



President's Column: *Now More Than Ever*

By Meade Mitchell

As I write this column, the United States Presidential election is days away. As you are reading this column, the results are known. Most do not remember a more fractious electoral process or greater divides between our two major political parties. These are indeed scary times, and, to paraphrase President Abraham Lincoln, these are “times that do indeed try men and women’s souls.”

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So, with all the uncertainty nationally, here is my simple question, “How many of you think that joining a bar association is a positive thing to do in times like these?” For me, and I hope you, the answer is a resounding yes.

Indeed, throughout the last 80 years, years filled with a myriad of national trials and tribulations, lawyers of this area have answered yes to that question. This organization, formed during the Great Depression, has lived and navigated through four wars, a presidential assassination, 9/11, the Civil Rights Movement, a host of economic ups and downs, and landmark decisions of the United States Supreme Court. Through them all, lawyers were there to provide professional leadership and guidance, to hold a steady course, and to provide services to our community when it needed them.

Now, as then, we must continue as a bar association to band together and work as a team for our profession and for the public. We need each other. In our unity, there is strength—strength in the programs we have established and consistently maintained, strength in the public service commitment that we have made and lived up to, strength in the challenges we have met and overcome,

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Upcoming Events

December 1

CABA Christmas Party
5:30–7:30 pm at the Old Capitol Inn

December 9

Attorney Business Center Open House
3–5pm Attorney Business Center at the Jackson Federal Courthouse

The views expressed in the articles published are solely those of the authors and do not represent the views of CABA, its officers, directors, or staff.

2016 CABA CHRISTMAS Party

December 1st at the Old Capitol Inn, from 5:30 to 7:30pm

CABA and JYL will collect toys for



and strength in the respect we have earned. It is again (and remains) the right time to stand together, to work together, and to not only help each other but all those who require our skills to protect them.

The bar associations of our country strive to showcase the noblest attributes of lawyers. CABA has shined brighter when the times were tough. We are shining now, with a myriad of projects underway in areas ranging from pro bono efforts, community service, programs addressing diversity and women’s initiatives, collaboration with the bench, facilitating law-related education, solo and small firm outreach, to donating to the MVLP through major fundraisers like our golf tournament. With all of us working together and

participating, we will continue to grow, improve and, yes, make a difference in this community.

So, it is important that each of you become involved in one of the many committees we have at the bar and that you participate in bar events. A voluntary organization is only as good as the commitment of its membership, and now more than ever, we need the commitment of our membership. We look forward to seeing you at the CABA membership meetings, socials, service projects, and CLEs—events which provide an opportunity to associate with like-minded people, afford chances to serve the community and learn, and allow development of friendships which will promote civility in the profession and the betterment of the bar.

Our next event is the Christmas Party on December 1 from 5:30 p.m. until 7:30 p.m. Please come and enjoy, with a small gift for Toys for Tots in hand. Also, do not neglect to participate in our bar composite project, and be on the look-out for announcements regarding other CABA events throughout the year.

In conclusion, thanks for being a member of CABA. I appreciate you helping CABA make a difference in our community and in aiding its mission of bringing out the noblest attributes of lawyers! ➔

Meade Mitchell, *CABA President*
meade.mitchell@butlersnow.com
 (601) 985-4560

CABA MEMBERS ARE CANDIDATES FOR MISS. BAR LEADERSHIP

Two of CABA’s most distinguished members, Pat Bennett and Rebecca Wiggs, will be candidates for President-Elect of the Mississippi Bar in 2017. The following profiles are the result of sit-down visits with each candidate to reflect on their careers in the law.

By Kate Margolis



Pat Bennett is a native of Forest, Mississippi. One of ten siblings in a family of educators, Bennett knew she wanted to be a lawyer from a young age. She “loved watching Perry Mason” and knew from then on that she “wanted to be in the courtroom” and practice criminal law. Even though “all of her family went to JSU,” Bennett chose Tougaloo because Constance Slaughter-Harvey—“the only African-American

lawyer from Forest” at that time—went there. Bennett decided “that’s where I’m going,” she said.

After graduating from Tougaloo and then the Mississippi College School of Law, Bennett started her legal career at the Small Business Administration. It was 1979, the “year of the Easter Flood” in Jackson



Rebecca Wiggs grew up in Louisville, Kentucky. In a city known for horse racing, she has a vivid memory of going with her dad and older brother to the track for the first time at age 11. She placed her \$2 bet on “Mayday Basket.” Wiggs’ brother teased her about the name of the horse, but accorded her a little more respect when Mayday Basket won the race.

Wiggs attended public school; her mom was a public school teacher. She describes Louisville as a place where tolerance and respect predominated. She said her June 1969 high school graduating class of nearly 500 came from diverse backgrounds. “I’m a big believer in public schools because I’ve seen the difference it makes to the overall community,” she said. Her mother and brother

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Pat Bennett, *cont. from page 2*

and the SBA was doing all it could to help close loans for people who had “lost everything.” In addition to assisting people who were “in desperate situations,” Bennett had “two great women lawyer mentors, Debbie Davis and Patricia Hancock” from the start.

After the SBA, Bennett went to the Mississippi Attorney General’s Office under Bill Allain, working on consumer issues and the implementation of a new law to integrate children with special needs into the public schools. Bennett traveled around the state, “working with schools, the Education Department and faculty” to determine what services were available to Mississippi children with special needs and address hardships families were then experiencing.

At the AG’s office, Bennett regularly appeared in the courtroom and felt like she was “making a difference.” She was also known as one of the “team of three,” along with Robert Gibbs, also at the AG’s office, and Mike Espy at the Secretary of State’s office, so-called because they “went everywhere together.”

When she got a call from Hinds County District Attorney Ed Peters, Bennett took the opportunity to fulfill her dream of practicing criminal law, “the reason she went to law school.” She was “in the courtroom all the time,” prosecuting “crimes against persons” felony cases, including crimes committed against children such as felony child abuse. She continued her work as a prosecutor as an assistant U.S. Attorney.

Bennett recalls wondering if some victims would ever recover from their trauma. She said one “way of knowing you’ve made an impact on individual lives” is when, “years later, someone walks up” and the person has “blossomed” since receiving “their day in court.” She said she “played a small part” in a team effort by the police, prosecutor, and judge. Bennett said one of her most rewarding moments occurred when a young defendant on trial for participating in gang violence told her that by convicting him “You probably saved my life.”

As an officer in the JAG corps and Mississippi Army National Guard, Bennett’s career took a turn in a different direction when she was asked to serve as an adjunct at the JAG school at the University of Virginia. Al Harvey, a general in the National Guard and dean at MC School of Law, asked her teach a trial practice class each semester. In 1989, she joined the faculty for good. She teaches courses in criminal law and procedure, pretrial and trial practice, evidence, experts, mediation and arbitration.

Rebecca Wiggs, *cont. from page 2*

are still in Louisville; her mother lives in the house Wiggs grew up in.

After graduating from Wake Forest with a degree in political science, Wiggs began a career in public relations and journalism, first as a press assistant for Congressman Ron Mazzoli. She was familiar with lawyers because her dad worked “in insurance claims,” but Mazzoli served as her first lawyer role model, planting the seeds for her future in law. She subsequently landed a job at the D.C. news bureau of TV Guide magazine, where she had press credentials for the U.S. Supreme Court and U.S. Capitol and reported on developments in the regulation of cable television. She found these work experiences invaluable and “to this day” continues to recommend getting “a couple of years of work experience” prior to law school.

An avid alumna of the University of Virginia School of Law (she describes herself as the “den mother of UVA lawyers in Mississippi”), Wiggs didn’t get in right away. When she learned that she would be “placed on the waitlist and considered in June for fall admission,” she decided to decline and reapply the next year so she wouldn’t have to leave D.C. on short notice. “I’m a planner,” she said. “I had roommates, a job—I couldn’t do that.” An assistant dean later told her that no student had ever declined to be waitlisted and that she had become quite “famous” among the law school administrators even prior to her arrival as a 1L.

Wiggs thrived at UVA, describing the “sense of community among faculty, staff, and students” as remarkable—a kind of respect “that encouraged collaboration.” “UVA puts together scaffolding to build something,” she said. Wiggs worked for the law school newspaper and quickly got to know people, including the other women who made up 38% of her class and her future husband, Mark Wiggs, a native Mississippian, who was a 2L. They married and Wiggs spent her 3L year in St. Petersburg, Florida where Mark was clerking for Judge Paul H. Roney on the Eleventh Circuit Court of Appeals. UVA “worked with her” so she could finish her J.D. from there. Wiggs also clerked for Judge Roney before the couple moved to Mississippi.

Wiggs landed at Watkins & Eager, where she still practices today. Wiggs is a general litigator who has specialized in different areas over the course of her career, including environmental law, appellate work, malpractice, product liability, banking litigation and insurance. “At heart, I enjoy the storytelling,” she said, “investigation, interviewing

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Pat Bennett, cont. from page 2

Bennett serves many roles at the law school. In addition to serving as Professor of Law, she is Director of MC's Litigation and Dispute Resolution Center. When Dean Wendy Scott steps down on December 1, Bennett will begin serving as interim dean of the law school.

Bennett continues to be committed to community work and bar work, which includes currently serving as President of the Charles Clark Inn of Court. After the meetings, she goes bowling. "I'm a serious league bowler," she said.

Bennett said that the growth of the Mississippi Bar is one of the biggest changes since she "first started practicing," a time when she "knew all of the judges and lawyers." She said that while "different things account for" the growth, it demonstrates that practicing law can be a rewarding and profitable career. ➡

Rebecca Wiggs, cont. from page 2

witnesses, connecting the dots, selecting the best witnesses to tell the story." She also serves as a mediator.

Wiggs said that the pressures "driven by technology" have been a "fundamental" change in law practice, not only affecting the "ability to be deliberative" at work, but often cutting into the time available for family, community involvement, bar work, and pro bono work, she said. She attributes lawyers' "decrease in satisfaction" largely to being "constantly on the job," which can lead to "burn out" and substance abuse.

"It's incumbent on us to make use of technology to stay in touch" and "look out for one another," she said, so we lawyers can continue to be a resource to the community, fulfilling "our highest and best use." ➡



CABA October Membership Meeting

Our speaker was Duane O'Neal, President and CEO of the Greater Jackson Chamber Partnership, pictured with CABA President Meade Mitchell and CABA President-Elect, Tiffany Graves

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and the
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THE POLEMICS AND POETRY OF BASEBALL BEFORE, DURING AND AFTER NOVEMBER 2ND OF 2016

“The one constant through the years, Ray, has been baseball. America has rolled by like an army of steam rollers. It has been erased like a blackboard, rebuilt and erased again. But baseball has marked the time. This field, this game.”

And so said the sage Terence Mann in *Field of Dreams* (1989). But Mann was only half right when he added, “It’s a part of our past, Ray, it reminds us of all that was once good and it could be again.”

As that “one constant,” baseball also undergirds our not-always-foreseeable future, the destiny that may be better than the past to which it is nonetheless tethered, though differences are inevitable. Not what “could be again,” but what will be in spite of our fears and doubts, beyond the momentary madness of the majority.

It is the constant that slips up on us when we least expect it and wrenches American humanity from those who would teach us to cower and doubt because they cannot control, because they cannot escape from fear of that which is different from their view of the country, a view upon which they mistakenly think they have bet their all.

That Wednesday night in early November¹ confirmed Terence Mann’s reassurance of the future, “Oh...people will come Ray. People will most definitely come.”

A few reasons why baseball is “the one constant”

No one was worrying about the “clock management” skills of Tito Francona and Joe Maddon. It was one of the magical features of Game 7 as pitch-by-pitch, the nation experienced those final innings.

In baseball, no game is ever decided by which team had the ball last. Or how much time was left on the clock when that last possession began. The team that bats last has three outs to try to score enough to win, the same as the other team.

And each gets the same three outs every inning. No time at bat cut short because of a bad pass or a fumble or a traveling call. True, it can be extended because of an error, but that seems only fair.

In substantial part, the exciting, gut-wrenching, heartwarming and important baseball game played that Wednesday evening—as

good as most can remember—was all it could be and could have been, because the rules of the game are so fair, so intelligent.

Yes, it is a big money game

By noon on November 2, the word was out that rain was in the forecast for Cleveland late that evening. And then news that the Commissioner’s office was considering starting the game early to avoid the rain.

How neat! Southeastern Conference baseball does that with college games all the time, and with great results. Few ever get stuck batting in the bottom of an inning when the drizzling has started, after the visiting team has a rain free top half of that inning.

No team’s top pitcher’s arm gets cold waiting out a rain delay, so that when play is resumed that pitcher cannot pick up where he was and go forward.

The only thing bad that would have happened if that seventh game between the Cubs and the Indians had begun at 5:30 p.m. EDT instead of 8:00 p.m. was that big money television advertisers would have demanded a discount on the prime time rates tied to an eight o’clock game time.

1. For the conventional details of the world-shaking World Series of 2016, see, e.g., “2016 World Series,”

http://en.wikipedia.org/wiki/2016_wiki_World_Series. And a dozen other sources.

Continued on page 6...

But, yes, baseball is a big money game. Without big money making the game available around the world, the Series may have been limited to radio, as in those two consecutive years long ago when the Chicago Cubs last won a World Series.

Ooops! Lest we forget, the first baseball game broadcast was on August 5, 1921, when KDKA radio Pittsburgh aired the hometown Pirates beating the Philadelphia Phillies 8 to 5.² KDKA carried the World Series a month later in that same year. John McGraw's New York Giants beat the New York Yankees and Babe Ruth, five games to three.

That was thirteen years **after** the Cubs—in Tinker to Evers to Chance, and a 29–9 season by Mordecai (Three Finger) Brown—beat Ty Cobb and the Detroit Tigers four games to one back in 1908, itself the year after those self-same Cubs swept those self-same Tigers in four straight.

The glory of money and technology in late October and early November of 2016 was that practically every person in the world who wanted to could see as much of each of the seven games he or she wished, and in real time,³ or by recording if for some reason the live schedule—and risk of rain—created an inconvenience.

It's not just that the loveable losers finally won

Baseball is our superior team sport. Remember, rules are supposed to facilitate fairness, maximizing the odds that the team that in a good and just and decent world ought to win probably will win. Sort of like the way the law is supposed to work.

Think about it.

One team can have the best hitter in the world but he only gets to bat once in every nine offensive plays his team is allowed. And he has to pass muster on defense, too.

Yes, I know the American League has monkeyed with that one. TRL does not suggest that baseball is the perfect team sport. It's just better than the rest. And another reason that

is so is that it is very hard for an individual to excel in baseball.

A player may be the slickest fielding shortstop in the league, or be able to cover more ground in the outfield than anyone, or have the strongest throwing arm. Yet the field is so big he can't possibly patrol it all or even very much of it. Each player has to share the field defensively with eight others, and help each other.

A football quarterback may complete over two-thirds of his passes, maybe many more, if he is really good and has a bit of luck. In basketball, a player may hit fifty per cent of his shots from the field or more.

But in baseball a batter is considered very good if he makes it to first base safely on thirty percent of the times he hits the ball, if he hits .300. A shortstop needs to hit better than that if his fielding percentage is consistently below .975.

In no other sport is the competition more appropriately balanced—by the rules—between the offensive players and those defending. Between talent and focus, between effort and luck.

It's all about the team and inches and the perspective of time

And the emphasis really is on the team. To be sure, lots of fans dislike free agency. We want a near-personal relationship with players on our team, the players we like. Then—poof—he's moved to another team and for the big bucks. But that rules change and the demise of *Flood v. Kuhn*, 407 U. S. 258 (1972), have made things better. A player is not stuck with a bad team for life.

But in no other team sport does he pay such a price if he moves for money. For if he does he is more exposed to really getting the business from his former fans when his new team comes to play in his old home town.

Venezuela born Miguel Montero played

for the Arizona Diamondbacks when TRL last visited Wrigley Field in May of 2014.⁴ He was a catcher for the Cubs in the 2016 World Series. Montero's rbi single in the top of the tenth inning on the evening of November 2 drove in the final run in the Cubs 8 to 7 win and World Series victory.

They say the teams with the richest owners have an unfair advantage. In some sense that is no doubt so. But dozens of big spending teams fall short for every one who wins a World Series. Just look at the New York Yankees over the sixteen seasons the Twenty-first Century has seen.

There is always room for a Billy Beane.⁵ Or a team like the 2008 Tampa Bay Rays, a low budget team of former nobodies that Joe Maddon managed to an AL playoffs victory over Tito Francona's Red Sox, only to falter in the World Series.

All sports are games of inches but none more so than baseball. Every at bat, every pitch is a matter of not just inches but so often tiny fractions of inches separating a hit from an out, a catch from a ball falling safely.

Yes, instant replay makes the games longer, often much longer than the two hours that most fans would consider optimal. But it helps the umps get it right! The only thing really wrong with the instant replay is that it still isn't used to correct a called third strike that really was several inches off the plate, or a fourth ball that walked in a run when the pitch really did catch the outside corner of home plate.

Old-timer trial lawyers long for the days when the rules weren't so complex, back before there were all of those damn pre-trial processes seen to help judges a lot more than they help the parties and their lawyers. But do we really want to go back to the pre-Rules days?

A very American team

The 2016 Cubbies were a peculiarly American team, Western Hemisphere variety. Dexter

2. Major League Baseball on the Radio, en.wikipedia.org/wiki/Major_League_Baseball_on_the_air.

3. See the Neilson ratings on Games 6 and 7 of the 2016 World Series. "Nielsen: World Series Game

7 is ratings hit, CMA Awards hits record low," <http://www.usatoday.com/story/life/tv/2016/11/08/neilsen-ratings-highlights-week-ending-november-6>

4. "The Friendly Confines on Addison at Clark,"

<http://caba.ms/articles/roadlawyer/friendly-confines-addison-clark.html>

5. See Michael Lewis', MONEYBALL (2003, 2004).

Continued on page 7...

Fowler, Jason Hayward and Addison Russell are African Americans. Aroldis Chapman and Jorge Soler are native Cubans. Pedro Strop is from the Dominican Republic. Catchers Montero and Willson Contreras are Venezuelan nationals.

Anthony Rizzo is an Italian American. Javier Baez and Jake Arrieta can trace their ancestry to Puerto Rico, and in Arietta's case on back to Italy and to the Basque Country. Ben Zobrist, Kyle Schwarber and Reinaldo Albert Almora are native born U. S. citizens, though hardly the Anglo-Saxon variety.

Wrigley Field really is a neighborhood ballpark, Northside Chicago variety. Your Road Lawyer can't do much better with that one than in June of 2014 when TRL posted "The Friendly Confines on Addison at Clark," www.caba.ms/articles.

And there was something very American about the way it happened in the Fall of 2016. Two teams of seemingly hapless loveable losers having finally made it to a World Series.

The Cubs we knew about, have long known about.

Not only have the Cleveland Indians not won since 1948, every spring when baseball gets cranked up again, the dozens if not hundreds of TV movie channels dust off their copies of "Major League" featuring Jake Taylor, Wild Thing, Willie Mays Hayes, Roger Dorn, Pedro Cerrano, Eddie Harris, manager Lou Brown and announcer Bob Uecker. Wild Thing a/k/a Charlie Sheen made a cameo appearance on November 2, along with his "Jobu" doll pilfered from Pedro Cerrano, but, alas, it wasn't enough.

Cubbies? Come now!

Many long said the problem was the team's name—the Cubs. Every other team in Major League Baseball has a team name that in the hands of a skillful caricaturist is susceptible of a rendering exhibiting fierceness. Even the Cardinals, the Orioles and, of course, the Blue Jays. "The year of the Bird!" Even the two sox

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MLK HOLIDAY: January 16
Monday 9:00 am–5:00 pm

SPRING BREAK: March 10—March 19
Friday (Mar 10) 7:00 am–5:00 pm
Saturday & Sunday (Mar 11 & 12) CLOSED
Monday—Thursday (Mar 13–16) 7:00 am–5:00 pm
Friday (Mar 17) 9:00 am–5:00 pm
Saturday & Sunday (Mar 18 & 19) CLOSED

EASTER HOLIDAY: April 14—April 16
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Saturday (April 15) 9:00 am–5:00 pm
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teams, Red Sox and White Sox.

But any hope of a properly competitive rendering of Cubs was stripped away long ago when Chicago's professional football team became the Bears—and less officially the Monsters of the Midway. The Chicago Bulls

and Michael Jordan reigned in pro basketball, and the Chicago Black Hawks were worthy entrants in professional hockey with Bobby Hull, Stan Mikita and Phil Esposito. More recently, the Black Hawks won the Stanley Cup in 2010, 2013 and 2015.

6. TRL told parts of this story in the June 2008 issue of what was then the Hinds County Bar Newsletter, at pages 12-14, at www.caba.ms/articles. The typed Q & A "confession" of "Shoeless" Joe Jackson of Greenville, South Carolina—that so mysteriously

disappeared just before the trial in September of 1920—emerged some sixty-seven years later among the archives of Chicago law firm Mayer Brown & Platt, whose 1920 iteration had been counsel for Comiskey in specially prosecuting the eight. See

"Joe Jackson's Statement ('Confession')" law2.umkc.edu/faculty/projects/ftrials/blacksox/shoelessjoe.pdf
7. Ted Williams Hall of Fame induction speech in 1966 (Cooperstown, New York).

Continued on page 8...

Second time around for Chicago's long suffering baseball fans

Many outside of Cleveland exulted at Addison Russell's grand slam home run in the third inning of Game Six. Sports bar and couch potato fans remember the TV announcers' follow-up—"the first World Series grand slam since Paul Konerko in 2005."

TRL recalls no mention of the fact that Konerko's seventh inning grand slam came in Game Two of the Series eleven years ago, and was a major force in the Chicago White Sox' ending their eighty-eight year drought, winning their first World Series since 1917!

Tell me you knew that.

As fate would have it, the White Sox never acquired the nationwide affections that the Cubs enjoyed even before the 88th year of their long dry spell. Several hypotheses are available, most plausible being the "Black Sox" experience in 1919. "Say it ain't so, Joe" captured the spirits crushed at learning that eight players admitted taking bribes to "throw" the Series won by the heavy underdog Cincinnati Reds, five games to three.

Of course, within a few years it became known that White Sox owner Charles Comiskey and maybe even his lawyers were as dishonest and crooked as his star players had been. That only further darkened the country's view of the ChiSox.⁶ Two wrongs don't make a right. Nor do three. It is now generally understood that the New York gamblers never came through with bribes anything like what the "eight men out" had been promised.

Many once long-suffering fans of the Boston Red Sox still cling to their DVDs of the 2004 American League Championship and World Series. Eleven years from now, the baseball happenings of October through November 2016 will no doubt be preserved through the technologies of that future date.

It is an interesting speculation how many

will remember the 2016 Cubs by the time the 2027 World Series is played. And whether like the Red Sox in 2007 and 2013 the Cubs will have posted more pennant and World Series flags.

The Red Sox Alumni World Series

The Cubbies and Indians that met in this year's World Series were and remain similar in the debt each owes to those once associated with the once long suffering Red Sox.

Theo Epstein is the head of player operations in the Tom Ricketts era on Chicago's North Side. Prior to 2011, he held a similar position with the Red Sox, and gets major credit for building the Sox teams that won in 2004 and 2007.

Tito Francona managed those 2004 and 2007 Red Sox Teams. This year was his fourth season as manager of the Cleveland Indians.

Southpaw Jon Lester was the winning pitcher for Francona's Red Sox in the final game of the 2007 World Series. Cubs' Game 4 starting pitcher John Lackey was a starter and winner for the Red Sox in Game 6 of the 2013 World Series.

Southpaw Andrew Miller, also a Red Sox alum, was the Indians's middle reliever *par excellence* in 2016.

Coco Crisp contributed to the Red Sox' series win in 2007. He was playing for Cleveland and his old Sox manager in the 2016 Series. Mike Napoli moved from the 2013 Series-winning Red Sox to the Indians in time for this year's Series.

The Kids and the Poets

Field of Dreams begins with Ray Kinsella dreaming that Joe Jackson wanted him to create a baseball diamond in an Iowa corn field, that Shoeless Joe and the other seven might play again.

Back in the 1980s, Ted Williams put his

finger on the problem, and bluntly. Charles Comiskey, arguably the biggest crook of the Black Sox of 1919, is in the Hall of Fame in Cooperstown, while the long ago deceased Joe Jackson was and remains barred, though he had been found not guilty at trial in September of 1920. Not to mention that Shoeless Joe hit .375 for that eight game Series, while supposedly slacking off.

But baseball—like life and like law—is not always fair, far from it. The outspoken Williams took that one on in 1966 as he was inducted into the Hall of Fame when he decried the fact that Satchel Paige and Josh Gibson and other Negro League greats "are not here only because they were not given a chance."⁷

Ernie Banks may have been the greatest Cub. He was given a chance to play but never in a World Series. "Wrigley Field became mine," he once said. "I grew to love going there. I didn't want to ever leave. That's why I said, 'Let's play two!'"⁸

Beyond its more perfect rules, baseball has inspired poetry. And so, as the 10th inning unfolded after the rain delay on that first Tuesday in November—and maybe even before—one thought of John Updike in another baseball setting saying that we were experiencing one of those special moments "when a density of expectation hangs in the air and plucks an event out of the future."⁹

But now the season is over. Dark and quiet hover over Wrigley Field—and, for that matter, over Progressive Field in Cleveland. Stirrings suggest the Hot Stove League is gearing up. And call to mind the thoughts of a poet who never saw a baseball game but who, understanding our souls, saw far more fully than we should wish that

*The best lack all conviction, while the worst
Are full of passionate intensity.*

...

*And what rough beast, its hour come round at last
Slouches towards Bethlehem to be born.*¹⁰ 🐼

8. Ernie Banks' Introduction to A CENTURY AT WRIGLEY FIELD at page 11 (2013).

9. John Updike, "Hub Fans Bid Kid Adieu," THE

NEW YORKER Oct. 22, 1960); www.newyorker.com/magazine/1960/10/22/hub-fans-bid-kid-adieu.

10. William Butler Yeats, "The Second Coming,"

in THE COLLECTED POEMS OF W. B. YEATS, 185 (1933, 1956).

TEACH YOUNG LAWYERS WELL

By Ira Rushing



In the words of Graham Nash, “teach your children well.”

With that said, I believe I had a good childhood. My parents were firm but fair, and they taught me to use my words to articulate any injustice in my life—like why I NEEDED a Nintendo. Seriously, every kid had one but me. As I got older, it’s possible they regretted their decision to encourage me to speak my mind, especially when my sister and I would remind them that we controlled which nursing home we’d stick them in. The quality of living in their latter years rests on how we perceive our quality of life to be now. I know, it’s terrible and insensitive, but such is life. I hope they have a Nintendo, wherever they ultimately go.

After a childhood filled with many an “injustice,” I inevitably ended up in law school, much to my mother’s disappointment. A recovering litigator herself, my mother tried to talk me into doing something else—anything else—with my life. But I made it through law school and thankfully landed a job here in the Jackson area. But now that I interact with lawyers everyday, I’ve begun to notice similarities to my childhood.

When I show up to work, I am a fly on the wall, listening to adults shareholders talk to one another while doing my best not to interrupt. I use my words to articulate why I’m right and should get what I want. I don’t hit or bite, and I try to put my things back where I found them when I leave the office at the end of each day. But I think—even if I’d never admit it at the office—there is still control to be had by we young associates with regard to the firm’s future.

Growing up in Jackson, I had the opportunity—and sometimes misfortune—to be surrounded by lawyers. But lawyers don’t run into each other as much anymore. This especially hurts young lawyers, because we miss out on some really good advice from folks who have been in the trenches for a long time. In my mother’s case, I think a *very* long time. This advice is key, because many successful firms are full of folks who have capitalized on that advice to get ahead. And without that advice, many associates are left to sort of reinvent the wheel, hurting the firm in the end.

When I was sworn in a few months ago, I had an opportunity to get some really good advice. My boss and I were both equally ready for me to get to work the Monday after bar results came out. I figured getting sworn in was better than getting sworn at, so the two of us went to the Hinds County Chancery Court on ex parte day. We went to Judge Patricia Wise’s chambers so we could knock things out and get back to the office. The quicker we got through this, the quicker I could begin an associate’s time-honored duty of completing the work no one else wanted. It should have been pretty streamlined, but I didn’t get away so easily.

Judge Wise decided that, instead of administering the oath quietly in chambers, she would open court for a ceremony. From the bench, she first asked my boss to introduce me to the other attorneys, attorneys who were there to do actual, meaningful work. (More importantly, they were on the clock and I was not.) She then asked me to introduce myself. As a Rushing, this typically does not end well. She finally gave me the oath, signed my license, and asked me to turn around and address the court. I was to tell everyone in the courtroom why I wanted to be a lawyer. I told them I had already used all my other excuses to wear a suit. Then, she had everyone stand

up, one by one, and give me advice on being a new lawyer.

I was nervous. These lawyers were waiting for their turn to present something presumably much more important to them than some new kid getting sworn in. I was just one more mouth to feed. But the advice I got was on the spot, meat-and-potatoes advice given by folks who really practice law. This was advice born of tried and true experience. Some of it was intuitive: call your clients; don’t be a jerk to the other attorney, even if he files things at the last minute ALL of the time (while glancing at one of the other attorneys in the room); and *when* you make a mistake, own up to it immediately, because it’s easier to fix it on the front end than to pay sanctions on the back. But whether or not the advice was intuitive, that wasn’t the point.

These lawyers handed down a little part of their life and experience that they thought would serve me well as I embarked on my journey into the practice of law. And under



the gaze of the Judge in front of whom their cases were immediately pending, they made it count. That advice is hard to come by these days, so when we get it, we must see the bigger picture. This is the passage of guidance that spans generations of practitioners.

Young lawyers: As we are admitted to courts all across the state of Mississippi, it is important to remember those who give us their advice. Shrug the details off if you want, but absorb the message. Take it and give thanks. Appreciate the opportunity to interact with those who came before us. Reflect on our new responsibility to pass down what we learn to others in the future.

Granted, my current level of legal wisdom couldn't lead kindergarteners to a playground (nor would they follow me). But as I take it in and relish the embarrassment of what hopefully will—but surely won't—be my last call-out in Chancery court, I'm building a wealth of experience that is only as good as my willingness to share it with others.

Shareholders: Teach your children well; we are still learning to walk. We have the same ambition to be great lawyers that you had when you first started. Or maybe we just want to be the next Perry Mason. Either way, it's much harder to get there without opportunities to learn from your experience. Lawyers don't talk at Primos as

much anymore.¹ As some of you move towards retirement, your quality of life and legacy will rest on what we learn now. We both want your firms to be left in capable hands. We all want Nintendos.

I'm incredibly thankful for the advice I received on the first day of my journey in the legal world. And I'm blessed to continue to learn from lawyers for whom I have great respect. Although I still have a lot of learning to do, I'm cognizant that one day I'll be passing the torch as well. I can only hope the knowledge and experience that I pass on will be the right sort of stuff. Because I want to be put out to the best of pastures one day myself, and I think that's the point. 🍀

1. TerryL Rushing, *It's Just Lawyers Talking at Primos*, Capital Area Bar Association, (April 2016), <http://>

caba.ms/articles/features/lawyers-talking-primos.html

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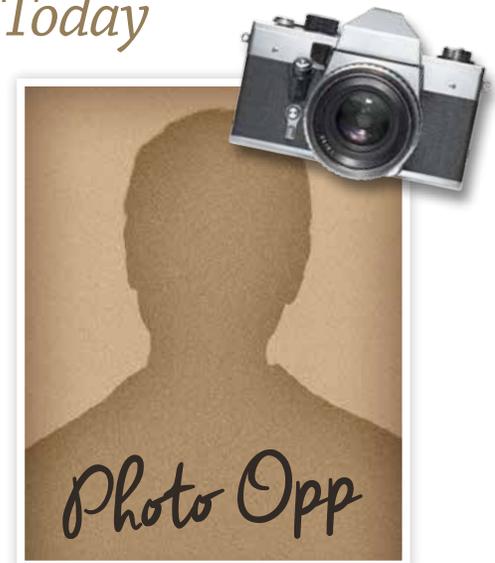
The photographs will be taken at the following locations:

- MC School of Law (Moot Court Conference Room), 151 E. Griffith Street, Jackson, MS from November 28, 2016 to December 1, 2016
- Old Capitol Inn (Suite 3), 226 North State Street, Jackson, MS on December 1, 2016 (the date of the CABA/JYL Christmas Party)
- MC School of Law (Moot Court Conference Room), 151 E. Griffith Street, Jackson, MS from December 2 to December 9, 2016
- Butler Snow, LLP (Founders Room), 1020 Highland Colony Parkway, Suite

1400, Ridgeland, MS from December 12 to December 16, 2016

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For professional quality and best presentation, appropriate dress is suggested. We recommend a dark suit jacket and light-colored shirt.

Thank you for being a member of CABA and taking part in this great member benefit! 🍀

CAPTAIN EQUITY

WHAT IF?

The Post Election Crystal Ball

Thanks to journalism deadlines, I was required to write this piece before the election, not knowing how things turned out. So in the tradition of turning lemons into lemonade, here is what my trusty Crystal Ball told me to say. To wit:

Assuming Trump Wins

It will not be pretty. Late night Twitter morphs into the most extensive use of Executive Orders in the history of this country. Forget Congress and focus on the Supreme Court. It will take less than 100 days before the nation is thrown into a Constitutional Crisis of major proportions. Part of this will be the fate of Crooked Hillary who will be charged with everything from Aggravated Jay Walking to Treason by Special Prosecutor Rudolf Giuliani. Meanwhile, Chris Christie will be pardoned for his role in Bridgegate while the Republican Party tries to deal with the loss of the Senate. None of this will trouble his Excellency, Donald the 1st. He will simply continue to hold rallies to get his ego fix while thinking up new ways to use the Executive Order. You will be amazed by his creativity and reach in this regard. And if you happen to be on the wrong side of history get ready for a stint in a concentration, aka reeducation camp funded by the Department of Education. The official name of the camps is Free Boarding School for Adults: Making America Smart Again.

Over the longer haul, the first use of a tactical nuclear weapon somewhere in the Middle East will prove a profound mistake for which his Highness will blame the generals.

Much like his early bromance with Lyin' Ted, he will have a falling out with his old buddy Vladimir Putin. Suddenly Russia is the Soviet Union all over again and the only thing keeping the new Cold War from heating up will be that ill-advised use of atomic weapons by the Donald. Putin will continue to needle the U.S, but a full blown nuclear war will be averted in the short run. And, of course, for the balance of his life he will be known by his press releases as "Deterrence Don," the man who ended nuclear war for all time.

The good news is that Trump's first and only term will be cut short by his impeachment, conviction and removal from office. President Pence will spend the remaining part of four years dismantling the concentration camps filled with Mexicans and Democrats while work on The Wall will finally cease. All the while, Pence, Paul Ryan, Lyin' Ted and Little Marco all get ready to run in 2020 pretty much knowing that the GOP ticket doesn't have a chance thanks to ex – President Trump.

Assuming Trump Loses

Both the Donald and the nation do much better on this count. The biggest development will be the Trump TV Network featuring Roger Ailes and Steve Bannon. It keeps Donald in the spotlight while he is able to monetize his base, who will quickly form an Alt Right Party. The hard right on-air personalities like Sean Hannity and Alex Jones join Trump TV as Fox News is now only slightly to the right of CNN. MSNBC squares off against Trump TV in a video Civil War seven days a week. In

the end, everybody loses except the cable news networks.

In the meantime, Trump joins in a collaboration with Bill Clinton and Bill Cosby on a new bestseller entitled *The Art of the Date*. It races to number one on the best seller lists. To publicize the book, Trump does an endless series of campaign style rallies to ensure the ego rush remains steady. He and his base love it even as he sues Clinton and Cosby for copyright infringement claiming they never had anything to do with the book. The case is settled and Trump becomes the sole author.

In addition to being the new titular head of the Alt Right Neo Trump party, the Donald prepares to run for president again to coincide with *The Art of the Date* coming out in paperback. He is fond of saying, "You have to keep the adrenalin flowing however you can, I can tell you that much." He will continue to run unsuccessfully for president for the rest of his long life, thanks to being the "most healthy" candidate ever. All in all, few self absorbed people could ask for a better life.

Assuming Clinton Wins

While it should have been foreseen, the First Gentleman will have way too much free time on his hands. Without the Clinton Global Initiative to take up his time, it is likely he will start dating again. This will lead to nothing but trouble as Hillary is focused on a plethora of real problems. The good news is that in his new supporting role, the Big Dog can't get impeached (again). The House and Senate would have had their hands full had Trump won, but unfortunately for the

Republicans they will simply have to adjust to Bill being back in the White House throwing Tupperware parties for the spouses of the elite inner circle of Washington Power.

Otherwise, it is the third Obama term. In 2020 her reelection campaign fails as she finishes third to the ticket of Bernie Sanders and Elizabeth Warren. Donald Trump finishes a far second only a small percentage ahead of

President Clinton, a sad fate for America's first female President. The only consolation will be her four Supreme Court picks.

Assuming Clinton Loses

Sadly, she is sentenced to life in prison for 37 alleged crimes (Aggravated Jay Walking, etc.) However, she will be found innocent

on the Treason charge. Her sentence will be commuted late in her life by Sasha Obama, allowing her to spend the rest of her days giving paid speeches to Parole Boards and Private Prisons. The saddest thing of all is that she never becomes the first woman President. That honor belongs to the other Obama daughter, Malia. It just goes to show that "Karma is a Bitch." 🍀

REFLECTIONS ON THE SPRING OF 1972

and the Meaning of Justice

By Laura Glaze



The first time I saw the inside of a courtroom I was five years old. I testified in municipal court as an eyewitness after a white neighbor in our old downtown neighborhood let her German Shepherds out

on a black maid walking down the sidewalk in front of her house. The maid, Mrs. Hartfield, was too scared to testify—afraid of what might happen to herself or her family members. It was the spring of 1972, and Hattiesburg public schools had just integrated.

I remember my parents telling me that I needed to go to court to tell the judge what had happened because while it might be dangerous for Mrs. Hartfield, I would be safe. They were confident no one would hurt me, though I'm now certain they knew it could adversely affect my father's dental practice and my parents' standing in polite society.

The courtroom was huge and imposing. The judge sat high above me. At age five, I was so little the judge had me stand in front of the witness box during questioning. There was not a single black person in the courtroom. I did my best to explain the injustice I witnessed—how

Mrs. Hartfield tried to defend herself from the dogs with her umbrella and how the white neighbor yelled at her and called her the N-word just as ferociously as the dogs barked. I had never heard that word before, but the way the lady's face contorted when she said it told me it was hateful. The Court ordered the neighbor to keep the dogs locked up or they would be put down. Without Mrs. Hartfield's testimony, that was probably all the justice the Court could grant. What to my five-year-old mind should have been a case about a serious injustice became a hearing about dangerous dogs. While the dogs were indeed very intimidating, they did not hold a candle to the hatred that came spewing forth from that white neighbor toward a woman who had done nothing more than walk down the sidewalk while being black.

I learned important lessons that day. I learned that it was safer for a five-year-old white child to speak out against injustice than it was for an adult, black woman. I learned that my whiteness afforded me protection, privilege, and the power to effect change. Those lessons have never brought me joy or even any sense of comfort. Rather, I am left with the always-present feeling that until all people are safe to stand up to injustice, those of us who enjoy privilege must continue to advance the cause—even when there is risk, especially when there is risk.

Forty-five years after my first trip into a courtroom, I live in a Mississippi and a United States that is still struggling with issues of race. Just recently, Hopewell Baptist Church in Greenville was burned; buildings in Meridian were marked with racially-charged graffiti; a black student at Stone County High School had a noose put around his neck; and we've witnessed violence by police and against police in far too many news cycles. The presidential election has been fraught with all kinds of tension—about race, religion, gender, orientation, disability, you name it. What is our responsibility as advocates for the law in all of this? Where are the legions of upstanding white citizens denouncing those acts which so clearly harken back to Jim Crow era forms of intimidation? How can white citizens continue to claim that American Muslims must stand up and speak out against the violent acts of ISIS (which they do) if we don't stand up and speak out against the violence perpetrated by white Americans? Why are so many of us so angry that athletes of color are peacefully demonstrating the injustice they see by kneeling during the national anthem? Why do we hold reverence to a flag more dearly than we do reverence for the ideals for which that flag stands? Why do we have such a hard time getting along? These are some of the questions that plague me these days.

I have spent time re-reading Martin Luther King, Jr.'s "Letter from a Birmingham Jail" which was written on April 16, 1963. In the letter, King responds to white clergymen who have criticized the demonstrations taking place in Birmingham. He notes that while the clergymen "deplore the demonstrations taking place in Birmingham...[they] fail to express a similar concern for the conditions that brought about the demonstrations." Sound familiar? He goes on to convict white progressives as follows:

First, I must confess that over the past few years I have been gravely disappointed with the white moderate. I have almost reached the conclusion that the Negro's great stumbling block in his stride toward freedom is not the White Citizen's Council or the Ku Klux

Klaner, but the white moderate, who is more devoted to "order" than to justice; who constantly says: "I agree with you in the goal you seek, but I cannot agree with your methods of direct action"; who paternalistically believes he can set a timetable for another man's freedom, who lives by a mythical concept of time and who constantly advises the Negro to wait for a "more convenient season." Shallow understanding from people of good will is more frustrating than absolute misunderstanding from people of ill will. Lukewarm acceptance is much more bewildering than outright rejection.

I had hoped that the white moderate would understand that law and order exist for the purpose of establishing

justice and that when they fail in this purpose they become the dangerously structured dams that block the flow of social progress.

"Letter from a Birmingham Jail." Except for some of the linguistic changes that have occurred over the last 50 years and the obvious fact that King was assassinated in 1968, the letter could have been written in 2016.

I wrote this article before Election Day, but it will be published after Election Day. I have no idea at this point who will be our next President. Regardless of who wins, we have a lot of work to do in our quest to become a more perfect union. I, for one, believe those of us who are privileged to hold the honorable position of lawyer in this great nation have a profound responsibility to leave it better than we found it. Are we willing to take the risk? ➡

CABA AND OTHER SPONSORS GIVE BACK AT FREE EXPUNGEMENT CLINIC

By Blake Smith



Research shows a criminal record can prevent a welfare recipient or other stigmatized job applicant from obtaining employment, and the Capital Area Bar Association recently helped qualifying low-income individuals wipe the slate clean at a *Pro Se* Expungement Legal Clinic.

In conjunction with the Mississippi Access to Justice Commission, the Mississippi Association for Justice, Mississippi State Senator Sollie Norwood, the Metrocenter Mall, and the City of Jackson, CABA sponsored the

two free legal assistance events on Oct. 4 and Nov. 4 in Jackson at the Metrocenter Mall's Event Center.

At the first workshop on Oct. 4, volunteer attorneys outlined charges that qualify for expungement and the judicial process applicants must follow. Low-income people who met financial guidelines for assistance with qualifying charges received invitations to participate in the subsequent legal clinic.

About 100 people attended the first workshop, and a little over half of them received invitations to participate in the legal clinic.

At the *Pro Se* Expungement Legal Clinic on Nov. 4, volunteer attorneys prepared legal documents necessary to file and complete an expungement and provided other free legal assistance to enable the pre-screened

individuals to represent themselves in court.

A record number of volunteer attorneys attended the Oct. 4 workshop.

"CABA's involvement in pro bono activities like this is significant because it demonstrates support from a local bar association for members of the local community who need assistance but lack the financial resources to obtain legal representation," Mississippi Access to Justice Commission Executive Director Tiffany M. Graves said.

CABA's Pro Bono/Community Outreach Committee also plans to sponsor a service project at Stewpot Community Services later this month. More information will be distributed to CABA members once the service project has been finalized. ➡

Photos on page 14...

Expungement Clinic
Photos



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WHY DRIVING WITH HIDDEN CASH IS (PROBABLY) NO LONGER MONEY LAUNDERING IN MISSISSIPPI

By Scott Gilbert¹



Over the last two decades, law enforcement officers specially trained in the interdiction of drugs have become ubiquitous on Mississippi's interstate highways. During that time, an incalculable amount of illegal drugs have been seized and the traffickers hauling the drugs prosecuted. In addition to the successful interdiction of illegal drugs, these specially trained law enforcement officers have also become adept at finding and seizing large amounts of money. Prosecuting money couriers, however, presented a challenge. Without actual drug evidence, the odds of bringing a successful prosecution for violating Mississippi's Uniform Controlled Substances Act were low. And without a bulk currency smuggling statute, the discovery of hidden money seemed to fall between the proverbial "cracks" of Mississippi's criminal code. In 2004, however, Mississippi's interstate money laundering statute was successfully used for the first time to prosecute the driver of a vehicle with \$170,040 found hidden in the gas tank.

Section § 97-23-101(1)(b)(ii)(1) of the Mississippi Code makes it a crime to "transport...funds...from a place in the state to...a place outside the state...knowing that the funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed...to conceal or

disguise the nature, the location, the source, the ownership, or the control of the proceeds of [the] specified unlawful activity."

The practice of charging money couriers with money laundering continues in Mississippi today. However, a 2008 United States Supreme Court holding invalidated the federal law upon which Mississippi's application of its money laundering statute is premised. This change in the law suggests that Mississippi's prosecutors will no longer be able to sustain money laundering charges brought against bulk money couriers.

The *Tran* case—Hidden Money Results in a Conviction

On December 10, 2002, Tran and Johnson Quoc Nguyen were stopped in Rankin County, Mississippi for a traffic violation.² The roadside encounter led to a consensual search of the vehicle in which Tran and Nguyen were traveling. That search revealed a secret panel cut into one of the gas tanks. Inspection of the gas tank led to the discovery of \$170,040. The money was bundled and wrapped in tin foil and vacuum sealed plastic wrap.³ Both Tran and Nguyen were convicted of interstate money laundering, and were sentenced to 20 years in prison.⁴ The State's theory of the case was that Tran's attempt to transport the proceeds of drug trafficking through the State of Mississippi, while concealing the money inside the gas tank of the truck to prevent its discovery was sufficient to prove concealment money laundering.⁵

As an issue of first impression, in 2006, the Mississippi Court of Appeals affirmed Tran's conviction and reversed and rendered Nguyen's

conviction.⁶ The court recognized and relied on the federal case law interpreting the analogous federal international money laundering statute, which "virtually tracks' word-for-word" with Mississippi's money laundering statute.⁷

In Tran's appeal, the appellate court based its analysis on the holding in *United States v. Carr* and found that Tran's conduct satisfied the concealment element of the statute.

So, we can conclude that Tran, the admitted owner of the money, wrapped the money to disguise its scent and stowed the money in a false gas tank to disguise it from sight. Additionally, Tran gave an inconsistent statement when he told Deputy Penn that the money did not belong to him. While it defies logic for one to refuse to acknowledge ownership of one's life savings, only to attempt to reclaim it at a later date, that act arguably concealed Tran's ownership of the money, and thereby concealed the source of the money. The plan in which Tran participated effectively removed the funds from someone's hands and concealed someone's ownership and control of the funds. The movement of these funds to Texas, as a part of the cycle of the drug trade, was necessary because narcotics traffickers cannot actually go to a bank, deposit proceeds from narcotics trafficking, and pay a supplier. Thus, the concealed movement of the funds was an integral part of the business of the drug enterprise. Additionally, Tran's method of carrying out his mission included hiding or concealing the funds in the gas tank

1. Scott Gilbert is a former Assistant United States Attorney for the Southern District of Mississippi, where he litigated white-collar crime matters, including health care fraud, money laundering, the Bank Secrecy Act, bank fraud, asset forfeiture and public corruption. Scott is now counsel with

the firm of Watkins & Eager, where he focuses his practice in Healthcare Litigation, White Collar Criminal Defense and state and federal asset forfeiture litigation and consulting.

2. *Tran v. State*, 963 So.2d 1, 4 (Miss.Ct.App. 2006).

3. *Id.* at 5.

4. *Id.* at 3-4.

5. *Id.* at 6.

6. Nguyen's conviction was reversed for reasons unrelated to the issue addressed in this article. *Tran*, 963 So.2d at 4.

7. *Id.* at 7, citing also 18 U.S.C. § 1956(a)(2)(B)(i).

and packaging the money to conceal it from drug dogs.⁸

According to the court, Tran’s attempts to prevent the money from being found during its transportation provided sufficient evidence for the jury to conclude that Tran had violated the concealment element of the statute.⁹ The Mississippi Supreme Court adopted the findings of the Court of Appeals.¹⁰

The *Cuellar* case—Virtually Identical to Tran, but Conviction Reversed

Two years later, with Tran serving his state sentence, the United States Supreme Court rejected the reasoning used in Mississippi to affirm Tran’s conviction, when it held that traveling with drug money hidden in a vehicle is not sufficient to violate the identical federal money laundering statute.¹¹ The Court’s holding in *Cuellar* calls into substantial doubt the continued viability of the holding in *Tran*.

In *Cuellar*, Humberto Fidel Regalado Cuellar was stopped near the Texas border. During the encounter, the defendant claimed he was on a three day business trip but gave differing versions of his itinerary, and had no luggage or extra clothing. Subsequently, the officer discovered an amount of cash in the defendant’s pocket that smelled of marijuana, and observed goat hair spread throughout the rear of the vehicle. A drug detection dog alerted on the vehicle, and the defendant consented to a search. Police ultimately found \$81,000 in currency hidden in a false compartment in the floor of the vehicle, which was wrapped in plastic and sealed with duct tape. The defendant was indicted and convicted of money laundering, in violation of Title 18, United States Code, Section 1956(a)(2)(B)(i).¹²

The Supreme Court rejected the idea that the mere concealment of money during transportation was sufficient proof to convict someone of money laundering.¹³ The Court held that the salient question is not “how one moves money” (*i.e.*, how the courier

hides the money to prevent its discovery during the transportation) but is instead “why one moves money” (*i.e.*, why the money is being transported in the first place).¹⁴ While the Court did recognize that the concealment of the money during its transportation could be circumstantial evidence that the transportation of the money was “only one step in a larger plan to facilitate the cross-border transport of the funds,” the court ultimately held that the “probative force, in that context, is weak. ‘There is a difference between concealing something to transport it, and transporting something to conceal it.’”¹⁵

Even with abundant evidence that petitioner had concealed the money in order to transport it, the Government’s own expert witness—ICE Agent Richard Nuckles—testified that *the purpose of the transportation was to compensate the leaders of the operation*. (“[T]he bulk of [the money] generally goes back to Mexico, because the smuggler is the one who originated this entire process. He’s going to get a large cut of the profit, and that money has to be moved back to him in Mexico”). The evidence suggested that the secretive aspects of the transportation were employed to *facilitate* the transportation, (noting that “concealment of the funds during the U.S. leg of the trip [was] a vital part of the transportation design or plan”), but not necessarily that secrecy was the *purpose* of the transportation. Agent Nuckles testified that the secretive manner of transportation was consistent with drug smuggling, but the Government failed to introduce any evidence that the reason drug smugglers move money to Mexico is to conceal or disguise a listed attribute of the funds.¹⁶

Tran and *Cuellar* are essentially the same, as was the evidence at both of their trials. Both cases involved a DEA expert witness testifying that “the purpose of the transportation was to compensate the leaders of the [drug] operation.”¹⁷ The experts further similarly testified that the “secretive manner of transportation was consistent

with drug smuggling.”¹⁸

While the facts were virtually identical, the holdings were different. The United States Supreme Court concluded that these secretive aspects of the transportation, which “were employed to *facilitate* the transportation” do not equate to proof “that secrecy was the purpose of the transportation.”¹⁹ The Supreme Court’s rationale is logical. The *purpose* of laundering money is to make it appear as if the money came from a legitimate source. Transporting money obtained from selling drugs for the purpose of giving it to the drug supplier is the antithesis of an attempt to conceal any one of the attributes listed in the statute. Instead of making the money appear to be the proceeds of some legitimate activity, delivering it back to the drug supplier actually proves that the *nature* of the money is illicit. Certainly transporting the money to the *location* where the drug supplier is located does nothing to conceal its true nature. Moreover, transporting the money for the purpose of taking it to the drug supplier proves—not conceals—that it is the drug supplier who is the *owner* of the money. The use of a money courier, and the employment of sophisticated techniques to hide the money during its transportation, are factors that tend to prove—not disprove—that the drug supplier is in *control* of the funds.

Where Does That Leave Mississippians?

The fact is, we don’t know—Mississippi Courts are not bound by federal law when interpreting Mississippi law. But the likely result is that the *Cuellar* result will control. Going to great lengths to hide money during its transportation and prevent its detection by police increases the odds that the transportation will be successful. That alone, however, should be insufficient to violate the money laundering statute.²⁰ Hiding money like Tran and Cuellar makes the money appear to be the proceeds of a crime. The purpose of laundering the proceeds of crime is to do just the opposite—to make it appear legitimate. Unless Mississippi’s legislature enacts a bulk currency smuggling law, prosecutors and law enforcement will have to find another way to prosecute drug money couriers in Mississippi. 📌

8. *Id.* at 12, citing *United States v. Carr*, 25 F.3d 1194 (3d. Cir. 1994).

9. *Id.*

10. *Tran v. State*, 962 So.2d 1237, 1240 (Miss. 2007).

11. *See Cuellar v. United States*, 128 S.Ct. 1994 (2008).

12. *Id.* at 1998.

13. *Id.* at 2002.

14. *Id.* at 2005.

15. *Id.* at 2004-05.

16. *Id.* at 2005. (internal citations omitted)(emphasis added).

17. *Id.*

18. *Cuellar*, 128 S.Ct. at 2005.

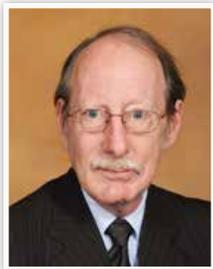
19. *Cuellar*, 128 S.Ct. at 2005 (emphasis included

in original).

20. *Id.* at 2003 (“[M]erely hiding funds during transportation is not sufficient to violate the statute, even if substantial efforts have been expended to conceal the money.”).

» On Computing

Focused on the Contemporary Lawyer



By Joel Howell

The new Apple update to iOS 10 also gives a much needed makeover to the whole iPhone. One of the biggest changes is that now you can get rid of all the apps that come with the phone that you never use! The notifications have also changed, along with some new things you can do with your text. Someone's

birthday? Send a text with balloons! Are you excited? You can make the text "Slam" onto the screen.

The iPhone 7 has done what no one thought they would actually do and REMOVED the headphone jack. No worries though, the new iPhone does come with headphones that plug unto the power port. However, if you want to charge your phone and use headphones you will have to invest in some Bluetooth headphones. Some other changes are the battery life, which is the longest in iPhone history, and the camera. This is also the first iPhone to be water resistant.

If you decide that the new iPhone isn't for you, of course there are plenty of other options. However, hold off on getting the new Samsung. They recently had to do a recall on their phones, because they were exploding and melting when used!

Below are some helpful apps for the new iOS 10 and the new iPhone 7 or any other smartphone device you may have. All of the following can be found on both Google Play and the Apple store, unless specified.

First off is Sticker Pal (Apple store only): Since the iMessage has changed with the new update, it now allows for you to make a few changes to your keyboard. This app allows you to put animated cartoon characters on your keyboard and send them to your friends.

Words with Friends (<https://itunes.apple.com/us/app/words-friends-worlds-best/id804379658?mt=8>): Most people know about this app already, however with this update it makes chatting with your friends during the game easier.

Next up is Doodle: Schedule Maker (<https://play.google.com/store/>): This is perfect app that lets individuals have a voting system within an iMessage. It's great when you are trying to pin down a good time for everyone in a group message. The only downside? Everyone in the group message needs an iPhone.

Circle Pay (Apple store Only): Do you ever go out with friends and try to figure out how to split the cost when some of you have cash and some have a card? This free app lets you do a digital money transfer over iMessage.

This next app is very similar to Google Translate. It's called

translate (only at the Apple app store). It allows you to translate a conversation with an individual in real time. However, like google translate the text might come out sounding like Yoda.

The holidays are approaching; Thanksgiving and Christmas are just around the corner. Many of the following apps will help you in your travels to family and friends.

Hotspot Shield VPPN ([free at https://play.google.com/store/apps/details?id=hotspotshield.android.vpn](https://play.google.com/store/apps/details?id=hotspotshield.android.vpn)): A VPN, or virtual private network, can disguise your online identity to help you access blocked websites/apps. This can be very helpful when traveling in a different country, where some apps that you use every day will be blocked. For a couple of examples, Southwest Airlines and StubHub are blocked in Bulgaria.

Memories app (<https://www.memrise.com>) isn't just another language app. It was created by a neuroscientist who made learning a language into a game. It will teach you need to know phrases when traveling.

The Avast Photo Space app (<https://itunes.apple.com/app/applestore/id1099203586?mt=8>) is perfect for the individual who take millions of pictures and doesn't like getting the "Storage Full" notifications. This app puts your photos into the cloud so you don't have to worry about not having enough storage.

The free app, Flight Stats, allows you to check the status of your flight. It's available on iTunes, Google Play, and even the Apple Watch. (<https://itunes.apple.com/us/app/flightstats/id572700574?mt=8>)

Units Plus (<https://itunes.apple.com/us/app/units-plus-converterbest/id593306620?mt=8>): This is another wonderful travel app that downloads local currency exchange rates every 15 minutes. It also converts weight, volume, area, distance and many other values.

The free Mobile Passport (<http://www.mobilepassport.us/>): app was created by Customs and Border Protection. It does away with the long customs forms you get before coming to the U.S. You answer all the questions on the app, and once you land you submit an e-form to Customs, skipping the line.

As this year comes to a close we can expect more new phones and tech for the holiday season. It'll be interesting to see if Apple holds their own after removing the headphone jack, or if users go back to Samsung after their exploding phones. Whatever you decide, we wish you all a great holiday season. 🍀



Questions or comments?

Drop me an email: jwh3@mindspring.com



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