

The Myth of the Litigious Society: Why We Don't Sue

By David M. Engel

The University of Chicago Press, Chicago, IL, 2016.
232 pages, \$24.00.

Reviewed by Henry S. Cohn

In *The Myth of the Litigious Society*, University of Buffalo School of Law professor David Engel denies that Americans are suit-happy. He notes that the subject of tort litigation brings to the public mind the suit against McDonald's for failure to warn about its extremely hot coffee, and movies such as Frank Capra's *The Fortune Cookie*, with Walter Matthau as a crooked plaintiff's attorney. The "Contract with America," introduced in Congress in 1994, sought to reduce frivolous litigation by "tort reform." Detailing the "myth" of excessive tort litigation, Engel sets forth what he calls the conventional model of a tort suit, the "decision tree," where an injury occurs and the plaintiff almost automatically sues: "injury victims make rational and conscious decisions ... their responses follow a linear path, and ... they behave as atomistic individuals."

Engel contends that the decision tree model has no empirical support. He cites statistics that show that most people do not sue and that attorneys reject numerous cases brought to them. Most potential plaintiffs, he writes, given the choice to "like it [sue] or lump it," choose to lump it. The book explores why many people choose not to sue and the consequences of their decision. "The reluctance of injury victims to press claims weakens the very foundations on which tort law's founders built their institutions." The failure to sue reminds Engel of the dog in the Sherlock Holmes story that did not bark. So much time is spent arguing about "tort reform" without considering whether the numbers actually support the belief that people tend to sue.

According to Engel, some people do not sue because they are so physically or emotionally shaken by their injuries resulting from an accident. Engel describes a woman who laments that every waking day she has pain due to her injury; she does not have the strength to think about her legal rights. Others cannot communicate their feelings, or they blame themselves for their injuries. Some people spend years in therapy and feel isolated or trapped; they cannot face the rigors of depositions and court participation.

Some prospective plaintiffs cannot prove the causation necessary to connect their injuries to a possible defendant. For example, a cancer victim may decide that he or she cannot prevail in court against an alleged polluter, because of the difficulty of showing causation. Engel cites the story of Erin Brockovich, which was made into an eponymous movie starring Julia Roberts. The Pacific Gas and Electric Company of California (PG&E) had polluted farmers' wells, causing cancer in the community. But the victims did not make a causal connection to PG&E until Brockovich's investigation.

Sometimes an injury is perceived, not as stemming from a tortfeasor, but as an act of God. A person with a faith-based perspective might be reluctant to sue because of a belief that his or her injury was part of a divine plan. Some injured persons believe that typical accidents, such as falling down

the stairs or developing a disabling backache from a chair, are not the fault of poor design, but are natural occurrences. They decide to "lump it." When the woman recovered against McDonald's for its negligence in serving excessively hot coffee, many saw her injury as merely a natural hazard of the breakfast routine.

Societal and family pressures deter people from suing. Engel describes a mother whose ex-husband pressured her to sue for injuries to her daughter, even though they were slight. A few months later, the mother, who became a born-again Christian, was counseled by her minister that he would have urged her to ignore her ex-husband and not sue. The mother felt guilty that she had sued. Some families do not approve of lawsuits of any kind and shame the possible plaintiff into forgoing court action. Some people who might have legitimate medical malpractice suits choose not to sue because of a long-standing relationship with the doctor.

Certain ethnic groups' cultural values also discourage them from litigating. Sometimes there is a question of what is meant by an "injury." "If pain can vary from one cultural context to another," Engel writes, "so does the cultural construction of injury itself." He explores the case of the Chinese girl whose parents did not sue a relative who damaged the child's feet by binding them to make them small and beautiful.

Engel also cites studies that confirm that circumcision causes psychological pain to the baby. Based on these studies, he argues that, although circumcision was never before considered tortious, it now may be. In light of the fact that a boy's parents must consent to circumcision, however, his argument did not impress me. In addition, the multiple pages that he devotes to international efforts to ban circumcision detract from the main thesis of his book.

Engel notes that many suits are not brought because attorneys reject them as not winnable. Occasionally a person does not sue because he has been given an apology by an insurance company representative. Especially after mediation, a possible plaintiff may put aside a lawsuit because the tortfea-

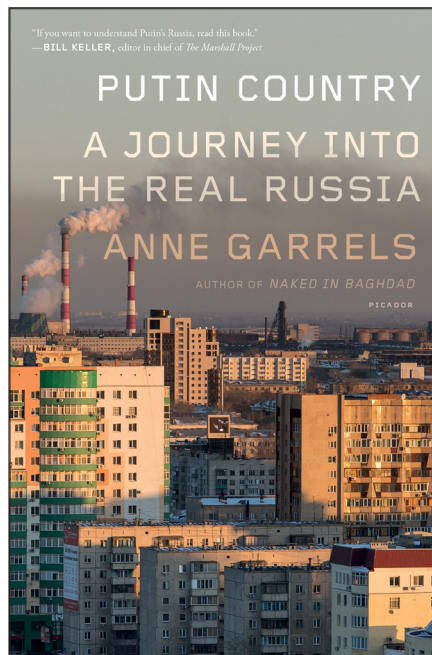
sor has shown contrition. In some cases, an insurance adjuster's offer of a small amount prevents a lengthy court proceeding.

These reasons mean, according to Engel, that we should not fear an excess of suits. He advocates for, instead of tort reform, more assistance to the marginal poor who cannot afford attorneys but nevertheless do not qualify for legal aid. Recently several law schools, including the University of Connecticut, have started programs for such people. Engel also suggests the grouping of smaller claims to make them more powerful in court. He calls for more government regulations to improve the environment and the safety of workplaces, thereby alleviating the need for lawsuits.

Engel writes well and makes a strong case. How sound is his thesis? Sachin Pandya, a professor at the University of Connecticut School of Law has pointed out that Engel's thesis is supported by studies that show that a good percentage of people choose not to sue for injuries. This may be so even when they have a winning case. He calls this reaction "underclaiming," and he finds Engel's explanations for underclaiming an important contribution.

At the same time, some people do bring extravagant claims, and Pandya refers to this as "overclaiming." Although Engel's book does not discuss overclaiming, this is an important concern as well. We have to decide, says Pandya, what choices to make to improve our legal compensation system in the United States. In *Underclaiming and Overclaiming*, 38 LAW & SOC. INQUIRY 836 (2013), Pandya and Peter Siegelman, also a law professor at the University of Connecticut, attempt to establish a "conceptual structure" to "separate valid underclaiming and overclaiming arguments" from those based on the myth of the litigious society. ☉

Henry S. Cohn is a Connecticut judge trial referee.



Putin Country: A Journey Into the Real Russia

By Anne Garrels

Farrar, Straus and Giroux, New York, NY, 2016. 228 pages, \$26.00 (cloth), \$17.00 (paper).

Reviewed by John C. Holmes

In *Putin Country*, Anne Garrels, former correspondent for National Public Radio, tells a vivid tale of Russia as it changed over the past 30 years. She gathered a vast amount of information from her many visits to Russia, particularly to the city of Chelyabinsk and its surroundings, located approximately 1,000 miles east of Moscow. Her book does much to explain Vladimir Putin's hold on Russia today and the Russian people's fear, respect, love, and distrust of him.

Most Russians today have a "grudging complacency" and are "eager for stability and a sense of national pride." They remember the days of confusion and instability after the fall of communism in 1990 and the collapse of the Soviet Union. Many Russians are resentful of the West, which they accuse of arrogance and hypocrisy.

When Garrels first arrived in Chelyabinsk in 1993, the city was impoverished and neglected. There were no decent accommodations. National GDP fell 34 percent between 1991 and 1995, the city was wracked by unemployment, food was in short supply, and no end was in sight. Like most Russian citizens, the townspeople were reconciled to the resignation of Boris Yeltsin and

relieved by the appointment of the relatively unknown Putin. They observed without complaint as Putin brutally put down the Chechen rebellion, destroyed rivals, blocked opposition parties, and abolished gubernatorial elections in favor of Kremlin appointments.

By 2012, Garrels relates, the Russian economy grew nearly tenfold, real income increased, and poverty and unemployment were cut in half. In Chelyabinsk, one could eat in "Pretty Betty, a replica of an American diner, complete with waitresses attired in 1950s-style bright yellow dresses, bobby socks, and sneakers." There were also Chinese and Japanese restaurants, and, at the McQueen restaurant and bar, "Oh, Pretty Woman" was sung in flawless English. In contrast to the babushkas of yore, "[s]tyle Russian women ... effortlessly stroll the cobblestones in four-inch heels." Travel agencies "offer cheap tours to Egypt, Turkey, Thailand, and Dubai." American and European chains, such as Holiday Inn and Radisson, "cater to Russian and foreign investors." Many foreign words, especially English words pertaining to computers, have been absorbed into the Russian language. The Russian Orthodox Church "is taking back long-confiscated properties, and everywhere churches are being restored or built."

But economic progress has come at a cost, including much anxiety and fear. Paramount is the all-encompassing spread of corruption. To do business in Russia today, Garrels writes, "you pay the minions of the fiddler, who is ultimately Vladimir Putin."

Garrels introduces us to Oleg Aleikhin, who, in his mid-50s, is the oldest member of a biker gang. "The relative of a senior official in the city government, he readily admits he makes his money as a fixer for shady land and property deals." He gives Garrels a ride on his motorcycle to a restaurant, where he meets a business partner and two "screwed-up" teenage girls he knows. Aleikhin and the girls disappear into a bathroom, where, the business partner informs Garrels, Aleikhin takes sexual advantage of them. Unlike other well-off Russians who have learned to be discreet, Aleikhin shows off his new foreign car and his expensive clothes and jewelry. It turns out that he'd hoped that Garrels could help him obtain a U.S. visa, for which he'd been turned down, but she cannot.

Albert Raisovich Yalaletdinov had been a professor of agricultural technology but lost his job in the tumultuous early 1990s. He got

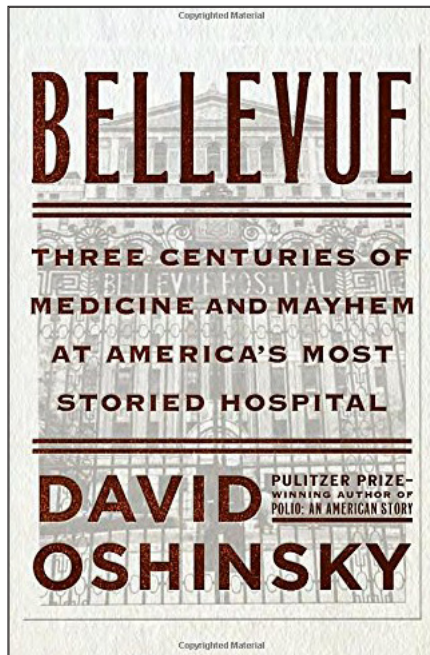
into the business of providing compressors, Garrels writes, “for road building, railroads, and the oil industry, all enterprises largely controlled by the state. Government officials regularly demand fake, inflated receipts so they can skim off the difference.” Yalaletdinov built a successful company that employs 400 people. He has to be ever-vigilant in knowing when to refuse bribes and when and whom to pay off to accomplish his aims. He is one of the few to succeed in business without the early benefit of government “favor.” Yet his current status is still fraught with constant pressure to grease the palms of bureaucrats who wield power over his business operations.

Vilyard Yakupov, one of numerous Muslims in the area, was accused by an imam, probably out of jealousy, of spreading extremist views, which is a criminal offense. A mild-mannered man, he was restricted from farming his own land for three years while awaiting trial. His accuser refused to appear at trial; nevertheless, officials continued to restrict his movements and harass him. Though he remains under constant surveillance, he has attempted to put his life back in order by restoring old tractors and combines, making honey, and “investing in a herd of horses to produce kumiss, the fermented mare’s milk that is popular with the local communities.”

The United States was once held in high esteem by Russians, particularly the young, but Putin’s manipulation of the government-controlled media has caused it to be perceived as a threat to Russia’s fulfillment of its international role. Garrels believes that Putin has consistently and purposefully striven to separate Russia from the West, particularly the United States. He is using military threats and diplomatic leverage to advance Russian interests, despite a weak economy burdened by low oil prices and Western trade sanctions.

Through many examples of individual lives, such as those mentioned above, and through keen observation and analysis of events in Russia, Garrels presents a comprehensive if sometimes still perplexing picture of Putin country. She does not suggest political solutions, but she offers an insightful appraisal of Russia’s technological and economic advances as well as of the myriad problems that continue to challenge Russia, with respect both to its economy and governance and its people’s severe alcohol and drug abuse. ☉

John C. Holmes was an administrative law judge (ALJ) with the Department of Labor for more than 25 years, and he retired as chief ALJ at the Department of Interior in 2004. He currently works part time as an arbitrator and consultant, and enjoys golf, travel, and bridge. He can be reached at jholmesalj@aol.com.



Bellevue: Three Centuries of Medicine and Mayhem at America’s Most Storied Hospital

By David Oshinsky

Doubleday, New York, NY, 2016. 400 pages, \$30.00.

Reviewed by Elizabeth Kelley

I was eager to read *Bellevue*, by Pulitzer Prize-winner David Oshinsky, in large part because I thought that the book’s emphasis would be on the “mayhem” that is noted in its subtitle. For me, like probably most Americans, Bellevue is the mental institution that housed such notables as Norman Mailer, Allen Ginsberg, and William S. Burroughs, in addition to New Yorkers thought to pose a danger to themselves or others, or waiting to be evaluated for competency or sanity in conjunction with court proceedings.

Bellevue’s emphasis, however, is on the other keyword in its subtitle: “medicine.” Indeed, in an ocean of largely favorable reviews of *Bellevue*, at least two commen-

tators (Jennifer Senior in *The New York Times* and Nathan Smith in *The Nation*) have found this slightly disappointing. But *Bellevue* is such a rich, colorful, and fascinating account of the history of medicine as well as of the history of New York City that any craving for a fuller treatment about the hospital’s work with the mentally ill disappears.

Bellevue was the first public hospital in the United States, founded in 1736 as an almshouse. Located in what became America’s largest city, it accordingly boasts a string of firsts, including first hospital to have a maternity ward, first to have a medical school, first to have a team of ambulances, and a leader in the use of antiseptic procedures.

Bellevue is a legal history; the hospital has been shaped, since its founding, by laws, lawyers, and legal issues. In 1750, the “Doctors’ Riot” was the work of an angry mob storming the jail, apparently seeking to lynch doctors in protective custody because of their robbing graves to obtain corpses for dissecting. Shortly after the riot, the legislature passed a law prohibiting grave robbing, but, at the same time, permitting the corpses of executed criminals to be used for medical research. A century later, in 1854, as Bellevue’s role as a teaching hospital expanded and the need for cadavers grew correspondingly, the “Bone Bill” was passed to allow the unclaimed bodies of residents of almshouses as well as of prisons to be used.

Today, the draconian penalties for the use of and trafficking in cocaine is largely responsible for this country’s mass incarceration. But Oshinsky provides the rather benign history of this drug as it related to medicine, Bellevue, and its doctors. One of the 19th century’s most influential surgeons was Dr. William Halsted. Halsted read about the European use of cocaine as a numbing agent for surgery. Oshinsky provides stomach-turning descriptions of medical procedures performed without anesthesia beyond a good dose of whiskey. Cocaine did fulfill its intended purpose, but its other qualities were soon discovered. Halsted became addicted and behaved erratically. It was suggested that he leave Bellevue for the newly opened Johns Hopkins Hospital in Baltimore. Meanwhile, Halsted became a leader in antiseptic surgery (more stomach-turning descriptions by Oshinsky of the world before medical staff washed their hands and cleaned surgical instruments) and in fact developed surgical gloves to prevent the rashes that appeared on one nurse’s hands because

of the powerful disinfectants he required. That nurse later became his wife.

According to Oshinsky, the incident perhaps responsible for making Bellevue synonymous with mental illness was inveterate investigative reporter Nellie Bly's exposé. As Oshinsky writes, "After spending several hours in front of a mirror 'practicing to be a lunatic,' Bly checked into a boardinghouse for young women and behaved so oddly that she was carried off to police court, where the judge ordered her to be taken to Bellevue's Insane Pavilion." Upon her release, she exposed in vivid detail not only that she was able to fake mental illness and put one over on the courts and Bellevue's medical staff, but also the snake pit-like conditions of a late 19th-century mental hospital.

Several years later, another reporter attempted a similar mission, but what he discovered was far more lurid. He claimed to have witnessed the murder of an elderly mental patient by three nurses. The nurses were put on trial and were represented by the master of cross-examination, Francis Lewis Wellman. They were acquitted, but, nonetheless, Bellevue was subjected to "relentless flogging in the press."

With the Roaring Twenties came the 18th Amendment (Prohibition) and, along with it, blackmarket whisky, which was poisoned by being made with denatured alcohol. As Bellevue's emergency rooms filled with victims of this noxious brew, and fatalities ensued, a new branch of medicine—forensic medicine—developed in order to explain the cause of death.

The sensational trial of Albert Fish in 1935, the man many believe to be the model for Hannibal Lecter in *The Silence of the Lambs*, not only tarnished Bellevue's reputation but raised serious questions about the duty to warn and liability for failing to warn. Fish had twice been referred to Bellevue by the courts, but he had been released as harmless. At trial, a defense witness who had examined Fish for purposes of trial disclosed that Fish "burned himself with hot poker, engaged in bloody episodes of self-flagellation with a nail-studded paddle, and repeatedly stuck metal objects into his rectum." X-rays showed 29 rusted needles lodged near his pelvis. "I always had a desire to inflict pain on others, and to have others inflict pain on me," he said. Hospital administrators testified that they had failed to recognize the danger that such a person posed because of crowded condi-

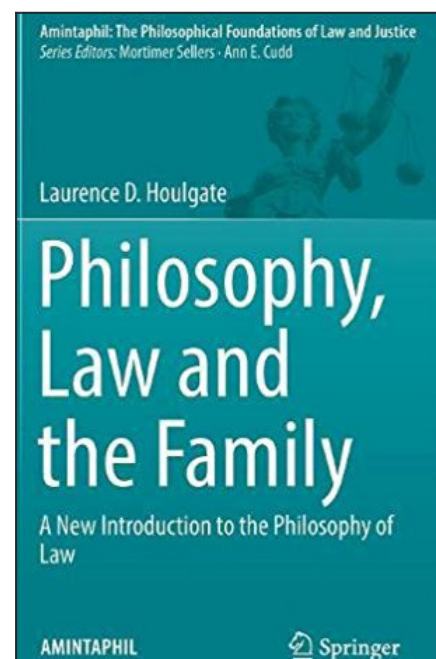
tions and overworked staff. The jury found Fish sane at the time of the act (because he knew right from wrong), and guilty, and sentenced him to death. Overcrowding, an overworked staff, and the tendency to let things fall through the cracks, sometimes with tragic consequences, would be themes throughout Bellevue's history. In January 1989, Dr. Kathryn Hinnant was murdered in her office at Bellevue. The accused was a homeless cocaine addict who, unbeknownst to anyone at Bellevue, had been squatting at the hospital, living out of a closet. He had moved freely throughout the hospital, wearing scrubs, and even eating in the staff dining room. Investigation showed that, prior to the murder, he had been admitted to Bellevue, but a psychiatrist had deemed him harmless.

As Oshinsky notes, "[t]here is never a good time for an epidemic to strike a city," but the AIDS epidemic of the 1980s came at a particularly bad time for Bellevue because New York City was still recovering from the recession of the 1970s. Five percent of the nation's hospitals, in California and New York, were treating 50 percent of the nation's AIDS patients and had to grapple with end-of-life issues, including the right to die. One of the early cases, *Evans v. Bellevue*, found for the hospital where doctors had overridden the patient's written wishes not to prolong his life, because there was a "reasonable expectation of recovery" from the condition immediately threatening his life, even if not from AIDS. Moreover, doctors hoped that while the patient remained alive, a new treatment for AIDS might be found.

These are some of the incidents Oshinsky recounts in a work whose inherently colorful subject is enhanced by a colorful narrative as well as by a generous selection of photos and illustrations, such as a photo of a young woman whose body showed the ravages of elephantiasis (Bellevue was an early sponsor of medical photography in the years following the Civil War) and a photo of the staff, including National Guardsmen, evacuating patients from the facility in the midst of 2012 Hurricane Sandy, the storm that closed the hospital for the only time in its history.

Bellevue is an important reminder of the distinguished and proud history of medicine in this country, and the lives that have been saved and enriched by the spirit of compassion and innovation that has flourished at Bellevue. ©

Elizabeth Kelley is a criminal defense lawyer based in Spokane, Wash., and she has a nationwide practice representing persons with mental disabilities. She served three terms on the board of the National Association of Criminal Defense Lawyers. She has been appointed to the National Advisory Committee of the ARC's National Center on Criminal Justice and Disability. She is the editor of *Representing People with Mental Disabilities: A Practical Guide for Criminal Defense Lawyers*, to be published by the ABA in the fall of 2017. Kelley can be reached at ZealousAdvocacy@aol.com.



Philosophy, Law and the Family: A New Introduction to the Philosophy of Law

By Laurence D. Houlgate

Springer International Publishing, Cham, Switzerland, 2017. 283 pages, \$59.99.

Reviewed by Christopher C. Faille

Laurence D. Houlgate, a professor of philosophy at California Polytechnic State University, has written a new textbook on the philosophy of family law. *Philosophy, Law and the Family* provides an overview of the field, suitable for college undergraduates. It takes in, along with much else, the philosophical issues raised by limits on access to marriage; alternatives to marriage; the right to procreate or to refrain from procreation, as each is recognized in U.S. constitutional law; the contours of child custody disputes;

and the triangular relationship among parents, children, and schools.

Houlgate believes this is an inadequately studied field in philosophy. In general, philosophers of law find criminal law most intriguing, and they may also bring their philosophical tools to bear upon torts, contracts, property rights, and a number of other matters before arriving at family law, if they ever do.

This book is organized according to the various philosophical lenses through which the family (or any other subject under legal cognition) may be viewed. Thus, the old debate between natural-law and positivist theories frames the early chapters. Later, we look at the family through utilitarian lenses, and we look at the U.S. constitutional issues involved in family law through originalism versus non-originalist conceptions of constitutionalism. The volume concludes with treatments of the consequences for family law of Critical Legal Studies and Feminist Jurisprudence.

Family Privacy and the Schools

To get a sense of Houlgate's approach, let us start with the idea of a child as a "minor," a person absent a package of rights that will arrive on a certain defined birthday. His or her parents or other adult guardians are taken as the rights-bearing members of the household.

This sharp distinction between minority and majority status is bound up with a principle on which Houlgate spends a good deal of time: the "principle of family privacy." In its older form, which Houlgate calls its "strong form," the principle of family privacy would prohibit any interference at all by the state in intra-family matters, including the prohibition or punishment of intra-family violence. The presumption of the strong form was that the family was an extension of the patriarch, and the patriarch's decision to use violence upon his wife or child was solely his concern. Houlgate understandably regards this form of the view as of chiefly historical interest.

But a different, "weaker" view of family privacy vis-à-vis the state is very much a living contemporary matter. It would allow the state to intervene to prevent harm, but it would prohibit the state from interference in other behaviors. This principle is invoked, for example, to limit teaching about sex in public schools, making it at the least easy for parents to have their children excused from any such course.

In *Meyer v. Nebraska* (1923), the U.S.

Supreme Court interpreted the substantive due process right in the 14th Amendment to protect parents' liberty to have their children learn a foreign language, even the then-politically disfavored language of German, and the liberty of instructors to teach it. The school involved in *Meyer* was parochial, but the state statute at issue was quite general, providing, "No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language."

Justice James McReynolds' opinion offers protection to liberty as exercised in the voluntarily established parent-child-teacher triangle, touching each side of that triangle in the following sentence: "Evidently the legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own."

Let's return to the foundational point of children as minors and focus on why this triangle has to involve the parents at all: Does one become a bearer of rights only when a certain clock tolls on a given birthday, even though the specific choice of "majority age" may be a matter of arbitrary societal convention?

Houlgate quotes the 19th-century social Darwinist Herbert Spencer on this point. In Spencer's view, children are born already possessed of "the fullest endowment of rights that any being can possess." It is a principle "rooted in the nature of things" that "every man has freedom to do all that he wills, provided he infringes not the equal freedom of any other man," and Spencer is clear that this general rule applies "as much to the young as to the mature." Spencer's view leaves little room for the "family" as a legal unit at all, just as it leaves little room for the state as *parens patriae*.

What Would Spencer Think?

One can, I think, fairly surmise that, if Spencer had lived long enough to learn of the *Meyer* decision quoted above, he would have approved the result, but he would have seen the pertinent contractual liberty as binary rather than triangular. He would not have written as McReynolds did of parents "controlling" the schooling of "their own."

Further, with regard to the more contemporary example of sexual education in public schools, one must say that Spencer didn't

believe in public schools at all, but that, had he been brought around to taking them as a given, he would have expected that the sex ed course would be an elective, and that the elector would be the pupil, not a parent.

John Stuart Mill expressed the same general rule of political morality as did Spencer, in quite similar words: The "sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. ... [T]he only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others," he wrote.

But Mill said what Spencer would later explicitly refuse to acknowledge: that children are relevantly different from adults with respect to this principle. "Those who are still in a state to require being taken care of by others, must be protected against their own actions as well as against external injury." This at least allows room for the argument that children must be protected from a too-early and too-frank discussion of the facts of human sexuality.

Houlgate Has His Own View

Though he works commendably hard, as the author of a textbook should, to present the different views in his field fairly on their own terms, Houlgate clearly has his own preferred approach to many of the philosophical questions raised by family law.

As to the sort of issue surveyed above, Houlgate advances what he calls the rights-in-trust theory. A minor possesses the full rights of an adult, but is limited in what he may exercise of them, just as a minor may own a fortune worth millions of dollars but be limited in what he may spend of it, because the rights (like the dollars) are in the care of a trustee recognized as such by the law.

The nature of this particular trust is this: A child can be prohibited from exercising rights to the extent that the desired exercise threatens the principal of the trust, that is, threatens the child's ability to exercise the same rights in later life. But a child (especially an older child, one capable of reasoning) cannot be prohibited from exercising certain rights for just any motive that pops into the trustee's head. He cannot be prohibited from exercising those rights, for example, simply in order to avoid offending the attendees of a school assembly.

continued on page 90



Transportation and Transportation Security Law Section

On Jan. 13, 2017, the Transportation and Transportation Security Law Section hosted their first monthly luncheon series of the new year. Section members gathered at the Department of Transportation in Washington, D.C., to listen to a panel discussion on setting career goals in transportation and transportation security. Panelists included Monica Hargrove, the vice president and secretary of Metropolitan Washington Airports Authority; Susan Prosnitz, deputy chief counsel for regulations and security standards at the Transportation Security Administration; and Fred Wagner of Beveridge & Diamond PC and former chief counsel of the Federal Highway Administration. The panel was moderated by Kathryn Gainey of Steptoe & Johnson LLP. ☺

Qui Tam Section

The False Claims Act Today

On February 8 the *Qui Tam* Section launched “The False Claims Act Today,”

an ongoing series of seminars in which the section convenes local attorneys, judges, and government officials to discuss the venerable federal statute and its practice in their jurisdiction—and offers continuing legal education (CLE) credit for those who attend.

The debut event, hosted in the Northern District of Florida with support from the FBA's Tallahassee chapter, featured experienced practitioners from both sides of the bench as well as a federal prosecutor. Attendees heard about the growth in False Claims Act (FCA) cases, and their overlap with diverse practice areas including health care law, criminal law, government contract law, and general litigation. The CLE provided a primer on the FCA; a discussion of important cases, including recent developments in the Eleventh Circuit; practice tips; and a panel discussion that covered all sides of FCA practice.

Tom Findley of Messer Caparello, P.A., represented defense counsel in a discussion on the background of the FCA, including the elements parties must meet and the heightened pleading standard for claims under the statute. Rick Johnson represented relators counsel in a discussion of parallel claims that

might occur, such as retaliation or other employment actions. Leah Butler, assistant U.S. attorney for the Northern District of Florida, provided invaluable practice tips and insight into how her office handles intake, investigation, and litigation of FCA cases.

After the formal presentation, panelists engaged in a question-and-answer period with the attendees and moderator Scott Oswald from The Employment Law Group, P.C. Lunch was provided and attendees earned 1.5 CLE credits for the event.

The *Qui Tam* Section plans to host sessions of “The False Claims Act Today” in jurisdictions across the U.S. in conjunction with local FBA chapters; at the time of publications, events were scheduled for Sacramento in May 2017 and Buffalo in September 2017. If you are interested in bringing the series to your region, contact Scott Oswald, the section's CLE chair, at soswald@employment-lawgroup.com. ☺

Book Reviews *continued from page 80*

The only legitimate reason for custodial adult action restricting rights as exercised by an older child that *would* be available to an adult is a real threat that their exercise may pose to the child's future autonomy. For example, a child of any age short of majority may reasonably be restrained from trying to cross a “decrepit bridge,” because, if the bridge should fall, the child may well lose life or limb. Of course, the loss of life means no period of full adult functioning at all, and serious injury means a limit on that functioning; either way, the principal of the trust has been impaired.

It is a good point, and worth further discussion. Suppose, pursuant to that

discussion, that a junior high school librarian decides to acquire a copy of Vladimir Nabokov's *Lolita* for that school's library. It is my impression that such a decision could set off a furor in many if not most of the public school districts in the United States. How might enraged parents argue, consistent with the rights-in-trust theory, that they are entitled to restrict their children's access to a literary treatment of statutory rape? What kind of evidence or arguments will count in trying to make the case that the book is analogous to the decrepit bridge? ☺

Christopher C. Faille, a member of the Connecticut bar, is the author of Gambling

with Borrowed Chips, a heretical account of the Global Financial Crisis of 2007-08. He regularly writes for AllAboutAlpha, a website devoted to the analysis of alternative investment vehicles, and for MJINews, a website for actual and potential investors in the legal marijuana industry.