YLD
Allegheny County Bar Association

Point of Law

The E-Newsletter of the Young Lawyers Division of the Allegheny County Bar Association

Winter 2022

Successful Children's Gift Drive: The YLD Has Done It Again!

By Tricia Martino

So often we hear that COVID-19 has separated us. Social distancing. Masks. Zoom. Quarantine. It seems being apart is the new normal. However, the Young Lawyers Division of the Allegheny County Bar Association showed us that we can overcome it all, come together, and throw the most successful YLD event during the pandemic to date! This year's annual Children's Gift Drive and Holiday Party was nothing less than monumental.

I was privileged to be one of the co-chairs, along with Rebeca Miller, who watched the budding idea of this year's Children's Gift Drive bloom to an unprecedented achievement. Based on previous years' events, we expected approximately 400 participating children, and our original planning was for that number. Imagine our surprise when we received 872 responding children's wish lists!

The challenge was on. The first "coming together" moment was a group meeting attended by many,

including both myself and Rebeca, YLD President Asra Hashmi, the co-chairs of the Public Service Committee (Aleksandra Kocelko, Rebecca Johnson, and Kathryn Gioia), the ever-helpful Christina Daub of the ACBA, prior coordinators of the Gift Drive, and a several others. Combining the networking power of our team, we embarked on an unmatched outreach mission to personal and professional contacts alike and received an overwhelming response. The second "coming together" was 172 individuals and 43 firms or organizations ensuring that each and every child received their requested gifts. Every bump in the road and sleepless night was worth that moment when we saw the final gift shipped to the last child.

The third "coming together" was the day of the Holiday Party events – December 4, 2021 – which went off without a hitch. We were able to provide cookies for the children to enjoy at the shelters' holiday parties. The Bar Leadership Initiative Class delivered the cookies early that morning. I personally dressed up in my Christmas best to drop off some of the cookies, and a few of the children ran to me with huge smiles, asking questions about Santa and wriggling with excitement to "meet" him that afternoon. Again, the YLD pulled through, and our Santa volunteers attended Zoom meetings with the children that afternoon. Merriment all around!

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Successful Children's Gift Drive

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Since the conclusion of this year's event, my co-chair and I received many updates from the shelters sending pictures and expressing their appreciation for the YLD's annual coordination. The children at one program even made personal thank you letters.

And so, from the bottom of my heart, I want to thank each and every one of you for making this such a memorable experience that I hope to continue in years to come. I hope your holidays are bright, and I wish you all the best in the new year! ■

Tricia Martino is a judicial law clerk for the Honorable Judith F. Olson on the Pennsylvania Superior Court. She graduated magna cum laude from Duquesne University School of Law in 2020.

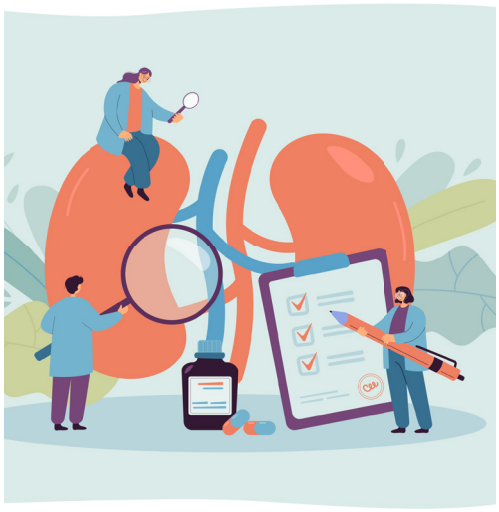
Copyright Infringement or a Work of Fiction? The Curious Case of Larson v. Perry

By Corey A. Bauer

So often in today's world we share our lives with others willingly, not knowing what happens to our glamourized and (perhaps) exaggerated life story once we place it thoughtfully onto Instagram or Facebook and turn back to the menial tasks that our lives are *actually* comprised of. But, what if you were to pick up a book one day and find that you are reading your life story? Not a glamourized version, but a hurtful one. What if someone used the very essence of who you are – your likeness, your habits, or even your heartfelt words – and repurposed it as a figment of their own imaginary world? Much like the woman in this story, Dawn Dorland, you would probably call a lawyer.

On October 5, 2021, journalist Robert Kolker published an article in the New York Times Magazine that has captivated many on social media. It involves an aspiring writer named Dawn Dorland ("Dorland") and her alleged "art friend" and fellow writer, Sonya Larson ("Larson"). About one year after Dorland earned her M.F.A. degree in creative writing, she decided to donate one of her kidneys. Not to a family member, or even someone she knew, but to a stranger who otherwise may have no living donor.

Being a person of the digital age, Dorland created a private Facebook group about it. She invited friends, family, and writers from GrubStreet, a Boston writing center where Dorland had spent many years honing her writing skills. One of the people in this group from GrubStreet was Larson. Dorland had known Larson for eight years, and Larson had leveled up her



writing career since they last were in the same social circles.

After the surgery, Dorland wrote a heartfelt letter to the unknown, soon-to-be recipient of her kidney, and posted it to the Facebook group. The letter stated the following:

Personally, my childhood was marked by trauma and abuse; I didn't have the opportunity to form secure attachments with my family of origin. A positive outcome of my early life is empathy, that it opened a well of possibility between me and strangers. While perhaps many more people would be motivated to donate an organ to a friend or family member in need, to me, the suffering of strangers is just as real. … Throughout my preparation for becoming a donor … I focused a majority of my mental energy on imagining and celebrating you.

Some people, however, seemed unmoved by her act of kindness. She noticed these people, including Larson, weren't responding to her Facebook group posts.

Unbeknownst to Dorland, Larson had been "inspired" by Dorland's donation and created a novel around the idea. This novel involved a white, wealthy, and entitled woman who is unaware of how her "selfless" act also contains elements of intense, unbridled narcissism. The recipient of the kidney in this work of fiction? An Asian-American woman who resents the donor and refuses to be "subsumed" by her privileged narrative.

The name of this donor in the early drafts of Larson's novel? Dawn. The fictional Dawn even wrote a letter to her kidney recipient. An earlier iteration of Sonya's story published online in an audio version drafted the "fictional" letter as follows, mixing direct quotes and paraphrases from Dorland's real letter:

My own childhood was marked by trauma and abuse; I wasn't given an opportunity to form secure attachments with my family of origin. But in adulthood that experience provided a strong sense of empathy. While others might desire to give to a family member or friend, to me the suffering of strangers is just as real.

Dorland retaliated against Larson's story, and got the book taken out of a Boston free publication Eventually, Larson sued Dorland in 2019 for some of Dorland's retaliatory actions. In response, in 2020 Dorland filed an Answer and Counterclaims against Larson for Copyright Infringement and Intentional Infliction of Emotional Distress (though the latter claim was dismissed on February 2, 2021). See *Sonya Larson v. Dawn Dorland Perry, et. al.,* Civil Action No. 1:19-cv-10203-IT (D. Mass. Feb. 2, 2021).

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Rice v. Diocese of Altoona-Johnstown: New Developments for the Discovery Rule in Pennsylvania

By Serena Tamburrino

On July 21, 2021, the Pennsylvania Supreme Court announced its decision in *Rice v. Diocese of Altoona-Johnstown,* a case centered on whether the discovery rule should toll the statute of limitations such that Rice's complaint be dismissed as untimely. 255 A.3d 237 (Pa. 2021). In its decision, Pennsylvania's highest court examined the applicability of the discovery rule and analyzed recent Pennsylvania precedent addressing the discovery rule. Ultimately, the Court declined to apply the discovery rule and held that the plaintiff's claim was barred by the statute of limitations.

Statutes of limitations govern when an action may be filed. In most cases, the time to file begins to run from the time the cause of action accrued, which is normally "when an injury is inflicted." *Id.* at 246. Generally, "[w]hether a complaint is timely filed within the limitations period is a matter of law for the court to determine." *Crouse v. Cyclops Indus.,* 745 A.2d 606, 611 (Pa. 2000). The discovery rule is a doctrine that tolls the statute of limitations. The purpose of the discovery rule "is clear: to ensure that persons who are reasonably unaware of an injury that is not immediately ascertainable have essentially the same rights as those who suffer an immediately ascertainable injury." *Rice,* 255 A.3d at 247(internal quotations omitted).

There are two competing approaches to the discovery rule: a more liberal approach, which tolls the limitation period until "the plaintiff has actual or constructive knowledge of her cause of action," and a stricter "inquiry notice" approach, which tolls the limitations period until the plaintiff has "actual or constructive knowledge" of significant harm linked to the defendant's conduct. *Id.* Pennsylvania follows the stricter "inquiry notice" approach, and courts apply the discovery rule to a multitude of causes of action. Despite Pennsylvania's general use of the "inquiry notice" approach, splits still exist within our courts as to application of the Discovery Rule. According to the Superior Court, "the discovery rule in Pennsylvania applies to all causes of action, including breach of contract." *Morgan v. Petroleum Products Equip. Co.,* 92 A.3d 823, 828 (Pa. Super. 2014). In contrast, however, according to the Commonwealth Court, the discovery rule does not apply to breach of contract cases. *Carulli v. N. Versailles Twp. Sanitary Auth.,* 216 A.3d 564 (Pa. Cmmw. Ct. 2019). The Pennsylvania Supreme Court has not addressed this issue directly, leaving the Superior Court and the Commonwealth Court to develop parallel lines of case law regarding the Discovery Rule.

In *Rice,* the plaintiff sued the Diocese of Altoona-Johnstown for its alleged role in covering up alleged sexual assault by a priest in the Diocese. Rice filed her initial complaint in 2016, alleging that the abuse occurred from approximately 1974 through 1981. The Diocese filed a motion to dismiss, which the trial court granted. The Superior Court reversed the trial court's dismissal of the case, holding that the Discovery Rule applied to toll the statute of limitations because the "relevant chronological event was when Rice could have learned of the cover-up, not simply the knowledge of the abuses[.]" *Rice,* 255 A.3d at 242. In doing so, the Superior Court relied on the Pennsylvania Supreme Court's decision in *Nicolaou v. Martin,* 195 A.3d 880 (Pa. 2018). *Nicolaou* was a medical malpractice case that turned on when the plaintiff discovered she had

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I Still Haven't Found What I'm Looking For: Why Public Agencies Must Search for Records Before Denying Access Under the RTKL

By Zachary N. Gordon

In U2's iconic hit song, a voice proclaims, "I have climbed mountains, run, crawled, and scaled city walls, but I still haven't found what I'm looking for." If California University of Pennsylvania had simply echoed U2's memorable chorus and added verses recounting the steps it took to look for requested public records, then the University might have saved itself $15,000 in fees ordered by the Commonwealth Court in a recent ruling. This article will examine the single-judge opinion awarding penalties and fees against the University, which primarily faults the agency for failing to undertake a search for records before denying access in *California University of Pennsylvania v. Bradshaw,* 1491 CD 2018, (Pa. Cmwlth Ct. Oct. 13, 2021) available at *www.openrecords.pa.gov/Appeals/DocketGetFile.cfm?id=78201("Bradshaw II").*

Before the fee opinion, the case started as a normal appeal regarding access to public records in *California University of Pennsylvania v. Bradshaw,* 210 A.3d 1134 (Pa. Cmwlth. Ct. 2019), appeal denied, 220 A.3d 532 (Pa. 2019). In *Bradshaw,* the University received a request for records under Pennsylvania's Right-to-Know-Law ("RTKL"). 65 P.S. § 101 *et. seq.* The request sought donations made by a specific corporation to the University's Foundation. The University claimed that it did not have its foundation's records, and even if it did, the records were exempt under Section 708(b)(13) of the RTKL, which exempts certain donations made by individuals to government agencies. *Bradshaw,* 210 A.3d at 1138 (citing 65 P.S. § 67.708(b)(13)). The Requester appealed to the Office of Open Records ("OOR"), which ordered the University to disclose the donation records because it found that the University abandoned its claim that it did not have the records and held that a corporation is not an individual for purposes of Section 708(b)(13).

The University appealed to the to the Commonwealth Court and argued that the University should not have to provide the records since they were exempt under Section 708(b)(13). *Bradshaw II,* at 3-4. The University argued again that it did not have to provide records of its Foundation. The Commonwealth Court rejected both arguments. It affirmed that the OOR correctly ruled that Section 708(b)(13) only applies to records of donations of individuals by holding that corporations are not included in statutory definition an "individual." *Id.* at 1138-39. As for the Foundation issue, the Commonwealth Court also found that since the Foundation was a contractor providing governmental functions, its records were records of the University per Section 506 of the RTKL. *Bradshaw,* 210 A.3d at 1139-40 (citing *E. Stroudsburg Univ. Found. v. Off. of Open Recs.,* 995 A.2d 496, 505-06 (Pa. Cmwlth. Ct. 2010) (en banc), appeal denied, 20 A.3d 490 (Pa. 2011)). The University then filed a petition for allocatur asking the Pennsylvania Supreme Court to reverse the Commonwealth Court's decision, which the Pennsylvania Supreme Court eventually denied. *Bradshaw II,* at 5.

At that point, the University sent an affidavit alleging that it did not have the records. The Requester then filed separate request for records of donations made by the same corporation directly to the University, which the University provided. The Requester then filed an application for relief seeking fees and penalties for the University's alleged bad faith in responding to the Request. *Id.* at 6-8.

The University admitted that it did not initially search the Foundation's records when the initial request was submitted in August of 2018. This fact was a key part of the Court's reason to grant the application for fees. The Court reviewed a recent December

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In the Court Order and Opinion on the Motion to Dismiss, District Judge Talwani for the United States District Court of Massachusetts ruled that (1) Dorland's real letter and the letter Larson included in her novel were closely related enough that a reasonable jury could find substantial similarity between the two; (2) that Larson's argument of "Fair Use" was not ripe before the summary judgment stage, and; (3) although statutory damages and attorneys' fees may not be allowable in this case, if Dorland prevails, she may be entitled to nominal damages and declaratory or injunctive relief. Copyright laws provide that the court may not award statutory damages or attorneys' fees in the case of "any infringement of copyright in an unpublished work commenced before the effective date of its registration." 17 U.S.C. § 412(1). Dorland did not register her copyright until Larson had already allegedly infringed it, so Dorland cannot recover statutory damages and attorneys' fees.

The next challenge for Dorland in this saga of unhappy authors will be the summary judgment stage. At that stage, the highest legal hurdle will be the "Fair Use" defense claimed by Larson to the Copyright Infringement claim. In considering a fair use defense, the court must, at minimum, consider:

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.

17 U.S.C. § 107. A recent Circuit Court evaluation of this issue provides significant guidance on the doctrine of Fair Use. Better yet, in a way, it brings us back to Pittsburgh, Pennsylvania.

The Andy Warhol Foundation for the Visual Arts, Inc v. Lynn Goldsmith, Lynn Goldsmith, Ltd., 11 F.4th 26 (2d Cir. 2021) applied the doctrine of Fair Use in application to Andy Warhol's use of photographer Lynn Goldberg's photograph of Prince. I am sure many readers have seen Warhol's "Prince Series," which shows a photograph of Prince with various background colorations on silkscreen. Warhol admittedly used Goldberg's photograph of Prince to create these works, leading to the Counterclaim at issue in the Warhol case.

Pertinent here, the Warhol Foundation claimed "transformative use" as a defense, much as Larson is claiming in her suit with Dorland. As opposed to derivative, a work can be "transformative," questioning "whether the new work merely supersedes the objects of the original creation, or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message." See *Campbell v. Acuff-Rose Music, Inc.,* 510 U.S. 569, 575 (1994).

The Court in *Warhol* ruled against Warhol, stating:

[T]he Prince Series retains the essential elements of its source material, and Warhol's modifications serve chiefly to magnify some elements of that material and minimize others. While the cumulative effect of those alterations may change the Goldsmith Photograph in ways that give a different impression of its subject, the Goldsmith Photograph remains the recognizable foundation upon which the Prince Series is built.

Warhol, 11 F.4th at 43. This month the Andy Warhol Foundation petitioned the Supreme Court to take up its appeal of the Circuit Court's ruling. Though the ruling may be called into question if the Supreme Court accepts the appeal, the Circuit Court found that Warhol's work was "derivative" (in the legal sense only). One could argue that the Warhol case is extremely similar to the curious case of *Sonya Larson v. Dawn Dorland Perry.* While the "cumulative effect" of the alterations made by Larson may change the writing "in ways that give it a different impression of the subject," it most certainly "remains recognizable."

It is unclear whether the District Court of Massachusetts, located in the First Circuit, will find this *Warhol* case persuasive, but it would be helpful in providing recent court guidance on the narrow and complex legal issue of Fair Use, at least until the Supreme Court may rule on the pending *Warhol* petition for review. ■

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'Tis the Season to Learn About Crypto?

By Matthew Brady and James LaMarca

Cryptocurrencies have frequently been in the news, and regardless of your personal interest or professional practice, they seem to be everywhere – in the arts, in sports, in science and energy discussions, in political debates, in financial news. Lawyers are needed to help individual clients and businesses navigate the existing and future laws and regulations.

Bitcoin and Ethereum, the two largest cryptocurrencies based on market capitalization, were valued at approximately $7,000 and $100 per unit, respectively, on January 1, 2019. Just one year later, on January 1, 2020, they were valued at more than $32,000 and $700 per unit, respectively. Just last month, in November 2021, Bitcoin and Ethereum had reached more than $68,000 and $4,800 per unit, respectively, but by December 5, 2021, they had dropped to roughly $49,000 and $4,100 per unit, respectively. These figures reflect a significant amount of price volatility, but with more than 15,000 different cryptocurrencies and a total market capitalization of more than $2 trillion, the growth of the industry is undeniable. Crypto skeptics call these figures a bubble, while advocates call them evidence of bona fide economic and technological opportunity.

Critics of cryptocurrencies also point to a number of red flags which they feel merit strict regulation. For example, the Eradicate Hate Global Summit that was held in Pittsburgh just two months ago discussed how cryptocurrencies are being used to finance and support hate groups. Separately, several high-profile ransomware hacks in 2021 (e.g., Colonial Pipeline and meat processor

JBS) involved demands by hackers for payment in cryptocurrency, presumably in part because of the anonymity of cryptocurrency transactions. Of course, cash is still king in this regard, as blockchain analytics firm Chainalysis estimates that only 0.34% of cryptocurrency transactions in 2020 were associated with illicit activity, most of which were scams.

Securities and Exchange Commission (SEC) Chairman Gary Gensler has publicly referred to the cryptocurrency market as the "Wild West," and the SEC and several states are investigating whether services that pay interest on customers' crypto holdings are offering unregistered securities. Katanga Johnson, *U.S. SEC Chair Gensler Calls on Congress to Help Rein in Crypto 'Wild West',* Reuters (Aug. 3, 2021). The Internal Revenue Service is issuing compliance warning letters to individual taxpayers and John Doe summonses to cryptocurrency exchanges with an eye towards possible money laundering and tax evasion.

On the other hand, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency released a Joint Statement which noted that "the emerging crypto-asset sector presents potential opportunities and risks for banking organizations, their customers, and the overall financial system." Board of Governors of the Federal Reserve System, *Joint Statement on Crypto-Asset Policy Sprint Initiative and Next Steps,* Office of the Comptroller of the Currency (Nov. 23, 2021). In striking a more balanced tone regarding the nascent "crypto-asset sector," officials may have been looking at the explosion in cryptocurrencies and blockchain applications and the fiat value associated with the sector.

While there are differing opinions over the utility and longevity of cryptocurrencies and blockchain technology, at a certain point, practical application and daily use may drive individual and institutional adoption. In July 2021, for example, the nonpartisan research organization NORC at the University of Chicago reported that 13% of Americans surveyed had reported purchasing or trading cryptocurrencies in the prior 12 months whereas 24% reported trading stocks during the same period. *More Than One in Ten Americans Surveyed Invest in Cryptocurrencies,* NORC (July 22, 2021).

Indeed, the mayors of Miami, New York, Tampa and Jackson (Tennessee) have stated that they will take at least initial paychecks in Bitcoin to promote the use of cryptocurrencies in their cities and regions.

A number of professional athletes, including football players Aaron Rodgers and Odell Beckham Jr., have said that they would take a portion of their salary in cryptocurrency. Professional sports teams are accepting payment in different cryptocurrencies: the Oakland

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Lyme disease, such that she could sue the defendants for malpractice related to their failure to diagnose her. *Id.* In *Nicolaou,* the Pennsylvania Supreme Court departed from the usual approach of treating the question of whether a claim falls within the statute of limitations as a question of law, and instead stated that based on the specific facts of the *Nicolaou* case, the question of whether the plaintiff had exercised due diligence under the circumstances was a question of fact for the jury to decide. *Id.*

The *Rice* plaintiff relied on *Nicolaou* and argued on appeal to the Pennsylvania Supreme Court that because she did not know of the Diocese's role in covering up the abuse until 2016, 2016 was when the cause of action accrued, and that the Discovery Rule issue was one of fact for the jury to decide. In contrast, the Diocese relied on *Meehan v. Archdiocese of Philadelphia,* 870 A.2d 912 (Pa. Super. 2005), arguing that because Rice knew of the priest's abuse, but did not investigate the Diocese at that time, her claim was time-barred.

The Pennsylvania Supreme Court disagreed with Rice and distinguished *Nicolaou,* stating that there were no similarities between the cases because in *Nicolaou,* the timeline was very confusing, while in *Rice* it was clear that the plaintiff "knew of her injury at the time of each alleged assault and she knew that [the priest] caused the injury." *Rice,* 255 A.3d at 251. At the time of the alleged abuse, Rice did not investigate the Diocese in any way, and in fact did not take any action until a grand jury report was released in 2016. The Court held that the conditions of inquiry notice were met in this case because once the alleged abuse occurred, Rice "was on inquiry notice regarding other potentially liable actors, including the Diocese, as a matter of law." *Id.* In rejecting Rice's argument that the question of whether her claim was time-barred was a factual one for the jury, the Court adopted the reasoning of the Superior Court in *Meehan* that lack of awareness of a secondary cause of an injury cannot qualify under the discovery rule. *Id.* The Court also cemented the principle that questions of whether a claim is time-barred are questions of law for the court to decide. *Id.*

Justice Wecht, joined by Justice Todd, dissented, stating that the majority erred in disregarding the holding of *Nicolaou* that whether a plaintiff exercised reasonable diligence is a question of fact for the jury and adopting the reasoning of the Superior Court in *Meehan.* Chief Justice Baer, in a concurring opinion, wrote separately to advocate for the adoption of the more liberal approach to the Discovery Rule in Pennsylvania.

The Discovery Rule is an important consideration in evaluating a potential claim. In advising potential and current clients, attorneys should be mindful of several key facts related to the Discovery Rule: (1) Pennsylvania's "inquiry notice" approach to the discovery rule, (2) determining whether a plaintiff has exercised reasonable diligence in investigating her claim is a question of law for the court to decide, not question of fact for the jury, and (3) whether your case involves a breach of contract claim before the Commonwealth Court. In the future, it is possible that the Pennsylvania Supreme Court could take up cases to either adopt a broader application of the Discovery Rule or resolve the conflict among Pennsylvania appellate courts about whether the discovery rule truly applies to "all claims," but until then, the Court's decision in *Rice* provides practitioners with additional clarity after its prior decision in *Nicolaou.* ■

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The Young Lawyers Division (YLD) of the Allegheny County Bar Association is comprised of all lawyers who have been admitted to the practice of law for 10 years or less. Lawyers who join the ACBA and meet the criteria automatically become members of the Young Lawyers Division without paying any additional dues. The Young Lawyers Division provides young lawyers with a means of gaining broader participation in bar activities, a forum for continuing legal education, and a vehicle for social exchange with their contemporaries at the bar.

The YLD is actively involved in helping young lawyers participate in activities of the ACBA and directs activities toward improving the administration of justice and prompting public welfare. The YLD helps young lawyers deal with problems and obligations specific to its members, and advises the ACBA of the needs and opinions of its newer members.

If you're interested in getting more involved in the division, find out more at *www.acbayld.org.*

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2020 opinion from the Pennsylvania Supreme Court, which affirmed an award of counsel fees in part for an agency's failure to search for its records and its contractors' records before responding to an initial RTKL request. *Id.* at 11-12 (citing *Uniontown Newspapers, Inc. v. Pa. Dep't of Corr.,* 243 A.3d 19, 34 (Pa. 2020). The Pennsylvania Supreme Court had explained that "[a] good faith response – either to produce records or assert an exemption – cannot occur absent a good faith search, followed by collection and review of responsive records, so an agency has actual knowledge about the contents of the relevant documents." *Id.* at 14 n.11 (quoting *Uniontown Newspapers,* 243 A.3d at 28-29). The University had admittedly not searched for records before denying the August 2018 request.

The University argued that it could refuse to search for records because it had grounds to object to the type of records sought, but the Court rejected that position as "untenable" and further explained: "Indeed, this case demonstrates precisely why it is axiomatic that an agency fulfill its initial duties under the RTKL in searching for potentially responsive records as outlined above," because had a proper search been performed, "the University would have learned at that time that the Foundation did not possess any such records, thereby short-circuiting the ensuing litigation that occurred in this case." *Id.* at 14-15.

The Court also found that the University's position regarding its Foundation's records not being subject to access under the RTKL was "frivolous" because the issue had been resolved by a case from 2010. The Court, however, found that it was not bad faith for the University to withhold records showing donations made by the corporation, since those records were not sought by the original request.

In turning to the relief awarded, the Court concluded that the entitlement to fees was clear and direct: "The University's admitted abnegation of its mandatory duties under the RTKL in failing to conduct a proper search for responsive records prior to issuing its denial to the RTKL request warrants a finding of bad faith on behalf of the University under Sections 1304(a)(1) and 1305(a) of the RTKL." *Id.* at 15. The Court, therefore, awarded a $1,500 penalty under Section 1304 and awarded Requester the full amount of attorney fees sought, totaling over $14,000. The Court required the University to pay the fees within 30 days and submit a verified statement of payment, which the University did.

Agencies have a duty to search for records upon receipt of a RTKL Request. This case shows that agencies will be penalized when they violate that duty. An agency cannot determine if a record can be withheld or produced under the RTKL until it gathers and reviews the requested records. In situations where the agency truly does not have the records, it should follow U2's lead by describing what the agency did to try to locate the records sought and then confirm to the requester that the agency has not found what the Requester was looking for. ■

Zachary N. Gordon is an associate attorney at Del Sole Cavanaugh Stroyd LLC. His practice is focused on litigation, including commercial, plaintiff's personal injury and medical malpractice, and appellate litigation. He also regularly counsels clients on the Right-to-Know-Law, FOIA, and First Amendment rights. His email is zgordon@dscslaw.com.

Submit an article for *Point of Law*

The YLD's ABA award-winning newsletter

YLD members are encouraged to write about the practice of law or any substantive legal issue of interest. Additionally, writers are encouraged to write responses to any article appearing in this issue. Featured authors will have their article – up to 1,000 words long – published along with a brief bio. Articles and inquiries may be submitted to *YLDCommunications@gmail.com.*

'Tis the Season to Learn about Crypto?

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Athletics (MLB); the Dallas Mavericks and Sacramento Kings (NBA); and the San Jose Sharks (NHL).

In the last year, two cryptocurrency exchanges, Crypto.com and FTX, bought naming rights to the Los Angeles' Staples Center ($700 million) and Miami American Airlines Arena ($135 million), respectively.

In countries where political oppression is pervasive, cryptocurrencies are helping human rights defenders through donations and financial lifelines; in struggling economies, such as Venezuela, cryptocurrencies assist individuals by reducing transfer and transaction costs and acting as a store of value against runaway inflation.

Several initiatives have sprung from Pennsylvania's elected officials and government entities which are attempting to advance the use of cryptocurrency not only throughout the Commonwealth but also the country.

Senator Pat Toomey (R-Pa.) has taken a public stance regarding the use of cryptocurrencies, calling for reasonable, not restrictive, oversight to facilitate further technological development and even opposing provisions in the Biden Administration's Infrastructure Bill that he felt cut against such development in the field. Jennifer Schonberger, *Toomey Vows Fix to 'Badly Flawed' Cryptocurrency Broker Plan in Infrastructure Bill,* Yahoo!News (Nov. 5, 2021).

Pennsylvania's ranking Republican on the U.S. House Agriculture Committee, Representative Glenn Thompson (PA-15), recently introduced a blueprint on how digital commodity markets could be regulated, and a group of bipartisan lawmakers in the Pennsylvania State Legislature proposed the creation of a Digital Assets Task Force this past July. The City of Philadelphia also recently announced an initiative to explore the potential use of crypto technology within city government. The University of Pennsylvania recently became the first Ivy League university, and one of only a few universities in the country, to accept cryptocurrency as payment for tuition.

Despite prevailing concerns about the use of cryptocurrencies and block-chain technology, regulatory ambiguity presents an opportunity for lawyers to help establish the legal groundwork for a growing industry, protect citizen interests, and promote economic development in areas such as Western Pennsylvania and Pittsburgh. ■

Matthew Brady (pictured) and James LaMarca are attorneys at Lynch Carpenter, LLP. Mr. Brady is a professional and educator with more than twenty years of experience living and working in developing and emerging markets, and providing policy recommendations to key stakeholders, including U.S. and foreign government officials. Mr. LaMarca is a recent graduate of the University of Pittsburgh School of Law.

Admissions Ceremony

December 9, 2021

Diverse Law Student Reception

October 27, 2021




YLD Holiday Party

December 8, 2021