South Carolina Bar
Continuing Legal Education Division

2018 SC BAR CONVENTION

Trial & Appellate Advocacy Section
(16th Annual Civil Law Update)

"Trial Practice, Procedure,
and Presentation"

Friday, January 19

SC Supreme Court Commission on CLE Course No. 180803

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The More Constitutional Jurisdiction Rules Change, the More they Remain the Same (and Other Developments in Civil Procedure)

Prof. William M. Janssen

The Quick and Skinny

On What Happened in Civil Procedure During 2017

William M. Janssen
Charleston School of Law

UNITED STATES SUPREME COURT

General Personal Jurisdiction: *Mere magnitude of forum contacts is not enough.*

"General" personal jurisdiction exists to allow a court to hear *any* claim against a defendant. To emphasize the nature of this type of jurisdiction, the U.S. Supreme Court seven years ago re-titled the principle as "all-purpose" jurisdiction. But general personal jurisdiction exists only when the defendant's contacts with the forum State are "so 'continuous and systematic' as to render [that defendant] essentially at home" there. In *BNSF Railway*, the Court ruled that laying and operating 2,000 miles of railroad track and having more than 2,000 employees in Montana was still not enough to find general personal jurisdiction over the defendant railroad there. The Court explained that the proper focus for this type of jurisdiction was the defendant's activities in their entirety, and not solely the magnitude of its in-State contacts. Because the railroad's place of incorporation and principal place of business were elsewhere, and because its Montana contacts did not mirror the Court's textbook example of general personal jurisdiction from 1952, general jurisdiction was refused.

BNSF Railway Co. v. Tyrrell, 581 U.S. __, 137 S. Ct. 1549 (2017) (8-1)

UNITED STATES SUPREME COURT

Specific Personal Jurisdiction: *Piggybacking off a qualifying lawsuit is not enough.*

"Specific" personal jurisdiction exists to allow a court to hear a claim against a nonresident defendant when the claim "arises from" or "relates to" that defendant's purposeful availment of the privilege of conducting activities in the forum State. This is the quintessential *International Shoe Co.* "minimum contacts" test set down by the Court in 1945. In *Bristol-Myers Squibb*, California citizens claimed injury from the defendant's drug. The defendant drug company was not incorporated or headquartered in California, nor was the drug at issue developed, manufactured, labeled, packaged, or approved in California. Other plaintiffs claimed similar injuries from the same drug, but they were citizens of other States, were prescribed that drug elsewhere, ingested the drug elsewhere, and suffered injury elsewhere. These non-Californians' claims of injury did not "arise from" the defendant's activities in California. Nor, ruled the Court, did the non-Californians' claims "relate to" the defendant's activities in California. Accordingly, specific jurisdiction could not be acquired by the non-Californian claimants.

Bristol-Myers Squibb Co. v. Superior Court, 581 U.S. __, 137 S. Ct. 1773 (2017) (8-1)

UNITED STATES SUPREME COURT

International Service By Mail: *The Hague Convention doesn't automatically disallow it.*

Serving original process on a defendant located outside the United States is often deeply frustrating. To ease this difficulty, the international treaty known as the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters* was opened for signature in 1965. This treaty has now been signed by 73 nations. A drafting ambiguity in the treaty left unclear the question of whether the treaty tolerates serving original process by postal mail. Courts across the country were divided on the question. The Court in *Water-Splash* ruled that the treaty's language does not automatically forbid such service. Although a signatory nation can object to (and thus disallow) mailed service, absent such a nation-specific prohibition, mailed service may be lawful.

Water-Splash, Inc. v. Menon, 581 U.S. __, 137 S. Ct. 1504 (2017) (8-0) (Gorsuch, J. did not participate)

UNITED STATES SUPREME COURT

Appealing Class Denials: *Voluntary Dismissals by named plaintiffs do not create finality.*

Historically, class action plaintiffs had little appellate recourse if the trial court denied certification. Because denying certification did not end the lawsuit on its merits (at least as to the named plaintiffs), their choices were either to litigate individually or dismiss entirely. In 1998, Rule 23(f) permitted an appeals court, in its discretion, to permit immediate appeals of grants and denials of class certification. But if that court refused such review, the named plaintiffs were back to their historic dilemma – fight individually or dismiss entirely. In *Microsoft Corp.*, the Court ruled that named plaintiffs could not escape this fate by voluntarily dismissing their individual claims to create "finality" and, thus, permit appellate review. The Majority found such a maneuver barred by the language of Rule 23(f); the Concurrence found it foreclosed by the Constitution's case or controversy requirement.

Microsoft Corp. v. Baker, 581 U.S. __, 137 S. Ct. 1702 (2017) (5-0-3) (Gorsuch, J. did not participate)

UNITED STATES SUPREME COURT

Standing by Intervenors: *Intervenors who seek something unique need standing.*

Article III standing is rooted in the Constitution's case or controversy requirement. It obligates claimants to allege "such a personal stake" in a lawsuit's outcome that an exercise of judicial power is warranted. Claimants who seek *intervention as of right* are required to show that they hold an interest in a pending lawsuit that might be impaired or impeded if they remain absent from that litigation and, further, that the existing litigants will not adequately protect the claimants' interests. *See* Fed. R. Civ. P. 24(a). The Court in *Laroe Estates* ruled that an intervenor as of right must also demonstrate Article III standing, if that intervenor intends to pursue some measure of relief that is not being sought by an existing plaintiff (for example, damages specific to the intervenor's interest).

Town of Chester v. Laroe Estates, Inc., 581 U.S. __, 137 S. Ct. 1645 (2017) (9-0)

UNITED STATES SUPREME COURT

Specialized Venue: *The special venue rule for patent cases was not displaced in 2011.*

Congress has established both a *general* venue statute (28 U.S.C. § 1391) and *special* venue statutes for certain specialized types of cases. Patent litigation is one such example. There, Congress enacted a special venue statute (28 U.S.C. § 1400(b)) which, the Court earlier interpreted, differs meaningfully from the approach adopted for the general venue statute. A corporation "resides" under the general venue statute where it is subject to personal jurisdiction but, under the patent statute, only in its State of incorporation. In *TC Heartland*, the Court ruled that amendments to the general venue statute in 2011 did not alter this difference. Corporate "residence" in patent cases remains unique.

TC Heartland LLC v. Kraft Foods Group Brands LLC, 581 U.S. __, 137 S. Ct. 1514 (2017) (8-0) (Gorsuch, J. did not participate)

UNITED STATES SUPREME COURT

Mandatory But Non-Jurisdictional Time Limits: *Can be waived or forfeited.*

Litigation time periods imposed by Congress are jurisdictional (and cannot be waived, forfeited, or extended unless Congress so provides). Litigation time periods imposed by a Court Rule are "mandatory" and must be followed. But they can also be lost. A party's failure to assert a right to an adversary's rule-based timely behavior can forfeit an entitlement to it. Arguments that Congress actually *meant* to permit extensions and just suffered an inadvertent drafting snafu are not persuasive to the Supreme Court, which "will presume more modestly instead 'that [the] legislature says … what it means and means … what it says." (Internal citations omitted).

Hamer v. Neighborhood Housing Servs. of Chicago, __ U.S. __, 138 S. Ct. 13 (2017) (9-0)

UNITED STATES COURT OF APPEALS – FOURTH CIRCUIT

Internet Personal Jurisdiction: *In-forum location of Internet servers may be sufficient.*

The U.S. Supreme Court has yet to definitively identify the constitutional standard for assessing personal jurisdiction anchored on Internet activity. That precedent vacuum commits the question to the federal courts of appeals. In 2003, the Fourth Circuit suggested that an in-forum location of web servers might not be sufficient to support personal jurisdiction over out-of-forum defendants. In *Batato*, the Court heard an in rem civil foreclosure action against out-of-forum defendants who allegedly used 525 in-forum servers to operate a "mega conspiracy" of copyright infringement and money laundering. That level of in-forum server use, ruled the Court, was enough to show the requisite in-State purposeful availment by the defendants to support specific personal jurisdiction.

United States v. Batato LLC, 833 F.3d 413 (4th Cir. 2016) (2-1)

UNITED STATES COURT OF APPEALS – FOURTH CIRCUIT

Testing for Personal Jurisdiction: *A live-evidence hearing is not always necessary.*

Personal jurisdiction can be contested facially (on the basis of allegations alone) or ultimately (on conclusions drawn from evidence). The former, a preliminary contest, is assessed under a prima facie standard; the latter, a final contest, is governed by the preponderance of the evidence standard. A defendant who contests the evidentiary support of jurisdictional facts is entitled to an "evidentiary hearing." But the Court in *Grayson* confirmed that the required "evidentiary hearing" need not always involve the taking of live evidence orally in open court. Instead, the Court ruled that the hearing may receive evidence by affidavits, documents, answers to written discovery, and depositions.

Grayson v. Anderson, 816 F.3d 262 (4th Cir. 2016) (2-1)

UNITED STATES DISTRICT COURT – D.S.C.

Twiqbal and Affirmative Defenses: *No Uniform Answer, but the trend is "inapplicable".*

Twice in 2017, the District Court for the District of South Carolina considered whether the "plausibility" pleading standard announced in *Bell Atlantic Corp. v. Twombly* and confirmed in *Ashcroft v. Iqbal* applies to affirmative defenses. Both times, the District Court ruled "no". So, here's the current tally:

NO: *Hand Held Prod., Inc. v. Code Corp.*, 2017 WL 2537235, at *5–*6 (D.S.C. June 9, 2017) (Gergel, J.) (noting absence of appellate court precedent, split among the Fourth Circuit district judges, and division among D.S.C. judges; finding that neither text of Rule 8 nor length of response period supports extending *Twiqbal* to affirmative defenses).

NO: *Cohen v. SunTrust Mortg., Inc.*, 2017 WL 1173581, at *2–*3 (D.S.C. Mar. 30, 2017) (Currie, J.) (noting that applying *Twiqbal* to affirmative defenses has become the minority view, and Rule's plain, unambiguous meaning and "the longstanding adversity" to striking defenses as inadequate (absent prejudice) favored rejecting minority approach).

Spec: *Palmetto Pharm. LLC v. AstraZeneca Pharm. LP*, 2012 WL 6025756, at *5–*6 (D.S.C. Nov. 6, 2012) (Austin, M.J.) (noting ongoing debate, and ruling *Twibal* inapplicable to affirmative defenses in patent context), *report and recommendation adopted*, 2012 WL 6041642 (D.S.C. Dec. 4, 2012) (Blatt, J.).

YES: *Sentry Select Ins. Co. v. Guess Farm Equip., Inc.*, 2013 WL 5797742, at *10 (D.S.C. Oct. 25, 2013) (Childs, J.) (following decision in *Monster Daddy*).

YES: *Monster Daddy LLC v. Monster Cable Prod., Inc.*, 2010 WL 4853661, at *7–*8 (D.S.C. Nov. 23, 2010) (Herlong, Jr.) (finding that majority view – at this time – found *Twiqbal* applicable to affirmative defenses, and, after summarizing courts' competing reasoning, ruling that majority view was persuasive).

N/A: *Reynolds v. Wyndham Vacation Resorts, Inc.*, 2016 WL 362620, at *6 n.4 (D.S.C. Jan. 29, 2016) (Duffy, J.) (noting debate, but finding no need to reach the issue).

N/A: *Babb v. Lee Cty. Landfill SC, LLC*, 298 F.R.D. 318, 325 n.7 (D.S.C. 2014) (Anderson, J.) (noting debate, but finding no need to reach the issue).

THE JUDICIAL CONFERENCE OF THE UNITED STATES

COMING AMENDMENTS: *December 2018 Amendments – Federal Rules of Civil Procedure*

In September 2017, the Judicial Conference of the United States approved the following amendments to the Federal Rules of Civil Procedure. Those amendments are now before the U.S. Supreme Court and, if approved there, will be on-track to become effective December 1, 2018:

- ***Mandatory Electronic Filing:*** Represented parties must electronically file all papers (after the complaint), absent a court order granted for good cause or local rule instruction otherwise. No certificate of service is ordinarily required with electronic filings. Filings made electronically qualify as a "written paper" within the meaning of the Rules. *Pro Se* parties may not file electronically absent a court order or local rule. (Amd'd FRCP 5(d)(1), (3)).
- ***Electronic Signing:*** A filing made through an authorized user's electronic-filing account, together with the filer's name on a signature block constitutes a qualifying signature. (Amd'd FRCP 5(d)(3)).
- ***Optional Electronic Service:*** Papers required to be served under the Rules may be served by transmitting it to the recipient: (a) by filing it with the court's electronic-filing system (if the recipient is also a registered user) *or* (b) by sending it through other means consented to in writing by the recipient. Neither is considered effective service if the filer or sender later learns that the paper did not reach the recipient. (Amd'd FRCP 5(b)(2)).
- ***Class Actions:*** The federal class action rule will be revised in several respects:
  - *Preliminary Approval Notice + Settlement Notice in (b)(3) Classes:* Both notices may be sent simultaneously. (Amd'd FRCP 23(c)(2)).
  - *Electronic Service in (b)(3) Classes:* Service by email or other electronic method may be ordered when it (alone or in combination with other types of notice) constitute the "best notice practicable under the circumstances." (Amd'd FRCP 23(c)(2)).
  - *Seeking Court Support for Class Settlement Notice:* Before ordering notice to the class, the court must find that it will likely be able to (a) approve the proposed settlement and (b) certify the settlement class. Proponents of the settlement must supply the court with information necessary to make that assessment. (Amd'd FRCP 23(e)(1)).
  - *Factors for Assessing Class Settlement Approval:* In assessing whether a proposed class action settlement is fair, reasonable, and adequate, courts are directed to examine: (a) the adequacy of the class's representation by counsel; (b) the arm's length nature of the negotiations; (c) the adequacy of the proposed relief (considering costs, risks, delay, processing and distribution, attorney's fees and their timing, and any agreement among the parties); and (d) the equitable treatment of class members relative to one another. (Amd'd FRCP 23(e)(2)).
  - *Objectors:* Persons objecting to a proposed class action settlement must state "with specificity" their grounds for objecting and whether their objection applies uniquely to them only, to a subset of the class, or to the entirety of the class. Objectors may withdraw their objection without court permission, but court approval is required before a payment may be made to an objector who forgoes or withdraws an objection or an appeal from the settlement's proposal. (Amd'd FRCP 23(e)(5)).
  - *Immediate Class Action Appeals:* Presently, immediate appeals may be taken from interlocutory orders granting or denying class certification. Two revisions are made: *first*, a court order conducting the new class settlement notice assessment may not be appealed immediately; and *second*, the appeal time is extended from 14-days to 45-days when the

federal government, federal agency, or federal officer or employee (for on-the-job claims) is a party. That enlarged time period applies to all litigants in such cases. (Amd'd FRCP 23(f)).

- ***Expanded Duration of Automatic Stay of Execution Procedures:*** Currently, a federal civil judgment cannot be executed upon or enforced for 14 days after its entry (absent a court order). This period of "automatic stay" will now be extended to 30 days. This stay will not apply to injunction, receivership, and patent infringement action accounting orders. Other post-judgment stay procedures will remain in effect, including the ability to obtain a stay by posting a bond or other security. (Amd'd FRCP 62(a)).

- ***Sources of Security to Obtain a Stay:*** Sureties are not the only permissible category of security providers that can supply the security needed to obtain a stay of execution or enforcement. Other non-surety providers of security may qualify as well. (Amd'd FRCP 65.1).

LINK to AMD'D TEXT: http://www.uscourts.gov/sites/default/files/2017-10-04-Supreme-Court-Package_0.pdf

SOUTH CAROLINA SUPREME COURT

Real Party In Interest / Amendments: *Clarifying the standards.*

Real Party in Interest (Rule 17(a)): Under the South Carolina Rules of Civil Procedure, a real party in interest ("RPI") is someone who has the right – under the applicable substantive law – that the lawsuit seeks to enforce. When a parent sues solely in her capacity as a child's representative, she possesses that RPI status for future medical expenses the child will occur after turning 18. For a child's medical expenses incurred before age 18, the parent possesses that RPI status, but in her individual capacity. But this errant RPI status can be cured under Rule 17 by ratification – which the parent did in *Patton* by waiving her *personal* right to recover pre-18 medical expenses in favor of her *representative* right to do so on her child's behalf.

Amendments Freely Granted (Rule 15(a)): In addition to ratification, the parent in *Patton* sought to amend her complaint to add individual-capacity claims to her original representative-capacity ones. Amendments should be freely granted, absent prejudice. Prejudice is not shown merely by having belatedly to defend a valid claim. Instead, prejudice is shown by having to defend that claim under a disadvantage that would not have been present earlier. Because the parent's amendment would have related back to the original filing, the amendment should have been permitted.

Patton v. Miller, 420 S.C. 471, 804 S.E.2d 252 (2017) (3-1-1)

SOUTH CAROLINA SUPREME COURT

Impleaders & Indispensable Parties: *Standards unchanged with joint tortfeasors.*

South Carolina's Contribution Among Joint Tortfeasors Act abrogated pure common law joint and several tortfeasor liability by directing a fact-finder to apportion fault among the liable defendants. *See* S.C. Code Ann. § 15-38-15(C)(3). The Court in *Smith* ruled, however, that the Act does not authorize the joinder of settling joint tortfeasors who have been discharged of all liability, even though their absence may defeat a proper apportionment of liability among the defendants. The Court reasoned that the Act, which must be construed according to its unambiguous terms, did not displace either (a) Rule 14's requirement that a new party may be impleaded only if that party "is or may be liable" to the defending party or (b) Rule 19's requirement that a new party is indispensable only if, in that party's absence, complete relief cannot be accorded among the existing parties.

Smith v. Tiffany, 419 S.C. 548, 799 S.E.2d 479 (2017) (4-1)

SOUTH CAROLINA SUPREME COURT

Untimely Personal Jurisdiction: *Timely asserted, but waiting to press, is waiver.*

Defendants preserve an objection to personal jurisdiction by raising that defense in their answer. But the defense can still be forfeited. In *Maybank*, the Court ruled that a defendant waives its personal jurisdiction defense if, after properly raising the defense in its answer, it then proceeds to defend the litigation actively for a year until the month before trial, when it finally presses the trial judge to rule on the objection. An issue of first impression in South Carolina, the *Maybank* Court's ruling aligns with federal practice.

Maybank v. BB&T Corp., 416 S.C. 541, 787 S.E.2d 498 (2016) (5-0)

SOUTH CAROLINA COURT OF APPEALS

Excluding Untimely Witnesses: *Cannot be done without assessing exclusion factors.*

Trial judges have the discretion to fix the proper sanction for belatedly disclosing a trial witness. But mere late disclosure alone is not sufficient cause to exclude such a witness from testifying. Instead, an exclusion order may be entered only after the trial judge first weighs the following factors: (1) the type of witness involved; (2) the content of the evidence emanating from the proffered witness; (3) the nature of the failure or neglect or refusal to furnish the witness' name; (4) the degree of surprise to the other party, including the prior knowledge of the name of the witness; and (5) the prejudice to the opposing party.

Burke v. Republic Parking Sys., Inc., __ S.C. __, __ S.E.2d __, 2017 WL 4799281 (2017) (3-0)

SOUTH CAROLINA COURT OF APPEALS

Immediate Appeal of Dismissals: *Not allowed if leave to amend granted.*

Granting a Rule 12(b)(6) motion to dismiss is ordinarily immediately appealable. However, if that dismissal is coupled with leave to amend (or an invitation to request such leave), the dismissal is not immediately appealable since it is not yet necessarily a final judgment.

Tillman v. Tillman, 420 S.C. 246, 801 S.E.2d 757 (2017) (3-0)

SOUTH CAROLINA COURT OF APPEALS

Internet-Based Personal Jurisdiction: *Mere Internet accessibility is not enough.*

The mere fact that the defendant's online information is accessible in South Carolina does not satisfy the U.S. Constitution's minimum contacts test, absent proof that the defendant purposefully directed that activity towards the State. The unilateral use of the Internet by someone in South Carolina will not be sufficient.

Hidria, USA, Inc. v. Delo, 415 S.C. 533, 783 S.E.2d 839 (2016) (2-0-1)

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Visual Storytelling for Trial

Kenneth J. Lopez

Storytelling for Trial Attorneys

Ken Lopez

Founder/CEO

A2L CONSULTING

Storytelling for Trial Attorneys

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Why are Stories Important to Trial Attorneys

How do You Tell an Effective Story

The Visual Component of Storytelling

Agenda

Stories help us

ORGANIZE

information

Stories help us **FEEL** & **BELIEVE** information

Stories help us
RETELL
the information

Perspectives

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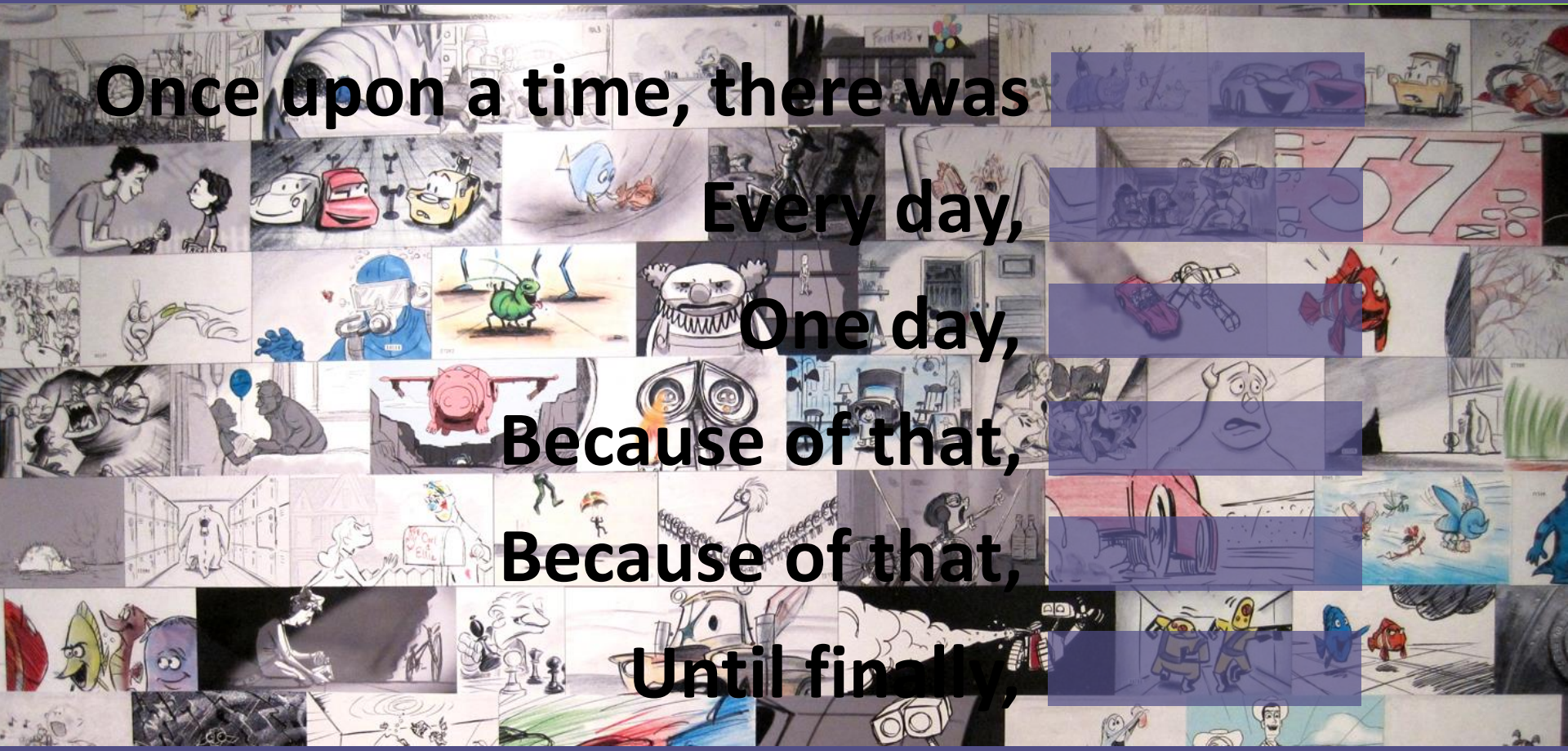
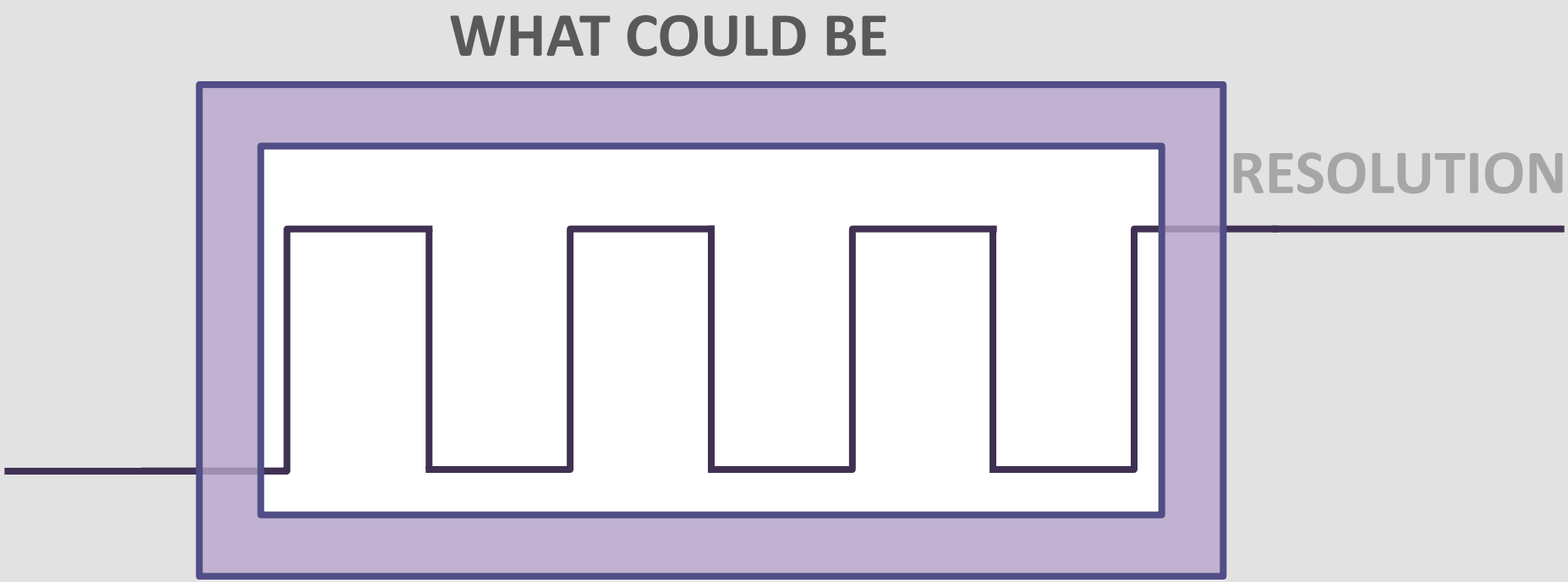
How to Tell a Compelling Story?

The Pixar Formula

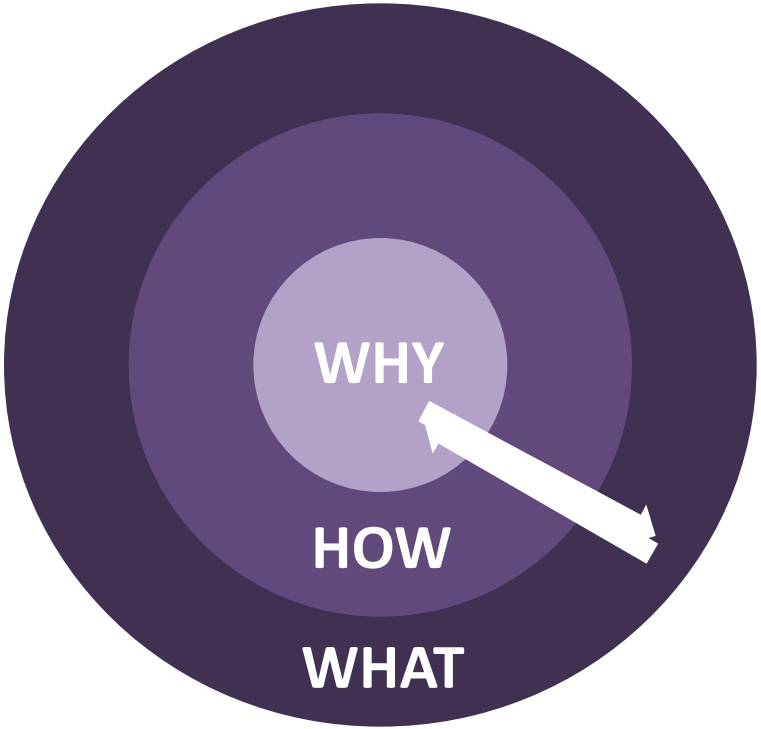



iPhone
Apple rein the phone

Nancy Duarte



Golden Circle (Simon Sinek)



A Story Should…

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Develop *relatable* characters

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3 Examples

1. Licensing Dispute between Two Companies
2. Product Liability Case
3. Antitrust Matter

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Third Eye Charlie

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Airline Industry Bankruptcies

Why are Stories Important to Trial Attorneys

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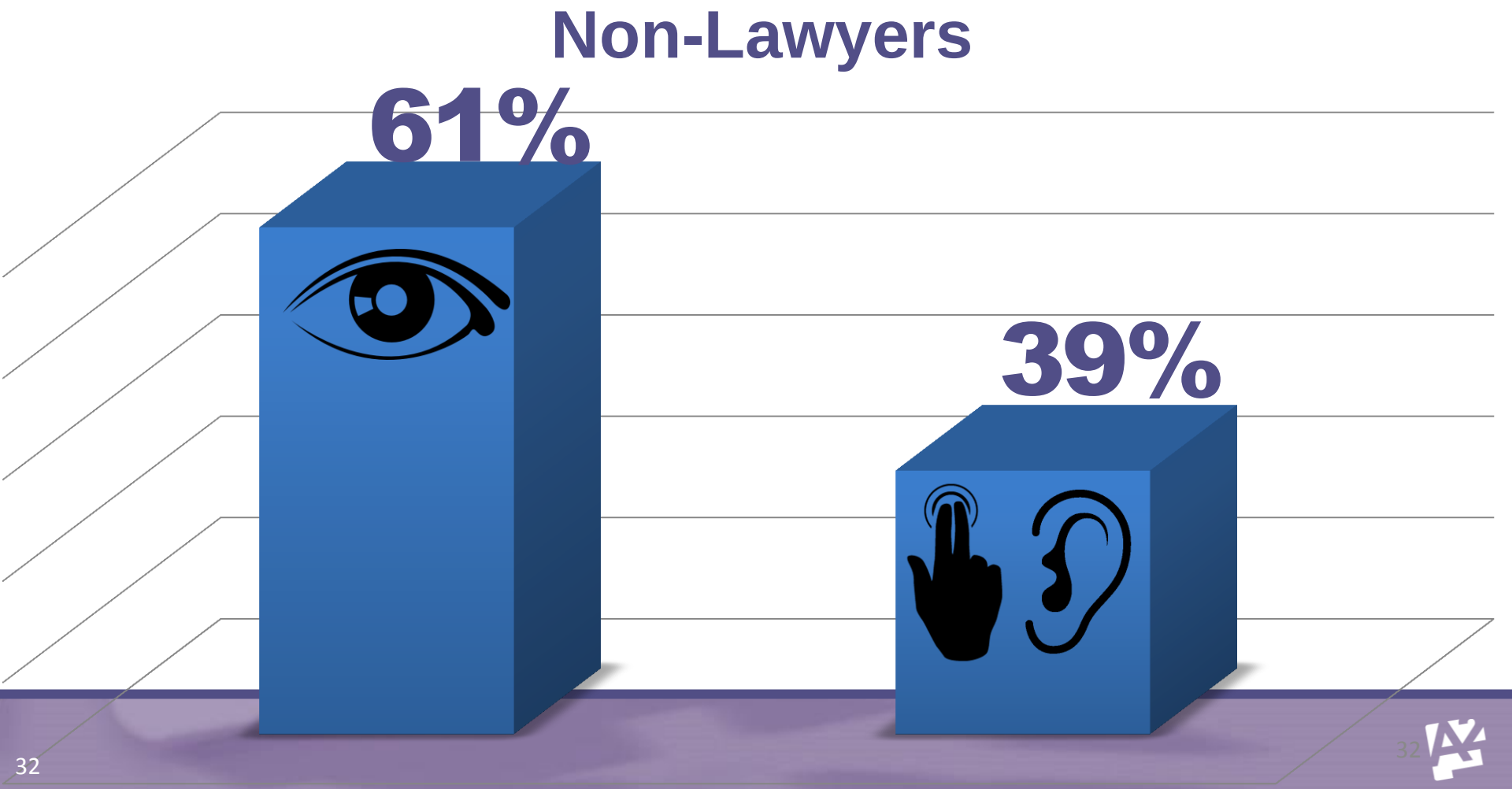
Learning and Communication Preferences



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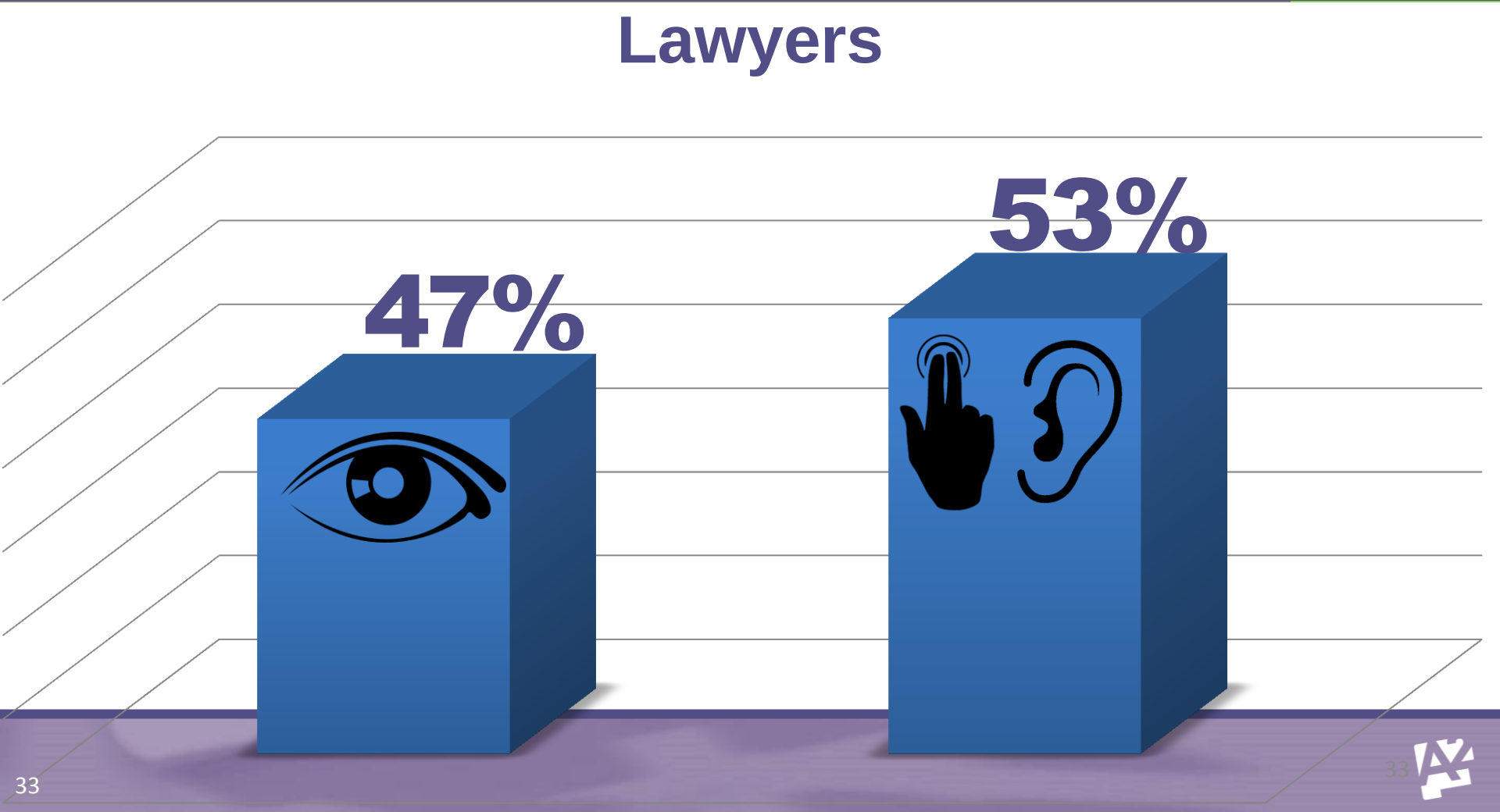
Learning and Communication Preferences



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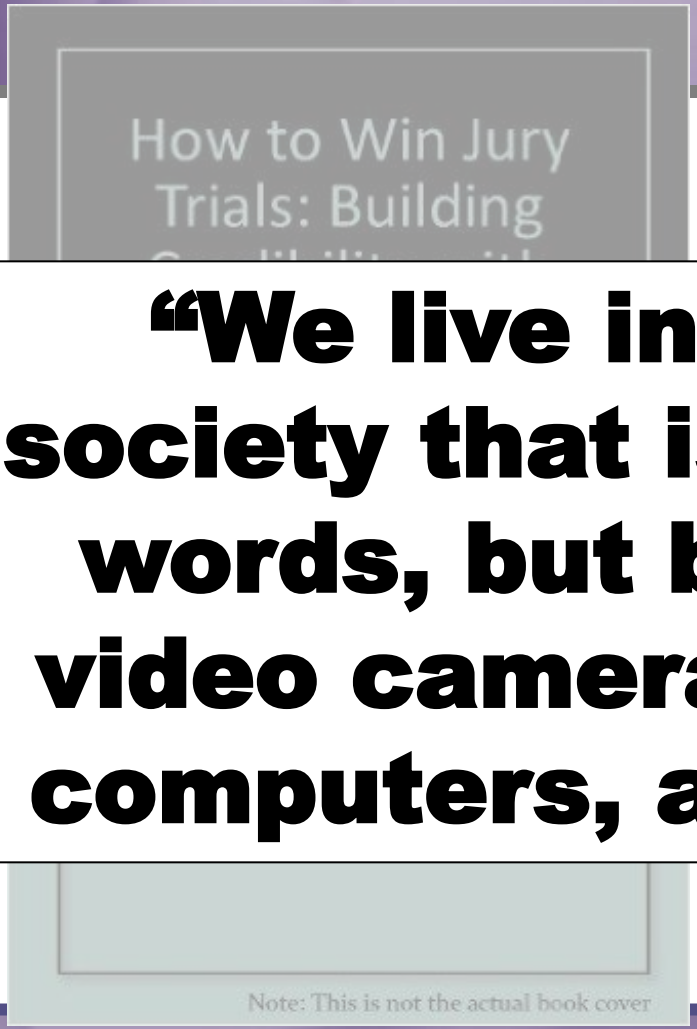
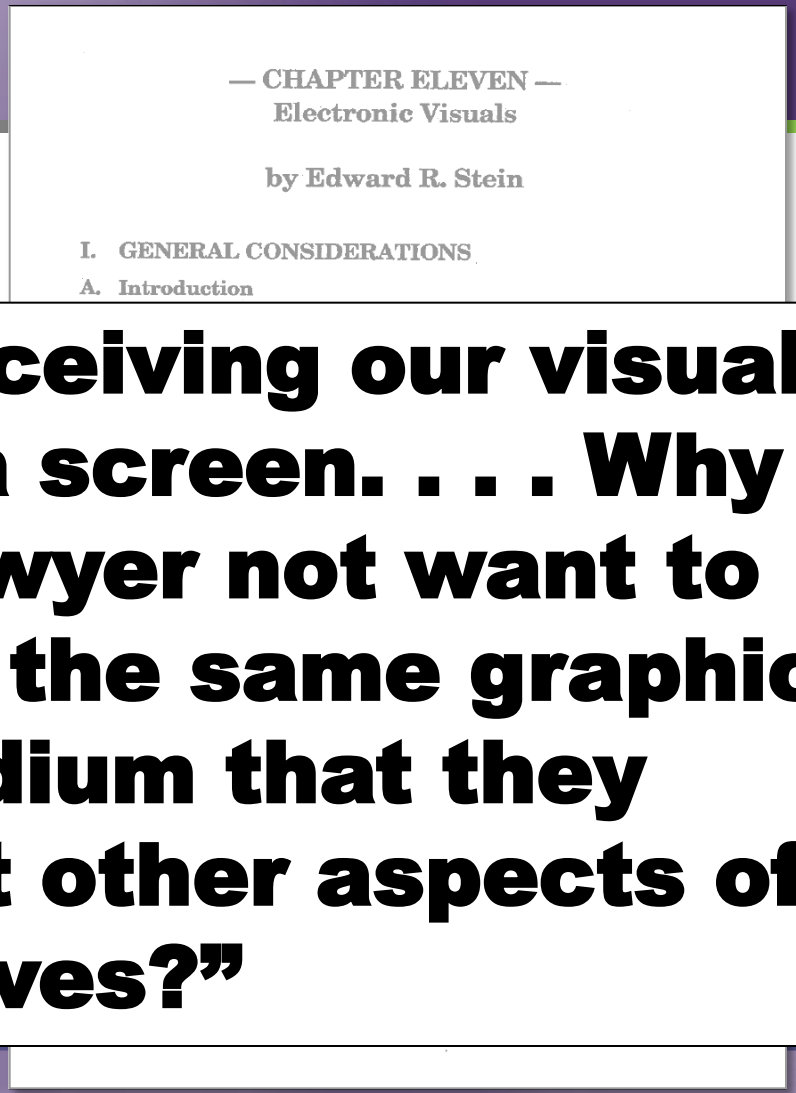


before judges, we all become comfortable arguing in the alternative. Real people (as opposed to attorneys!) do not understand the theory of arguing in the alternative. When they hear an attorney say, "Even if I am wrong about point one, I am right about point two," real people interpret this as an admission that the attorney is indeed

"We live in a picture-based society that is dominated not by words, but by television sets, video cameras, movie screens, computers, and photo albums."

by words, but by television sets, video cameras, movie screens, computers, and photo albums.

Too many attorneys let their addiction to words control their trial presentations. We love to trap a witness in

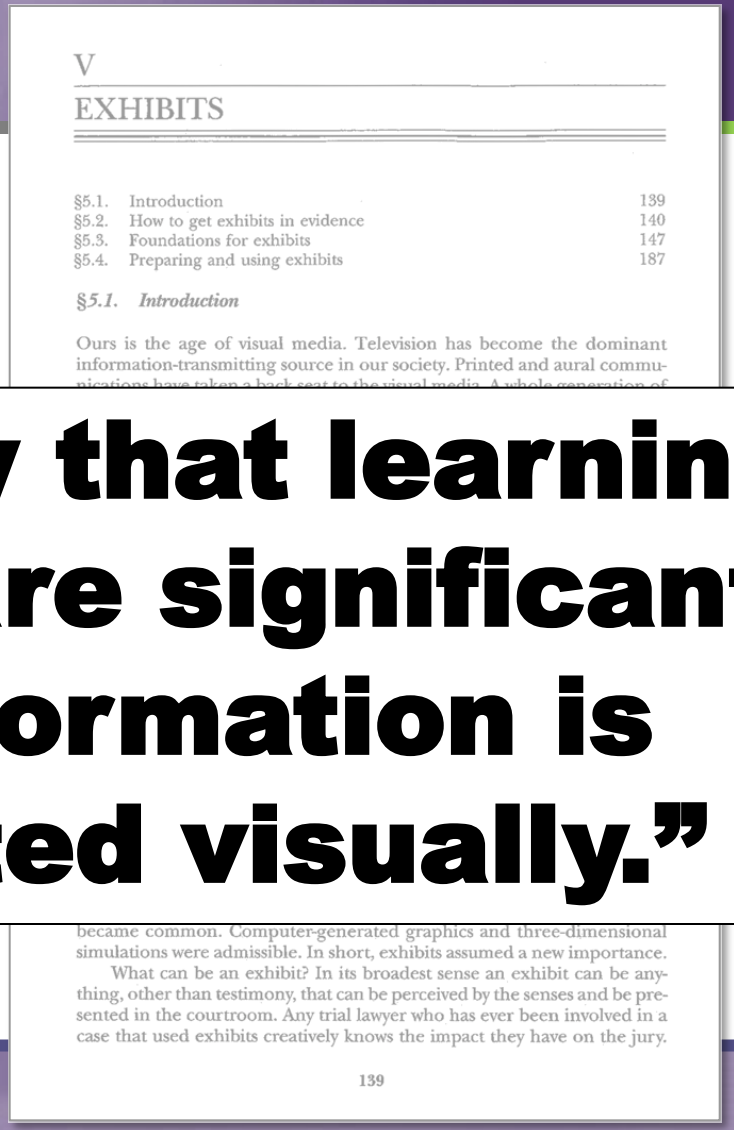

— CHAPTER ELEVEN —
Electronic Visuals

by Edward R. Stein

I. GENERAL CONSIDERATIONS

A. Introduction

“We are used to receiving our visual information from a screen. . . . Why would any trial lawyer not want to provide jurors with the same graphic quality and medium that they experience in most other aspects of their lives?”



V

EXHIBITS

§5.1. Introduction

Ours is the age of visual media. Television has become the dominant information-transmitting source in our society. Printed and aural communications have taken a back seat to the visual media. A whole generation of

became common. Computer-generated graphics and three-dimensional simulations were admissible. In short, exhibits assumed a new importance.

What can be an exhibit? In its broadest sense an exhibit can be anything, other than testimony, that can be perceived by the senses and be presented in the courtroom. Any trial lawyer who has ever been involved in a case that used exhibits creatively knows the impact they have on the jury.

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"Studies show that learning and retention are significantly better if information is communicated visually."

Graphics Are Proven to Increase Persuasiveness

Applied Cognitive Psychology, Appl. Cognit. Psychol. 27: 235–246 (2013)
Published online 6 December 2012 in Wiley Online Library (wileyonlinelibrary.com) DOI: 10.1002/acp.2900

Effects of a Visual Technology on Mock Juror Decision Making

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[2]*Quinnipiac University School of Law Hamden, CT, USA*

Summary: Two studies explored the effects of lawyers' use of PowerPoint on liability judgments in a case involving statistical evidence. Participants (Study 1, N = 192; Study 2A, N = 180; Study 2B, N = 189) watched videotaped opening statements for plaintiffs and defendant. In general, defendant's responsibility was judged to be greater when plaintiffs used PowerPoint slides than when they did not and less when defendant used PowerPoint slides than when it did not. Furthermore, PowerPoint's impact was greatest when its use was unequal. PowerPoint enhanced persuasion partly through central and partly through peripheral processing. In general, each party's use of PowerPoint increased participants' recall of that party's evidence, which in turn increased defendant's judged responsibility (when plaintiffs used PowerPoint) or reduced it (when defendants used PowerPoint), indicative of central processing. PowerPoint also functioned as a peripheral cue, influencing participants' judgments of defendant's responsibility by affecting their perceptions of the respective attorneys. Copyright © 2012 John Wiley & Sons, Ltd.

PowerPoint slide shows, nearly ubiquitous in business and educational settings, are becoming increasingly common in law as well. Apparently, many lawyers assume that illustrating opening statements, witness examination, or closing arguments with PowerPoint slides makes their presentations more effective and persuasive. Reliable empirical support for this widespread assumption, however, is scanty. Despite growing efforts to explore courtroom technology generally (e.g., Center for Legal and Court Technology, 2007; Federal Judicial Center/National Institute for Trial Advocacy, 2001) and a handful of experimental studies of other digital visual technologies, such as computer animations (e.g., Dunn, Salovey, & Feigenson, 2006; for a review, see Feigenson, 2010), there have been no published controlled experimental studies of the effects of PowerPoint in legal settings.

There are certainly reasons to expect that augmenting the spoken word with PowerPoint slides would improve lawyers' ability to communicate with and persuade their audiences. Dual-process theories such as the Heuristic-Systematic Model (Chaiken, Liberman, & Eagly, 1989) and Cognitive-Experiential Self-Theory (Epstein, 1994) are especially promising as frameworks for understanding jurors' uptake of courtroom communications because they develop the basic insight that persuasion and judgment, like cognition in general, occur through heuristic and intuitive as well as deliberate and reflective processing (Kahneman & Frederick, 2002). Thus, according to the leading dual-process theory of persuasion, the Elaboration Likelihood Model (ELM; Petty & Cacioppo, 1986; Petty & Wegener, 1999), people process messages through a central route, effortfully attending to message content, and/or through a peripheral route, expending less cognitive effort and using aspects of the message or source as heuristic cues to judgment. ELM has been employed as a theoretical framework for understanding how jurors process complicated trial information. For instance, McAuliff, Kovera, and Nunez (2009) hypothesized that mock jurors exposed to an expert witness's research study might engage in central processing (as indicated by their ability to differentiate an internally invalid from an internally valid study) and/or peripheral processing (as indicated by reliance on the study's ecological validity as a heuristic cue) in judging the quality of the study and the expert's testimony. The researchers found limited evidence of central processing (mock jurors rated study quality lower when there were missing control groups but not when there were confounds or experimenter bias) but no effect on verdicts, and they found no tendency to resort to peripheral cues in lieu of more systematic thinking about the evidence. In another study, Levett and Kovera (2009) found some evidence that jurors process expert testimony using both routes: An opposing expert who addressed the validity of the first expert's research sensitized jurors to the validity of that research to some extent, which seems indicative of central processing, but the mere presence of an opposing expert led mock jurors to be more skeptical of all expert testimony, which seems indicative of peripheral processing.

The use of PowerPoint might persuade jurors through either central or peripheral processing. With respect to central route processing, visual displays tend to be more vivid than words alone (see Bell & Loftus, 1985), by attracting and holding jurors' attention, slide shows would be predicted to improve jurors' retention and possibly their understanding of the information displayed. Some research on courtroom technologies other than PowerPoint, for instance, computer animations, has found limited enhancement of recall of key information (Dahir, 2005; Morell, 1999). In addition, dual coding theory (Paivio, 1971, 1986) posits that people think both visually and verbally. By offering visual stimuli, PowerPoint slides should appeal more directly to the visual processing channel and may be especially effective for people whose learning style inclines toward the visual (Dunn, 2000). Research on multimedia learning supports the efficacy of well-designed visual instruction (Mayer, 2001). Indeed, one mock juror study found that a multimedia (i.e., video plus animation) tutorial accompanying an expert witness's testimony about basic DNA science helped participants with visual learning styles to learn the material better (Hewson & Goodman-Delahunty, 2008).

The results of research on the effectiveness of PowerPoint in improving learning outcomes in educational settings,

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Neal Feigenson, Esq.

Source: Applied Cognitive Psychology 27: 235-246 (December 6, 2012)

Graphics Are Proven to Increase Persuasiveness

Applied Cognitive Psychology, Appl. Cognit. Psychol. 27: 235–246 (2013)
Published online 6 December 2012 in Wiley Online Library (wileyonlinelibrary.com) DOI: 10.1002/acp.2900

Effects of a Visual Technology on Mock Juror Decision Making

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Summary: Two studies explored the effects of lawyers' use of PowerPoint on liability judgments in a case involving statistical evidence. Participants (Study 1, N = 192; Study 2A, N = 180; Study 2B, N = 189) watched videotaped opening statements for plaintiffs and defendant. In general, defendant's responsibility was judged to be greater when plaintiffs used PowerPoint slides than when they did not and less when defendant used PowerPoint slides than when it did not. Furthermore, PowerPoint's impact was greatest when its use was unequal. PowerPoint enhanced persuasion partly through central and partly through peripheral processing. In general, each party's use of PowerPoint increased participants' recall of that party's evidence, which in turn increased defendant's judged responsibility (when plaintiffs used PowerPoint) or reduced it (when defendants used PowerPoint), indicative of central processing. PowerPoint also functioned as a peripheral cue, influencing participants' judgments of defendant's responsibility by affecting their perceptions of the respective attorneys. Copyright © 2012 John Wiley & Sons, Ltd.

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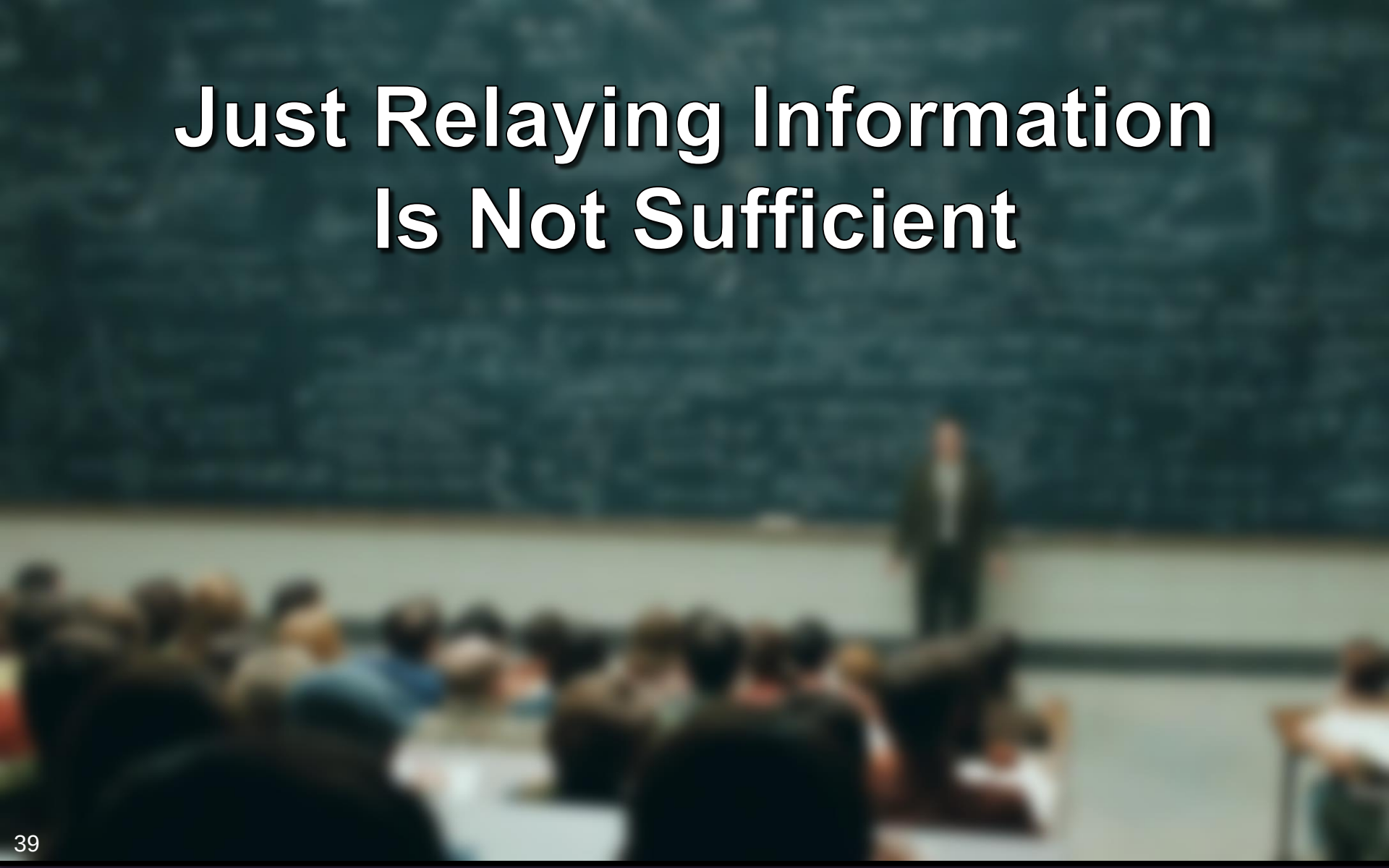
- More Persuasive
- More Competent
- More Credible
- More Likable
- More Retention
- Better Verdicts

Source: Applied Cognitive Psychology 27: 235-246 (December 6, 2012)

Just Relaying Information Is Not Sufficient



Significant Exits From ACA Exchanges

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loud music. She smiled at her date, whom we'll call Drew, a good-looking junior – or in UVA parlance, a third-year – and he smiled enticingly back.

"Want to go upstairs, where it's quieter?" Drew shouted into her ear, and Jackie's heart quickened. She took his hand as he threaded them out of the crowded room and up a staircase.

Four weeks into UVA's 2012 school year, 18-year-old Jackie was crushing it at college. A chatty, straight-A achiever from a rural Virginia town, she'd initially been intimidated by UVA's aura of preppy success, where throngs of toned, tanned and overwhelmingly blond students fanned across a landscape of neoclassical brick buildings, hurrying to classes, clubs, sports, internships, part-time jobs, volunteer work and parties; Jackie's orientation leader had warned her that UVA students' schedules were so packed that "no one has time to date – people just hook up." But despite her reservations, Jackie had flung herself into campus life, attending events, joining clubs, making friends and, now, being asked on an actual date. She and Drew had met while working lifeguard shifts together at the university pool, and Jackie had been floored by Drew's invitation to dinner, followed by a "date function" at his fraternity, Phi Kappa Psi. The "upper tier" frat had a reputation of tremendous wealth, and its imposingly large house overlooked a vast manicured field, giving "Phi Psi" the undisputed best real estate along UVA's fraternity row known as Rugby Road.

Jackie had taken three hours getting ready, straightening her long, dark, wavy hair. She'd congratulated herself on her choice of a tasteful red dress with a high neckline. Now, climbing the frat-house stairs with Drew, Jackie felt excited. Drew ushered Jackie into a bedroom, shutting the door behind them. The room was pitch-black inside. Jackie blindly turned toward Drew, uttering his name. At that same moment, she says, she detected movement in the room – and felt someone bump into her. Jackie began to scream.

"Shut *up*," she heard a man's voice say as a body barreled into her, tripping her backward and sending them both crashing through a low glass table. There was a heavy person on top of her, spreading open her thighs, and another person kneeling on her hair, hands pinning down her arms, sharp shards digging into her back, and excited male voices rising all around her. When yet another hand clamped over her mouth, Jackie bit it, and the hand became a fist that punched her in the face. The men surrounding her began to laugh. For a hopeful moment Jackie wondered if this wasn't some collegiate prank. Perhaps at any second someone would flick on the lights and they'd return to the party.

"Grab its motherfucking leg," she heard a voice say. And that's when Jackie knew she was going to be raped.

She remembers every moment of the next three hours of agony, during which, she says, seven men took turns raping her, while two more – her date, Drew, and another man – gave instruction and encouragement. She remembers how the spectators swigged beers, and how they called each other nicknames like Armpit and Blanket. She remembers the men's heft and their sour reek of alcohol mixed with the pungency of marijuana. Most of all, Jackie remembers the pain and the pounding that went on and on.

As the last man sank onto her, Jackie was startled to recognize him: He attended her tiny anthropology discussion group. He looked like he was going to cry or puke as he told the crowd he couldn't get it up. "Pussy!" the other men jeered. "What, she's not hot enough for you?" Then they egged him on: "Don't you want to be a brother?" "We all had to do it, so you do, too." Someone handed her classmate a beer bottle. Ja
young man, silently b
go through with it. An
bottle into her, Jackie
mentally untethering
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ing body under assault

When Jackie came t
was after 3 a.m. She p
the floor and ran shock
She emerged to discover t
still surreally under way,
noticed the barefoot, dishev
rying down a side staircase,
en, dress spattered with blood,
nothing. Disoriented, Jackie burst
side door, realized she was lost, and
aled a friend, screaming, "Something bad
happened. I need you to come and find
me!" Minutes later, her three best friends
on campus – two boys and a girl (whose
names are changed) – arrived to find
Jackie on a nearby street corner, shaking.
"What did they do to you? What did they
make you do?" Jackie recalls her friend
Randall demanding. Jackie shook her
head and began to cry. The group looked
at one another in a panic. They all knew
about Jackie's date; the Phi Kappa Psi
house loomed behind them. "We have to
get her to the hospital," Randall said.

Their other two friends, however, weren't
convinced. "Is that such a good idea?" she
recalls Cindy asking. "Her reputation will
be *shot* for the next four years." Andy seconded the opinion, adding that since he
and Randall both planned to rush fraternities, they ought to think this through.
The three friends launched into a heated
discussion about the social price of reporting Jackie's rape, while Jackie stood beside them, mute in her bloody dress, wishing only to go back to her dorm room and
fall into a deep, forgetful sleep. Detached,
Jackie listened as Cindy prevailed over the
group: "She's gonna be the girl who cried
'rape,' and we'll never be allowed into any
frat party again."

Contributing editor Sabrina Rubin Erdely *wrote about transgender activist CeCe McDonald this summer.*

Jackie recalls how h **mer friend Randall, who, citi**
She remembers th **y to his own frat, declined to be int**
and pot. Most o **wed. But her concerns go beyond taking**
h her alleged assailants and their frater-
nity. Lots of people have discouraged her
from sharing her story, Jackie tells me with
a pained look, including the trusted UVA
dean to whom Jackie reported her gang-
rape allegations more than a year ago. On
this deeply loyal campus, even some of
ackie's closest friends see her going pub-
as tantamount to betrayal.
ne of my roommates said, 'Do y
be responsible for something U
t UVA in a bad ligh
system that **Jackie**
frowns. "My friend just said, 'You have to
remember where your loyalty lies.'"

From reading headlines today, one might think colleges have suddenly become hotbeds of protest by celebrated anti-rape activists. But like most colleges across America, genteel University of Virginia has no radical feminist culture seek-

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to assume the girl is lying, even though studies indicate that false rape reports account for, at most, eight percent of reports.

And so at UVA, where social status is paramount, outing oneself as a rape victim can be a form of social suicide. "I don't know many people who are engrossed in the party scene and have spoken out about their sexual assaults," says third-year student Sara Surface. After all, no one climbs the social ladder only to cast themselves back down. Emily Renda, for one, quickly figured out that few classmates were sympathetic to her plight, and instead channeled her despair into hard partying. "My drinking didn't stand out," says Renda, who often ended her nights passed out on a bathroom floor. "It does make you wonder how many others are doing what I did: drinking to self-medicate."

By the middle of her first semester, Jackie's alarm would ring and ring in her dorm room until one of her five suitemates would pad down the hall to turn it off. Jackie would barely stir in her bed. "That was when we realized she was even there," remembers suitemate Rachel Soltis. "At the beginning of the year, she seemed like a normal, happy girl, always with friends. Then her door was closed all the time. We just figured she was out." Long since abandoned by her original crew, Jackie had slept through half a semester's worth of classes and had bought a length of rope with which to hang herself. Instead, as the semester crawled to an end, she called her mother. "Come and get me," Jackie told her, crying. "I need your help."

THE FIRST WEEKS OF FRESHMAN year are when students are most vulnerable to sexual assault. Spend a Friday night in mid-September walking along Rugby Road at UVA, and you can begin to see why. Hundreds of women in crop tops and men in khaki shorts stagger between handsome fraternity houses, against a call-and-response soundtrack of "Whoo!" and breaking glass. "Do you know where Delta Sig is?" a girl slurs, sloshed. Behind her, one of her dozen or so friends stumbles into the street, sending a beer bottle shattering. ("Whoo!" calls a far-away voice.)

"These are all first-years," narrates one of my small group of upperclasswomen guides. We walk the curving length of tree-lined Rugby Road as they explain the scene. The women rattle off which one is known as the "roofie frat," where supposedly four girls have been drugged and raped, and at which house a friend had a recent "bad experience," the Wahoo euphemism for sexual assault. Studies have shown that fraternity men are three times as likely to commit rape, and a spate of recent high-profile cases illustrates the dangers that can lurk at frat parties, like a University of Wisconsin-Milwaukee frat accused of using color-coded hand stamps as a signal to roofie their guests, and this fall's suspension of Brown University's chapter of Phi Kappa Psi – of all fraternities – after a partygoer tested positive for the date-rape drug GHB. Presumably, the UVA freshmen wobbling around us are oblivious to any specific hazards along Rugby Road; having just arrived on campus, they can hardly tell one fraternity from another. As we pass another frat house, one of my guides offers, "I know a girl who got assaulted there."

"I do too!" says her friend in mock-excitement. "That makes two! Yay!"

"Some of my hallmates were skeptical," says one survivor of rape. "They were silent and avoided me afterwards. It made me doubt myself."

Frats are often the sole option for an underage drinker looking to party, since bars are off-limits, sororities are dry and first-year students don't get many invites to apartment soirees. Instead, the kids crowd the walkways of the big, anonymous frat houses, vying for entry. "Hot girls who are drunk always get in – it's a good idea to act drunker than you really are," says third-year Alexandria Pinkston, expertly clad in the UVA-after-dark uniform of a midriff-baring sleeveless top and shorts. "Also? You have to seem very innocent and vulnerable. That's why they love first-year girls."

Once successfully inside the frat house, women play the role of grateful guests in unfamiliar territory where men control the variables. In dark, loud basements, girls accept drinks, are pulled onto dance floors to be ground and groped and, later, often having lost sight of their friends, led into bathrooms or up the stairs for privacy. Most of that hooking up is consensual. But against that backdrop, as psychologist David Lisak discovered, lurk undetected predators. Lisak's 2002 groundbreaking study of more than 1,800 college men found that roughly nine out of 10 rapes are committed by serial offenders, who are responsible for an astonishing average of six rapes each. None of the offenders in Lisak's study had ever been reported. Lisak's findings upended general presumptions about campus sexual assault: It implied that most incidents are not bumbling, he-said-she-said miscommunications, but rather deliberate crimes by serial sex offenders.

In his study, Lisak's subjects described the ways in which they used the camouflage of college as fruitful rape-hunting grounds. They told Lisak they target freshmen for being the most naïve and the least-experienced drinkers. One offender described how his party-hearty friends would help incapacitate his victims: "We always had some kind of punch.... We'd make it with a real sweet juice. It was really powerful stuff. The girls wouldn't know what hit them." Presumably, the friends mixing the drinks did so without realizing the offender's plot, just as when they probably high-fived him the next morning, they didn't realize the behavior they'd just endorsed. That's because the serial rapist's behavior can look ordinary at college. "They're not acting in a vacuum," observes Lisak of predators. "They're echoing that message and that culture that's around them: the objectification and degradation of women."

One need only glance around at some recent college hijinks to see spectacular examples of the way the abasement of women has broken through to no-holds-barred misogyny: a Dartmouth student's how-to-rape guide posted online this past January; Yale pledges chanting "No means yes! Yes means anal!" And despite its air of mannered civility, UVA has been in on the naughty fun for at least 70 years with its jolly fight song "Rugby Road," which celebrates the sexual triumphs of UVA fraternity men, named for the very same street where my guides and I are now enveloped in a thickening crowd of wasted first-years. Through the decades, the song has expanded to 35 verses, with the more recent, student-penned stanzas shedding the song's winking tone in favor of something more jarringly explicit:

A hundred Delta Gammas,
a thousand AZDs

Ten thousand Pi Phi bitches who get
down on their knees

But the ones that we hold true,
the ones that we hold dear

Are the ones who stay up late at night,
and take it in the rear.

In 2010, "Rugby Road" was banned from football games – despite a petition calling it "an integral part" of UVA culture. But Wahoos fearing the loss of tradition can take heart that "Rugby Road" verses are still performed on campus by UVA's oldest a cappella group, the Virginia Gentlemen.

...E ON CAM...

...T THE END OF HER FRESHMA... year, Jackie found herself in the... Peabody Hall office of Dean Nicole Eramo, head of UVA's Sexual Misconduct Board. This was a big step for Jackie. She still hadn't... managed to tell her own mother ... had happened at Phi Kap... Psi. ...mother ... for her... tears, and her mother... had a "bad experience" at... blanched and given Jackie th... Dean Eramo.

If Dean Eramo was surprised... story of gang rape, it didn't sho... woman with curly dark hair ... nonsense demeanor, Eramo ... among the most difficult jobs ... the intake (UVA dean-h... ...grade of ...liable for comment ...and out of ...self, Eramo is belov... ...take Eramo ...consider her a friend... ...alum her... though, as only a few ...vors, who ... her office isn't a confide... – even ... Each time a new complaint com... Eramo's office, it activates a... UVA's Title IX officer, is includ... ...ean Eramo is ...tally of federally mandated Cl... ...isconduct Bo... statistics, and Eramo may ...but in the his... ...on, reveal details of her c... ...ors. (Jacke... ...udent to other ...er that Eramo ...ith another UVA ...a dean's foremost ...ty of the campus. ...alking, Eramo ...laid out her ...

...here's the ...?

...of UVA's Sexual ...beloved by students, ...e school, no one has ...for sexual assault.

...any schools, UVA has taken to ...ng that in matters of sexual as... ...rs to victim choice. "If stu... ...t we are forcing them into a ...disciplinary process that they ...d be part of, frankly, we'd be ...that we would get fewer re... ...associate VP for student af... ...n Davis. Which in theory makes ... Being forced into an unwanted ...ce is a sensitive point for the victim... But in practice, that utter lack of guid... ...can be counterproductive to a 19-year... so traumatized as Jackie was that she... contemplating suicide. Setting aside... moment the absurdity of a school ... ...ing to handle the investigation and ...dication of a felony sex crime – somet... Title IX requires, but which no univ... ...ty on Earth is equipped to do – the sh... menu of choices, paired with the reassu... ...ance that any choice is the right one, often ... has the end result of coddling the victim ... into doing nothing.

"This is an alarming trend that I'm seeing on campuses," says Laura Dunn of the advocacy group SurvJustice. "Schools are assigning people to victims who are pretending, or even thinking, they're on the victim's side, when they're actually discouraging and silencing them. Advocates who survivors *love* are part of the system that is failing to address sexual violence."

Absent much guidance, Jackie would eventually wonder how other student victims handled her situation. But when she clicked ...UVA's website, she found ... bike theft, ... and were the ...inkenness complaints ...nly a fraction of UVA stud... ...Sex crimes turn to campus p... go to Dean Eramo's office, t... ...ville police or the county she... when RS asked UVA f... ...press office repeatedl..., the ...UVA police crime lo... ...o the ...ussell believes that Susan ... "When a pare... ...delib... ...pus ...

PHOTO: NICOLE ED AMO / BILLY


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Jackie s... were ha... wants t...
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UVA's rape stats "Because nobody... the rape school."
All the first-year women are morally uptight.
They'll never do a single thing unless they know it's right.
But then they come to Rugby Road and soon they've seen the light.
And you never know how many men they'll bring home every night.
"RUGBY ROAD"
She's a helluva twat from Agnes Scott, she'll fuck for 50 cents.
She'll lay her ass upon the grass, her panties on the fence.
You supply the liquor, and she'll supply the lay.
And if you can't get it up, you sunuva bitch, you're not from UVA.
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oldest and most powerful fraternities – founded in 1853, its distinguished chapter members have included President Woodrow Wilson – the school may have wondered about its responsibilities to the rest of the campus. Experts apprised of the situation by RS agreed that despite the absence of an official report, Jackie's passing along two other allegations should compel the school to take action out of regard for campus safety. "The fact that they already had that first victim, they should have been taking action," says SurvJustice's Laura Dunn. "That school could really be sued."

If the UVA administration was roiled by such concerns, however, it wasn't apparent this past September, as it hosted a trustees meeting. Two full hours had been set aside to discuss campus sexual assault, an amount of time that, as many around the conference table pointed out, underscored the depth of UVA's commitment. Those two hours, however, were devoted entirely to upbeat explanations of UVA's new prevention and response strategies, and to self-congratulations to UVA for being a "model" among schools in this arena. Only

Jackie came across something disturbing: Two other young women confided that they, too, had been victims of Phi Kappa Psi gang rapes.

once did the room darken with concern, when a trustee in UVA colors – blue sport coat, orange bow tie – interrupted to ask, "Are we under any federal investigation with regard to sexual assault?"

Dean of students Allen Groves, in a blue suit and orange necktie of his own, swooped in with a smooth answer. He affirmed that while like many of its peers UVA was under investigation, it was merely a "standard compliance review." He mentioned that a student's complaint from the 2010-11 academic year had been folded into that "routine compliance review." Having downplayed the significance of a Title IX compliance review – which is neither routine nor standard – he then elaborated upon the lengths to which UVA has cooperated with the Office of Civil Rights' investigation, his tone and manner so reassuring that the room relaxed.

Told of the meeting, OFfice of Civil Rights' Catherine Lhamon calls Groves' mischaracterization "deliberate and irresponsible." "Nothing annoys me more than a school not taking seriously their review from the federal government about their civil rights obligations," she says.

Within days of the board meeting, having learned of ROLLING STONE's probe into Jackie's story, UVA at last placed Phi Kappa Psi under investigation. Or rather, as President Sullivan carefully answered my question about allegations of gang rape at Phi Psi, "We do have a fraternity under investigation." Phi Kappa Psi national executive director Shawn Collinsworth says that UVA indeed notified him of sexual assault allegations; he immediately dispatched a representative to meet with the chapter. UVA chapter president Stephen Scipione recalls being only told of a vague, anonymous "fourth-hand" allegation of a sexual assault during a party. "We were not told that it was rape, but rather that something of a sexual nature took place," he wrote to RS in an e-mail. Either way, Collinsworth says, given the paucity of information, "we have no evidence to substantiate the alleged assaults."

"Under investigation," President Sullivan insists when I ask her to elaborate on how the university is handling the case. "I don't know how else to spell that out for you." But Jackie may have gotten a glimpse into the extent of the investigation when, in the days following my visit to campus, all seems very hopeful. But this week, the third week of September, has been a difficult one. Charlottesville police received their first sexual-assault report of the academic year; Jackie and Alex were also each approached by someone seeking help about an assault. And as this weekend progresses, things will get far worse at UVA: Two more sexual assaults will be reported to police, and, in every parent's worst fears come true, an 18-year-old student on her way to a party will vanish; her body will be discovered five weeks later.

Suspect Jesse Matthew Jr., a 32-year-old UVA hospital worker, will be charged with Hannah Graham's "abduction with intent to defile," and a chilling portrait will emerge of an alleged predator who got his start, a decade ago, as a campus rapist. Back in 2002, and again in 2003, Matthew was accused of sexual assault at two different Virginia colleges where he was enrolled, but was never prosecuted. In 2005, according to the new police indictment, Matthew sexually assaulted a 26-year-old and tried to kill her. DNA has also reportedly linked Matthew to the 2009 death of Virginia Tech student Morgan Harrington, who disappeared after a Metallica concert in Charlottesville. The grisly dossier of which Matthew has been accused underscores the premise that campus rape should be seen not through the schema of a dubious party foul, but as a violent crime – and that victims should be encouraged to come forward as an act of civic good that could potentially spare future victims.

Jackie is hoping she will get there someday. She badly wants to muster the courage to file criminal charges or even a civil case. But she's paralyzed. "It's like I'm in my own personal prison," she says. "I'm so terrified this is going to be the rest of my life." She still cries a lot, and she has been more frightened than usual to be alone or to walk in the dark. When Jackie talks about her assault, she fixates on the moment before Drew picked her up for their date: "I remember looking at the mirror and putting on mascara and being like, 'I feel really pretty,'" Jackie recalls. "I didn't know it would be the last time I wouldn't see an empty shell of a person."

Jackie tells me of a recurring nightmare she's been having, in which she's watching herself climb those Phi Kappa Psi stairs. She frantically calls to herself to stop, but knows it's too late: That in real life, she's already gone up those stairs and into that terrible room, and things will never be the same. It bothers Jackie to know that Drew and the rest get to walk away as if nothing happened, but that she still walks toward that room every night – and blames herself for it during the day.

"Everything bad in my life now is built around that one bad decision that I made," she says. "All because I went to that stupid party."

WITH A POCKETKNIFE AND pepper spray tucked into her handbag, and a rape whistle hanging from her key chain, Jackie is prepared for a Friday night at UVA. In a restaurant on the Corner, Jackie sips water through a straw as the first of the night's "Whoo!"s reverberate from the sidewalk outside. "It makes me really depressed, almost," says Jackie with a sad chuckle. "There's always gonna be another Friday night, and another fraternity party, and another girl."

Across the table, Alex sighs. "I know," she says. Bartenders and bouncers all along the Corner are wearing T-shirts advertising the new "Hoos Got Your Back" bystander-intervention campaign, which

In all, Ms. Eramo was referred to by name

30 TIMES

… and as Dean

10 TIMES

Stories touch our, BRAIN, HEART, & GUT

Visuals

are a critical component to getting your message across

About 15 years to develop a new drug

APPROVED

FDA

APPROVED

About 18 months for ANDA approval

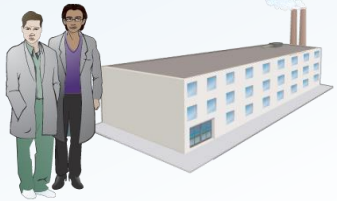
Brand Name Drug Manufacturers

Research

Development &Testing

Manufacturing

Generic Drug Manufacturers



Manufacturing

Wholesalers

Buy and sell Drugs

Pharmacy

Pharmacy

Parties

Brand Name Drug Manufacturers

Research

Development &Testing

Manufacturing

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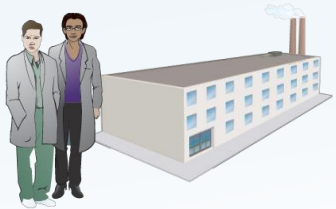
Generic Drug Manufacturers



Copy the Brand Name Drug & Manufacture It

SANDOZ

APOTEX

Eon Labs

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TEVA

KALI

Wholesalers

Buy and sell Drugs

LOUISIANA WHOLESALE DRUG

Parties

Brand Name Drug Manufacturers

Research

Development &Testing

Manufacturing

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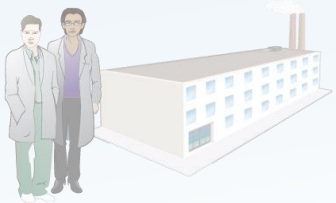
Generic Drug Manufacturers



NOT A PARTY

Copy the Brand Name Drug & Manufacture It

SANDOZ

APOTEX

Eon Labs

KALI

Wholesalers

Buy and sell Drugs

LOUISIANA WHOLESALE DRUG

Louisiana Wholesale Drug Antitrust Lawsuits

1998 Louisiana Wholesale Drug Company v. Hoechst Marion Russel and Andrx Pharmaceuticals, Inc.

1998 Louisiana Wholesale Drug Company v. Abbott Laboratories, Zenith Goldline Pharmaceuticals, and Geneva Pharmaceuticals, Inc.

2000 Louisiana Wholesale Drug Company v. Bayer Corporation, Barr Laboratories Inc., and The Rugby Group, Inc.

2001 Louisiana Wholesale Drug Company v. Schering-Plough Corporation, Upsher-Smith Laboratories, and American Home Products Corporation

2001 Louisiana Wholesale Drug Company v. Bristol-Myers Squibb Company, Watson Pharma, Inc., Danburg Pharamceutical Inc., and Kaiser Foundation Health Plan, Inc.

2002 Louisiana Wholesale Drug Company v. Meijer, Inc., Meijer Distribution, Inc., Pfizer, Inc., and Warner-Lambert Co.

2002 Louisiana Wholesale Drug Company v. Smithkline Beecham Corporation

2003 Louisiana Wholesale Drug Company v. Organon, Inc. and Akzo Nobel N.V.

2004 Louisiana Wholesale Drug Company v. Purdue Pharma, LP, Purdue Frederick Company, P.F. Laboratories, Inc., and Purdue Pharma Company

2004 Louisiana Wholesale Drug Company v. Biovail Corporation, Rochester Drug Cooperative, and Forest Laboratories, Inc.

2005 Louisiana Wholesale Drug Company v. Warner Chilcott Public Limited Company, Warner Chilcott Holdings Company III, LTD., Warner Chilcott Corporation, Warner Chilcott (US) Inc., Galen LTD., and Barr Pharmaceuticals, Inc.

2005 Louisiana Wholesale Drug Company, Rochester Drug Co-Operative Inc., and Meijer Distribution Inc. v. Abbot Laboratories, Fournier Industrie Et Sante, and Laboratories Fournier S.A.

2005 Louisiana Wholesale Drug Company v. Ferring B.V., Ferring Pharmaceuticals, Inc., Aventis Pharmaceuticals, Inc., and Meijer Distribution, Inc.

2006 Louisiana Wholesale Drug Company v. Astrazeneca Pharmaceuticals, L.P., Astrazeneca L.P., Zeneca, Inc., and Zeneca Holdings, Inc.

2007 Louisiana Wholesale Drug Company v. Abbott Laborartories

2007 Louisiana Wholesale Drug Company v. Sanofi-Aventis, Sanofi-Aventis U.S., LLC, Aventis Pharmaceuticals, Inc.

2007 Louisiana Wholesale Drug Company v. Braintree Laboratories, Inc.

17 Lawsuits Against Brand-Name Drug Manufacturers


12000 ft
6000 ft
0 ft
Takeoff
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Miles Per Hour

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Continuing Legal Education Division

2018 SC BAR CONVENTION

Trial & Appellate Advocacy Section
(16th Annual Civil Law Update)

Friday, January 19

Civil Law Update from the Bench

Hon. James E. Lockemy

Civil Law Update 2017

Chief Judge James E. Lockemy

South Carolina Court of Appeals

Court of Appeals
This case is an appeal from the Lee County School District Board of Trustees of the Circuit Court's reversal of its decision to terminate the employment of teacher Laura Toney. The Court of Appeals affirmed. Laura Toney was employed as a social studies teacher at Lee Central High School. Her employment was terminated by Lee County School District Board of Trustees for discussing another faculty member's personal information with other employees, failure to adhere to the directives of an administrator, and other incidents of unprofessional conduct. The proper standard of review in reviewing decisions made by the School Board is the "substantial evidence test." The Court of Appeals finds the record does not contain substantial evidence to support the Board's decision to terminate Toney's employment based upon a pattern of unprofessional conduct.
Laura Toney v. Lee County School District., Op. No. 5466 (S.C. Ct. App. filed February 1, 2017)

South Carolina Supreme Court—Worker's comp
In this action, Lowe's admitted Clemmons had suffered an accepted, compensable injury in the course of his employment and agreed to pay temporary total disability benefits until Clemmons reached maximum medical improvement or returned to work. All medical evidence indicated that he lost 50% or more of the use of his back but the Commission awarded him disability based on 48% injury to his back. The court of appeals affirmed the decision of the commission and Supreme Court now reverses and holds the Commission's finding of only 48% loss was not supported by substantial evidence. Evidence of a claimant's ability to hold gainful employment alone cannot preclude a determination of permanent disability under the scheduled-member statute. The Supreme Court holds Clemmons is entitled to permanent total disability and remands to the Commission for the entry of an award.
Henton T. Clemmons, Jr. v. Lowe's Home Centers' Inc., Op. No. 27708 (S.C. Sup.Ct. filed March 8, 2017)

South Carolina Court of Appeals
While employed as a data entry clerk for the Charleston County School District, Wilson was a bystander to a fight between two male students. The students inadvertently pushed into Wilson and pinned her against a marble countertop, which resulted in injuries to her neck and back. Wilson now appeals the circuit court order affirming the Appellate Panel of the South Carolina Workers' Compensation Commission arguing the Appellate Panel erred in (1) holding res judicata barred her change of condition claim because although she had experienced situational anxiety and depression in the past, she had not suffered from endogenous depression until after her work injury and subsequent back surgery and (2) determining her depression had to begin or worsen between January 2008 and January 2009 to be compensable. The Court of Appeals reverses and remands.
Sara Y. Wilson v. Charleston County School District, Op. No. 5475 (S.C. Ct. App. filed March 22, 2017)

South Carolina Supreme Court
This action reviews the decision of the Court of Appeals affirming the Workers' Compensation Commission's award of benefits to a dancer who was shot while performing at a nightclub. The court reversed and remanded based on the commission's decision to award $75 per week was not support by substantial evidence. Lewis sough workers' compensation benefits for injuries suffered after a shooting in a night club. The Supreme Court previously ruled the petitioner was an employee, rather than independent contractor, and was entitled to workers' compensation benefits. This court also previously remanded the matter to the court of appeals to review the commission's order which awarded benefits to Lewis in the amount of $75/week. The Court of Appeals affirmed the award holding her average weekly wage was a factual determination supported by the evidence and she did not meet her burden of proving wages earned from other employers. The Supreme Court held that the commission's order was devoid of any specific detailed findings of fact to substantiate the award and the commission awarded $75/week without indicating what total it assigned to her average weekly wages or how it reached the figure. Also, it was not true that Lewis presented "no evidence whatsoever" as claimed by the Commission. As such, the case was remanded to the commission for a de novo hearing to determine the amount of benefits she is entitled.
LeAndra Lewis v. L.B. Dynasty, Op. No. 5467 (S.C. Sup.Ct. filed April 19, 2017)

South Carolina Court of Appeals
In this declaratory judgment action The Court determined that Community Management Group, LLC; its president, Stephen Peck; and its employee, Tome Moore, engaged in the unauthorized practice of law while managing homeowners' associations. More specifically when a homeowner in an association did not pay an overdue assessment, Community Management Group—without the involvement of an attorney—prepared and recorded a

notice of lien and related documents; brought an action in magistrate's court to collect the debt; and after obtaining a judgment in magistrate's court, filed the judgment in circuit court. It also advertised that it could perform these services.

Jenna Foran v. Murphy, USA, and Liberty Insurance Company, Op. No. 5491 (S.C. Ct. App. filed June 14, 2017)

South Carolina Supreme Court
Chapman presents a novel issue of law related to the right to counsel in Sexually Violent Predator Proceedings on this direct appeal. Prior to being released from prison on a charge of one count of lewd act on a minor, involving a ten-year-old female, the State filed a petition under the SVP Act seeking his commitment as an SVP. Chapman's counsel did not make any motions, including motion for directed verdict or JNOV and only objected once. The jury found that Chapman met the statutory definition for an SVP and the trial court ordered his commitment. Chapman appealed. The court held the SVP Act recognizes an SVP's constitutional right to the effective assistance of counsel and the appropriate forum to assert the right to effective assistance of counsel is through habeas relief.
In the Matter of the Care and Treatment of Jeffrey Allen Chapman, Op. No. 5467 (S.C. Sup.Ct. filed February 15, 2017)

South Carolina Supreme Court
Justin B was found delinquent for committing criminal sexual conduct with a minor in the first degree. The Spartanburg County Family Court imposed the mandatory, statutory requirement that Justin B register as a sex offender and wear an electronic monitor for the remainder of his life. The minor claims this statutory imposition is unconstitutional. The Supreme Court affirmed the holding. It found that if the requirement that juvenile sex offenders must register and must wear an electronic monitor is in need of change, that decision is to be made by the Legislature—not the courts.
In the Interest of Justin B., a Juvenile under the age of Seventeen, Op. No. 27716 (S.C. Sup.Ct. filed May 3, 2017)

South Carolina Court of Appeals-evidence
Appeal filed by Republic claiming the trial court erred by denying its motions for judgment notwithstanding the verdict and a new trial based on many arguments, including excluding Republic's expert witness. Court of Appeals held trial court erred by excluding Republic's expert witness and reverse for new trial. The issue on appeal is whether the trial court abused its discretion by excluding Shuman's testimony based on Republic's failure to timely identify Shuman as an expert witness.

Burke alleged he parked his car and attempted to exit the Lot on foot when he tripped and fell on a "raised curb" inside the Lot. Burke claimed Republic operated and managed the Lot and was responsible for keeping it free of hazardous conditions, maintenance, and repairs. Burke moved to exclude Republic's expert witness, Dr. Todd Shuman, and Republic argues the trial court abused its discretion by excluding Shuman's testimony. The Court of Appeals held that a trial court has discretion to decide the sanction for a party providing untimely notice of a witness but may exclude the witness from testifying only after considering each of the Jumper factors (Jumper v. Hawkins, 348 S.C. 142) Here, the trial court excluded a witness for the sole reason that the party attempting to call the witness failed to provide timely notice under the rules of discovery, thus committing an error of law, which is an abuse of discretion. Reversed and remanded.

Robert J. Burke v. Republic Parking Systems, Inc., Op. No. 5519 (S.C. Ct. App. filed October 25, 2017)

South Carolina Supreme Court

Petition to the court to consider whether the definition of "household member" in SC Code section 16-25-10(3) of the Domestic Violence Reform Act and Section 20-4-20(b) of the Protection from Domestic Abuse Act is unconstitutional under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the US Constitution. Doe challenges the constitutionality of the provisions because the Acts do not afford protection from domestic abuse for unmarried, same-sex individuals who are cohabitating or formerly have cohabited. The court declared the sections unconstitutional as applied to Doe and the family court may not utilize these statutory provisions to prevent Doe or those in similar same-sex relationships from seeking an Order of Protection.
In 1994, the definition of "household embers" was narrowed to a "a male and female who are cohabiting or formerly have cohabitated." The court held the General Assembly purposefully included the phrase "male and female" within the definition of "household member" in 1994 and has retained that definition. The Court was unable to find any reasonable basis for providing protection to one set of domestic violence victims while denying it to others, and thus the classification violates the Equal Protection Clause. Therefore, the Court severed the discriminatory provision and the remainder of the Act remains in effect.

Jane Doe v. State of South Carolina, Op. No. 27728 (S.C. Sup.Ct. filed July 26, 2017)

South Carolina Supreme Court

Retail Services owns and operates three separate liquor store locations and seek to open a Fourth store. It petitioned the SCDOR, which is charged with the administration of SC Statutes concerning retail sale of liquor. SCDOR refused to grant an additional liquor license pursuant to 61-6-140 and -150, which limits liquor-selling entity to three licenses. Retail

Services brought action seeking declaratory judgment that this provision is unconstitutional. The trial court found the provisions were constitutional because regulation was within State's police power and regulation satisfied the rational basis test. Circuit Court granted the motion for summary judgment. Retail Services appealed the decision and the Supreme Court reversed. There was no indication in the record of the reason for this regulation except for economic protectionism. This regulation is in place to preserve the right of small, independent liquor dealers to do business. As such, the Court held that although the State is granted broad powers with respect to regulating liquor sales, this regulation is an example of market regulation that exceeds constitutional bounds. Sections 61-6-140 and -150 are unconstitutional as violative of the General Assembly's police powers under the Constitution.

Retail Services & Systems, Inc. v. South Carolina Department of Revenue, Op. No. 27709 (S.C. Sup.Ct. filed March 29, 2017)

South Carolina Court of Appeals
James Winston Davis was classified as a habitual offender by the DMV as a result of multiple convictions for driving under suspension. The Court of Appeals found substantial evidence existed to support the ALC's finding the six-year delay between Davis's third Driving Under Suspension conviction and the suspension of his license was fundamentally unfair. Accordingly, the ALC's order reinstating the driver's license of Davis was affirmed.
James Winston Davis, Jr. v. SC Department of Motor Vehicles, Op. No. 5484 (S.C. Ct. App. filed May 3, 2017)

South Carolina Supreme Court
Petitioners sought a declaration that SCDOT's inspection of three privately owned bridges violated sections 5 and 11 of article X of the SC Constitution. Petitioners assert this provision prohibits the expenditure of public funds for a private purpose. The trial court granted Respondents' motion for summary judgment due to lack of standing, a moot controversy w/ no exceptions, and not ultra vires or unconstitutional. The Court of Appeals affirmed and the Supreme Court now reverses. The court determined it is not the public's responsibility to pay the maintenance costs of bridges located within a gated community that seeks to exclude the public from enjoying the use of the bridges. Because it did not serve a public purpose, the Court found the inspection was unconstitutional and reversed the decision of the Court of Appeals.
South Carolina Public Interest Foundation and Edward D. Sloan v. SC Department of Transportation, Op. No. 27738 (S.C. Sup.Ct. filed September 14, 2017)

South Carolina Supreme Court
These actions present cross-appeals from declaratory judgement actions to determine coverage under Commercial General Liability (CGL) insurance policies issued by Harleysville to address issues regarding insurance coverage for damages stemming from defective construction of two condominium complexes in Myrtle Beach. The Special Referee found coverage under the policies was triggered and calculated Harleysville's pro rata portion of the progressive damages based on its time on the risk. This court affirmed the finding of the Special Referee in the Magnolia North Matter and affirmed as modified in the Riverwalk Matter. The purchasers of units in Riverwalk and Magnolia North developments filed suit against those that developed and constructed the condominium complexes (collectively "Heritage") to recover damages for repairs to their homes from construction defects. The POAs sought actual and punitive damages for the extensive construction defects under theories of negligent construction, breach of fiduciary duty, and breach of warranty. Because Heritage conceded liability, the only contested issue in the trials was the nature and extent of damages resulting from negligent construction. After verdicts were reached, Harleysville filed this declaratory judgment action to determine what portion would be covered under Heritage's CGL policies because Harleysville contended, under terms of the policies, it had not duty to indemnify Heritage for these judgments. Harleysville contend that there is no coverage under the CGL and that punitive damages were not covered under the policy. This court found that the Special Referee correctly found Harleysville failed to reserve the right to contest coverage of actual damages and that punitive damages are covered under the CGL policies.
Harleysville Group Insurance v. Heritage Communities, Inc., Op. No. 27698 (S.C. Sup.Ct. filed Jan. 11, 2017)

South Carolina Supreme Court--insurance
In this case, the court reviewed the applicability of comparative negligence to strict liability and breach of warranty claims in a crashworthiness case brought by Plaintiff against General Motors. The District Judge in the lower court certified two questions to the court to address the defenses available to a manufacturer in crashworthiness cases brought under strict liability and breach of warranty theories. The court answered that comparative negligence does not apply to permit the negligence of another party in causing an initial collision to reduce the liability of a manufacturer for enhanced injuries in a crashworthiness case. The Court noted the doctrine of crashworthiness itself divides and allocates fault to a manufacturer for damages it alone caused, so it would be incongruous to allow comparative negligence to apply to further reduce the manufacture's liability or shift that responsibility to another party. The second certified question concerned barring recovery pursuant to South Carolina Public Policy against driving while impaired. The Court noted it has repeatedly declined to create or expand public policies which the General Assembly could have adopted had it chosen to do so, and it declines to deviate from that practice.
Reid Harold Donze v. General Motors, Op. No. 27719 (S.C. Sup.Ct. filed May 17, 2017)

South Carolina Supreme Court
This case involves a contract dispute between the University of South Carolina and the Gamecock Club (Petitioners) and several Gamecock Club members (Respondents). Respondents' alleged Petitioners failed to comply with their contractual obligation to give Lifetime Members first priority in the selection of parking spaces. Respondents argued that their contracts with Petitioners unambiguously granted Respondents priority in the selection of parking spaces; or alternatively, the contracts were ambiguous and extrinsic evidence should be admitted proving the contracts' terms. The court of appeals affirmed the trial court's ruling that the Lifetime Membership contracts were unambiguous and extrinsic evidence was therefore inadmissible to prove their meaning. However, it reversed the trial court's ruling as to equitable estoppel, and found the affidavits and depositions were sufficient to create an issue of material fact as to whether Respondents suffered a detrimental change in reliance on the representations. The Supreme Court granted a de novo review. The Court held "a party cannot avoid the parol evidence rule simply by claiming he thought the contract he signed meant something other than what it said…the general rule that written contracts must be respected." In closing, Respondents remained grateful to be Gamecock Members rather than members.
Linda Rodarte v. University of South Carolina, Op. No. 27718 (S.C. Sup.Ct. filed May 11, 2017)

Supreme Court of South Carolina
The Plaintiffs entered into contracts with Defendants to purchase interests in vacation time sharing plans for real estate on Hilton Head Island. Due to the Defendants failure to comply with the registration requirements in the South Carolina Vacation Time Sharing Plans Act, Plaintiffs sought a return of all money paid under the contract, with interest, as well as declaration that the contract as invalid and nonbinding. After the Plaintiff filed suit, the SC Real Estate Commission issued an order retroactively granting Defendants registration. Plaintiffs argue they have a constitutional and statutory right to initiate judicial proceedings without regard for the REC's actions, whereas Defendants argue public policy requires the REC have exclusive jurisdiction to enforce the Timeshare Act. First, the Court held the REC does not have exclusive jurisdiction to determine if a person has violated the Timeshare Act. South Carolina Code 27-32-130 gives the REC authority to enforce the Timeshare Act, however it makes clear that the grant of authority does not interfere with their ability to bring a private action to do the same. For the same reason, the Court held a finding by the REC of a statutory violation cannot be a condition precedent to bringing a private suit under the Timeshare Act. Lastly, the Court held the REC's decisions are not binding on the courts unless they have been subjected to judicial review and found to be lawful.

Paula Fullbright and Mark Fullbright v. Spinnaker Resorts, Inc., d/b/a Spinnaker Resorts South Carolina, Inc., Op. No. 27720 (S.C. Sup.Ct. filed May 17, 2017)

South Carolina Court of Appeals
Appeal filed by Rose Electric arguing that the trial court erred in finding an express contract barred its recovery under the theory of quantum meruit; finding Rose Electric did not establish the elements of its quantum meruit claim; and failing to award Rose Electric damages. In the fall of 2010, Southern Produce, Inc entered into a "flat fee, turnkey contract" with Cooler Erectors to construct a refrigerated processing center on their leased parcel of land at the Farmers Market. Cooler Erectors and Rose Electronic spoke about subcontracting the electrical work on Southern Project. Rose Electric agreed to complete the work but the two did not discuss a price. Southern paid Cooler Erectors $203,277.00 but Cooler Erectors failed to pay Rose Electric. So, Rose Electric filed a mechanics' lien on Southern's property claiming $54,339.13 for the Total Contract Price and $10,755.39 for the completed change orders. Rose Electric pursued a case of action for quantum meruit, foreclosure of its mechanic's lien, breach of contract, and unjust enrichment. Rose Electric opted to only pursue the equitable cause of faction for quantum meruit during trial. The trial court found for the Respondents because it found there to be an express contract between the parties and Rose Electric opted to not proceed on its contract claims. The trial court found that the existence of an express contract precluded Rose Electric recovery under quantum merit or in the alternative, Rose electric failed to establish the elements of quantum meruit. The court of appeals found that the trial court erred in finding an express contract between Rose Electric and Cooler Erectors and also Rose Electric and Southern as price was never discussed and the cost of the change orders was never discussed. The court of appeals found Southern' s offer to pay did not relieve it of its responsibility to pay for the benefit and thus erred in finding Rose Electric did not establish the elements of its quantum meruit claim. The court of appeals also found that Rose Electric was owed damages. Reversed and remanded to the trial court to modify its judgment to include an award of damages to Rose Electric in the amount of $17,703.63 and to address Rose Electric's claim for prejudgment interest.
Rose Electric, Inc. v. Cooler Erectors of Atlanta, Inc., 794 S.E.2d 382 (S.C. Ct.App. 2016)

South Carolina Court of Appeals
This is a lien foreclosure action where the homeowner, Alexander, seeks review of an order of the Master-In-Equity denying his motion to vacate the judicial sale of his property. He argues the master erred in denying his motion to vacate because the sale price was inadequate and he had health problems and lack of prior notice of the judicial sale; sale was a forfeiture of property because sale was involuntary and $135,000 less than property tax

valuation, the bidder was unjustly enriched because homeowner was unable to attend sale, and homeowner had equitable right to redeem property up until time Bidder paid bid and received the deed. The court of appeals affirmed the master in equity's decision.
The court held that period in which Homeowner was allowed to exercise his right of redemption expired upon the acceptance of the highest bid at the judicial sale and that the Homeowner failed to show that the master abused his discretion to warrant interference with the trial court decision. The record as a whole indicates he had the ability to participate in the action, directly or through an agent. Although the Homeowner had an equitable interest in the property up to the date of the judicial sale, the bidder became the equitable owner upon paying the required deposit, which effects a transfer of legal title. The court affirmed the master's denial of a motion to vacate.

Wachesaw Plantation East Community Services Association, Inc. v. Todd C. Alexander, Op. No. 5494 (S.C. Ct. App. filed February 28, 2017)

South Carolina Supreme Court

Appeal from circuit court order holding the Appellants (Episcopal Church) had no legal or equitable interests in certain real and personal property in South Carolina, and enjoined Appellants from utilizing certain disputed service marks and names. The trial judge's decision making was controlled by her interpretation of the "neutral principles of law" approach to deciding ecclesiastical disputes and the Court's decision in All Saints Parish Waccamaw. In the trial judge's view, the admissibility of evidence and the resolution of the property disputes at issue here were properly adjudicated solely on the basis of state corporate, property, and trust law, and she was required to ignore the ecclesiastical setting in which these disputes arose. The Court disagreed, holding the present property and church governance disputes were not appropriate for resolution in the civil courts, and the trial court erred in holding that the Respondents' state-registered trademarks prevail over Appellants' federally-protected trademarks. Further, the Court overruled All Saints in part, holding the analysis for the "neutral principles of law" approach to be distorted. "Properly applied, the 'neutral principles' approach requires that the civil court's initial inquiry be a 'holistic' one . . . [i]f the dispute is 'a question of religious law or doctrine masquerading as a dispute over church property or corporate control,' then the Constitution of the United States requires the civil court defer to the decisions of the appropriate ecclesiastical authority." While all individuals are guaranteed the freedom to disassociate from a religious body, here the question of the disposition of ecclesiastical property following the disaffiliation from the [Appellants] is a question of church governance, which is protected from civil court interference by the First Amendment.

Protestant Episcopal church in the Diocese of South Carolina, et al v. The Episcopal Church, et al., Op. No. 27731 (S.C. Sup.Ct. filed August 2, 2017)

South Carolina Supreme Court
The Plaintiffs claim the registration provisions in the Surface Water Withdrawal Act constitute an unconstitutional taking, a violation of due process, and a violation of the public trust doctrine. The circuit court granted summary judgment against the plaintiffs on the grounds the case did not present a justiciable controversy due to lack of standing and lack of ripeness for judicial determination. The plaintiff's claims of unconstitutional taking and violation of due process ere based on the allegation the Act deprived them of riparian rights. The public trust claim was based on the allegation the Act disposed of assets the State held in trust for its citizens. The Court found the plaintiffs' allegations that the Act deprived them of their common law riparian rights were not supported by the terms of the Act. Further, the Act on its face is entirely consistent with the State's obligations under the public trust doctrine. The Court found the plaintiffs did not have standing nor did they make any claim that was ripe for judicial determination, and thus no justiciable controversy.
James Jefferson Jowers Sr., et al v. South Carolina Department of Health and Environmental Control, Op. No. 27725 (S.C. Sup.Ct. filed July 19, 2017)

Civil Law Update 2017

Chief Judge James E. Lockemy

South Carolina Court of Appeals


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...AND I'LL SHOW YOU AN APPELLATE COURT JUDGE.
SHOW ME
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Harleysville Group Insurance v. Heritage Communities, Inc., Op. No. 27698 (S.C. Sup.Ct. filed Jan. 11, 2017)

South Carolina Supreme Court

Laura Toney v. Lee County School District., Op. No. 5466 (S.C. Ct. App. filed February 1, 2017)

South Carolina Court of Appeals

Belle Hall Plantation Homeowner's Association v. Murray, Op. No. 5467 (Ct. App. Filed February 8, 2017)

South Carolina Court of Appeals

Rogers Townsend & Thomas v. Peck, Op. No. 27707 (Sup. Ct. filed February 22, 2017)

South Carolina Supreme Court

Henton T. Clemmons, Jr. v. Lowe's Home Centers' Inc., Op. No. 27708 (S.C. Sup.Ct. filed March 8, 2017)

South Carolina Supreme Court

James Winston Davis, Jr. v. SC Department of Motor Vehicles, Op. No. 5484 (S.C. Ct. App. filed May 3, 2017)

South Carolina Court of Appeals

Linda Rodarte v. University of South Carolina, Op. No. 27718 (S.C. Sup.Ct. filed May 11, 2017)

South Carolina Supreme Court

Reid Harold Donze v. General Motors, Op. No. 27719 (S.C. Sup.Ct. filed May 17, 2017)

South Carolina Supreme Court

James Jefferson Jowers Sr., et al v. South Carolina Department of Health and Environmental Control, Op. No. 27725 (S.C. Sup.Ct. filed July 19, 2017)

South Carolina Supreme Court

Jane Doe v. State of South Carolina, Op. No. 27728 (S.C. Sup.Ct. filed July 26, 2017)

South Carolina Supreme Court

Protestant Episcopal church in the Diocese of South Carolina, et al v. The Episcopal Church, et al., Op. No. 27731 (S.C. Sup.Ct. filed August 2, 2017)

South Carolina Supreme Court

South Carolina Public Interest Foundation and Edward D. Sloan v. SC Department of Transportation, Op. No. 27738 (S.C. Sup.Ct. filed September 14, 2017)

South Carolina Supreme Court

Robert J. Burke v. Republic Parking Systems, Inc., Op. No. 5519 (S.C. Ct. App. filed October 25, 2017)

South Carolina Court of Appeals

Rose Electric, Inc. v. Cooler Erectors of Atlanta, Inc., 794 S.E.2d 382 (S.C. Ct.App. 2016)

South Carolina Court of Appeals