



FEBRUARY
2016

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WESTERN NEW ENGLAND UNIVERSITY SCHOOL OF LAW

OVERCOMING ADVERSITY

How will you handle the challenges that come with being a new lawyer? One real-life account page 11



Dr. Danielle Bessett

Assistant Professor of Sociology and Women's, Gender, and Sexuality Studies affiliate at the University of Cincinnati

www.law.wne.edu/clason

Sociology and the Law: Collaborating to Improve Abortion Access

"Legal advocates and social scientists share goals for evidence-based policy and just institutional practices; these aims can best be achieved through thoughtful partnerships," said sociologist Danielle Bessett. In this talk, she will reflect on her participation in three collaborations related to abortion access in the U.S.: evaluation of Medicaid funding for abortion in Massachusetts; assessment of abortion restrictions in Ohio; and an amicus brief on behalf of social science researchers for *Whole Women's Health v. Cole* (currently before the U.S. Supreme Court). She will share lessons that encourage more effective cooperation and promote positive outcomes.

Danielle Bessett is an assistant professor of Sociology and Women's, Gender, and Sexuality Studies affiliate at the University of Cincinnati, where she teaches courses on medicine, family, and reproduction. Her book on women's experiences of pregnancy in the U.S., *Pregnant with Possibilities*, will be published by New York University Press next year. Her current research focus is on abortion restrictions, abortion stigma, disparities in infant mortality and contraceptive access, and factors that affect breastfeeding outcomes.

Monday, February 22, 2016
12:00 noon | Law School Common

Presented by the Clason Speaker Series and the Center for Gender & Sexuality Studies.

All lectures open to students, alumni, the University community, and the general public. Pizza will be served.

For more information, call **413-782-1405** or email Professor Erin Buzuvis at ebuzuvis@law.wne.edu.

The Clason Speaker Series presents expert lectures to the School of Law. The series is named after Charles R. Clason, a prominent local attorney and member of the U.S. House of Representatives, who held the position of Dean of the School of Law from 1954 to 1970. Today, the purpose of the Charles and Emma Clason Endowment Fund is to host speakers who will enhance the academic environment of the School of Law at the University.

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Is LegalZoom Really Legal?



by **SAMANTHA MASTROMATTEO**
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LEX BREVIS Staff Writer

We live in an on-demand society where consumers search for their needs in a cost and time-conscious manner. LegalZoom is a self-help service that provides consumers the tools to prepare and file their own legal documents for only a fraction of the costs of an attorney. Amidst an era boastful for extraordinary savings, the idea of securing important legal documentation without the cost of an attorney is appealing to the masses. Unfortunately, the staff of LegalZoom are not attorneys; they are not held to the standards of practicing attorneys, they do not check submissions for legal accuracy and they will not advocate for its users should subsequent litigation arise from filings completed through its website. It is illegal to participate in the unauthorized practice of law, so how is LegalZoom permitted to skate the line of this moral and practical dilemma? I reviewed some of the services of LegalZoom and relevant case law in search for an answer to that very question:

Is LegalZoom Really Legal?

THE DANGER OF LEGALZOOM ILLUSTRATED IN BUSINESS PLANNING

LegalZoom offers small businesses on a tight budget the opportunity to file important documents for a fraction of the cost in hiring a business attorney. For



“Question Mark” (CC BY 2.0) by Leo Leung

these small business owners this low cost on-demand service is an ideal solution to their struggles... but at what risk?

The media has claimed that the resistance of lawyers to agree to LegalZoom is due to fear of competition and the extraordinarily low prices associated with this competing service. LegalZoom is a dangerous product for the unwitting consumer. Small business owners mistakenly believe that LegalZoom is providing the same service a business lawyer would, but in reality LegalZoom is performing a fraction of the services a business attorney would when talking to a new potential client. If a small business owner goes on LegalZoom and pays for the incorporation of their business, they can become a C corporation

in Massachusetts for the low price of \$439.00. With the click of a mouse the small business owner has now obligated themselves as a separately recognized state entity that must comply with corporate procedures regarding a board of directors, officers and bylaws.

If the small business owner is the sole employee, or the business is family-run there are possibilities that a Partnership, LLC, or S-Corporation would be more suitable entity options than a C Corporation. By electing to file through a prepared-forms service such as LegalZoom the business is receiving no guidance or sophisticated assistance in any measurable sense. By incorporating under an inappropriate entity form the business could endure huge financial losses for potentially avoidable tax con-

sequences or unexplored stock opportunities. A small business owner is forfeiting all of these other gains accounted for by a thoroughly prepared business plan when utilizing a service such as LegalZoom. Something so important and significant for the financial future of the business, and all those employed by it, require more than fifteen minutes of consideration to make an informed decision.

Customers are not warned of the legal risks for the business transactions they perform on LegalZoom.com. They are binding themselves without knowledge of the real life repercussions related to their newly formed business. The general legal information offered on LegalZoom is not actively updated nor is it specific to any jurisdiction. When working with a lawyer a business owner will get individualized attention, specific and applicable to the state in which they are working. Also, they will be able to interact with the attorney face to face receiving legal opinion and advice relevant to the formation and maintenance of their company. A lawyer will prepare a detailed plan for the business that considers beyond the one transaction of entity formation to focus on the best courses of action for the business to utilize all of its potential successes.

LegalZoom collects its processing fee without thinking about the future for the business before them. They are not considering the potential tax and legal implications of every decision but rather copying over information as the consumer delivers it to them. This is not the level of service that a business owner needs to preserve his or her potential interest in their company, or to protect the future of the company.

THE DANGER OF LEGALZOOM ILLUSTRATED THROUGH THEIR U.S. TRADEMARK APPLICATION PROCESS

One of the many services offered by LegalZoom is the preparation and filing of a trademark application. To utilize this service customers fill out a questionnaire on the LegalZoom website along with their credit card information to process payment. This will cost only a fraction of what one would expect to pay for retaining a trademark lawyer, but it comes with significant risks. There is no one checking your questionnaire to assure the information you are submitting is accurate. The staff who work for LegalZoom are non-lawyers that simply copy the information as you typed it into the questionnaire on their website. The questionnaire used by LegalZoom is essentially the same as the USPTO application freely available at the Trademark Office's website.

Since LegalZoom is not a law firm it cannot represent one of its clients should their trademark application get rejected by the Trademark Office or challenged by someone during the 30-day trademark opposition period. *Id.* A trademark is an investment, but LegalZoom cannot offer you representation should someone infringe on your trademark in the future. They also will not represent you should you find yourself subject to litigation for allegedly infringing on someone else's trademark. The cost difference seems significant from afar but once you consider the quality of service you receive, the question remains, what are you paying for when you pay for LegalZoom?

The reality is you are paying for someone

to transcribe the information you have already gathered and prepared. The person receiving your data is only inputting that information into the appropriate forms, they are not checking your information for accuracy. If you are granted a trademark based on misrepresented information you submitted on LegalZoom you could be subject to trademark cancellation on the basis that it contains materially false information. *Id.* Again, LegalZoom is in no way obligated to help litigate problems that arise from these gaps in its service because they are technically not practicing law.

THE DANGER OF LEGALZOOM ILLUSTRATED THROUGH THE PREPARATION OF A WILL

Another popular service offered through LegalZoom is estate planning in the form of a will preparation for as low as \$69.00. LegalZoom can charge next to nothing for its services because it is really performing little if anything of a service to their consumers. LegalZoom is not licensed to practice law as the disclaimer on their website reads:

LegalZoom is not permitted to engage in the practice of law. LegalZoom is prohibited from providing any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms or strategies.

The company also boasts on its website that a will can be completed in as little as fifteen minutes. The classic saying "If it is too good to be true... it probably is" seems applicable to this situation. The

reality is that estate planning is like any other legal process-- the final documents need to be prepared carefully with time and consideration. The reason it costs significantly more to have a will prepared by an attorney is due to the time and care necessary to ensure it is done properly. An attorney will take the time to review the information you provide and advise you to assure everything is completed to your best interests. LegalZoom is not authorized to offer any legal advice, therefore, should a client submit a request for a will that is legally inaccurate LegalZoom can and must do nothing to rectify the situation. You are paying for a product with no guarantee of success, other than a "review of your answers for completeness, spelling and grammar, as well as internal consistency of names, addresses and the like." *Id.*

On its own website LegalZoom acknowledges that 80 percent of people who fill in blank forms to create legal documents do so incorrectly, a statistic that proves the margin of error in self-prepared forms. *Id.* LegalZoom tries to reassure its customers that professionals are there to help; that customers can have "peace of mind" knowing that LegalZoom professionals will customize their will based on their legal decisions. *Id.* The "peace of mind" LegalZoom is selling to its customers is a facade of a legally binding document protecting one's future when under judicial scrutiny such a will may be problematic or even unenforceable.

By retaining a lawyer to prepare a will or trust the client is receiving the assurance by the state licensing authority that the lawyer will adhere to a specific standard of conduct. If a lawyer does not properly

perform a job he may be susceptible to malpractice claims or sanctions. All of these safeguards protecting the work product in our legal community have not been adopted by LegalZoom.

SO, LEGALZOOM SEEMS PRETTY AWFUL . . . BUT IS IT ACTUALLY ILLEGAL?

It seems as though LegalZoom is practicing law in their preparation of legal forms and filing other documents with absolutely no assurance of consumer protection. Their disclaimer reads: LegalZoom is not responsible for any loss, injury, claim, liability, or damage related to your use of this site or any site linked to this site, whether from errors or omissions in the content of our site or any other linked sites, from the site being down or from any other use of the site. In short, your use of the site is at your own risk. Despite its disclaimer the services offered on the LegalZoom website imply that the use of an attorney is not necessary, but rather clients can save a bundle and utilize this self-help service instead. In each state the State Bar Association has authority to regulate the service and conduct of all lawyers operating within the state. The State Bar Association assures that the citizens of that state are protected when they rely on legal representation as they hold bar members to a high standard of conduct. They have strict mandates and sanction violations of policy with the power granted to them by the government.

This issue has not recently been litigated in Massachusetts courts so I turned to North Carolina the "practice of law" is defined as performing any legal service for any other person, firm or corporation,

with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation. *N.C. Gen. Stat. § 84-2.1 (2013).*

In March 2003, the North Carolina State Bar opened an inquiry into whether LegalZoom's activities, but that was closed due to insufficient evidence to support a finding of probable cause that LegalZoom was engaged in the unauthorized practice of law. *LegalZoom.com, Inc. v. N.C. State Bar. 2014 NCBC 9 (March 24, 2014).* Four years later the North Carolina State Bar notified LegalZoom that again they had opened an inquiry into whether LegalZoom was engaging in the unauthorized practice of law. *Id.* Subsequent to their inquiry the State Bar's Authorized Practice Committee notified LegalZoom that they had "concluded that there is probable cause to believe that LegalZoom's conduct constituted the unauthorized practice of law . . . [and] voted to issue this Letter of Caution to notify you of its decision and to demand that you stop engaging in your activities now." *Id.* LegalZoom responded to that letter challenging the conclusions of the State Bar Association and providing a legal opinion which concluded that the

"document preparation and filing service provided by LegalZoom does not constitute the 'organizing' of a corporation, and therefore is not the unauthorized practice of law" *Id.* The State Bar acknowledged receipt of LegalZoom's response and declined to pursue further legal claims at that time.

The reason the practices of LegalZoom were reviewed by the State Supreme Court was the direct result of an action brought by LegalZoom against the North Carolina State Bar in 2011. LegalZoom brought this action against the North Carolina State Bar Association because they have refused to register LegalZoom's prepaid legal service plan within the state. In its complaint, LegalZoom alleges that the Bar Association should not have the authority to reject its application to register within the state and that the Bar Association failed to cite reasonable grounds for disallowing its registration in the first place. *Id.* However, the State Bar does have authority to reject a pre-paid legal services plan under the Administrative Rule: "if, in the opinion of counsel, the plan does not meet the definition or otherwise fails to satisfy the requirements for registration, counsel will inform the plan's sponsor that the registration is not accepted and explain any deficiencies." 27 N.C. Admin. Code 01E.0301 (2013)

Before determining the authority of the State Bar to register LegalZoom under the Administrative Rule the court, in *LegalZoom.com, Inc, v. N.C. State Bar, 2014 NCBC 9 (March 24, 2014)*, first considered whether the conduct of LegalZoom falls under one of the exceptions to the prohibition against unauthorized practice of law. The first possibility has been re-

ferred to as either "self-help" or the "self-representation" exception, essentially meaning that one can legally undertake activities in his own interests that would be the unauthorized practice of law if undertaken for another, or to "practice law" to represent oneself. *Id.* The second exception has been referred to as a "scrivener's exception," essentially meaning that unlicensed individuals may record information that another provides without engaging in the unauthorized practice of law as long as they do not also provide advice or express legal judgments. *Id.*

To determine whether the conduct of LegalZoom qualifies under the "self-help" exception the court reviewed the law as applied in *The Florida Bar v. Brumbaugh, 355 So. 2d 1186 (Fla. 1978)*. The court in *Brumbaugh* recognized that: (1) each person has a fundamental constitutional right to represent themselves, and (2) individuals may sell sample legal forms and "type-up" instruments that clients have filled out without engaging in the practice of law. *Id.* LegalZoom cited a case in which the North Carolina Supreme Court found no violation of the regulation barring unauthorized practice of law for a construction worker that drafted several house deeds. *State v. Pledger, 257 N.C. 634, 127 S.E.2d 337 (1962)*. The Supreme Court held that the defendant did not engage in the unauthorized practice of law, because "[a] person, firm or corporation having a primary interest, not merely an incidental interest, in a transaction, may prepare legal documents necessary to the furtherance and completion of the transaction without violating [the law]. *Id.* The North Carolina Supreme Court recognized this right of self-representation and

further extended the right to allow corporate agents to prepare certain legal documents on behalf of the corporation so long as the efforts were to advance a matter in which the corporation had a primary interest. *Id.*

In addition to its assertion to the first exception LegalZoom also contended that its recording of information falls comfortably within the recognized "scrivener" exception. *LegalZoom.com, Inc, v. N.C. State Bar 2014 NCBC 9 (May 24, 2014)*. This argument was less effective as the court considered a past case in which they found a petitioner to be in violation of *Section 84-2.1*. In this past case the court found that by taking the information the customer filled out in the Workbook and entering it into an official form on a computer, which differed from the Workbook the customer filled out, the preparer had engaged in the practice of law. *In re Graham, 2004 Bankr. LEXIS 1678, at 36-40 (2004)*. After all of this discussion the North Carolina Supreme Court decided not to rule on the issue of whether LegalZoom was engaging in the unauthorized practice of law until more information was available on the record pertaining to LegalZoom's specific practices. *LegalZoom.com, Inc, v. N.C. State Bar 2014 NCBC 9 (May 24, 2014)*.

LegalZoom failed to compel the court to order the N.C. State Bar to register their pre-paid legal service plan; but, without a clear ruling on whether the conduct on LegalZoom falls under one of the exceptions they will be left to operate without consequence and the North Carolina State Bar Association cannot do anything to prevent them from doing so. While the legal community suffers this setback it watches from the sidelines as the Unit-

ed States Supreme Court decides a case brought by the Federal Trade Commissioners against the North Carolina State Board of Dental Examiners. *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101 (Feb. 25, 2015).

This case is not directly about the suppression of competition in the legal profession. It's about suppression by a state board of dental examiners, acting as a private body without any public guidance. The case, however, has broad implications for competition and economic freedom. *Id.* As teeth whitening became more popular so did the demand for the service, and soon non-dentists were performing teeth whitening services for a fraction of the cost. *Id.* Many dentists complained to the board about this competition but they failed to reference any harmful side effects the consumer could experience or other data to support the contention non-dentists were unqualified to perform teeth whitening procedures. *Id.* There was a general inquiry as to whether the process of teeth whitening is a cosmetic or dental procedure and if performing teeth whitening constitutes a "practice of dentistry." *Id.* The Supreme Court in this case ultimately held that when a controlling number of the decision makers on a state licensing board are active participants in the occupation

the board regulates, the board can invoke state-action immunity only if it is subject to active supervision by the state. *Id.*

This decision may affect other privately regulated boards by revoking their anti-trust immunity. Antitrust immunity generally covers non-state actors only if the state both (1) clearly articulates the anti-competitive policy, and (2) actively supervises the policy. The Court's opinion explains that even though the dental board is an agency of the state, its actions must still be supervised by the state in order to enjoy antitrust immunity. *Id.* Here, just like the State Bar Association and the practice of law, the N.C. Board of Dental Examiners is controlled by market participants in the same occupation that the board regulates. "When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest." *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101 (Feb. 25, 2015).

So in conclusion, what does all of this mean for the future of LegalZoom and its intrusion into the legal profession? We know that the products offered by LegalZoom cost a mere fraction of purported legal fees for the same task. That there

has been no legal ruling as to whether the conduct of LegalZoom qualifies as the "unauthorized practice of the law"; and that the State Bar Associations are not allowed to forbid LegalZoom from offering its services. It seems almost hopeless for the consumers who will now be lured into a false sense of security for inadequately prepared legal documents.

The hope is this will eventually be resolved in future litigation. Meanwhile, LegalZoom is per se legal in its operations. It asserts it does not offer legal advice or opinion so, until evidence is brought before the court that can prove otherwise, the services offered through its site are not an unauthorized practice of law. For the unsuspecting customer LegalZoom is a dangerous falsehood charging for assistance with legal documentation that very well could be unenforceable, inaccurate or misapplied with absolutely no guarantees or protections should litigation ensue. Yes, the initial cost will be greater but the end result of retaining proper legal counsel far surpasses the coy gimmicks offered by LegalZoom and it's like competitors. Although the business operations of LegalZoom are not in violation of law they should be avoided with faith that the court will determine their services invalidated in the future.



Rich Herbert
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I WISH I KNEW...

I wish I didn't find discovery so boring in school. When you practice, for the most part, everything is discovery. It's where you win your case, really. Information comes out (or doesn't) that makes it crystal clear to one side or another that the case can't go to trial, and suddenly you've won. Interrogatories, requests for production of documents, depositions, etc., learn it. Your knowledge of evidence ties in nicely here. That's how you combat the other side's discovery, which is crucial. It's actually a good thing that civil procedure is boring; if it were fun, then everyone would be good at it. Good luck.

nuts & bolts

It's All In A Comma

How The Second Amendment Was Rewritten, Misapplied, and Misused



by **CHELSEA DONALDSON**
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LEX BREVIS Staff Writer

Headlines such as “Shooting in San Bernardino” are shockingly commonplace in the United States. Even more commonplace is the discussion that happens afterwards – words such as “gun control,” “politics,” “background checks,” and “criminals” are often hurled around at such a lightning pace that the public is usually left feeling at a loss about how to absorb such tragedy, let alone how to solve it.



“Water Guns” (CC BY 2.0) by Dean Hochman

The issue of mass shootings in the United States has been one that has plagued us for decades, but no one seems to know what to do about it. Eventually, it dissolves into politicians tweeting, “#PrayersforBernardino” and “#HopeforSandyHook” and the world keeps going on. Zero days since the last mass shooting in the United States.

This time, though, something was different. After the (alleged Daesh) attack in San Bernardino, politicians began to get angry. Many politicians took to social media to demand why this kept happening, though that seemed to be just as trite as hashtag prayers and blessings. However, quite a few elected to channel their frustration into something a bit more blunt. Connecticut Senator Chris Murphy (sitting Senator during the

Sandy Hook Massacre in 2012) did not tweet about prayer or hope. Instead, he tweeted something very different: “Your ‘thoughts’ should be about steps to take to stop this carnage. Your ‘prayers’ should be for forgiveness if you do nothing - again.” It has been retweeted nearly 24,000 times.

Gun control in the United States is a hot-button politic topic, often talked about but never actually enacted. Only a small handful of states have what I would consider “strict” gun control, but many states are reluctant to enact even a background check to purchase a firearm. It seems to be common sense; enacting a background check for the purchase of a weapon to ensure that there are no violent charges on record sounds like a perfect way to help reduce gun violence. What’s even more puzzling is the individuals who are banned

from owning firearms – and those that are still allowed to purchase them. Recently, the GOP majority Senate failed to pass a bill (45-54) to ban those on the federal terrorist watch list from purchasing assault weapons. Their main reasoning behind the rejection was that it was a violation of the Second Amendment.

This is a common knee-jerk reaction to the vocalization of the need for gun control. In the United States, you can regulate cars, gasoline, land, coffee, birth control, and even candy canes, but if you attempt to regulate the sale of guns, you are violating the Constitution. I have always been a fierce advocate for gun control, but it wasn't until the Sandy Hook massacre (which murdered a classroom of first graders in my adoptive home state of Connecticut, a tragedy that prompted swift gun control and a tragedy that has not been repeated since) that I realized it was less a constitutional problem and more an issue of politics.

The Second Amendment is often a point of discussion for politicians, especially around election season. You often cannot get through a single televised debate without someone bringing up the Second Amendment, the National Rifle Association, Newtown, or any other related gun control topic. Americans love (or hate) their guns – and it seems to be a uniquely American discussion. What is not discussed, though, is the history of the Second Amendment and why it is so ingrained in American legal culture.

Interestingly, the United States Supreme Court did not rule that an individual had a right to own a gun within their household until 2008. *District of Columbia v. Heller* determined that a citizen has the right to own a gun within their household and that a ban on handguns in the home was considered unconstitutional via the Second Amendment of the United States Constitution. The decision was lauded by pro-gun enthusiasts as a correct reading of the Second Amendment, which finally immortalized the right to own a gun as a constitutional liberty, as the founding fathers intended it. I, however, argue that the Supreme Court made a mistake.

The Second Amendment reads as follows: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." It is only one sentence long, but it is one of the most debated

sentences in American history. One would argue (and, as of 2008, the Supreme Court argues) that this one single sentence means you have the constitutional right to privately own a weapon – in this case, a handgun. For thirty-two years, Washington D.C. had banned handguns within their city lines – and every challenge against the law had failed. What could have changed the Court's mind in 2008?

It was a comma.

For over 150 years, the Court interpreted the Second Amendment as the right of the people to bear arms while presently serving in a militia (or, more modernly, the United States military). However, in *Heller*, the Court argued that the first portion of the Second Amendment (the "militia" clause), was a mere introduction to the operative clause (the "right to bear arms"), and that the Second Amendment was to be read as a right to bear arms regardless of whether or not one is serving in a militia. The sentence was to be viewed in two separate parts and the placement of the comma separating the need for a well regulated militia and the right of the people to bear arms intended two separate rights, rather than the combination of one sole right.

Even if you give the Supreme Court the benefit of the doubt that they did not stretch the Second Amendment to the brink of the nonsensical over a comma, you still have to wonder how gun control fits into this new interpretation. The Court did not say anything about background checks, registration, or licensure in *Heller*; they simply stated that a ban on handguns violated the Second Amendment, and that you had the constitutional right to own a gun. That may be true – however, the First Amendment grants me the right to stand on a street and scream racial slurs at people, but the First Amendment will not protect me from being arrested for disturbing the peace, or from my job firing me for conflicting with the morality clause of the contract I signed on day one. Where does the line end?

A background check seems to be common sense. After all, most people can agree that certain individuals probably should not be in the possession of a weapon. Violent offenders, individuals with untreated mental illness, folks who can't pass a basic criminal background check – all of these things could be examined with an interview and a quick CORI. The FBI, the CIA,

and the NSA all have background check systems, along with a full federal database of those who have committed violent offenses. Each state, too, has a database of violent offenders. Common sense would indicate that those individuals should probably not own a weapon capable of killing large swaths of people, nor should they have access to thousands of rounds of ammunition.

Despite this, only thirteen states are known as “Full Point Of Contact” states, which means any purchase (by a registered and licensed arms dealer) receives an instant criminal federal background check by the Federal Bureau of Investigation. This means the background check is conducted exclusively by the FBI and the dealer has absolutely no control in contacting the FBI to ensure that the background check is completed. Background checks of this caliber are considered ‘strict’ gun control. California, for example, is a “full point of contact” state, but the states bordering California are not. In addition, California has magazine limits, a ban on semi-automatic weapons, and strict licensure requirements for owning weapons. Pro-gun enthusiasts were quick to point out that gun control does not work, as the shooters managed to obtain guns in spite of the strict gun control California enacted. How, then, did the San Bernardino shooting happen in spite of the gun control legislation? Where did the failure occur?

The problem with gun control in the United States is that it is not universal. As stated before, only thirteen states have mandatory and instantaneous FBI background checks. In California, the guns purchased in the San Bernardino shooting were all purchased and registered legally. However, while the handguns were purchased legally in California, the high-powered rifles (arguably the cause of most of the damage) were not – they were bought in other states and simply transferred across the border.

Chicago, too, is often pointed at as a “failure” of strict gun control, having some of the strictest gun laws in the country. Gun shops are banned in Chicago and there are no civilian gun ranges within the city limits. There are also bans on assault weapons and high magazine limits. Despite this, Chicago is a hub for gun violence, with one of the highest murder rates in the country. Republican Presidential candidates (ranging from Ted Cruz to Donald Trump) frequently bemoan Chicago as a

prime example for how gun control obviously does not work. However, there is a problem with their logic.

The Chicago Police Department decided to study the roots of all guns collected in their city from 2011-2012 and collected 50,000 guns from various arrests and seizures. One would think that the majority of these guns were purchased in Chicago, given how their gun control was so ineffective. The numbers break down differently, though, and give a shocking insight into how ineffective the United States is at the regulation of weapons.

22,051 of the weapons were purchased in Illinois outside of the city limits, where the gun control laws were less strict. One could simply leave Chicago, hop to the next county over, buy a handgun, and return to the city – legally. The remaining guns

4	2	6	3	5	8	1	7	9
7	3	5	1	9	4	6	8	2
1	8	9	7	6	2	4	3	5
2	1	8	5	4	6	7	9	3
5	9	3	2	1	7	8	4	6
6	7	4	8	3	9	5	2	1
8	6	7	9	2	1	3	5	4
3	4	2	6	7	5	9	1	8
9	5	1	4	8	3	2	6	7

6	8	5	7	4	1	9	2	3
9	2	1	3	8	6	5	4	7
3	4	7	5	9	2	8	6	1
2	9	6	4	1	7	3	8	5
5	3	8	2	6	9	1	7	4
7	1	4	8	5	3	2	9	6
4	6	3	1	2	8	7	5	9
1	5	2	9	7	4	6	3	8
8	7	9	6	3	5	4	1	2

(that is, over half of them) came from every single state (yes, *every single state*) and were brought into Chicago illegally. The heavy hitters are as follows: Indiana (7,474); Mississippi (4,296); Wisconsin (1,467); Kentucky (1,226); Ohio (1,121); Tennessee (1,090); and Alabama (1,070). Additionally, seven guns were identified as being smuggled in from Puerto Rico (5) and Guam (2).

This study (while alarming and particularly damning of the current gun control system the United States has in place) is an isolated one. A point of topic in debate is often that there is absolutely no research to prove that gun ownership leads to gun violence – and while that is (alarming) true, it is not for lack of trying. For twenty years, Congress has banned any research into the correlation between gun violence and gun ownership, a ban which they chose to renew following the Charleston massacre in the summer of 2015. Their reasoning? The Center for Disease Control and Prevention (the only program within government even mildly suited for studying the issue, as there is no “gun violence committee” or any other government organization tasked to studying the prevention of death) cannot study the link between gun violence and gun ownership because a gun is not a disease. Therefore, it falls outside their expertise. Then-Speaker of the House, John Boehner, was quoted as follows: “I’m sorry, but a gun is not a disease. Guns don’t kill people — people do. And when people use weapons in a horrible way, we should condemn the actions of the individual and not blame the action on some weapon.”

The last time the CDC investigated gun violence (in 1990), Dr. Fred Rivera discovered that having a gun in the home increased the likelihood of homicide or suicide by threefold. After the study was published, the National Rifle Association quickly came out against the study, claiming that it was false. Gun lobbyists rallied against the study. Politicians (who receive donations from the National Rifle Association and the gun lobbyists who defend them) denounced it. And, ever since, Congress has refused to allow the CDC to study further. Progress on researching gun violence and the effect of gun control on gun violence has ground to a halt ever since.

Connecticut Senator Murphy, though, has a point. We can do something about it – Connecticut did, after the Newtown shootings. Connecticut implemented magazine limits, a semi-

automatic weapons ban, and a new registration system. The background check system is stricter and Connecticut is now considered a “full point of contact” state. The state Congress examined what happened in Newtown, elected to say “never again” and immediately passed legislation. Further, Governor Malloy enacted an executive order banning those on the terrorist watch list from obtaining a weapon in Connecticut the day after the federal Congress failed to do the same. While all of these legislative actions have problems (such as erroneous information on said terror watch list and loopholes in background checks), Connecticut has not seen a mass shooting since the Newtown incident.

Even so, there is a gaping problem with gun control in the United States as a whole – the lack of a universal federal system, utilized by all fifty states, in order to run basic background checks. It is entirely possible to bring semi-automatic machine guns with massive magazines and thousands of rounds of ammunition from one state to another. Even in Connecticut, where gun control was reasonably strict, Adam Lanza had access to high magazine rifles which led to the tragedy of a classroom of first graders being massacred. Newtown was a turning point in the discussion within Connecticut and became the center of a focused analysis on the Second Amendment, questioning whether we could balance gun rights with the safety of others. Ultimately, Connecticut decided that you could. The problem, though, is that other states have yet to figure out how to balance the two.

Initially, this article was to be an argument for the existence of such a system, and it still is. However, President Obama elected to kick off 2016 with a staunch refusal to become a lame duck president, issuing an executive order establishing a universal background system, authorizing funding into mental health research, and promoting community safety in an effort to condemn gun violence. This new action led to a rewrite of this article, but I have never been more happy to do so. While the executive order will certainly not solve the problem of gun violence in the United States, it opens the door to allow federal agencies to do what should have been done decades ago – research gun violence, come up with solutions, and create safe-gun technologies that allow safe ownership of weapons. It is an important first step in combating what has become an epidemic unique to the United States.

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SOLVED PAGE 8

SPOTLIGHT ON MENTORING



by **AMARA RIDLEY**
LEX BREVIS Editor-In-Chief



Attorney Robert “Bob” Harnais

President of the Massachusetts Bar Association

When did you become Mass Bar President?

September 3, 2015 at Fenway Park.

What was that like?

Incredible. The Hispanic National Bar Association had their first annual conference in Boston in conjunction with the MassBar.

When did you decide to become an attorney?

I was 17 or 18 years old, watching Breaker Morant.

Why that movie?

It was interesting. I went on a date. I saw the attorney fighting for three clients and a tainted trial. He lost, two clients were executed but the third wasn't. I didn't fall in love with the woman I was dating but I did fall in love with the law.

“ Even now, whenever I have to make a decision, I always ask myself ‘what would my mentor have done in this situation?’ ”

My family is from Argentina and education wasn't a huge thing. I didn't know how to go about doing it. I started hanging around the Quincy District Court. I would go to school at UMass Boston and go mid-afternoon [to the District Court] and just sit around and watch. I did this for a few months. Finally, someone came up to me and asked what I was doing - they said "You're always here, what are you doing?" I said, "I want to be an attorney. I just don't know how to do it; what steps to take, what to do." He said, "Instead of hanging around why don't you start volunteering?" So, I started volunteering in the Clerk's Office. It was a lot of filing. There was a project to destroy old dockets that were well over 100 years old.

How long did you volunteer at the Quincy District Court?

I think almost a year. I was going to school during the day and then I would volunteer until 4:30 then go to a job I had as a cook. I did that for close to a year. Then I got offered a paid job there. First in the Clerk's Office then in the Probation Department. It was an incredible learning experience.

What made it so incredible for you?

You are talking about a kid who was making a lot of bad decisions. I knew some day I would end up in court, I just didn't know which side I would be on. People who knew me always said "we knew you would need a lawyer, but we didn't know you would be one."

I was in college, I would go to school and then go to court. A gentleman named Larry Falvey who became an incredible friend and helped me get into law school, he worked at the court house.

And, Mr. Falvey, what did he do for you?

He knew how much I wanted it and he had the knowledge to help me get in. IT'S NEVER TOO LATE.

What was law school like?

I went nights and worked during the day. It was difficult but I saw a lot of students just like me and we knew each other and helped each other. I didn't have time to do internships but I got to write briefs for Probation [at Quincy District Court]. I was first, along with another Probation officer, in starting the electronic bracelet program. They tested it out on me. They kept it on me for like three weeks and that kind of eliminated my excuse for coming in late to work in the morning.

Did you stay at the Quincy District Court throughout law school?

Most of it.

What impact did law school have on you?

I was very confused at the beginning.

What about after law school?

I worked for an attorney in the Hispanic community in Massachusetts.

What was that like?

I stayed there for about a year and a half to two years but it wasn't the kind of law I wanted to practice. It was personal injury. Unfortunately there were some attorneys that worked in certain communities doing personal injury work and took advantage of the community - It just wasn't the type of practice I wanted to do.

What was it about the work that you didn't like?

I wasn't into personal injury cases where they worked like a mill.

Where did you want to go?

I've always had a General Practice. I moved to my office in Quincy where I've been ever since.

What do you like about practicing now?

The bottom right drawer of my desk is full of thank you notes and cards from clients. You have no idea how much that means to me. GETTING YOUR LAW DEGREE, GOING TO COURT AND MAKING MONEY IS EXPECTED OF US. GOING OUT AND MAKING A DIFFERENCE IS WHAT IS RESPECTED OF US. People tend to forget that.

What is the hardest part of your job?

It doesn't stop sometimes. You are dealing with people coming to you about their legal problems. It's really not a 9-5 job and it gets really hard time-wise.

How do you manage that?

Many years ago I found myself a great mentor. His name was Peter Muse and he was a great lawyer.

How did that impact you?

He was a great man. He made me a better lawyer, man, husband and a better dad. I became an attorney because people helped me. If I don't pass that on- one of the signs of respect is doing it to other people.

Why might mentoring relationships be important to law students?

You are going into a field where people rely on you to help them. You need a mentor to advise you. Where maybe there is a case you shouldn't take or helping to learn how to prioritize and overall how to not get off track. Also, when you are on track, not to go too fast.

What do you mean by going too fast?

You graduate. You pass the Bar. You think you know it all and that you can take on any case - you're so far from that.

Were you at that same point?

I can't deny I flunked [the Bar] the first time. My daughter, Courtney, takes credit for the one I passed because that was the day she was born. I really think it was a sign of me needing to make more money to take care of her. She's a great kid - though not a kid anymore, she's 25.

You mentioned mentoring. Was there anything unexpected about it?

I developed an incredible friendship with my mentor. Though he passed away in 2012 I can tell you to this day, when I need to make a decision I always ask "what would Peter do?"

I understand you are the first Latino MassBar President?

My family is from Argentina and my primary language is Spanish. I was President for two years in the Massachusetts Hispanic Bar Association and then I was President of Region 1 for the Hispanic National Bar Association.

What was that like?

Interesting.

Why?

Everything is a learning experience. You've got to make it a point to learn something every day.

Have you been back to Argentina?

I haven't been back in years. It's not that easy.

What was the process for becoming MassBar President?

There is an interview process then the Interview Board decides if you go on the slate. Every year you have to go through the interview process in order to move up. You move up from Secretary to Treasurer to Vice President to President-Elect to President.

And you went through all of that?

Yes. The interview Committee decides everything but the President. Once you become President-Elect you then become President.

What has it been like being President?

It's a lot of work; it's exciting and interesting. It's a great learning and a great education. All the things you can imagine.

What has been your favorite part so far?

Meeting people and talking to students.

Why?

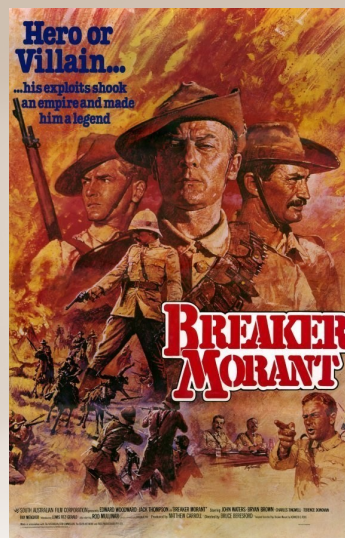
I guess I just find that more enjoyable. There is nothing like being able to talk to students. They are the future.

What are your goals for the MassBar while you are President?

My goal was to bring the MBA across the state. We are the largest state wide bar and we need to work on our outreach.

Why might a law student consider joining the MassBar before they sit for the Bar Exam?

Students should join for a few reasons. Networking is obvious but we offer free CLEs to our members as well as numerous other programs. Take for example the Young Lawyers Division, I think that any young lawyer that has been a member will tell you that it is both a great way to meet other young lawyers but also a great way to meet mentors since the YLD is very active in the MBA.



1980 Australian war and trial film. Director Bruce Beresford states that *Breaker Morant* was meant to explore how unspeakable acts during wartime can be "committed by people who appear to be quite normal." Beresford also said that he was "amazed" whenever people see the film as being about "poor Australians who were framed by the Brits."

"In The Spotlight" (CC BY-NC 2.0) by Jeremy Brooks

COMMA continued...The President, in a televised statement, broke down into tears when discussing the executive action, becoming choked with emotion as he discussed the Newtown shootings. "First graders," the President said. "Every time I think about those kids, it gets me mad." Perhaps if more politicians got angry instead of utilizing Twitter to send out hashtag prayers, more Newtowns could be avoided. Instead, the United States has become a conundrum to the rest of the world. How is it that the self-described most powerful nation in the world cannot even manage to have a simple discussion on gun control, and must resort to executive authority in order to get anything done? President Obama has frequently voiced the same question throughout the duration of his presidency, but has elected to take (constitutional) action against this issue instead of waiting for Congress to detach themselves from Twitter.

However, in tune with Congressional thinking and to those who skip to the end of the article in order to get to the point, I leave you with this, in 140 characters or less: A universal background check system, mental health research, and safe gun technology? #ThanksObama.

ALUMNI PROFILE

Your name: Julie-Anne G. Stebbins, Esq.

Graduation Year: 2014

Where do you work: Massachusetts Trial Court,
Probate and Family Department

The work you do/area of law you practice in:
Law Clerk



1. What is the most fulfilling part of your work?

When litigants come to the Probate and Family Court it is because they need help resolving some of the most important issues in their lives--issues that impact their marriages, their children, and the property that they have acquired over a lifetime. The work that I am a part of in my clerkship directly impacts families well after the trial is over. I love being part of a team dedicated to public service with such far reaching results.

2. During law school, what kind of work did you do that helped enhance your skills?

My work outside of the classroom was the most helpful. I externed and interned with the Probate and Family Court for a total of six months, worked part-time as a Legal Intern at the Springfield Housing Authority for another ten months, and completed a second externship with Community Legal Aid. I learned so much about the practical application of the law, found mentors, and honed my legal skills, especially my legal writing and research.

3. What was the most difficult aspect of school and how did you overcome that obstacle/experience?

I needed to work during law school and held down a consulting job for the first two years. I found it really challenging to balance my obligations, especially during the first year. There never seemed to be enough time to get everything accomplished. What really helped take the pressure off was when I started to emphasize quality of my study time over the quantity. For example, spending a Saturday in the library didn't get me very far when I was distracted by a table full of friends, so instead I started spending time getting work done in my carrell.

4. Are there any specific programs, committees, clubs that you suggest current students to join? Either for classes, studying, fun, networking etc.

I was on the Law Review and although it is certainly a lot of work, that was where I became a highly skilled researcher and honed my skills in legal writing and citation. The attention to detail that is emphasized with the staff is incredibly helpful in a profession where small, careless mistakes can have big consequences.

5. How did you network or if you didn't how do you wish you had? How can students benefit from meeting other attorneys and others within the legal profession?

I was not part of a formal networking organization, but I did make valuable connections from my externships and internships. I walked away from each of my placements with mentors who are still helping me to navigate my career. Again, I think that quality over quantity is the key here. To me, finding a mentor who is invested in your success is incredibly important and likely more helpful than tons of LinkedIn connections.

6. What is something you did or advice you were given that has helped you now?

One of my mentors gave me the advice to focus on one area of law and become really skilled in it. I think there's something to be said for having a speciality rather than a comparatively small amount of insight into several areas.

7. Was there a class or area of law you studied that has proven particularly helpful now?

I was really surprised at how endlessly useful my Administrative Law class was. I don't practice in that area, but Administrative Law has indirectly impacted every legal experience I have had. For example, in Family Law so many litigants receive benefits that are administered through a Department of the Executive branch. Having a basic understanding of Administrative Law has really helped me to understand the legal mechanisms affecting those benefits.

8. What class(es) if you recall, helped you the most on the Bar exam and what states' Bars did you sit for? And do you have any advice for those about to take the Bar?

I was really glad that I took Secured Transactions when I was studying for the bar. It's a small part of the exam, but can be confusing. I sat for Massachusetts only and my limited advice would be to do as many practice questions as possible. That was by far the best way for me to learn, not by filling in blanks in the bar notes.

9. What was your favorite part of attending Western New England University School of Law?

My favorite part was the opportunities through externships and internships. I can't emphasize enough how critical they were to my legal education and to opening doors for future opportunities. My experience as an extern with the Probate and Family Court helped to open the door to my current clerkship.

10. How did the skills you learned in law school transition into the legal profession?

My ability to research accurately and write clearly transitioned well. There is no getting around the necessity of those skills in this profession.

11. What surprised you most about practicing?

I'm still in my second year of my clerkship, so the surprises of practice are still waiting for me!

12. What have you enjoyed most in being an attorney?

I haven't practiced yet, but what I enjoy most about being a professional in the legal field is the opportunity to educate others. For me, that might be through a drafted judgment that breaks down the legal standards into more accessible language. I believe strongly that litigants should not feel that the laws affecting them are a mystery.

13. What advice would you give current students to prepare them for practice?

I don't have much advice for practice, but more generally, I would advise students to prepare for the professional arena by treating law school as a professional experience. I think for some students it is easy to view law school as an extension of their undergraduate education. If you view yourself as a professional now and create a professional reputation you can be proud of, then you will be at an advantage come graduation.

Thank you again for your willingness to give back.

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Color of Law Roundtable Discussion Series

Jacquelyn Lee-Washington

Career Paths: **Attorney**

Jacquelyn Lee-Washington is an attorney in Springfield, MA. After earning a B.S. in Business Administration from Westfield State University, she started her career working as a property manager to over 200 Springfield residential rental units.

Attorney Lee-Washington later attended North Carolina Central University School of Law, and returned to the Springfield area after graduation. She became an Assistant District Attorney for Hampden County, where she prosecuted cases in Juvenile, District and Superior Courts. She also handled child support cases for the Massachusetts Department of Revenue's Child Support Enforcement Unit.

After 11 years as a prosecutor, Attorney Lee-Washington launched her solo practice, specializing in criminal defense. She is a member of the Hampden County Bar Association, the Hampden County Lawyers for Justice, and is a cofounder of Women of Color in the Law.



Please join us for this inspiring speaker.

**Wednesday
February 24
2016**

12:00 noon
Blake Law Center
Faculty Lounge

Lunch will be served.
Seating is limited.
Reservations required by
contacting Professor Sudha Setty
at sudha.setty@law.wne.edu.

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