian River Drive. Usually you can find a parking spot on Indian River Drive but if none are available there is a 3 story parking garage not far from us on 2nd Street. All of the parking is free.

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

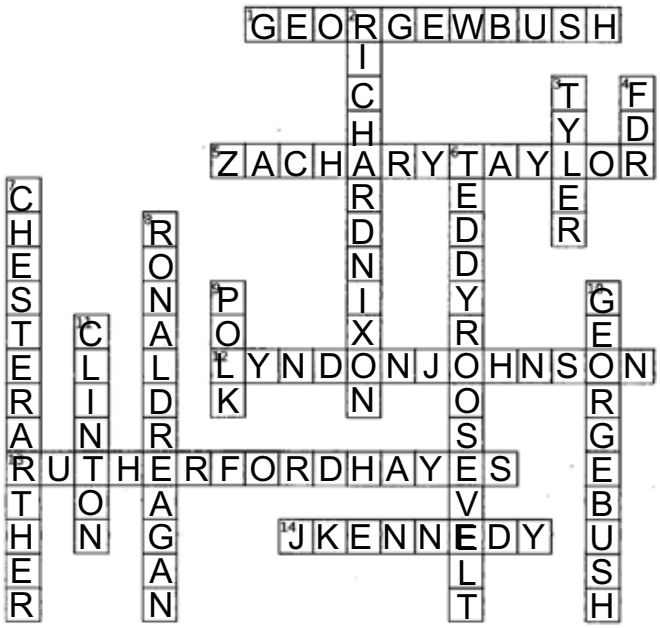
From The West:
Take S.R. 70 (Delaware Avenue) to US 1
Turn left (North) on US 1 to Orange Ave
Turn right (East) on Orange Avenue
To South Indian River Drive and turn right (south)
You'll see us on the right hand-side of the road

Come To The Next Friends' Meeting!

Thursday March 15
at 5:30 p.m.
Thursday, April 12
at 5:30 p.m.
Thursday April 26
at 5:30 p.m.

All meetings are at the Library and refreshments are provided. There are two meetings in April as we prepare for the Law Day Reception. We look forward to seeing you!

Last issue's Crossword answers



Mental Illness and Incarceration: Prison as the New Asylum

By Ashley Walker

Johnathan Bartholomew Goode is a schizophrenic man with a hard-rocking name. In February 2010, the Palm Beach Post reported that Mr. Johnny B., christened after the 1958 Chuck Berry classic, had been brought to jail for the 49th time. Johnny is homeless and addicted to alcohol and narcotics, and he was arrested on 48 occasions in the 40 months from March 2006 to July 2009. He has been diagnosed with schizoaffective disorder, a mental condition that causes psychosis, defined as a loss of contact with reality. It results in uncontrollable mood swings that the sufferer can neither anticipate nor prevent. Symptoms of the disorder can include hallucinations, paranoia, bizarre delusions, disordered speech, and a belief that special messages may be found in ordinary objects, places, or events. All of Johnny's arrests were for misdemeanors, most involving trespassing or disorderly conduct. Yet he has been sentenced to time served – at an average sentence of twelve days – rather than treatment in a medical facility each of the 49 times that he has been arrested. In fact, judges ordered mental evaluations in only five of his arrests. Unfortunately for Johnny, none of the sealed results of these evaluations have led to his receiving stable, long-term treatment for his condition.

In fact, the prison system is now the largest mental health provider in the United States.

Incarceration is designed to punish and rehabilitate individuals found guilty of the commission of crime, but for the mentally ill, the mind itself is a prison. Sufferers from mental illness are not equipped to handle the experience of incarceration, with its stringent rules, emphasis on discipline, and violent subculture. Sadly, the complexities and flaws of the criminal justice system do not begin and end with mental illness. The United States has the highest documented rate of incarceration in the world. As a proportion of our population, America locks up five times more adults than Great Britain, nine times more than Germany, and twelve times more than Japan. One American adult in 100 is living behind bars (with the rate rising to one in nine for young black men). Furthermore, America's imprisoned population, at 2.3 million adults, exceeds that of fifteen of its states. This figure has been steadily increasing for decades, but our nation's high rate of incarceration does little to prevent future crime or ensure safety.

Although rehabilitation and reintegration into society are ostensibly two of the criminal justice system's central goals, resources available to incarcerated individuals for these purposes have been found to be severely lacking. Conditions within prison often contribute to a culture of brutality, and overcrowding results in a significant lack of access to medical care. This is particularly troubling because services are needed now more than ever. As the prison population increases, so does the percentage of inmates that suffer from mental illness. According to the Bureau of Justice Statistics, 45% of federal prisoners, 56% of state prisoners, and 64% of jail inmates suffer from a mental illness and the vast majority are serving time for nonviolent offenses. Rates of recidivism are high, and if current trends continue, 68 percent of prisoners released are likely to be re-arrested within three years, 47 percent will be convicted of a new crime, and 25 percent will be recommitted to prison with a new sentence. Educational opportunities, substance abuse treatment programs, and mental health courts have all been shown to reduce the likelihood of recidivism. Recent studies of prisons in the geographically and population-variant states of Texas, California, and Alaska found that individuals who entered a mental health court after arrest and completed the court's program were significantly less likely than their peers to have been rearrested after eighteen months. However, state and federal budgets have cut funding for these programs in recent years, leaving the mentally ill population with few opportunities for rehabilitation and sending them on a pathway to prison.

In fact, the prison system is now the largest mental health provider in the United States. Of these prisoners with mental health conditions, only 1 in 4 in the federal prison system, 1 in 3 in the state system, and 1 in 6 in jails ever receive treatment. Many suffer from serious illnesses like schizophrenia, bipolar disorder, and major depression, conditions that often require medication and ongoing clinical management from skilled professional physicians. Most prisons cannot provide the range of services that the severely ill desperately need in order to live fuller and safer lives. In Florida, mentally ill individuals in jail and prison outnumber those in state mental hospitals by nearly five to one. Furthermore, the population of the mentally ill within prison has grown by over 165% over the past decade, from roughly 8,000 to nearly 18,000 individuals. Approximately 50 percent of these individuals were incarcerated for nonviolent crime. The rate of recidivism for the mentally ill is even higher than among the general population. Treatment can be far more cost-effective than repeat incarceration; minimal care for one mentally ill person for one year in a Florida jail has a price tag of $40,000, while intensive community mental-health treatment is less than $20,000. Institutions within Florida that treat mental illness include the David Lawrence Center in Naples and Henderson Behavioral Health, with locations in cities across South Florida, including Fort Lauderdale, Lake Worth, Hollywood, and Davie.

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Mental Illness and Incarceration: Prison as the New Asylum

Fla. Ch. 916 addresses adjudication of defendants who are mentally ill or mentally deficient. Part II details the criteria for mental health examinations and discusses procedures that are in place to treat persons who are incompetent to stand trial due to mental illness. State law requires that inmates with severe mental illnesses be moved from jails to psychiatric hospitals within fifteen days of receiving commitment orders. However, overcrowding in prisons and medical facilities has led to an unmanageable situation for criminal justice and mental health. A 2006 New York Times article reported that, with Florida's 1,416 psychiatric beds full, a rising number of mentally ill inmates have been left without treatment in jails. One schizophrenic patient in the Pinellas County Jail in Clearwater gouged out his eye after waiting weeks for transfer to a mental hospital. Two mentally ill inmates in the Escambia County Jail in Pensacola died after they were subdued by guards. Many patients awaiting hospital beds suffer from hallucinations, delusions, chaotic patterns of thought, and serious disturbances to their perceptions and memories. Their illnesses make it impossible for them to comply with prison rules, and they are frequently disciplined for behavior that they are powerless to change.

"The Counsel of State Governments states that a majority of prisoners suffering from mental illness would never be incarcerated if they received the services they needed before they entered the justice system."

The United States Supreme Court held in *Estelle v. Gamble* that prisoners are protected under the Eight Amendment, prohibiting "cruel and unusual punishment". They also ruled that adequate health care must be provided to sufferers of medical illness. 429 U.S. 97 (1976). In the seminal case *Coleman v. Wilson*, the U.S. District Court for the Eastern District of California ruled that the mental health system operated by the California Department of Corrections was unconstitutional. The Court found that prison officials were deliberately indifferent to the needs of mentally ill inmates, and they noted that many prisoners were punished for actions that they could not control, often exacerbating their conditions and leading to future disturbances. 912 F.Supp. 1282 (E.D.Cal. 1995). California has since worked to implement some of the suggestions made in *Coleman v. Wilson.* However, prisons in the state continue to suffer from a lack of qualified prison staff and medical services, and the needs of an ever-growing population have not been fully addressed. One psychiatrist at a California prison described the problems with mental health care within the criminal justice system as follows:

"We are literally drowning in patients, running around trying to put our fingers in the bursting dikes, while hundreds of men continue to deteriorate psychiatrically before our eyes into serious psychoses. . . . The crisis stems from recent changes in the mental health laws allowing more mentally sick patients to be shifted away from the mental health department into the department of corrections."

These problems are preventable to a significant degree. The Counsel of State Governments states that a majority of prisoners suffering from mental illness would never be incarcerated if they received the services they needed before they entered the justice system. Left untreated and unstable, sufferers from serious mental illness are more likely to experience poverty, homelessness, violence, and addiction. They may commit crimes out of ignorance or fear, feeling that they have few options for survival or support. The failure of the health system to treat and protect the mentally ill has thus led to what many have termed the criminalization of mental illness itself.

There are no easy solutions for these issues, but community health services and groups like Project Renewal, a New York City-based nonprofit, have been shown to drastically prevent incarceration among the mentally ill population. Project Renewal provides transitional housing, job training, and health services, including counseling and medication, to former prisoners and homeless individuals suffering from mental illness. The program costs about $23,000 annually per participant, but participation reduces the odds that an individual will be arrested in the future by 44 percent. The cost is also less than half of the $52,000 cost for incarcerating an adult in New York State prison, and just a fraction of the $240,000 per patient per year cost at Central New York Psychiatric Center. Community prisons and correction centers may also serve as alternatives to traditional prison facilities for mental health sufferers who have committed non-violent crimes. These provide counseling services and supervised employment opportunities to their inmates, giving them the help that they need to work towards a brighter, healthier future.

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Did You Know?

The library has laptops that patrons can use if they want to find a quiet corner of the library.

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Within our own state, Miami-Dade County Judge Steven Leifman has worked tirelessly to protect the rights of sufferers of mental illness and save them from lives in prison. As part of his efforts, he is creating a unique center in Miami-Dade that will house a forensic diversion program for the mentally ill. The program provides a sentencing alternative to traditional prison; inmates will start out in a higher-security area, and after they have been stabilized, they will move to a lower-security area for treatment. "They'll continue to step down until they're actually ready to go back to the community," Leifman said in a 2011 report on NPR's "All Things Considered" program. The forensic diversion facility will be able to serve approximately 200 participants upon completion. Judge Leifman has received extensive state and national recognition for his work in the areas of criminal justice and mental health, and Miami-Dade County has seen reductions in arrests and recidivism rates among sufferers of mental illness as a result of his initiatives.

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

Upcoming Bar Events

Treasure Coast

Dedication of the Federal Courthouse in Fort Pierce
March 23, 2012 at 11:00 a.m.

Bench and Bar Conference
March 30, 2012 at 8:00 a.m.
At the Port St. Lucie Civic Center

Library Brown Bag Lunch Series
"Civility in Discovery Practice : Enhancing Our Public Image" by Cynthia Angelos
April 19, 2012 at noon, $25 for lunch, 1 hr CLE,
At the Rupert J. Smith Law Library

St. Lucie County Bar Association

General Membership Monthly Lunch Meeting
April 13, 2012 at 12:00 noon
Cobb's Landing

Gulfstream Lunch
April 19, 2012 at 12:00 noon
Cobbs' Landing

Social Mixer with the Treasure Coast Dental Society and the St.Lucie/Okeechobee County Medical Society
April 25, 2012 at 5:30 p.m.
Cobb's Landing

Law Week Art Contest and Reception
May 1, 2012 at 5:30 p.m.
Fort Pierce Courthouse

Law Week Luncheon
May 4, 2012 at 12:00 noon, Pelican Yacht Club

Port St. Lucie Bar Association

Regular meetings:
March 21 at Spiro's Taverna at noon
April 18, location TBA
June 20, location TBA

Law Week Luncheon
May 2, 2012 at 12:00 noon, PGA Country Club
Scott Hawkins, President of the Florida Bar, speaker

Indian River County Bar Association

Regular meetings:
April 13
May 11
June 8
At the Quail Valley Country Club at noon

Martin County Bar Association

Regular meetings:
March 16
April 20
Monarch Country Club at 11:45 a.m.
(No regular meetings May, June, July)

What's New at the Library

By Nora Everlove

Keeping up Our Wonderful CLE Collection

We have ordered four more courses from the Florida Bar since the last issue of "Friendly Passages." For a complete list please see the law library website: http://www.rjslawlibrary.com. These can be borrowed by any attorney who maintains a patron courtesy account. Open your account with as little as $20. Courtesy accounts are a convenience in making photocopies and printing online materials. It is refundable at any time. There is no charge to borrow CLE materials, we'll even mail them to you. We pay the postage to send them to you; you pay the postage back to the library. The normal check out period is one week but we extend this to two weeks to our distance learners to allow for shipping. We want as many people as possible to use the programs and for this reason, there is a $1 per day overdue fine.

Our latest additions to our collection:

Technology Essentials for the Extraordinary Lawyer
6.5 hours of credit/10 ethics

Annual Ethics Update 2011
5.5 hours of credit/5.5 ethics

37th Annual Public Employment Labor Relations Forum
12 hours of credit/1.0 ethics

2011 ELULS Annual Update: Power to the People
16.5 hours of credit/1.5 ethics

Domestic Relations

Friendly Passages
March/April 2012
A Publication of The Friends of the Rupert J. Smith Law Library of St. Lucie County Florida

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We thank our authors and other contributors for making this issue a success!

From the Staff...

En Español

La Biblioteca de Ley Tiene un Nuevo horario:

lunes, martes, miercoles y jueves: 8:30 de la manaña a 7:00 de la tarde
vierne: 8:30 de la manaña a 4.30 de la tarde

sabado: 9:00 de la manaña a 1:00 de la tarde
domingo: 1:00 en la tarde a- 4:00 de la tarde

DIA DE LEY Mayo 1, 2012

Mayo es el mes cuando celebramos Dia de Ley.

El tema del concurso es lo siguiente:

"NO HAY TRIBUNAL, NO HAY JUSTICIA, NO HAY LIBERTAD".

Es importante que los cuadros llegan a la Biblioteca de Ley por el 24 de Abril, de 2012, para que podemos estar seguro que todos los estudiantes tengan la oportunidad de esta competencia.

Estamos acceptando los cuadros desde las nueve de la manana hasta las cuatro y media de la tarde. Si los cuadros no llegan a tiempo no es possible colocarlos en las paredes para que los jurados tengan la oportunidad de examinarlo para la competencia. ***EL 24 DE ABRIL ES EL ULTIMO DIA PARA ACCEPTAR LOS CUADROS.***

No se olvide de animar a todos los estudiantes en K -12 para participar en este concurso. Hay premios en dinero efectivo y más categorías que antes. Llame al 772-462-2370 para mas información.