INTRODUCTION

ATTENUATED MEMORIES

Robert A. James, Benjamin C. Zuraw,
Manley W. Roberts & John J. Little[†]

In meetings held at Yale Law School in 1982, an organization was launched that has had a distinctive impact. No, no, we speak not of *that* society, but of the *Journal of Attenuated Subtleties*. This short-lived experiment by five twenty-four-year-old 2Ls addressed legal trivia in a mock-serious fashion, a practice that has been taken to ever greater heights with the second series of the *Green Bag*.

The *Attenuated Subtleties* standard is that while the articles may be funny, they are not jokes. In piece after piece, we described a subject of unlikely but not impossible relevance to daily practice and applied to it the powerful (but pretentious) tools of research and analysis employed in the law review literature. If the questions ever did come up, in a case or a more substantial publication, our articles would be good authority. They have in fact been cited on some of those rare subsequent occasions.

We editors thank the *Journal of Law* for reproducing the entire run, uncut, in its original dot-matrix glory. Here, we recall the founding era.

PART ONE
Foreword: Form Over Substance

Robert A. James (RAJ): The *Foreword* has been appraised in the pages of the *Green Bag* itself by our classmate Dave Douglas, now Dean of the William &

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Mary Law School.[1] We of course encountered *Lucas v. Earl* and "attenuated subtleties" in our income tax course. I may have written "Our colleagues of this ilk must find their recreation outside the law, in alcohol or bowling" under the influence of one or the other.

The exact date when time formerly became out of memory, September 23, 1189, was stated without explanation in the edition of *Black's Law Dictionary* I was then using. The back story is supplied in Lewis Hyde's new book on what might be called the passive virtues of forgetting things.[2]

Instructions in Supreme Court Jury Trials

RAJ: Again, Dave Douglas covered the genesis of this piece. Every law student who reads *Marbury v. Madison* is exposed to the Judiciary Act of 1789, and some have glanced at its section 13 confirming the right to a jury trial on issues of fact in original jurisdiction actions at common law. I dug in, and found Charles Alan Wright's casual mention of one such jury trial, but no other treatment. I learned of two more trials (from an ABA piece on courthouse history!) and discussed them all in the law school dining hall with David Kirkland, Manley Roberts, and Ben Zuraw. We laughed at the thought of an article that would simultaneously identify and solve a problem that had never arisen. Soon, the *Journal* was born.

The principal trial, *Georgia v. Brailsford*, has turned out to be an important precedent on a related topic, jury nullification; we had no idea at the time. The citation of Kenneth Arrow was a thinly veiled jab at the law review practice of dropping highfalutin names to support rather ordinary points. Jacques Derrida, Jürgen Habermas, Friedrich Nietzsche and Susan Sontag might agree that this was rather clever.[3]

The Supreme Court and the Westward Movement

Benjamin C. Zuraw (BCZ): My memories of the *Journal*'s creation are somewhat hazy because by my second year, I had fully committed to enjoy-

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[1] Davison M. Douglas, Attenuated Subtleties *Revisited,* 1 GREEN BAG 2D 375 (1998).

[2] *See* Lewis Hyde, A PRIMER FOR FORGETTING: GETTING PAST THE PAST 286-87 (2019); *cf.* Alexander M. Bickel, *The Supreme Court, 1960 Term — Foreword: The Passive Virtues,* 75 HARV. L. REV. 40 (1961).

[3] *Cf.* Jacques Derrida, OF GRAMMATOLOGY (1967); Jürgen Habermas, LEGITIMATION CRISIS (1973); Friedrich Nietzsche, ALSO SPRACH ZARATHUSTRA (1883); Susan Sontag, AGAINST INTERPRETATION (1966).

ing what might be called the academic freedom of the law school student. I was spending most weekends in New York City with my girlfriend, who luckily is still married to me today. For this purpose the term "weekend" often embraced Thursday through, uh, Tuesday.

I was usually in New Haven on Wednesdays, though — to hang out with friends, play some pickup basketball on the fifth floor of Payne Whitney Gymnasium, and enjoy the underrated cuisine of the law school cafeteria. It was on one of those Wednesdays that my good friend Rob James told me about the idea to create the *Journal* along with David Kirkland and Manley Roberts.

My concept, an article comparing the geographic center of the Supreme Court over time to the geographic center of the overall United States population, was enthusiastically received. The idea sprang from my personal interest in geography. I had spent parts of seven summers, starting my junior year of high school, driving across the country. I developed an in-depth knowledge of the Interstate Highway System and dazzled friends by rattling off the highway numbers connecting any two given U.S. cities.

I cited the frontier theories of Frederick Jackson Turner, and my data showed a rough symmetry between the nation's westward movement and the geographic center of the Court. There were some interesting outlying data points like the birthplaces of Justice Frankfurter in Vienna, Austria and Justice Brewer in Smyrna, Ottoman Empire. Rob suggested that we include data for the location of Justices upon appointment to the Court in addition to birthplace data, to account for geographic influences in their professional lives. David added the citation to *Shapiro v. Thompson* and the constitutional right to interstate travel. Since my original article, regular updates have been published to reflect changes on the Court thanks to Rob's efforts.[4]

While my article was intended to be largely whimsical, our nation's increasing polarization makes the subject of geographic diversity increasingly important. After all, is the Court reflective of our nation's diversity when in the last ten years, four of the Justices hailed from four boroughs of New York City?

The complication of course is that it is no longer clear that degrees longitude are helpful in understanding much about the backgrounds of our

[4] *See* Robert A. James, *The Roberts(dale) Court*, 22 GREEN BAG 2D 137 (2019) (citing prior updates).

Justices. San Francisco is west of Lubbock, Texas, but that directional relationship does not tell us anything useful about the influences of growing up in these distinct locations. Neither does the fact that Hickory, North Carolina is west of Chapel Hill, North Carolina furnish insight into living in those locales.

Today much of our polarization is reflected in the urban/rural divide. This separation is clearly illustrated in the now familiar colored county-level election maps showing a wide sea of red Republican party voting in the nation's sparser heartland, broad swaths of blue Democratic party voting in coastal America, and blue dots across the country representing large urban city centers and smaller college and university towns. This polarization is quite real when analyzing voting patterns, but hard to characterize with a center point.

While I still think that it is important to analyze whether our Supreme Court reflects the diversity of our country, we need a different tool. Perhaps we should generate a number rather than a map — say, the average distance in miles of each Justice's data point from the nearest office location of Alphabet Inc., or U.S. college or university with a "top 100" ranking. I bequeath this exercise to a new generation of scholars who enjoy the academic freedom that I found in school.

Rethinking Detroit Timber

RAJ: David Kirkland was the genius behind this piece. He also made the *Journal* possible with his homebrew computer (built from parts years before the Macintosh or IBM PC, mind you) and a program he personally wrote to integrate texts and footnotes.

David read *U.S. Law Week* regularly as a law student, and was struck by the *Detroit Timber* "shrink-wrap" warning on every Supreme Court syllabus. Professor Paul Gewirtz called our attention to a case where the opinion cited dual standards for equal protection review, but the syllabus only mentioned the less restrictive of the two.[5]

David's grandfather Robert Wales clerked for Justice Oliver Wendell Holmes, Jr. and provided the recollection that only the Reporter wrote or edited the syllabi in years past. We marveled that a relative he personally

[5] *Michael M. v. Superior Court*, 450 U.S. 464 (1981).

knew had served a Civil War veteran and American icon. David was surprised but delighted to report on the split in authority and the logic for "the Ohio rule." The topic has since been addressed in depth by others, including "Gil Grantmore" (Daniel Farber) in "The Headnote," published in the *Green Bag*.[6]

The Titles of Nobility Clauses: Rediscovering the Cornerstone

Manley W. Roberts (MWR): In my case, work on the *Journal of Attenuated Subtleties* was an exercise in stress reduction. Even at Yale (a famously philosophical institution), the level of competitiveness was high. The halls were full of self-motivated, driven individuals, striving for the best jobs, the best judicial clerkships, and the intellectual respect of their classmates.

To a large extent, the articles in the *Journal* were a parody of legal scholarship, and self-parody was the tool I (and I think the other editors) used to cope with the currents around us and inside us. (It is no surprise that several of us also performed in the law school's parody musical comedy show, the Yale Law Revue, and Rob James and I co-directed that Revue for two years.)

Nor did those extracurriculars end at graduation. I have been involved in similar outlets during most of my professional life, including performing in the Charlotte, North Carolina bar's musical parody group (the Mecklenburg Bar Revue), singing with a number of vocal groups (including the Charlotte Symphony chorus), and playing keyboards with various bands and choirs around the South (including a church choir that sings African-American gospel; last month, we loaded the choir and my keyboard on a float and rocked the crowd at the Charlotte Pride Parade). Both the study and the practice of law have been more humane and enjoyable as a result of these outside passions.

I was interested in writing about the twin "titles of nobility" clauses of the U.S. Constitution, precisely because at first glance the topic seemed virtually irrelevant to the modern American scene. Much to my surprise, my research revealed a few modern cases that in fact cited those provisions.

The case holdings were often strange and sometimes sad. One decision prevented a man from changing his name from "Jama" to "von Jama," be-

[6] 5 GREEN BAG 2D 157 (2002).

cause the prefix "von" often occurred in the names of German and Austrian nobles. But I found other authorities, especially dissents by Justice John Paul Stevens, that championed what I called a "radical equality principle" underlying the clauses.

We mined those few cases and our own imaginations to create a "multi-factored" balancing test. This output was itself a parody of a common approach to legal analysis: tossing up a laundry list of "factors," and allowing the decision-maker to decide whether the factors in a particular case supported ruling for the plaintiff or the defendant.

Somewhere along the way, I had read that the children of Congressional Medal of Honor winners receive special treatment when they apply to military academies. Naturally, we applied our factors to those facts and concluded that the Medal of Honor and its ancillary benefits (festooned with "ribbons and appurtenances," as the statute says) violated the federal nobility clause.

I am pleased to report that a later (2007) article by a professor at U.C. Davis Law School reached the same conclusion: the special treatment of the children of Medal of Honor winners "is a clear violation of the federal Nobility Clause."[7] The equality principle for which the nobility clauses have been cited turns out to be relevant to the college admissions practices featured in today's news headlines. We live in a time when titles of nobility may no longer be a laughing matter.

PART TWO

The *Journal* was produced in small, photocopied production runs. The first issue sold out quickly to students and faculty, and we made a second printing correcting some errors (attention, collectors). The second issue sold out in one printing, and that was all she wrote.

Suing Satan: A Jurisdictional Enigma

John J. Little (JJL): I was the last of the five to join the *Journal* effort. The precise memories are beyond faded, but I am relatively sure I came on board while the first issue was still in the works. I was immediately in-

[7] *See* Carlton F.W. Larson, *Titles of Nobility, Hereditary Privilege, and the Unconstitutionality of Legacy Preferences in Public School Admissions*, 84 WASH. U. L. REV. 1375, 1435.

trigued by the mission and resolved to come up with something worth exploring.

I came upon *U.S. ex rel. Mayo v. Satan and his Staff*,[8] which became the launch point for this article. It was then (and may still be) the only reported federal decision in which the Devil is a named defendant.[9] While the court expressed grave doubts concerning the exercise of personal jurisdiction and mused about the possibility of the case proceeding as a class action, it ultimately issued the most narrow of rulings, denying leave to proceed *in forma pauperis* and assigning the case a miscellaneous docket number.

Courts continue to cite *Mayo* primarily to cast doubt on jurisdiction over other kinds of defendants: parties who are dead or may not ever have existed.[10]

What about Satan, though? The specifically diabolical issues addressed in this article and alluded to in *Mayo* have received some attention in the legal literature. The most well-known treatment is Charles Yablon, *Suing the Devil: A Guide for Practitioners*.[11] Other authors have touched ever so lightly upon the topic.[12]

Recently, *Mayo* has been routinely, and erroneously, cited in a series of decisions out of the Eastern District of Texas, which lies both east and north[13] of my adopted city of Dallas. These decisions incorrectly reference

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[8] 54 F.R.D. 282 (W.D. Pa. 1971).

[9] In researching my contribution to this piece, I came upon *Harris v. Attorney General of Philadelphia*, 2011 WL 3653504 (W.D. Pa. July 22, 2011), in which a *pro se* plaintiff had named God as a party defendant. The Court, citing *Mayo*, expressed doubt that it could serve process upon or exercise jurisdiction over God. *See also Collins v. Henman*, 676 F.Supp. 175, 176 (S.D. Ill. 1987) (*Mayo* cited in action where plaintiff "claimed to be the prophet Muhammed").

[10] See, for example, *Ely v. Cabot Oil & Gas Corp.*, 2016 WL 4169197 at *1, n. 1 (M.D. Pa., Feb. 17, 2016) (presumably beyond the court's power to compel deceased witness to testify); *Driskell v. Homosexuals*, 533 B.R. 281, 282 (D. Neb. 2015) (no defendant "has been identified with sufficient specificity for service of process"); *Krawec v. Allegany Co-op Ins. Co.*, 2009 WL 1974413 at *1, n.1 (N.D. Ohio, July 7, 2009) (assuming court had jurisdiction to transfer case against a defendant "who may or may not exist"); *Water Energizers Ltd. v. Water Energizers, Inc.*, 788 F. Supp. 208, 211 (S.D.N.Y. 1992) (defendant's existence is a necessary prerequisite for personal jurisdiction).

[11] 86 VA. L. REV. 103 (2000).

[12] *See* Christine Alice Corcos, *"Who Ya Gonna C(S)ite?"* Ghostbusters *and the Environmental Regulation Debate*, 13 J. LAND USE & ENVTL. L. 231, 262 & n. 147 (1997) (arguing that Gozer the Destructor is not subject to personal jurisdiction); James D. Gordon III, *How Not to Succeed in Law School*, 100 YALE L.J. 1679, 1687-88 (1991) (supposing plaintiff in *Mayo* proceeded *pro se* "because suing the devil would present lawyers with an obvious conflict of interest").

[13] Oddly enough, the Eastern District of Texas contains four counties (Denton, Collin, Cooke, and Grayson) that lie *due north* of Dallas County, which is in the Northern District. 28 U.S.C § 124(c)(3).

Mayo as having concluded that the plaintiff's pleading was "frivolous";[14] as noted above, the *Mayo* court declined to go that far.

Without doubt, the crowning achievement for this piece (and likely for any other writing I have ever attempted) was its citation by none other than Guido Calabresi[15] in his 1985 book, *Ideals, Beliefs, Attitudes and the Law*. At page 158, he wrote, "The pains of hell surely are costly, but it is not clear that they are cognizable in a court of law." To this passage he added endnote 193: "*Cf.* Little, *Suing Satan: A Jurisdictional Enigma*, 1 JOURNAL OF ATTENUATED SUBTLETIES 27 (1982)."[16] For that, and for the opportunity to participate in the *Journal*, I am forever grateful.

Are Footnotes in Opinions Given Full Precedential Effect?

RAJ: I learned about the *Melancon* case in David Mellinkoff's lucid book *The Language of the Law*. If an opinion footnote could cite a footnote as authority on the Footnote Argument, I reasoned, why couldn't a law review footnote do the same with the entire caselaw?

The word "indeed" was in common use by one of our professors at the time, when he wanted to endorse a student's comment mildly before moving to another topic. Note the obligatory citation to Immanuel Kant (supposedly in the original German, no less).

At the time, I thought it would be funny for a footnote to have an Appendix. It was not. The humor was sophomoric, and my only defense is that I was a sophomore. I am thankful the *Green Bag* gave me a chance in 1999 to elevate the *Melancon* quotation to the "body" of the footnote, where it belongs. That version has been cited in judicial decisions concerning cocaine

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The Northern District also includes three counties (Kaufman, Rockwall and Hunt) that lie *due east* of Dallas County. 28 U.S.C § 124(a)(1).

[14] *Grohoske v. Fontner*, 2019 WL 2463222 at *1 (E.D. Tex. March 11, 2019); *Lynn v. Summers*, 2018 WL 3431996 at *7 (E.D. Tex. April 30, 2018); *Brown v. U.S. Government*, 2013 WL 4417679 (E.D. Tex. Aug. 13, 2013).

[15] Guido Calabresi is a 1957 graduate of Yale Law School and joined its faculty in 1959. He served as Dean of the Law School from 1985 through 1994. He currently serves as Sterling Professor of Law Emeritus. In 1994, he was appointed to the U.S. Court of Appeals for the Second Circuit, where he continues to serve as a Senior Judge.

[16] Dean Calabresi was certainly aware that the five of us preferred to have the *Journal* cited as J. ATTEN. SUBT. That citation form appears throughout both issues, including my article (1 J. ATTEN. SUBT. 27, 28 n.5). One can only surmise that his editors at Syracuse University Press would accept only those abbreviations that had been blessed by the *Bluebook*.

and eminent domain,[17] and in articles addressing internet gambling, tribal jurisdiction, the World Trade Organization, the Australian constitution, and international arbitration. It is handy for anyone who wishes to bolster the authority of a helpful footnote.

On the Spelling of Daniel M'Naghten's Name

RAJ: This again is the work of David Kirkland, who saw the *Ohio State Law Journal* article cited in a draft criminal law casebook authored by visiting professor John C. Jeffries, Jr., later dean of the University of Virginia Law School. David secured consents from the then-regnant law-journal editor and from Dr. Diamond himself.

A System of Citation for Phonograph Records

RAJ: This article was our joint effort. It stems from the footnote crediting Bruce Springsteen in Mark J. Tushnet's "Darkness on the Edge of Town: The Contributions of John Hart Ely to Constitutional Theory," published in the *Yale Law Journal*. At the time, the *Bluebook* had no provision for citing music.

Proposing "*hear*" as a signal equivalent to "*see*" was facetious, and references to "phonograph records" and "phonorecords" are downright quaint. However, we also made a serious point: in any setting where a shibboleth is overly valued, worthy voices that lack that shibboleth are silenced. That shibboleth could be an approved citation form. But it could likewise be an elite-law-school degree, membership in a privileged group, or articles written exclusively in a mainstream style.

Nowadays, the *Bluebook* has elaborate forms in Rule 18 for citing music as well as other electronic media. A Canadian law review article opined: "The editors of *The Journal of Attenuated Subtleties* were the real pathbreakers in the field of musical legal citation."[18]

The article notes that the *Yale Law Journal* of the time observed a "harmless error" standard on matters of citation. David and I spotted some typos

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[17] *Are Footnotes in Opinions Given Full Precedential Effect?,* 2 GREEN BAG 2D 267 (1999); *State v. Hansen,* 627 N.W.2d 195, 243 Wis. 2d 328 (2001); *In re Condemnation by Mercer County Area School Dist.,* No. 2269 C.D. 2012 (Pa. Commonwealth Ct. Mar. 17, 2014). See also Ira Brad Matetsky's elegant extension, *The Footnote Argument — Sustained At Last?,* 6 GREEN BAG 2D 33 (2002).

[18] Vaughan Black & David Fraser, *Cites for Sore Ears (A Paper Moon),* 16 DALHOUSIE L.J. 217 (1993).

in the first issue of Volume 92. I suggested to Managing Editor Bob Cooper (later Attorney General and Reporter of Tennessee) that since we were going to read all the issues sooner or later, we might as well report those errors ahead of publication. Bob agreed, and David and I started final-proofing the articles, notes, and book reviews of that volume. To that end, I created letterhead of a shadowy quasi-military grammar-police organization, ÆSTHETIC CENTRAL COMMAND, and signed my comments S.Æ.C., *Supreme Æsthetic Commander*.

This article featured the appearance of both dot-matrix printed text and exotic laser-printed examples generated by a friend of David in the Yale computer science department. It is a 1982 Rosetta stone.

Case Note

RAJ: Old law reviews ended with short pieces critiquing recent decisions in the manner of Harvard Law School dean C.C. Langdell. During his trusty *U.S. Law Week* reading, David found a case where Justices dissenting from a cert denial wrote in shorthand that a motorcycle had been stolen "along with title," meaning the paper certificate. I intentionally misread this phrase to mean that the dissenters believed a thief takes title to a pilfered object, and proceeded to rail against the opinion in the manner of Miss Emily Letella in an old *Saturday Night Live* routine. Two passages merit mention in despatches: "these forgotten stanzas of the lost Langdellian idyll" and "a new and ugly trend in Anglo-American legal thought."

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RAJ: The "trivial pother" Learned Hand quote and most of the pejoratives are from copyright infringement claims dismissals, cited in the Kaplan & Brown casebook. David found the clincher, quoted by Justice Thurgood Marshall and originally penned by Judge Hutcheson of the Fifth Circuit: "a harking back to the formalistic rigorism of an earlier and outmoded time."[19]

[19] Benjamin Kaplan & Ralph S. Brown, CASES ON COPYRIGHT . . . (3d ed. 1978); *Crump v. Hill*, 104 F.2d 36 (5th Cir. 1939).

PART THREE

We had vague thoughts of publishing more issues after graduating, but they did not materialize. The lack of execution was not for want of imagination, though. First, John Little drafted an article on "Sports Officiating and the Limits of Judicial Review."

JJL: Preparing these reflections reminds me why I got involved in the *Journal*. Simply put, it was a lot more interesting than law school. It was far easier to find time to research "sports officiating" cases than, say, one's third-year paper (even though the latter was required for graduation). Thirty-eight years later, it remains far more interesting than working on discovery responses (which is what I ought to be doing as I write this).

The sports officiating piece was inspired by a then-recent state court decision, *Georgia H.S. Ass'n v. Waddell*.[20] *Waddell* arose out of a football game between Lithia Springs High School and R.L. Osborne High School, the winner of which would advance to the state playoffs. Osborne led 7-6 with 7:01 remaining in the game, had the ball, and faced fourth down with 21 yards to go on its own 47-yard line. Osborne punted, but roughing the kicker was called. The referee assessed a 15-yard penalty and the ball was placed on the Lithia Springs 38-yard line, *but no first down was awarded* (an obvious error by the official). Osborne punted again. Lithia Springs received the punt, drove down the field and kicked a field goal, and later scored again, making the final score 16-7 in its favor.

Osborne protested the erroneous call to the sports association. The protest was denied by the association's Executive Secretary, then by its Hardship Committee, and finally by its Executive Committee, which sounds like an exhausting exhaustion of administrative remedies.

Suit was filed by the parents of Osborne players in the Superior Court of Cobb County. The trial court found that it had jurisdiction, that the plaintiffs had "a property right in the game of football being played according to the rules, and that the referee denied the plaintiffs and their sons this property right and equal protection of the laws by failing to correctly apply the rules."

The trial judge entered an order cancelling a Lithia Springs playoff game scheduled for November 13 and ordered Lithia Springs and Osborne

[20] 285 S.E.2d 7 (Ga. 1981).

to meet on the football field on November 14, resuming the game with 7:01 remaining, with Osborne in possession at the Lithia Springs 38-yard line, still leading 7-6, and this time with *first down and 10*. (Many of us would love the opportunity to turn back the clock to redo something that happened in high school, or something that did not happen in high school.)

The Supreme Court stayed the trial court order. It cited its prior decision in *Smith v. Crim*,[21] holding that a high school football player has no right to participate in interscholastic sports[22] and no protectable property interest which would give rise to a due process claim. The opinion concluded that courts of equity in Georgia "are without authority to review decisions of football referees because those decisions do not present judicial controversies."

Unfortunately, I have no recollection of what I concluded in the sports officiating piece. The article was complete, or nearly so, but prepared in the most analog of fashions — typed on a Smith-Corona portable electric typewriter with neither memory nor back-up (as if any of us, save David, would have known what that meant in 1982). The manuscript has been lost to history.

Having now done a little more current research, I admit the topic would now be neither sufficiently "attenuated" nor "subtle" for inclusion in the *Journal*. Sports officiating decisions have regularly found their way into our courts.[23] There has been an explosion of law journals devoted to sports and entertainment, which routinely carry articles that could all have traced their lineage to this *Journal of Attenuated Subtleties* piece on sports officiating had we published it (in the subjunctive mood of sports lingo, "woulda, coulda, shoulda").[24]

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[21] 240 Ga. 390, 240 S.E.2d 884 (Ga. 1977).

[22] RAJ, interrupting JJL: I cannot resist citing *Spath v. Nat'l Collegiate Athletic Ass'n*, 728 F.2d 25 (1st Cir. 1984): "There being no fundamental right to education, see *San Antonio Independent School Dist. v. Rodriguez* [citation omitted], there could hardly be thought to be a fundamental right to play intercollegiate ice hockey."

[23] *See, e.g., Bain v. Gillispie*, 357 N.W.2d 47 (Iowa Ct. App. 1989) (affirming summary judgment for college basketball official on claims brought by sports memorabilia vendor that official's erroneous call constituted malpractice and injured vendor to the tune of $175,000). *Cf. McDonald v. John P. Scripps Newspaper*, 257 Cal. Rptr. 473 (Cal. Ct. App. 1989) (citing *Waddell* in dismissing action brought by loser of county spelling bee based upon official's error).

[24] *See* Richard J. Hunter, Jr., *An "Insider's" Guide to the Legal Liability of Sports Contests Officials*, 15 MARQ. SPORTS L. REV. 369 (2005); S. Christopher Szczerban, *Tackling Instant Replay: A Proposal to Protect the Competitive Judgments of Sports Officials*, 6 VA. SPORTS & ENT. L.J. 277 (2007); Russ VerSteeg &

A most provocative piece in this vein is John Cadkin, *Sports Official Liability: Can I Sue If the Ref Missed a Call?*[25] The author concludes (correctly, I would say) that generally, the "decision of the referee should be left on the playing field." But he argues that a cause of action should lie where "only monetary relief is requested and where the allegedly negligent call is an: (1) on-the-spot judgment, (2) made in good faith, (3) absent instant replay, and (4) is outcome determinative."

The author argues the official's conduct should be judged against an ordinary negligence standard. While I do not recall what I concluded in 1982, I am relatively certain that I would have disagreed with this cause of action and liability standard (and I still respectfully disagree).

RAJ: I wrote a draft of "The Jurisprudence of Paper Clips," an essay on the affixation of allonges to negotiable instruments by various fastening devices, which appeared in the *Green Bag* recently and which has been enriched by correspondence from Paul Kiernan and Shale Stiller.[26]

I looked into "Admiralty Jurisdiction Over Collisions Between Ships and Trains," but it turned out that such accidents have happened with alarming frequency.

In a fragment of "The Mess of Dillegrout," which is still in existence and has been delivered to the editors of the *Green Bag*,[*] I described unusual English serjeanty tenures in which land rights were issued on condition of the holder's serving chicken soup at a coronation or making a "passing of wind" before the monarch.

David Kirkland whimsically suggested "Time Travel: It's Not Just Impossible, It's Illegal," pointing out the problems that journeys into the past could cause for the first-to-file system under Article 9 of the Uniform Commercial Code. Sadly, we do not know his solution. Perhaps he envisioned a Turing Test to determine whether someone who files a UCC-1 today is an interloper from the future.

Years later, I contributed to *The Copyright Infringement Quarterly*, a compendium of legal humor edited by my friends John Morris and Adam Sachs. In that context, I mentioned one of my favorite appellate cases, *Lyon County*

Kimberley Maruncic, *Instant Replay: A Contemporary Legal Analysis*, 4 MISS. SPORTS L. REV. 153 (2015).

[25] 5 U. DENV. SPORTS & ENT. L. J. 51 (2008).

[26] 19 GREEN BAG 2D 249 (2016).

[*] *General Editor's note:* And it may well appear in print here or there, someday.

Bank v. Lyon County Bank.[27] In 1998, John Morris introduced me to Professor Ross Davies, and the connection of the *Journal of Attenuated Subtleties* to the *Green Bag* was established.

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ALL: We are grateful that our works will live online for another day, now complete and in their native format. In the realm of publication, we may have peaked a bit early with our student output of nearly forty years ago. We look forward to the useful and entertaining contributions of those who, like us, appreciate the world of legal scholarship enough to go to *so, so much trouble* parodying it.

[27] 58 P.2d 803 (Nev. 1936), spotted in Fleming James, Jr. & Geoffrey C. Hazard, Jr., CIVIL PROCEDURE (2d ed. 1977).