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Bill Slaughter – Attorney and Captain of the Upper Ojai Search and Rescue Team

By Gabriele M. Lashly

Page 10



DIEN LE
 LESLIE A. MCADAM
 PANDA L. KROLL

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 STEVE HENDERSON

THE JEROME H. BERENSON AMERICAN INN OF COURT	3
WHY DO YOU DO IT?	6
HOW DO BIOTECHNOLOGY LAWS AFFECT REAL PEOPLE?	8
CORNFLACK IN MAYHEM IN THE COURT	12
LAW DAY 5K PHOTO COLLAGE	17
WE READ SO YOU DON'T HAVE TO	20
CLASSIFIEDS	25
EXEC'S DOT... DOT... DOT...	26



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PRESIDENT'S MESSAGE: THE JEROME H. BERENSON AMERICAN INN OF COURT – A TRADITION OF EXCELLENCE

By Dien Le



The American Inns of Court, which is perhaps the oldest, largest and fastest growing legal mentoring organization, is firmly rooted in the noble 800-year-old tradition of the Inns of Court in England. Local chapters of the Inns of Court provide a collegial atmosphere that encourages networking between all members, mentoring and skills development, the exchange of concepts, ideas and techniques important for every practitioner, and enhancing civility. It provides a valuable opportunity for newer attorneys to socially interact and work together on a less formal basis with judges and more seasoned attorneys. Participants often remain involved for many years and end up developing close ties and lasting friendships.

The Ventura County chapter was founded in 1995 by a core group including **Justice Richard Aldrich, Judge Harry Walsh, Jim Armstrong, Richard Regnier, and James McGahan**. **Steve Henderson** was instrumental in setting up our chapter as a 501(c)(3) organization, and has served as the CEO ever since. It was not until **Judge David Long** became president in 1996 that our chapter was named the **Jerome H. Berenson American Inn of Court** (“JHB Inn”). Who was Jerome H. Berenson? After interviewing some of the founders, I learned that Judge Berenson was a partner in the Oxnard firm of Nordman, Berenson & Lewis, a past VCBA president in 1960, who then was appointed to the Ventura County

bench in 1962. He was later elected as presiding judge and continued in that role for some 15 years until he retired in 1982.

The Inn meets for dinner the second Thursday of each month from September through May at the Saticoy Country Club in Somis. The group consists of eight teams of ten members each. Members of each team consist of judges, attorneys, and in some cases law students, and are slotted in three different levels: Masters (judges or seasoned attorneys with 20 or more years of experience); Barristers (five to 20 years’ experience); Associates (less than five years’ experience). Each year, JHB Inn presents two to three scholarships (to cover the dues) to law students to become team members for the whole year. This effort to extend the bar’s outreach and mentoring to local law schools has often resulted in these students becoming great attorneys who stay with the Inn, like **Rachel Coleman**. The team assignments are randomly drawn by the VCBA staff in July, and then any final tweaks are made by the Masters and Board. The 2010-2012 JHB Inn Board is led by President **David Lehr**, Treasurer **Carol Woo**, and Immediate Past President **Alyse Lazar**. Next year, **Lindsay Nielson** will take the helm. Other board members include **Judge Tari Cody, Judge Walsh, Richard Regnier, Katie Pietrolungo, and Panda Kroll**. Dues range from \$255-375, which mostly covers the food cost. Any remaining funds at the end of each year, is normally

around \$500-1,000, are donated to VCBA’s pro bono program (VLSP).

The educational function of Inns of Court is provided by the interesting, creative, practical, interactive team presentations on all areas of legal practice. One team is assigned to present each month. Whoever said that attorneys are dull has apparently never attended a JHB Inn meeting. The topics of each program are up to each team to develop as long as there is no duplication. One thing is for certain, the teams never fail to entertain (with elaborate/outlandish costumes, props, guests and animals), especially when they seek to outdo the other for the coveted **James F. McGahan Memorial Excellence Award**, a perpetual plaque with the names of each winning team member, which was first awarded in 2000-2001 and every year since. This plaque once hung in Courtroom 22 during the time that Judge Long served as supervising civil/MSJ judge. After Judge Long’s retirement, Judge Walsh has retained custody of it. During my recent visit to a meeting, I was treated to a “Wizard of Oz” program on attorney sanctions.

It’s not all fun and games, because, as new members soon learn, countless hours of script writing and role playing practice are contributed by each team member in order to bring everything together. The Excellence Award is decided by the Masters and Board members who score each presentation after each monthly meeting. Teams are judged by criteria such as the topic’s timeliness and relevance, involvement of each team member, entertainment, creativity and innovation, educational value, and written materials. Recently, the score sheet was modified to add a category for projection of voice clearly and audibly. The difficulty is having that perfect balance of education while still being entertaining.

Not only are members able to obtain their continuing legal education, but they also enjoy camaraderie, a nice setting and the delicious food offerings at the Club. As Associate **James Perero** jokingly refers to the experience, saying it is like the “Dungeons and Dragons” for lawyers. I too have fond memories of my previous stint in 2000-2001.

Continued on page 5

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President's Message continued from page 3

Every year, the national Inns of Court recognizes (for each of its seven regions) "a practicing judge or lawyer whose life and practice display sterling character and unquestioned integrity, coupled with ongoing dedication to the highest standards of the legal profession and the rule of law." Our chapter recently nominated **Judge Long**, who has been a longstanding fixture of JHB Inn and has continually shown his dedication, for one of the 2012 Professionalism Awards.

If you're interested in participating in this unique and rewarding experience for the upcoming 2012-2013 term, now is the time to submit your application to Steve at the VCBA office.

***Dien Le** is a partner at Westlake Village-based Sullivan Taketa LLP, where he represents clients in business litigation, employment litigation, real property litigation and appellate matters in both federal and state courts.*

Photos courtesy of Craig Bates and Telegraphics

TRIAL LAWYER OF THE YEAR



Mark Pachowicz accepts the VCTLA "Trial Lawyer of the Year" Award with nearly 75 lawyers and judges May 22.

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WHY DO YOU DO IT?

By Leslie McAdam



I just got back from a week in Hawaii, a place about as far removed from the practice of law as the moon. As **Meghan Clark**, one of my attorney friends, put it: I came back and got black goo all over my Aloha. Faced with opposing counsel with outsize egos, professional litigants with no desire to be reasonable, and www.bitterlawyer.com, becoming the second mate on the glass bottom boat tour was looking really attractive. (Another lawyer in my firm wants to start a Bonsai tree farm. To each their own.). After all, watching the sea turtles under the boat come up right beside the boat to breathe affirms life. A sister fighting against her sister about whether Mom loved her more does not.

But then I read a chapter in a book geared towards professionals looking to recover their Aloha. It discussed how to re-engage in your professional career. It asked, simply, why did you get into this profession to begin with? There had to be something attractive. Finding that underlying reason and remembering it with attention is the key to keeping your Aloha.

Of course, in the practice of law, there are lots of things that are attractive. They just get buried under the 4:30 p.m. "Urgent" fax from opposing counsel who refuses to use email.

I made a list of why I was interested in the practice of law. I just may tack this up somewhere in my office (which still has streamers up from my birthday weeks ago ... and, no, I am not removing them until they fall down. I like them.)

Here's my list:

- I like helping people solve their problems.
- I like being a know-it-all.
- I like finding out new things so that I can continue to be a know-it-all.
- I think the actual *practice* of law is quite interesting. Researching, analyzing, applying facts. You know: the stuff you learned in law school.
- I like being part of a profession with a rich and interesting tradition. I like the high ideals that are set forth in our founding documents and the challenge of applying those ideals to modern life.
- I like the fact that we are part of a civilized process to maintain an orderly society. We don't solve problems with a military coup. We solve them with nine people in black robes.
- I like wearing suits.

Yes, yes, I know the *business* of law gets in the way of the practice. I know about marketing, collecting, finding clients, maintaining clients, keeping clients happy, and preparing for trial. And I know all about the challenges of life that get in the way of both the business and the practice of law. One example: an attorney I know who had no clean laundry wore a bathing suit to court under her suit. Not me. But I sympathize. My son is so used to being late for Kindergarten that on the one day my husband took him and he got there early, he still ran to the classroom as if he were late.

Thus, the challenge is to remember the ideals and ideas that give the profession personal meaning. Slow down and look for those core ideals in the 4:30 p.m. fax, the sisters fighting, and yes, even "Bitter Lawyer." Because they are there if you just look for them. You don't have to look for sea turtles to find them.

Leslie McAdam is a civil litigator at Ferguson Case Orr Paterson and a member of the CITATIONS Editorial Board



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HOW DO BIOTECHNOLOGY LAWS AFFECT REAL PEOPLE?

By Panda Kroll

The legal framework governing biotechnology comes to life when interest groups and real people push against agency interpretations and applications of federal and state legislation, regulations, and executive orders. Biotechnology law plays out in courts as well as in congressional chambers and agency offices, often with unpredictable and dynamic results. As just one example, laws governing stem cell research can serve as a catalyst for ethical and scientific controversy among detractors and backers.

Case in point: *Sherley v. Sebelius*, 644 F.3d 388 (D.C. Cir. 2011). After a judge granted an order shutting down research on human embryonic stem cells (hESCs), a scramble ensued in labs across the nation.

“I have had to tell everyone in my lab that when they feed their cells tomorrow morning, they better use media that has not

been funded by the federal government,” said the director of a stem cell transplantation program at Children’s Hospital Boston, referring to food given to cells.

“This ruling means an immediate disruption of dozens of labs doing this work since the Obama administration made its order [expanding hESC funding].” Note: the University of California is the largest beneficiary of the National Institutes of Health (NIH) grants at issue.

Sherley was a lawsuit brought by conservative Christian interests on behalf of embryos, embryo adoption agencies, and scientists seeking to bar expanded NIH funding of biomedical research involving new hESC lines. By convention, the defendant in such lawsuits is the current head of the agency whose action is challenged, i.e., Kathleen Sebelius, Secretary of the Department of Health and Human Services. The lead

plaintiff, Dr. James Sherley, uses adult stem cells in his research, but never hESCs. The plaintiffs sought to enjoin funding of competing NIH hESC research grants. Dr. Sherley cited as authority the Dickey-Wicker Amendment, a policy rider to appropriations legislation that precludes federal funding of research involving the destruction of embryos. Dickey-Wicker was the basis for a Bush-era policy and related executive order limiting stem cell research to the 60 lines derived from embryos destroyed prior to 2001. Shortly after he was elected, President Obama rescinded the prior administration’s executive order, and required the NIH to draft new funding guidelines for projects involving hESCs “to the extent permitted by law.”

Prior to enacting its new “Guidelines for Human Stem Cell Research,” NIH issued a notice of proposed rulemaking

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containing draft guidelines, as required by the Administrative Procedure Act governing all agency regulation. 49,000 public comments were submitted for and against such research. The final guidelines authorized public funding of hESC research utilizing embryos that were “created using in vitro fertilization for reproductive purposes” but that were “no longer needed” and for which informed consent had been given for use in research. Under the guidelines, Dickey-Wicker precludes only funding for research which actively included derivation of hESCs from embryos, and does not unambiguously preclude research on privately-derived hESCs. Dr. Sherley challenged these guidelines in court, and a D.C. judge agreed, enjoining researchers to stop “any action whatsoever” taken under the guidelines, which were preliminarily ruled unlawful based on Dickey-Wicker. The disruption ensued.

Seventeen days later, an appellate court stayed the *Sherley* injunction, allowing the lab work to resume. The ruling turned on the definition of “research.” The appellate court found that the congressional intent behind Dickey-Wicker, while barring research “in which” embryos “are” presently destroyed, was not to bar research “for which” embryos “were” destroyed in a prior, privately-funded extraction phase of a project. The lower court, forced to dismiss Dr. Sherley’s case, grumbled that it had “become a grudging partner in a bout of linguistic jujitsu.” Further challenges to hESC research are expected, and Dr. Sherley’s most recent appeal was heard on April 23.



Panda Kroll, Esq., is a lecturer in CSUCI’s Martin V. Smith School of Business & Economics and a member of the CITATIONS Editorial Board.



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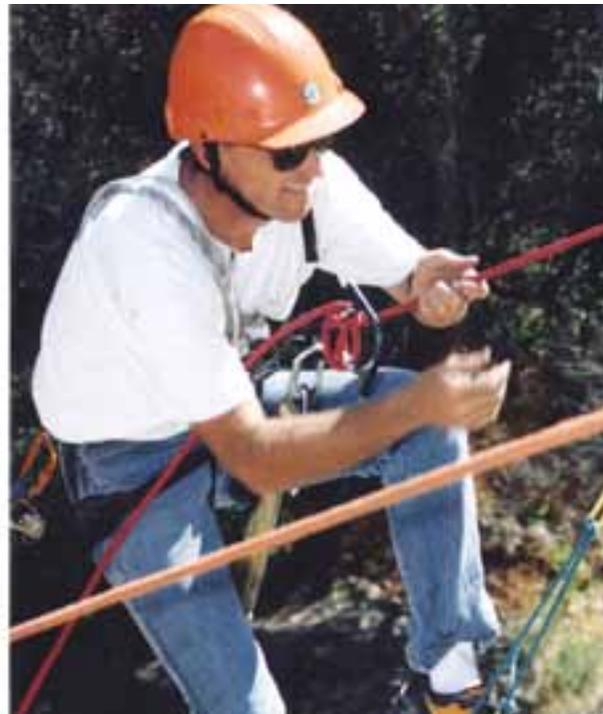


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Bill Slaughter – Attorney and Captain of the Upper Ojai Search and Rescue Team

By Gabriele M. Lashly



Bill Slaughter, a civil litigator and managing partner of Slaughter & Reagan LLP in Ventura, is an attorney with a life outside the law. In his other life, Bill is not only a devoted family man, but the captain of the Upper Ojai Search and Rescue Team.

Being on the search and rescue team was a natural evolution. Bill grew up in Santa Paula. During his high school years, Bill and his friends headed into the back country every weekend, exploring the local mountains and wilderness areas. This was the beginning of his lifelong passion for the outdoors. During a search for a friend, who fell to his death climbing a water fall in Santa Paula Canyon, Bill first saw the Upper Ojai Search and Rescue in action. It left a lasting impression.

After graduating from law school, Bill moved back to Ventura County in the early 1980s and settled in Upper Ojai. He began to practice law with **Bill Fairfield** in Ventura. Bill wanted to spend time outdoors and serve the community. By joining the Upper Ojai Search and Rescue Team in 1986, he combined both. When the longtime Captain Carl Hoffmeister retired about ten years

ago, Bill's Upper Ojai Search and Rescue Team members elected him to become their leader. According to Bill, "It was a great vote of confidence and trust in my abilities to be chosen as Captain by my fellow team members."

The Upper Ojai Search and Rescue team is a volunteer organization that is governed by Ventura County Sheriff's Department. Bill's mountain rescue team is one of six Search and Rescue teams throughout Ventura County. It has 30 volunteers, male and female, and includes members with varied occupations, such as optometrists, tree trimmers, contractors and local business owners.

Bill and his team are on call 24/7/365. Calls come often during the night and weekends, during winter storms or wild fires. Bill has gone out to find missing backpackers, to retrieve hikers stranded on cliffs, and to save motorists stalled in swift water creek crossings. The Search and Rescue unit plays a vital part in protecting not only lost hikers but all of us in cases of general emergencies. He and his teammates provide assistance in

fire-related evacuations and responded to mutual aid calls for emergencies throughout California. For example, Bill assisted in retrieving victims of the landslide in La Conchita, searching with shovels and by hand for bodies.

One memorable rescue occurred last year during a late winter storm. A group of hikers from the Sierra Club was missing in the back country. By sheer luck, Bill spotted the headlamps of the group 400 feet above Highway 33 at Potero John Canyon late at night. At the time, the search had been almost suspended due to the bad weather and lack of visibility. Bill's discovery led to a dramatic all-night rescue and the hikers were successfully retrieved by helicopter. They suffered from hypothermia, but survived.

Bill and the other volunteers each spend hundreds of hours a year training for rescues and emergencies. Bill often uses his weekends for training, such as practicing swift water rescues or helicopter evacuations. The team volunteers over 3,000 hours a year on searches, rescues and training. That would be a lot of billable hours.

One can predict a heavy winter storm by looking in Bill's office and seeing search and rescue rain gear along with a duffel bag full of equipment on the floor, ready to go. It is not unusual for him to come into the office in the morning after having been out the entire night on a rescue.

Like other team members, Bill invests hundreds of dollars of his own money to purchase equipment, such as climbing gear. "We need to do fundraising to provide for additional equipment, in particular in light of the budget crises," Bill says. "Time to mark your calendars. The team will hold its annual fundraiser and barbeque at Bocalli's in Ojai on October 7, 2012." <http://ojaisar.org>.

Technology has not only changed the way we practice law, but also search and rescue operations. In the past, a captain had to communicate with his team through two-way radios which often were out of range. Now, every team member has a smart phone with a GPS, making it much easier for Bill to deploy rescuers. In addition, the Upper Ojai Search and Rescue has a state-of-the-art mobile command center and gets support from the Sheriff's air unit, including its helicopters.

Bill is a member of the Ventura County Sheriff Foundation Board of Directors, and he uses his passion for the outdoors and his legal skills in assisting in pro bono cases involving back country issues, such as efforts to maintain public access to Matilija Falls. His experience in the back country has also helped him in litigating cases involving wild fires and mud slides.

Being an attorney prepared Bill to be a captain and vice versa. As Bill puts it, "Managing a law office and leading a rescue team is very similar. In both cases, I must bring together individuals with different backgrounds and abilities and make them work as a team to achieve success."



Gabriele M. Lashly is a State-Bar certified appellate specialist, and an associate at Slaughter & Reagan LLP in Ventura.



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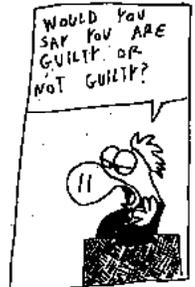
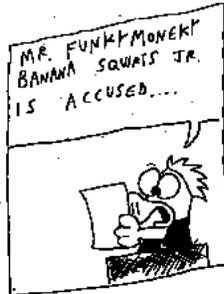
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CORNFLAK IN MAYHEM IN THE COURT



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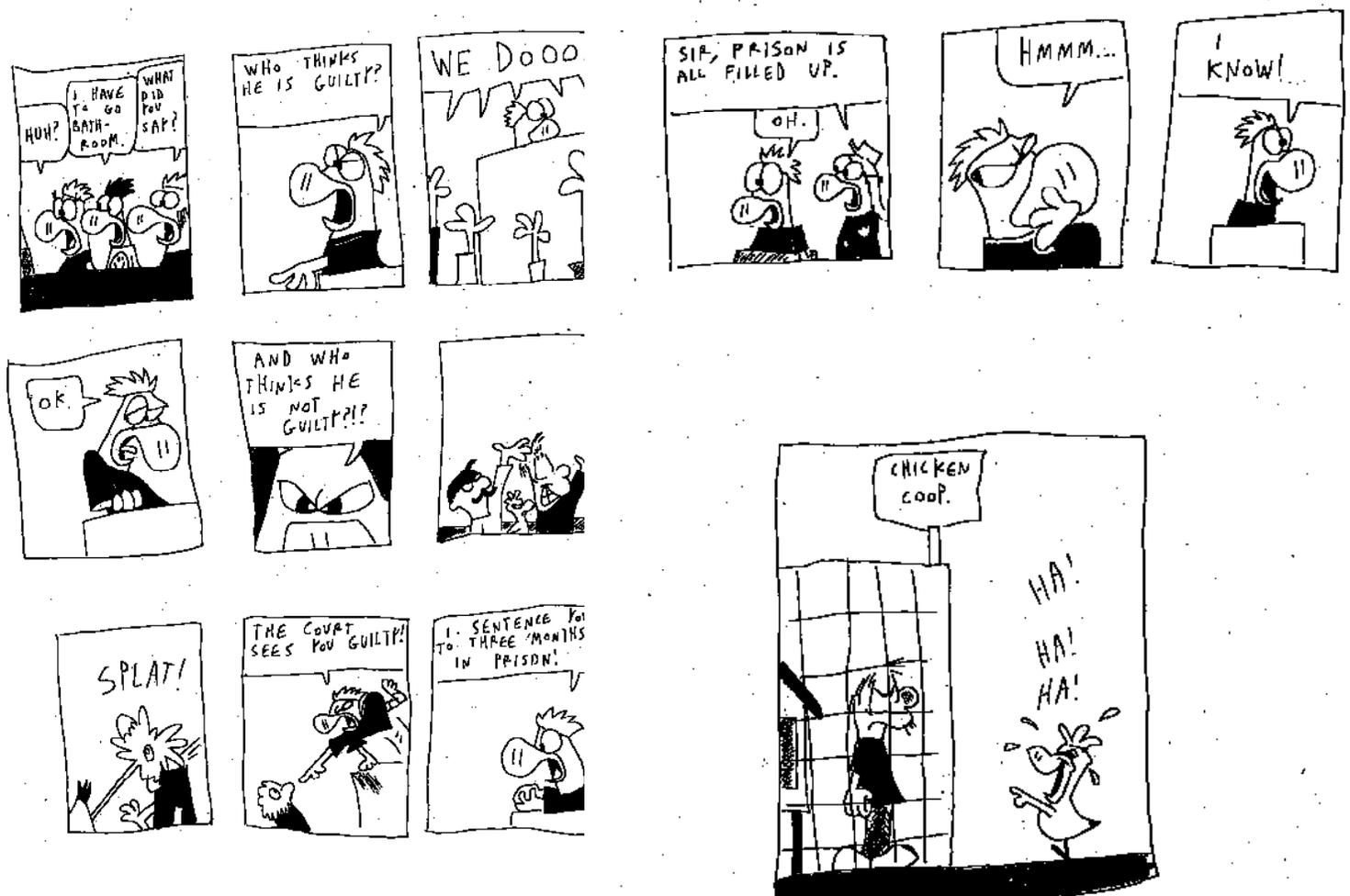
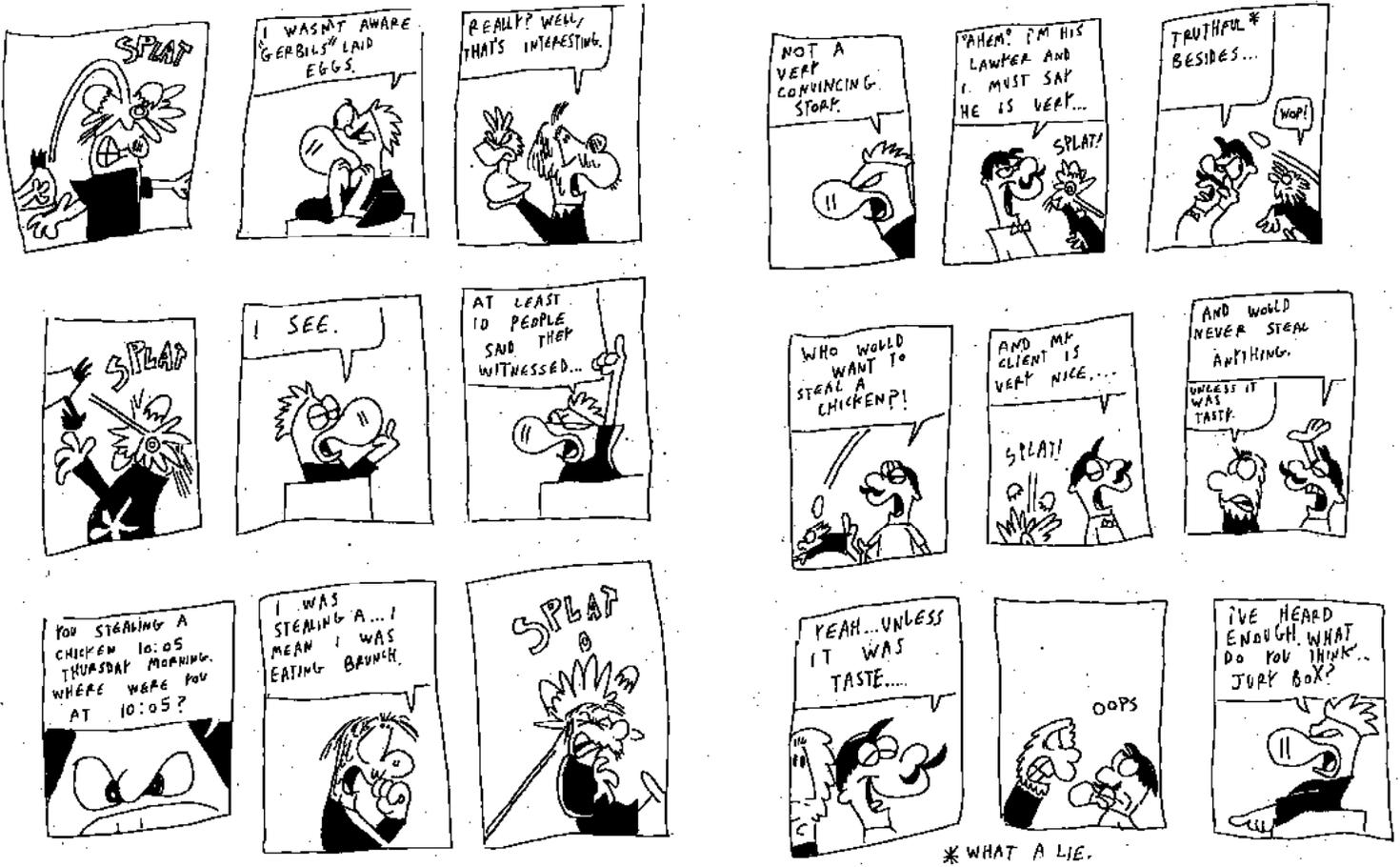


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WE READ SO YOU DON'T HAVE TO:

Bradshaw v. Unity Marine Corp., 147F Supp. 2d 668 (S.D. Tex. 2001)

Plaintiff John W. Bradshaw claims that he was working as a Jones Act seaman aboard the M/V CORONADO on January 4, 1999. The CORONADO was not at sea on January 4, 1999, but instead sat docked at a Phillips' facility in Freeport, Texas. Plaintiff alleges that he "sustained injuries to his body in the course and scope of his employment." The injuries are said to have "occurred as a proximate result of the unsafe and unseaworthy condition of the tugboat CORONADO and its appurtenances while docked at the Phillips/Freeport Dock."

Before proceeding further, the Court notes that this case involves two extremely likable lawyers, who have together delivered some of the most amateurish pleadings ever to cross the hallowed causeway into Galveston, an effort which leads the Court to surmise but one plausible explanation. Both attorneys have obviously entered into a secret pact—complete with hats, handshakes and cryptic words—to draft their pleadings entirely in crayon on the back sides of gravy-stained paper place mats, in the hope that the Court would be so charmed by their child-like efforts that their utter dearth of legal authorities in their briefing would go unnoticed. Whatever actually occurred, the Court is now faced with the daunting task of deciphering their submissions. With Big Chief tablet readied, thick black pencil in hand, and a devil-may-care laugh in the face of death, life on the razor's edge sense of exhilaration, the Court begins.

Defendant begins the descent into Alice's Wonderland by submitting a Motion that relies upon only one legal authority. The Motion cites a Fifth Circuit case which stands for the whopping proposition that a federal court sitting in Texas applies the Texas statutes of limitations to certain state and federal law claims. See *Gonzales v. Wyatt*, 157 F.3d 1016, 1021 n.1 (5th Cir. 1998), cert. denied, 528 U.S. 1118 (2000). That is all well and good—the Court is quite fond of the *Erie* doctrine; indeed there is talk of little else around both the Canal and this Court's

water cooler. Defendant, however, does not even cite to *Erie*, but to a mere successor case, and further fails to even begin to analyze why the Court should approach the shores of *Erie*. Finally, Defendant does not even provide a cite to its desired Texas limitation statute. A more bumbling approach is difficult to conceive—but wait folks, There's More!

Plaintiff responds to this deft, yet minimalist analytical wizardry with an equally gossamer wisp of an argument, although Plaintiff does at least cite the federal limitations provision applicable to maritime tort claims. See 46 U.S.C. § 763a. Naturally, Plaintiff also neglects to provide any analysis whatsoever of why his claim versus Defendant Phillips is a maritime action. Instead, Plaintiff "cites" to a single case from the Fourth Circuit. Plaintiff's citation, however, points to a nonexistent Volume "1886" of the Federal Reporter Third Edition and neglects to provide a pinpoint citation for what, after

being located, turned out to be a forty-page decision. Ultimately, to the Court's dismay after reviewing the opinion, it stands simply for the bombshell proposition that torts committed on navigable waters (in this case an alleged defamation committed by the controversial G. Gordon Liddy aboard a cruise ship at sea) require the application of general maritime rather than state tort law. See *Wells v. Liddy*, 186 F.3d 505, 524 (4th Cir. 1999) (What the . . .)! The Court cannot even begin to comprehend why this case was selected for reference. It is almost as if Plaintiff's counsel chose the opinion by throwing long range darts at the Federal Reporter (remarkably enough hitting a nonexistent volume!). And though the Court often gives great heed to dicta from courts as far flung as those of Manitoba, it finds this case unpersuasive. There is nothing in Plaintiff's cited case about ingress or egress between a vessel and a dock, although counsel must have been thinking that Mr.

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Liddy must have had both ingress and egress from the cruise ship at some docking facility, before uttering his fateful words.

Further, as noted above, Plaintiff has submitted a Supplemental Opposition to Defendant's Motion. This Supplement is longer than Plaintiff's purported Response, cites more cases, several constituting binding authority from either the Fifth Circuit or the Supreme Court, and actually includes attachments which purport to be evidence. However, this is all that can be said positively for Plaintiff's Supplement, which does nothing to explain why, on the facts of this case, Plaintiff has an admiralty claim against Phillips (which probably makes some sense because Plaintiff doesn't). Plaintiff seems to rely on the fact that he has pled Rule 9(h) and stated an admiralty claim versus the vessel and his employer to demonstrate that maritime law applies to Phillips. This bootstrapping argument does not work; Plaintiff must properly invoke admiralty law versus each Defendant discretely. See *Debellefeuille v. Vastar Offshore, Inc.*, 139 F. Supp. 2d 821, 824 (S.D. Tex. 2001) (discussing this issue and citing authorities). Despite the continued shortcomings of Plaintiff's supplemental submission, the Court commends Plaintiff for his vastly improved choice of crayon-Brick Red is much easier on the eyes than Goldenrod, and stands out much better amidst the mustard splotted about Plaintiff's briefing. But at the end of the day, even if you put a calico dress on it and call it Florence, a pig is still a pig.

Now, alas, the Court must return to grownup land. As vaguely alluded to by the parties, the issue in this case turns upon which law--state or maritime--applies to each of Plaintiff's potential claims versus Defendant Phillips. And despite Plaintiff's and Defendant's joint, heroic efforts to obscure it, the answer to this question is readily ascertained. ****

Accordingly, Plaintiff's claims versus Defendant Phillips were not timely filed and are barred. Defendant Phillips' Motion for Summary Judgment is **GRANTED** and Plaintiff's state law claims against Defendant Phillips are hereby **DISMISSED WITH**

Continued on page 23

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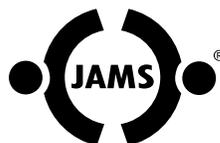
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WE READ SO YOU DON'T HAVE TO*Continued from page 21*

PREJUDICE. A Final Judgment reflecting such will be entered in due course.

II. CONCLUSION

After this remarkably long walk on a short legal pier, having received no useful guidance whatever from either party, the Court has endeavored, primarily based upon its affection for both counsel, but also out of its own sense of morbid curiosity, to resolve what it perceived to be the legal issue presented. Despite the waste of perfectly good crayon seen in both parties' briefing (and the inexplicable odor of wet dog emanating from such) the Court believes it has satisfactorily resolved this matter. Defendant's Motion for Summary Judgment is **GRANTED**.

At this juncture, Plaintiff retains, albeit seemingly to his befuddlement and/or consternation, a maritime law cause of action versus his alleged Jones Act employer, Defendant Unity Marine Corporation, Inc. However, it is well known around these parts that Unity Marine's lawyer is equally likable and has been writing crisply in ink since the second grade. Some old-timers even spin yarns of an ability to type. The Court cannot speak to the veracity of such loose talk, but out of caution, the Court suggests that Plaintiff's lovable counsel had best upgrade to a nice shiny No. 2 pencil or at least sharpen what's left of the stubs of his crayons for what remains of this heart-stopping, spine-tingling action.

IT IS SO ORDERED.

DONE this 26th day of June, 2001, at Galveston, Texas.

SAMUEL B. KENT
UNITED STATES DISTRICT JUDGE



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By Steve Henderson, Executive Director, M.A., CAE

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and associates of the firm, respectively... Viagra and Cialis apparently have nothing on a BMW motorcycle seat. According to a lawsuit filed last month in San Francisco Superior Court, the seat left its driver with a two-year erection. Henry Wolf filed suit against BMW North America and Corbin-Pacific, Inc. He claimed in the lawsuit that the "ridged seat" of his 1993 BMW caused him mental and emotional anguish after it left him with a severe case of priapism, aka a long-lasting erection. Wolf said he rode the motorcycle in San Francisco on a four-hour round trip on May 1, 2010 and developed the priapism soon after. Wolf "has been experiencing continuing problems since his motorcycle ride," his attorney Vernon Bradley wrote in the lawsuit. I will undoubtedly keep the readership abreast of this situation...**Jessica Arciniega** has landed a pretty cool job as an assistant general counsel with the State of California's Agricultural Labor Relations Board. She may be contacted at jessarciniega@yahoo.com...

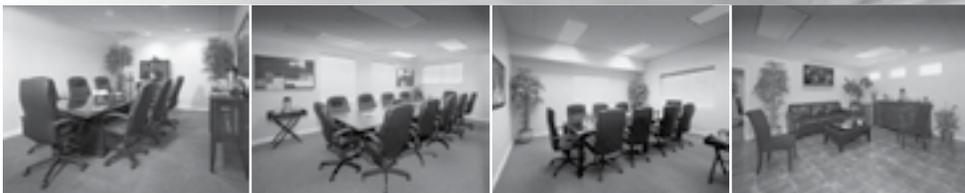
K. Eric Adair has joined Hinson & Gravelle as a partner and the firm is now called Hinson Gravelle & Adair LLP. An interesting twist here is that **Wayne Hinson**, Eric, and **Douglas Gravelle** all previously worked as in-house attorneys for Texaco Inc. in the early 90s...And just when you think you've heard it all – Give **Wade McCree** credit, the man at least owns the fact that he's a creeper extraordinaire. McCree is a circuit judge in Detroit and recently, a female bailiff received an image of the judge nude, at least from the waist up, in the shower. When a television reporter confronted McCree, the judge copped to it, even seeming proud. "Hot dog, yep that's me," McCree told the reporter, adding, "Ain't no shame to my game."...Mark your calendars – Barristers' Trivia Night is June 21 and you may take part by contacting **Matt Purcell** at 987.8809...

Steve Henderson has been the executive director and chief executive officer of the bar association and its affiliated organizations since November 1990. Early in his career he assisted John Travolta with personal needs and later attended to Metta World Peace as an associate. Henderson may be reached at steve@vcba.org, FB, Twitter at [stevehendo1](https://twitter.com/stevehendo1) or [vcba1](https://twitter.com/vcba1), or better yet, 650.7599.

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