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OUR DEMOCRACY
THE 19TH AMENDMENT AT 100

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PARACLETE: The Spirit of Truth
MAY/JUNE 2020

This issue:
Law Day

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The United States officially recognizes Law Day as a day to reflect on the role of law in the foundation of the country and to recognize its importance for society. However, as I write this, we are several weeks into “social distancing” and trying to navigate all the changes this has made in our professional and personal lives. So, it seems the thought of Law Day will be overshadowed by this country’s current situation.

On the other hand, during this national crisis, this may be a perfect time to reflect on the meaning of Law Day. Over the past few weeks, we have listened to discussions about government restrictions on our freedoms for the good of public health and safety. We have been told what businesses can operate, ordered to stay at home unless it is for an essential reason, and forbidden to be with family and friends. Many are voicing their opinion that the restrictions do not go far enough. Others believe the restrictions are too strict. Regardless of your opinion, the fact that government restrictions are an issue shows how the law and the guarantee of our freedom is the foundation of our country.

I am sad we will not be able to hold our membership luncheon in May wherein we would take the time to celebrate Law Day. I know we all enjoy this annual meeting to honor those that have excelled in the promotion of the role of law in our society. So, I hope everyone takes time during the entire month of May to reflect on the importance of the law that secures our rights that are the basis of the freedom we all benefit from.
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As I sit here pondering topics for my editor comments, I would be remiss to not reflect on the current situation of COVID-19. I will keep this brief. To say these are unprecedented times is the most egregious understatement. Could anyone have ever imagined we would be working from home en masse, our children attending virtual school, graduations missed, taking depositions via Zoom? Just the other day, I attended an hour-long telephonic hearing wearing athletic clothes sitting on the floor of a bedroom. Strange times… Every morning, I log into the Department of Health Data and Surveillance Dashboard to look at the staggering, updated numbers. I see fear and paranoia everywhere, but I also see kindness, empathy, and genuine care amongst friends and neighbors. This has reached each and every corner of our societal fabric. Will we ever shake hands again? Will we continue to stand six feet away from each other? Will the stores ever have toilet paper again? Brief moment of levity aside, I sincerely hope that these trying times can help us come together, virtually of course, to unify, and adjust to a markedly different world. I hope that by the time this magazine comes to publication, we, as a society, have begun to return to a new normal. Until then, stay safe.

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Equality and Voting Rights for Disenfranchised Felons in Florida

Law Day is held annually and provides an opportunity to understand how the law protects our liberty, strives to achieve justice, and contributes to the freedoms that all Americans share. President Dwight D. Eisenhower established Law Day as a day of national dedication to the principles of government under law. In 1961, Congress designated May 1 as the official date for celebrating Law Day. The St. Petersburg Bar Association customarily celebrates Law Day with a luncheon, award ceremony, and guest speakers but, due to the coronavirus pandemic, this year’s event has been cancelled.

This year’s theme, “Your Vote, Your Voice, Our Democracy – The 19th Amendment at 100” focuses on the centennial anniversary of the 19th Amendment which prohibited state and federal governments from interfering with an individual’s right to vote on the basis of sex. This important milestone offers us the opportunity to engage in a discussion about equality and voting rights today, in particular those of individuals with a felony conviction.

State approaches to felon disenfranchisement vary widely. As of 2018, Florida, Iowa, Kentucky, and Virginia were the only states where convicted felons did not regain the right to vote, unless a state officer or board restored an individual’s voting rights. In 2019, Kentucky and Virginia gave felons the right to vote. Iowa is currently the only state that does not automatically restore voting rights. However, voting rights may be restored by application to the Governor’s Office. In contrast, in Maine and Vermont, felons never lose their right to vote, even while incarcerated.

In Florida, the question of whether and how to restore the voting rights of a person with a felony conviction has been complicated and controversial. In 2018, Florida passed a citizen-initiated constitutional amendment to automatically restore the right to vote for people with prior felony convictions upon completion of their sentences, including prison, parole, and probation. It provided an exception for those convicted of murder or a felony sexual offense. Those individuals must still apply to the governor for voting rights restoration on a case-by-case basis. Prior to the amendment, anyone convicted of a felony had to have voting rights restored by a full pardon, conditional pardon, or restoration of civil rights by the governor. The Executive Clemency Board set the rules for restoration of civil rights that, at the time the amendment passed, included a five- or seven-year waiting period and a list of crimes for which an individual could never apply for rights restoration. The amendment passed with 64.55 percent of voters approving the restoration of voting rights for felons after they finished their sentences. The amendment went into effect January 8, 2019. The passage of the amendment, however, did not immediately restore voting rights for felons.

After the passage of Amendment 4, the state legislature enacted a law clarifying that in order to get their voting rights restored, felons must have completed all terms of their sentence, which included probation and parole, and must pay any outstanding restitution, fines, and fees. This quickly drew a legal challenge from civil rights and voting rights groups who likened the new law to a “poll tax.” At issue, was the interpretation of what “completion of the sentences” meant and whether Florida lawmakers could require felons to first pay all outstanding fines, restitution, and other legal debts before they could regain the right to vote under the voter-approved Amendment 4. The issue wound its way through the courts and was most recently addressed in February 19, 2020 by the 11th Circuit Court of Appeals in Jones v. Governor of Florida.

In Jones, the 11th Circuit held Florida’s law unconstitutional stating that, although states may exclude felons from voting, states could not disenfranchise felons solely on account of their indigency and inability to pay for reasons wholly beyond their control. The court further held that the district court did not abuse its discretion in issuing its preliminary injunction that technically applies only to the 17 plaintiffs in the suit, leaving the remaining 1.4 million felons somewhat in limbo.

The 11th Circuit’s decision in Jones may bring an estimated 1.4 million voters back into the voting pool. This is a massive number. In Jones, the judges wrote:

Contemporary media reports suggested that as many as 1.4 million felons could be eligible for re-enfranchisement under the law. Accounts differed as to whether this figure made Amendment 4 the
single largest act of enfranchisement since the Nineteenth Amendment in 1920, the Voting Rights Act in 1965, or the Twenty-Sixth Amendment in 1971. By any measure, Amendment 4’s enfranchisement was historic.8

Only the future will tell how Amendment 4’s re-enfranchising of 1.4 million felons will affect the voting pool for future elections. To the extent that Florida is a key swing state with 29 electoral votes, this amendment may have an effect on national politics. In 2016, Florida was estimated to have 1,686,318 persons, representing 10.43 percent of the voting age population, disenfranchised due to felonies.9

In the 2016 Presidential election, Donald Trump’s margin of victory over Hillary Clinton was 112,911 votes, a margin of victory of 1.2 percent.10 In 2012, Barack Obama won Florida by 0.9 percentage points. In 2000, George W. Bush narrowly won by only 537 votes.11 Similarly, the margin of victory in Florida’s most recent gubernatorial elections have been thin: in 2010, the margin of victory was 1.2 percent; in 2014, it was 1 percent; and, in 2020, DeSantis won by only 32,462 votes.12

In 2016, Florida had the highest percentage of disenfranchised felons in the United States.13 Jones v. DeSantis, the underlying case, is set for trial in April.14 The legal battle could head to the U.S. Supreme Court. Florida’s Amendment 4, and the ongoing legal challenges it faces, serves as a reminder that there are over a million Floridians who are still fighting for the right to vote and to participate in our democracy.

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2. Id.
7. Jones v. Governor of Fla., 950 F.3d 795, 800 (11th Cir. 2020).
8. Jones v. Governor of Fla., 950 F.3d 795, 800 (11th Cir. 2020).
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Mentoring Matters

Why does mentoring matter? The benefits are numerous. For the mentees, the benefits include impartial advice and encouragement, a supportive professional relationship, assistance with problem-solving, and a marked improvement in self-confidence. The benefits for mentors include widening one’s understanding of the profession and the way it works, gaining opportunities to practice interpersonal skills, and developing a sense of personal satisfaction through supporting the development of others. The benefits for all involved include an opportunity to reflect on one’s own practice, increased peer recognition, and the broadening of professional relationships. With so many benefits, why wouldn’t everyone be engaged in mentoring?

Well, there are some hurdles to creating and sustaining mentoring relationships. I’ll address some here and propose solutions.

Time: Mentoring takes time. Not only do the mentor and mentee have to make time to meet, but they also have to plan out their meetings, plan topics for discussions, and follow up. Both parties are taking time away from their work, family, and other obligations. Although this relationship may seem like an indulgence for the mentee, or purely altruistic for the mentor, mentoring is essential to the ongoing survival of the legal profession. If time is tight, those involved can limit themselves to one formal mentoring relationship for three months. This arrangement should be sufficient for both parties to benefit.

Inexperience: If it is your first time in a mentoring relationship, the task can seem daunting. But there are numerous resources that can help. Put those researching skills to the test: get a quick guide to mentoring; sign up for a program with a local voluntary bar association and the novice mentor will have everything needed to get started. As Dr. Maya Angelou once said, "In order to be a mentor, and an effective one, one must care. You must care. You don't have to know how many square miles are in Idaho, you don't need to know what is the chemical makeup of chemistry, or of blood or water. Know what you know and care about the person, care about what you know and care about the person you're sharing with." It's that simple.

Fear: In the age of the #MeToo and Time’s Up movements, cross-gender mentoring has suffered. Some companies and individuals fear the risk of engaging in typical mentoring activities including one-on-one meetings in the office or for lunch, coffee, or dinner. But, men in the workplace can be crucial allies to women. As of 2019, women make up only 38% of the legal profession. Further, “80% of white men, but only 63% of white women, 59% of men of color, and 53% of women of color reported that they had equal opportunities for high-quality assignments.” Thus, to maintain regular access to meaningful mentoring relationships, both men and women will have to participate.

So, how can you get started? The GulfCoast Legal Services of Tampa Bay offers pro bono opportunities and is always looking for experienced attorneys to act as mentors to young attorneys who take pro bono cases. In addition, the local Inns of Court, like the Wm. Reece Smith Litigation,
are seeking mentors for its scholars and interns in the program who are second and third-year law students at Stetson University College of Law and Western Michigan University (WMU) - Cooley Law School. In addition, the St. Petersburg Bar Association offers informal mentoring for bar members; please visit the SPBA website mentoring tab for more information. For more mentoring resources, visit the National Legal Mentoring Consortium.

Mentoring matters now more than ever. If you have not had a mentoring relationship in a while, will you consider starting one today?

Joseline J. Hardrick is an Assistant Professor at WMU - Cooley Law School’s Tampa Bay Campus. She teaches Constitutional Law and Criminal Law and assists with bar exam preparation. She also is the founder and President of Diversity Access Pipeline, Inc. a nonprofit charitable organization that runs Journey to Esquire: Scholarship & Leadership Program, among other endeavors. Please visit www.journeytoesquire.com for more information.


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What to Say When You Get Pulled Over

By Bruce Denson

Do not be confused by the dropping of a few footnotes, this is not a legal treatise. And it is not a scholarly breakdown of your 4th and 5th Amendment rights. This article will not get you through the Bar Exam, but it will get you through your next encounter with law enforcement.

Most of us are familiar with that feeling of panic when you see an officer with lights on behind you. And many of us know the dread when it is you they are pulling over. No one is perfect. We all screw up. So, catch your breath, put on your signal and pull over in the nearest safe place to do so.

Words to live by

Then, by no choice of your own, you are going to have a conversation with a police officer. Be ready. If you’d like to boil down to its essence what you should say when you get pulled over by police, it can be summed up in the following suggested dialogue:

Why did you stop me?
I do not want to discuss my day.
Am I free to go?
I’m taking the 5th (If you are not good at remembering which enumerated amendment you are exercising, let them know you are invoking your right to remain silent).

[Period. Stop talking. Zip it.]

No, really, stop. It is hard for a lot of people to stop talking, especially some lawyers. Even a fish wouldn’t get caught if they kept their mouth shut. They are not joking when they tell you what you say will be used against you (and – as a jaded criminal defense attorney, I will add – possibly misconstrued).

You have the right to remain silent, hopefully you have the ability.

Be nice

You must follow the above script in a polite fashion. Always be polite. Your mother was right, good manners make all the difference. Be quiet, but do not be discourteous. The best way to minimize any problem is to be polite to the police officer. And the quickest way to more problems is to be a jerk to a police officer.

The finer points

Do you need to produce your license, registration, and insurance? Yes. And I would recommend you have those documents handy so you don’t have to dig around for them. I can’t tell you how many police reports I have read where officers comment, “the driver fumbled with her license and registration.”

Do you need to get out of the car if asked? If they told you that you are not free to go, yes. But at that point, things are likely going downhill and you are not going to talk your way out of a bad situation. It is now likely this is going to be a predicament that a lawyer is going to need to sort out later.

Do you need to actually invoke the 5th Amendment? Yes. It is ironic, but in order to invoke your right to remain silent you need to speak, as in some circumstances your silence could be used against you. And there are cases where statements made much later after being arrested are used against a defendant who just remained silent for a period of time without saying the magic words or a phrase to that effect.

Are you required to consent when police ask to search your car? No. Don’t be intimidated into agreeing to allow a search of your vehicle. Police need probable cause to search a car and that is a very fact-intensive question. The existence or lack of probable cause is something better litigated in the courtroom than on the roadside. For example, in the past the “olfactory essence of illegality” (also known as “I smell weed”) was probable cause for the search of a vehicle. However, with recent changes to cannabis and hemp laws, if you have refrained from saying something that incriminates you, that odor alone may not be sufficient grounds to search the vehicle.

Obviously, the best advice is to follow the rules of the road and not put yourself in a bad situation. Don’t drive impaired. And don’t ride around town with illegal substances. If that fails and you find yourself in a hole, stop digging.

Bruce Denson is a criminal defense lawyer in St. Petersburg, FL. He has been a member of the Florida Bar since 1994.

1. https://vm.tiktok.com/sbfCY1/
2. If you are having trouble remembering which amendment to invoke, watch this Chappelle Show clip and I guarantee you will not forget it is the Fifth Amendment. https://youtu.be/mdeo7Q2E5cE.
5. Gualtieri, Guidance for Cannabis Enforcement, Pinellas County Sheriff’s Office Inter-Office Memo, October 8, 2019, “There is a difference between ‘knowing’ and having ‘probable cause’ to believe... Simply put, the days when the ‘odor of marijuana’ established probable cause are gone...”
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As we all embark on a new normal for our work and personal lives, there are many things that we can still control. No, not the people you see at the grocery store who don’t understand what six feet is or the people that still want to go to the public beaches and parks for parties. It is us. You can still control yourself. Some days it’s hard and other days, a little easier. I like to focus on the controllable. That usually keeps me sane.

As the owner of Well Suited Custom Clothiers, I recently partnered with the St. Petersburg Bar Association (SPBA) through a corporate annual sponsorship. I still believe that it was a great decision for my business, despite the current challenges everyone is facing. I plan on being around after things get back to the “new normal” and I can meet SPBA members face to face. I plan on being around by controlling what I can. And what I can’t control, I just accept and move on.

For me, I need to keep a schedule to have some sort of normalcy every day. Whether that is waking up and going to bed at the same time (except for the weekends). I am trying to get back into my workout routine, because I now have a little more time. What better way to make sure your clothes still fit when we can get back to the office! I also have 2-4 zoom or phone calls with my colleagues every week. This helps me bounce ideas around and communicate with human beings. My dogs are starting to get sick of me.

Another way I keep myself on track is wearing real clothes every day! What I mean by that is not workout or pajama clothes all day. Let’s face it, they all have some sort of stretch so we might not realize all the carbs and sweets we have been eating (and drinking) are catching up to us! By doing this, we can feel accomplished. This also means, eating healthy, exercising, taking a shower and doing our hair and makeup. If you look good on the outside, you will feel good on the inside.

There might also be a side effect to this virtual office thing. People will forget, just because you have a video call, you can wear whatever you want. How many of you are wearing a nice shirt and jacket with shorts or pajama bottoms? What if you need to get up during the meeting? Is this a first-time client? Are you trying to settle a case? This can affect the perception of your image. Do professionals dress and act like this? Does your client now think they aren’t important to you? In an environment that competition will be even fiercer, don’t you want to stand out in a good way?

This is also a time when we have a little more time on our hands to do the things we have had on our to do list for a while. We should all just clean out our closets and donate clothes that don’t fit, are old, haven’t worn in over a year and start fresh. Charities will need those donations because the workforce will need help. Now that you have cleaned out your closets, you can focus on your needs.

The needs are your basics:

**Suits**—Gray, Blue, Earth tones, Navy, Black

**Shirts**—White, Blue, Pastel

**Patterns**—solid, stripe, plaid/check

**Shoes (men)**—black, brown

**Belts**—matching shoes always

**Shoes (women)**—all colors just keep the heel lower based off your comfort

**Sport Coats**—match at least 2 pair of pants and jeans

**Casual Trousers**—tan, black, navy, gray, olive

**Jeans**—dark denim

Undergarments that fit properly—go to a professional if you do not know your size. This will make your clothes fit better.

With these basics, you can mix and match and always feel dressed appropriately for any occasion. Just remember to be sure your clothes fit. That means not too tight or too big. If you see pulling (creases going out) it is too tight. If you see them hanging because you lost weight or bought it over five years ago, they are too big. Please do not worry what the size tag says, every manufacturer has their own idea what size is. Please, buy what fits you best and makes you feel great!

This article was submitted by valued St. Petersburg Bar Association Bronze Annual Sponsor, Erin Wamboldt, owner of Well Suited Custom Clothiers. Well Suited is a mobile custom clothing company for men specializing in suits, shirts, sport coats, trousers, and formal wear. Erin also provides closet consults and personal shopping for clients. www.wellsuitedclothiers.com.
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ZETROUER PULSIFER
ATTORNEYS AT LAW
Do you sometimes feel that your soul is slowly withering away, despite the great life you have built for yourself? Has life lost some of its thrill leaving you depleted of energy? While we’re all stuck working and living in an uncertain environment, this may be a good time for self-reflection.

According to Gay Hendricks, author of The Big Leap, “liberating and expressing your natural genius is your ultimate path to success and life satisfaction.” In order to reach a higher level of life satisfaction, you must spend more of your life operating in your “zone of genius.” Mr. Hendricks breaks down four different zones, but I’d wager that anyone reading this article is operating out of their zone of competence or zone of excellence. What really hit home to me was reading about how the zone of excellence is a seductive trap that keeps you away from your zone of genius.

What is your zone?

The zone of competence:
- Is where you are efficient.
- Others are also efficient here, so you do not distinguish yourself noticeably from others.

The zone of excellence:
- Is where you do very well and make a good living.
- SEDuces you to staying in this zone because it is comfortable, reliable, and steady.
- Is where your family, friends, and organizations want you to stay because you are reliable here.
- Feed your own addiction to comfort.

According to Mr. Hendricks, although the zone of excellence may seem appealing, “a deep sacred part of you will wither and die if you stay” here in your zone of excellence and don’t strive to release your inner genius. This resonated with me. I was clearly in need of a movement into...

The zone of genius:
- Is where your innate talents lie.
- Is where you excel and act “in flow” with your natural gifts.
- Energizes you.
- Fuels your passions and creativity.

I have two kids under the age of six and I’ve often wished I had half of their energy. Do you remember being so energized by love or life that you couldn’t sleep or were counting down the minutes to something (other than just the end of the workday)? I do, but barely. Finding your passion in your professional life is infinitely better for your energy level than all the coffee at Starbucks.

So, how do you find your way to the zone of genius? It’s feasible and you can start right now, but it will be a lifelong journey to stay there as we will always be tempted by the easier, more reliable areas in the zones of competence and excellence. Liberating your natural genius is not for the faint of heart. Warning: such liberation may lead to moments of discomfort or fear.

Questions to help you find your zone of genius:

1. Ask yourself the following questions:
   a. What do I most love to do?
   b. What work do I do that doesn’t feel like work?
   c. In my work, what produces the highest ratio of abundance and satisfaction to amount of time spent?
   d. What is my unique ability?

What in your law practice do you genuinely enjoy doing? What do you excel at? Where do those two lists overlap? The overlap is your zone of genius. When you are operating in your zone of genius, it doesn’t feel like work. You love what you are doing, and you are phenomenal at it. When you are working in your zone of genius, your energy is high, and the work is giving you energy instead of draining it. You are doing what you are innately situated to do.
In order to determine your unique ability, fill in these blanks:

1. I'm at my best when ______________________________.
2. When I'm at my best, the exact thing I'm doing is ______________________________.
3. When I'm doing that, the thing I love most about it is ______________________________.

These answers may not come easily and I encourage you to spend some time deep in thought to answer. If you have a trusted friend or colleague, consider asking them when they think you are at your best.

If you can't immediately jump to the exact work you want to be doing, try these three steps to make the big leap into your zone of genius:

1. Determine what your zone of genius is (use this article to help you!);
2. Determine what parts of your practice are within your zone of genius;
3. Create a plan to increase your time working on those projects and similar ones that are within your zone of genius, while minimizing time spent on projects that are not within your zone of genius;
4. Execute plan.
   a. Tips for executing:
      i. Plan to check in with yourself weekly, when assessing your schedule for the week, to see if your planned activities are within your zone of genius.
      i.i. Learn to say no to projects that are not within your zone of genius.

You must fiercely protect your zone of genius by saying “No.” We are constantly presented with work that is outside of our zone of genius. That’s how we are continually kept in the zone of excellence, or worse, the zone of competence. This is the biggest struggle for me: removing things from my plate so that I can focus on the areas that are truly within my zone of genius.

If the work in your zone of genius doesn’t immediately pay what you are accustomed to, start small. Start spending an additional 10% of your time in your zone of genius immediately. Strive to add an additional 10% every month. Soon, you’ll be spending a majority of time in your zone of genius and inspiring others to do the same.

Go out and find your passion and find a way to start pursuing it daily. Make a commitment to yourself to find and operate within your zone of genius because you deserve it. If you do, take this opportunity, feel free to reach out and let me know how it goes. I’m in the process of this myself and I’ll gladly swap tips.

Shannon L. Zetrouer is the managing partner of Zetrouer Pulsifer, PLLC. After obtaining her law degree and M.B.A. from Stetson University with honors in 2005, Ms. Zetrouer focuses her practice on real estate (with a concentration on timeshare issues, condominiums and homeowners associations), litigation, and government relation matters. Her passion for law is only superseded by her love for her children, Ariana Sol and Austen Lee and her husband, Trevor. As a Florida native, she takes full advantage of 360 days of sunshine by biking, boating, paddle boarding, enjoying live music, and exploring the world and her beloved hometown, St. Petersburg.
In an unusual case involving a little known provision of the U.S. Copyright Act, a federal appeals court in New York ruled that a real estate developer had violated the Visual Artists Rights Act of 1990, 17 U.S.C. § 106A, (VARA) by destroying the artwork of a variety of aerosol graffiti artists who had created and displayed their work at a site in Queens, New York. Castillo v. G&M Realty L.P., No. 18 498 CV (2d Cir. 2020).

According to the court, in 2002, the developer, Gerald Wolkoff, undertook a project to install artwork in a series of dilapidated warehouse buildings that he owned in Long Island City, across the East River from Manhattan. Wolkoff engaged Jonathan Cohen, a distinguished aerosol artist, to turn the warehouses into an exhibition space for graffiti artists. Cohen and other artists rented studio spaces in the warehouses and filled the walls with aerosol art, with Cohen serving as curator. Under Cohen’s leadership, the site, known as 5Pointz, evolved into a major global center for aerosol art. It attracted thousands of daily visitors, numerous celebrities, and extensive media coverage.

One of the features of the project was the concept of “creative destruction.” Some art at the site achieved permanence, but other art had a short lifespan and was repeatedly painted over. The walls were divided into “short-term rotating walls,” where works would generally last for days or weeks, and “longstanding walls,” which were more permanent and reserved for the best works at the site. During its lifespan, 5Pointz was home to approximately 10,650 works of art.

In May 2013, Cohen learned that Wolkoff had sought municipal approvals to demolish 5Pointz and build luxury apartments on the site. Cohen applied to the New York City Landmark Preservation Commission to designate 5Pointz as a site of cultural significance in order to prevent its destruction, but he was unsuccessful, as were his efforts to raise money to purchase the site.

At that point, Cohen and numerous other 5Pointz artists sued under VARA to prevent the site’s destruction. VARA, which was added to the Copyright Act in 1990, grants visual artists certain “moral rights” in their works, including the right to prevent modifications of artwork that are harmful to their reputations and to prevent destruction of their artwork if the work has achieved “recognized stature.” Under the statute, an artist who establishes a violation of the law may obtain actual damages and profits, or statutory damages, which may be enhanced if the artist proves that the violation was willful.

Early in the litigation, the plaintiffs applied for temporary injunctive relief, which the district judge denied in a brief order, telling the parties that he would soon issue a written opinion. That night, Wolkoff began to destroy the artwork. He banned the artists from the site and refused to permit them to recover any works that could be removed. Several nights later (and before the district court’s written opinion could be issued), Wolkoff deployed a group of workmen who, at his instruction, whitewashed the art.

On November 2013, the judge issued an opinion denying the preliminary injunction, stating that, although some of the 5Pointz paintings may have achieved recognized stature, resolution of that question should be reserved for trial. He also decided that, given the transitory nature of much of the work, preliminary injunctive relief was inappropriate and that the monetary damages available under VARA could remediate any injuries proved at trial.

After extensive discovery, a three-week trial was held, which included testimony from 29 witnesses and the admission of voluminous documentary evidence.

The district judge issued his opinion in February 2018. He found that 45 of the works had achieved recognized stature, that Wolkoff had violated VARA by destroying them, and that the violations were willful. The judge observed that the works “reflect[ed] striking technical and artistic mastery and vision worthy of display in prominent museums if not on the walls of 5Pointz.” His findings emphasized Cohen’s prominence in the
world of aerosol art, the significance of his process of selecting the artists who could exhibit at 5Pointz, and the fact that, while much of the art was temporary, other works were on display for several years.

Where a violation of VARA is established, the statute permits the injured party to recover either actual damages and profits or statutory damages between $750 and $30,000 per work, and up to $150,000 per work if the artist proves that a violation was “willful.” Here, the judge awarded statutory damages, finding that such damages would serve to sanction Wolkoff’s conduct and to vindicate the policies behind VARA.

Moreover, the judge found that Wolkoff had acted willfully. His finding was based on Wolkoff’s awareness of the ongoing VARA litigation and his refusal to afford the artists the 90-day opportunity provided by the statute to salvage their artwork, some of which was removable. The judge rejected Wolkoff’s assertion that he whitewashed the artwork to prevent the artists from engaging in disruption and disorderly behavior at the site. Instead, the judge found that Wolkoff acted out of “pure pique and revenge for the nerve of the plaintiffs to sue to attempt to prevent the destruction of their art.”

He also found that Wolkoff had lied in an affidavit that the demolition of 5Pointz had to be completed by the beginning of 2014, with construction to commence in April 2014, because Wolkoff acknowledged at trial that he did not apply for a demolition permit until March 2014. The judge stated that he would have granted the preliminary injunction if Wolkoff had testified earlier that demolition could be delayed until March. The judge thus awarded the maximum amount of statutory damages, $150,000 for each of the 45 destroyed works, for a total of $6.75 million, and the appeals court affirmed the award.

David R. Ellis is a Largo attorney practicing trademarks, copyrights, patents, trade secrets, and intellectual property law; computer and cyberspace law; business, entertainment and arts law; and franchise, licensing and contract law. A graduate of M.I.T. and Harvard Law School, he is a registered patent attorney and Board Certified in Intellectual Property Law by the Florida Bar. He is the author of the book, A Computer Law Primer, and has taught Intellectual Property and Computer Law as an Adjunct Professor at the law schools of the University of Florida and Stetson University. He can be reached at 727-531-1111 and ellislaw@alum.mit.edu. For more information, please see www.davideellislaw.com.
Consider Singular “They” for A More Inclusive Legal Writing Style

By Rachel B. Oliver and Kirsten K. Davis

As a matter of grammar rules, the personal pronoun they has traditionally been considered a personal, plural, third-person pronoun. That is, they is the pronoun writers typically use as a substitute for a plural antecedent noun. Take for example the sentence, “Lawyers must be competent writers.” If lawyers—a plural noun—were replaced with a pronoun, they would be a grammatically correct choice—“They must be competent writers.”

But should competent legal writers limit substituting they for only plural nouns? The Merriam-Webster Dictionary, the Publication Manual of the American Psychological Association, the Chicago Manual of Style, the Associated Press, and the Washington Post recognize or permit (and in some cases, even prefer) using singular they as part of a gender-inclusive writing style. Lawyers who care about writing with an eye toward social justice, gender inclusivity, and meeting client needs will want to consider using they in both singular and plural form. Singular they can be an acceptable (or even a preferred) way for lawyers to (1) refer to a person whose gender is unknown or unspecified or (2) identify someone who has a nonbinary gender identity, which is an “internal, deeply held” identity that is “outside the categories of man and woman” or is “wholly different from these terms.”

Modern English lacks a gender-neutral, third-person, singular pronoun, so writers traditionally used masculine pronouns (i.e., he, him, and his) when a person’s gender was unknown or unspecified. But studies showed defaulting to masculine pronouns invoked only male images in readers’ or listeners’ minds and thus perpetuated male superiority. For this reason, many academic institutions, professional organizations, style manuals, and even state legislatures denounced the default use of only masculine pronouns. Lawyers are often already sensitive to gendered language use and will use the phrase he or she to identify a person whose gender is unknown. But, that construction, although gender-neutral, can be awkward or clumsy. Although some style manuals prefer writers to reword sentences to avoid singular pronouns where gender is unknown, the American Psychological Association’s Publication Manual, for example, recently endorsed writers using “they” when “referring to a generic person whose gender is unknown or irrelevant to the context.”

Adopting this approach to legal writing means that legal writers could choose they when writing about persons with an unknown or unspecified gender. For example, a litigator might use they when referring to a juror generally, where gender is not relevant or is unknown, similar to how they is used as a singular pronoun in speech. Similarly, an estate planning lawyer might use they in a trust when referring to the office of trustee, which could be filled by different people of different genders as circumstances change. Writing this way eliminates unnecessary gender bias and improves inclusivity through pronoun use that is gender-neutral.

They has also been adapted for use as a singular pronoun to respect individuals who have nonbinary gender identities. Singular they is now stylistically accepted as a grammatically correct pronoun for a person who has a nonbinary gender identity. In fact, the well-known legal style manual, The Redbook, instructs legal writers to “respect” the pronoun a person uses. Thus, when referring to a client with a nonbinary gender identity who uses they as their personal pronoun, a lawyer should use singular they. In that case, a lawyer would write: “My client Chris told me they started a new job.” A lawyer might also demonstrate respect for clients who identify as nonbinary by asking on a client intake form the question, “What personal pronouns do you use?”

Using they as a singular pronoun in legal writing might face some opposition. One argument might be to keep they grammatically plural as a matter of principle or tradition or to avoid controversy or unwelcome attention or risk. Another argument might be that using singular they is less precise than using he or she to replace a singular noun and can create ambiguity in contracts, for example, where ambiguity is frowned upon.

But, Florida lawyers are “public citizens having a special responsibility for the quality of justice” who are expected to improve “the quality of service rendered by the legal profession.” By consciously using, when possible, an inclusive legal writing style—even if non-traditional or not yet universally adopted—lawyers can improve upon writing that is unnecessarily gender-biased or denies the identities of those individuals about whom lawyers write. Moreover, because legal writing has the power to transform the ways that
institutions operate in the world and individuals regard one another, lawyers should be the first and not the last to adopt an inclusive writing style that furthers human dignity, social justice, and client-centered practice. The words lawyers choose do more than direct legal matters; those words can shape the discourse about our communities, which gives lawyers the opportunity to make those communities more just for all. Thus, lawyers’ writing should be more than just grammatically precise—it should, whenever possible, be mindfully and intentionally respectful and inclusive of everyone.

Kirsten Davis is a Professor of Law at Stetson University College of Law in Gulfport, FL. She is the Director of Stetson Law’s Institute for the Advancement of Legal Communication and currently serves as the Chair of the Florida Bar’s Standing Committee on Professionalism. She teaches and writes about legal ethics and legal communication.

Rachel Oliver is an attorney with The Diamond Law Firm, PA, in St. Petersburg, FL. She focuses her practice on estate planning, estate and trust administration, and estate and trust litigation.

2. Id.
5. The University of Chicago, The Chicago Manual of Style ¶ 5.48 (17th ed. 2017) (permitting they as the pronoun for a person who does not “identify with a gender-specific pronoun” but preferring singular pronouns for singular nouns with unspecified gender and also recognizing that singular they is more widely recognized in British English).

11. Id. at 193–196.
12. Id. at 196–197.
13. See Garner, supra, note 1, at § 11:10(o) (noting that “[o]ften these techniques can be ungainly or distracting—and they end up emphasizing the inherent problem of not having a generic third-person pronoun”).
14. Not all style guides agree on the preferability of “they” when referring to a person of unknown gender, but they recognize that singular they is gaining greater acceptance in formal writing. The AP Stylebook, for example, encourages rewording when possible to avoid ambiguity, see Merrill Perlman, Stylebooks finally embrace the singular they,” Columbia Journalism Review (March 27, 2017), https://www.cjr.org/language_corner/stylebooks-single-they-ap-chicago-gender-neutral.php (discussing the Stylebook preferences), as does the Chicago Manual of Style, see supra, note 5, at ¶ 5.48. Likewise, the well-known legal style manual, The Redbook, acknowledges the approval of they as a singular pronoun in other style manuals and notes that they is “preferred by some writers” when there is no gender-specific antecedent noun. Garner, supra, note 1, at § 11.10(o). The Redbook, however, stops short of endorsing singular they in this context and suggests rewording to achieve “invisible gender-neutrality.” Id. The authors of this article advocate for greater acceptability of singular they for use with nouns where the gender is unknown or unimportant. See also Kristen K. Davis, He, She, or They: Thinking Rhetorically About Gender and Personal Pronouns, Appellate Advocacy Blog (Sept. 5, 2019), https://lawprofessors.typepad.com/appeal_advocacy/2019/09/he-she-or-they-thinking-rhetorically-about-gender-and-personal-pronouns.html.
15. See Lee, supra, note 8.
16. See Garner, supra, note 1, at § 11:10(o) (noting singular they used in speech).
17. Jessica A. Clarke, They, Them, and Theirs, 132 Harvard L. Rev. 894, 896 (2019). This recent transformation of they is in part because “nonbinary gender identities have gone from obscurity to prominence in American public life.” Id.
19. See Garner, supra, note 1, at § 11:10(o).
20. See, e.g., id. at § 11:10(o) (suggesting rewording sentences to avoid the need to use singular they); Hare, supra note 6 (noting that “[c]larity is a top priority”).
22. Lawyers in St. Petersburg are already part of a community that practices gender-inclusion. Among other things, the City has an LGBT Welcome Center and an official LGBT liaison for the City Government. LGBT St. Petersburg, About the City, St. Petersburg Official Site, http://www.stpete.org/vision/lgbt.php (last visited Jan. 31, 2019). The City’s Mayor has proclaimed a Transgender Day of Remembrance. Id. Some local social justice events ask for participants to include their pronouns (e.g., she/her/hers for someone who identifies as female) on their name tags.
Gulfcoast Legal Services Celebrates 40 Years of Service

By Chelsea Wait

It’s hard to believe that only five years ago, Gulfcoast Legal Services (GLS) was celebrating its 35th anniversary by opening a brand new office in downtown St. Pete. A lot has changed since then, including our offices! In 2018, GLS officially outgrew our downtown space and in 2019, we opened ancillary offices in the high needs areas of Lealman and Wimauma. Our office in Wimauma focuses on assisting victims of crimes with immigration and family law issues. In its first year, our small team has helped over 250 people.

Now, just after our 40th anniversary, we celebrate many things. We celebrate a new medical-legal partnership in Pinellas, collaborations to address the fines and fees facing returning citizens, and an expanded life-planning program for seniors in three counties. We celebrate new staff from across the country and world, a new program addressing the needs of human trafficking victims, and two new annual fundraisers.

After some years of change, leadership has stabilized on all levels. We are thankful for the guidance of our Executive Director, Tammy Greer, and our Deputy Directors Jena Blair, Lisa Murray, and Robin Stover. Professor Kristen Adams of Stetson College of Law now leads our board. She and our nine other board members continue to help us shape our future as a leading organization in providing free civil legal aid. GLS is grateful for the support we receive from them, our volunteers, partners, and community supporters all throughout the region.

Still, too, we have much to learn. Now, just after our 40th year, we will focus on answering the most difficult questions a nonprofit faces: What is our lasting impact? How can we better meet the needs of clients? How are we taking care of our staff who help clients through intensely traumatic events, who face immense pressure to be successful in obtaining life-changing and sometimes life-saving judgements?

GLS at 40 is many things—reinvention and stabilization, fresh energy, and a call to remember our history. We are committed to advocacy and a staunch belief in upholding the rights of our most vulnerable community members, such as our client “Emilia,” whose case is highlighted below.

Emilia came to GLS in 2014, after reporting a sexual assault that was committed against her minor daughter, a US citizen. Emilia fully cooperated with law enforcement in the investigation, even though she feared it might lead to her deportation. In 2015, GLS filed for her U visa in order to obtain legal immigration status for Emilia. (U visas are for victims of certain crimes who are willing to cooperate with police investigations of said crimes.) Emilia was the single mom of several US citizen children, and she cared for them while seeking services, and therapy for her daughter. The family formed a very close bond. For this reason, Emilia’s children were terrified of being permanently separated from their mom.

Our Deputy Director of Immigration and Human Rights, Lisa Murray, began working with Emilia in 2016, while we were still waiting for her U visa to be approved. With so many U visa applications being filed, it often takes a very long time for such cases to be approved, but Lisa kept checking in diligently.

Eventually, Emilia was approved for a temporary legal status and work authorization. Her life and the lives of her children became much more stable. But her immigration case was not over, and the family was still worried about losing each other.

In 2019, U.S. Citizenship and Immigration Services (USCIS) wanted more evidence to support Emilia’s case and Lisa immediately began working on the new documentation needed. This is a lengthy process and includes documentation of what Emilia’s life is like. Emilia is a mother. She volunteers in her community, goes to church every weekend, and hopes to eventually have a job where she helps children who have suffered abuse.

After Lisa submitted legal arguments and a tremendous amount of evidence in response to the request from USCIS, Emilia’s U visa was approved. Emilia cried with relief. She finally felt that she could sleep at night and not worry about being separated from her children. GLS is proud of Emilia and the courage she has. We will continue to fight for her and those like her in whatever ways we can.

Thank you for your support of GLS as we enter a new decade filled with learning and growth.

Chelsea Wait is the Grants & Resource Development Manager for Gulfcoast Legal Services, a 501(c)3 nonprofit providing free civil legal aid in the Tampa Bay area. She is also an award-winning author and teaches creative writing in her free time.
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By Ben Thomas

At the start of this bar year, I asked you to accept that you can be the difference and bring a positive change to our community. Throughout this year, you lived up to that challenge and helped make our bar organization more giving and our community stronger. We participated in food, supply, eyeglass, and toy drives. We cleaned multiple beaches and built a pantry. We raised awareness for the needs our community faces on a daily basis by supporting organizations such as Ready for Life, St. Pete Free Clinic, Guardian Ad Litem of Tampa Bay, Keep Pinellas Beautiful, and LiFT. In doing those things, we rose together to meet a small part of those needs while we interacted with the people those organizations support. I hope the commitment to our community lingers within each of you and you continue to seek out volunteer opportunities.

Now we face another challenge that has affected daily life on a global scale. In the past, when dire problems confronted the community, usually in

Ben Thomas presenting Hannah Torop, a student at LiFT U, with the Florida Bar YLD 2020 Affiliate Outreach Conference President’s Award

Ben Thomas and Alex Lewis at Tech Road Show CLE presented by the Florida Bar YLD

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the form of a natural disaster, people found strength in unity and gathering together to mourn, fortify, and rebuild. With the recent COVID-19 pandemic, we were forced to alter our innate desire for togetherness and physically remain apart. Still, what I have seen is heartening. I see more and more people reaching out over the phone, on video chat, and by email. I see the bar shifting its CLE focus to provide crucial information about the pandemic and helpful information on working remotely. I see attorneys still providing valued representation to their clients. In times like these, the best of humanity has an opportunity to lend a hand to another. We will fight this pandemic together, even though we may not be physically with one another. I know we will persevere through this.

My time as the Young Lawyers’ Section (YLS) President is coming to an end in June. I have the utmost faith in my successor, Alex Lewis, and I know he will provide the support and guidance that each of you deserve. He will need your help, much like I did this past year, in implementing the great programs and opportunities that enliven our bar to promote growth to our members through community service and fellowship. I will be shifting to support you and the other young lawyers of the Sixth Circuit as a member of The Florida Bar Young Lawyers’ Division (YLD) Board of Governors. If there is anything I can help you with in the future, please do not hesitate to contact me.

Thank you for making this past bar year a success. It would not have been possible without your ideas, involvement, and encouragement in the YLS.
PFAWL hopes that all of its members, family members, and friends are staying safe and healthy and looks forward to our events in May and June. On May 16th, we intend to have our annual Membership Drive Event. This year’s Membership Drive will be a pub crawl around downtown St. Petersburg. PFAWL members and guests will ride in style on the Jolly Trolley as we stop at several of St. Pete’s most fun spots, including The Independent, Green Bench Brewing, and Bacchus. Please join us for an afternoon of friendship and camaraderie. Tickets will cost $35.00 per member, or $15.00 for the member with the purchase of a ticket for a guest at $15.00.

In June, our monthly social will be held at Café Ponte in Clearwater. At the end of the month, we will applaud the achievements of our 2019 – 2020 Board of Directors and welcome in our 2020 – 2021 officers and directors, led by our 2020 – 2021 President, Nicole Bell.

PFAWL is proud to recognize our members. Congratulations to Mattaniah Jahn, our pro bono director, who was appointed to the Local Planning Agency for Pinellas County earlier this year. This is a position of incredible importance and impact to the future of our zoning laws.

A special thanks to our annual sponsors, David Reynolds Jewelry & Coin, Fran Haasch Law Group, Claycomb Appraisals and Estate Services, KnownLaw and Team Borham at Keller Williams Realty for their support of PFAWL and the advancement of women in the legal profession.

Upcoming Events:
May 16th – Membership Drive Pub Crawl, beginning in downtown St. Petersburg, 1 – 4 p.m.
June 2nd – Social, Café Ponte, 13505 Icot Boulevard in Clearwater
Socials are from 6 – 8 p.m. unless otherwise noted.

Check out our website to learn more at www.pfawl.org.
Don’t miss these great events – Join Now! If you would like to join PFAWL or renew your membership, please visit www.fawl.org/. For membership inquiries, please contact Lauren Kerr at pfawlmembershipdirector@gmail.com.

Cindy Campbell is a Private Wealth Strategist with Raymond James. She is the director of public relations for the Pinellas County Chapter of the Florida Association of Women Lawyers.
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is a non-profit corporation formed in 1989 by members of the St. Petersburg Bar Association concerned about the civil legal needs of low income residents of Southern Pinellas County, Florida. Over the years, CLP has recruited a panel of approximately 400 St. Petersburg area attorneys who provide free assistance to thousands of people in need of civil legal assistance each year. To volunteer for pro bono service, contact Community Law Program at 727-582-7480.

The COVID-19 pandemic has hit home for me (as I’m sure it has for many of you), in more ways than one. As I reflect on the St. Petersburg Bar’s theme of wellness over the past couple of years and on having our backs this year, these concepts now have new and broader meaning to me. I’m now examining these ideals from a much broader lens. Now, my analysis includes new questions like – as a society, do we have sufficient tools to have empathy for others? As lawyers, are we prepared to be the best advocates we can be, and can we properly fulfill our oath within in our community? As a non-profit organization, do we have the capacity and the courage to take on the bold new steps that are now needed to meet the expected increase in demand?

As it relates to the last question, I can say that Community Law Program (CLP) has done and will continue to do all that it can to stay well and to have our community’s back amidst this health crisis. Since mid-March, we have suspended all in-person clinics and walk-in assistance and our entire staff has been working remotely. We are continuing to assist people by either arranging for them to speak with a volunteer attorney by phone or by referring them to other legal aid providers as appropriate. We are also still trying to place some cases with volunteer attorneys and/or trying to handle them in-house.

This whole experience has brought to light our challenges with technology and with our capacity to mobilize. As a small pro bono program, with a majority of staff working only part-time accustomed to basic office applications, technology isn’t our thing! Moreover, most of our staff never worked remotely; nor is our current computer system (with the exception of our email, case management software, and accounting software) set up to operate remotely. We, as many others, had only a few days to convert from an office based setting to a remote operation with all that entails technologically.

We are also challenged by the need to completely alter our existing way of serving clients. CLP’s delivery system model of coordinating and hosting in-person advice clinics has worked well for 30 years, and our staff and volunteers know that model and execute it efficiently and effectively. With the present crisis, however, it’s not working well now. Plus, an honest assessment of the resources available in our community might reveal that there are more effective ways to operate going forward once the immediate threat to personal health caused by the pandemic is over.

This crisis, however, has also highlighted our strengths. CLP staff hasn’t missed a beat. Despite not being set up to work remotely, staff have created a system to serve those we can, adjusted work schedules to maintain coverage, and have taken on new projects. Each day, we meet remotely to check-in, discuss problems, and troubleshoot solutions. In the midst of this, our office is being painted, creating an obstacle course for staff when they do go into the office to check the mail or get a file.

While we can’t know what all of the needs of our community will be as a result of COVID-19, we anticipate an increase in the need for legal services in the near future. So that we can have the backs of our community’s most vulnerable, we intend to re-start the majority of our existing clinics in May or June, but they will operate remotely, as opposed to in-person until such time as it is safe to resume in-person operations. We are also going to need volunteer attorneys willing to accept pro bono cases in all areas of the law. To gear up for this, we are in the process of reaching out to all of the attorneys on our existing volunteer panel who have not been active with our organization in recent years to find out if they are able to help. If you aren’t on our existing panel, don’t know if you are on it, and/or would like to join our panel, you can complete a volunteer registration form on our website at https://lawprogram.org/attorneys/, or you can send an email to Jennie White at jwhite@lawprogram.org.

We are also using technology as best we can to help clients remotely. Thanks to local attorney, Kristina Feher, we are in the process of recording and editing our Divorce Forms Class so that our clients as well as pro se litigants in our area who have access to a device can follow along with the presentation and complete the Supreme Court approved forms necessary to start a divorce.

Thank you, Kristina, and thank you to the many attorneys who have already volunteered to provide advice to our clients over the telephone and/or have accepted pro bono cases even amidst this crisis. Together, as a community and a profession, we need to have each other’s back during and after this crisis more than ever. We could not provide access to justice without you!
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What’s Up & Who’s New

Iurillo Law Group, P.A. is pleased to announce that Kevin L. Hing has joined the firm as an associate attorney, where he practices business bankruptcy, restructuring, and commercial litigation. Kevin has particular experience in the area of Chapter 11 reorganization, including representation of corporate debtors, institutional creditors, and Chapter 11 trustees. Kevin also serves as a Florida Supreme Court Certified Circuit Civil Mediator and as a Residential Mortgage Foreclosure mediator in the bankruptcy courts for the Middle and Southern Districts of Florida. Kevin obtained his Juris Doctor from the University of Southern California and his B.A. from the University of California, Los Angeles.

Congratulations

St. Petersburg Bar Association
YLS President Ben Thomas!!!
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The Florida Bar Sixth Circuit
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