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HAMPTON LAW OFFICES, LLC

*Criminal Defense – All Courts
State & Federal
DUI
Motor Vehicle
Drug Arrests
Civil Litigation
Personal Injury*

“Making a Difference When it Counts”

Justice should be equal. But oftentimes it is not. Our newsletter highlights recent developments in the law, and areas of concern for our clients and fellow practitioners.

SOL

For lawyers, SOL is shorthand for statute of limitations. For young Dan, it meant something quite different.

I’ve known Dan since he was a boy. He was a high school classmate of one of my kids. Now 25 years old, Dan sat in my conference room with his young wife. Despairing. He couldn’t get a job – no one would hire him. Anywhere.

As a teen, Dan had gotten into some trouble. His family hadn’t been able to hire an attorney and he had tried to navigate the defense landscape on his own. He ended up with a conviction. It was a misdemeanor. Not a serious one either. But a conviction nonetheless.

Here’s the rub. The “magic question” is asked *everywhere*: “Have you ever been convicted of a crime?”

It’s on apartment rental applications, car loan applications, financial affidavits, mortgage applications. And, of course, on job applications. If you’ve been convicted of a crime, your opportunities in life are significantly limited. In many instances, you are SOL.



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SOL (Continued from page 1)

Dan had come to my office to find out if there was any way that he could clear up his record. Had he been represented by a defense attorney at the time of his charges, he wouldn't have needed to see me. There are so many diversionary programs available through the courts – programs that if successfully completed result in a dismissal of the charges and no criminal record. Not only that, but in most instances, the arrest records themselves can be expunged.

Dan wasn't that fortunate. His criminal conviction came back to haunt him on every background check, eliminating him from eligibility for any job offered to him.

Interestingly though, there is a process by which someone with a criminal conviction *can* clean up their record. It is called the pardons process. It's not easy. It's not a laydown. But it does offer hope. If you have a blemish on your record, consult a lawyer. You may not be SOL.

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To Tell The Truth

Remember the old American television game show "To Tell The Truth?" The contestants, who were imposters, were allowed – even encouraged – to lie. The central character was sworn "to tell the truth." The panelists then had to vote as to which contestant was the central character. It was great fun. And there was prize money!

Unfortunately, in the criminal justice system, getting at the "truth" can be a challenge. The jury votes. It's not fun. And there isn't prize money.

Serious cases such as sexual assault claims can sometimes be based on circumstances and bare accusations with no physical evidence whatsoever. If the defendant denies the claim, the case will turn on one word against the other. The proverbial "He Said/She Said."

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Did you know?

Folks seem to think that DNA evidence is a "slam dunk."

But it's not necessarily so.

A DNA profile is most often created with what's called a buccal swab.

Evidence collected in this way is highly reliable.

But DNA collected from personal items, stored samples or human remains may yield a less reliable partial profile.

Moreover, the fundamental evidentiary issues of legality and competency in the manner of collection and chain of custody always still pertain.



To Tell The Truth (Continued from page 2)

Because there is so much at stake, these are very difficult cases to negotiate, especially if the alleged victim is a child. The mission of the State is to prosecute. The victim's advocate's office is charged with protecting the alleged victim. Everyone wants to know why anyone would "make up" claims such as these. We work with our investigators to examine issues of credibility and alternative theories for the claims. But, what about the "truth?" How can we shift the playing field?

With clients in circumstances such as these we often explore the efficacy of taking a polygraph, also known as lie-detector test. While polygraphs continue to be inadmissible at trial, the science has improved considerably. It is fairly difficult to "fake them out." And with a "clean" polygraph, we can go to the prosecutor with the stance that we are on the side of "truth." It's not dispositive – and some prosecutors won't consider them – but it usually compels a prosecutor to re-examine the facts of the case and becomes an important tool in the negotiation process.

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Buyers Beware!

We've had a number of cases involving internet scams. And they haven't had happy endings.

In recent cases, students endeavored to make purchases through eBay "Trading Assistants." One wanted to purchase a guitar for \$1,500, the other an automobile for over \$4,000!

In both instances, the "Trading Assistant" held itself out as authorized to conduct eBay transactions. Both used the eBay logo, as well as logos for PayPal, FedEx and the United States Postal Service. Both used very sophisticated and convincing language indicating that the transactions were safe and confidential. Both contained "Security Warnings," alerting customers to internet fraud and assuring potential buyers of the security of their transactions.

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Tom Poston, Kitty Carlisle, Orson Bean and, standing, moderator Bud Collyer of "To Tell the Truth."



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Avoid The Chicken Coop

There is a classic story that is told in the Trusts and Estates course that most lawyers take early on in law school. An elderly man dies leaving a Will. Concerned about this important document, he puts the Will in his safety deposit box in the bank. With it, he leaves a note to his heirs. He writes, "The key to the safety deposit box is hidden under the chicken coop in the back yard."

Well, as you might imagine, the Will was not timely found.

A safety deposit box is the *worst* possible place to leave your Will especially if you are the only one who has access to it. Upon death, the only way to open a safety deposit box held in the decedent's name is with an order of the probate court. And the heirs may not even know that a safety deposit box exists.

A Will is an important document. And it *should* be kept in a safe place. Most law firms have vaults in which you may maintain your estate planning documents. One option, then, is to leave the original document with your lawyer. Another option is to get a fireproof (and waterproof) box in your home and put it there.

Keep in mind that the *original* document is the *only* operative document. A probate court will not accept a copy. Without the original Will, there is no Will.

Keep your designated executor informed as to where the original documents are. Avoid the chicken coop.

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Buyers Beware! (Continued from page 3)

Once the purchase price was established, the unwitting buyers were asked to remit payment via MoneyGram. "Once we receive payment confirmation, we will start the shipping process," their emails said. "We will hold the payment details until you send us your confirmation that you are satisfied with the product you received," the buyers were assured.

You already know the end of the story. Both students sent their money. Neither received their purchases.

There is a process to pursue internet crimes. And the FBI does pursue some of these. But the volume of the deception is staggering. And most of these "Trading Assistants" disappear into the cyber ether – with the money.

When making purchases over the internet, especially significant ones, make certain that you are dealing with reputable individuals and/or established merchants. Use extreme caution before parting with your money. Use a credit card. Do not send cash or use money grams. If something appears too good to be true, or something appears "off," trust your instincts. And run.

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