Notes and Comments: A Law Review Article

Patric M. Verrone

Abstract

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I. INTRODUCTION: WHAT THIS ARTICLE IS ABOUT

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The argument to be presented in this article is as follows: A number of difficult cases have been erroneously decided by underpaid, overworked appeals court judges. The cumulative effect of these cases is a bad trend in the law which has caught the eye of a research junkie who is looking for tenure or an appointment to the bench. This "scholar," who needs to get something published quick, argues that this bad trend is based on a bad standard of review, and proposes an alternative standard of review which will correct the trend. Unfortunately, the article is never read.

* © 1993 Patric M. Verrone. B.A. 1981, Harvard College, J.D. 1984, Boston College Law School. Mr. Verrone is a writer in the sixth year of a three month sabatical from his Florida law practice. His writing credits include "The Tonight Show Starring Johnny Carson" and "The Larry Sanders Show with Garry Shandling." He is currently writing a movie which will include the titles of over 200 of Judge Alex Kozinski's opinions.

1. This is the first footnote of said article.
3. Id.
4. See? Four footnotes already (see supra notes 1-4).
5. Made you look.
6. Actually, by underpaid, overworked law clerks.
7. See supra note *.
8. So that he can get some underpaid, overworked law clerks of his own, see supra note 5, and contribute to a new and equally bad trend in the law.
9. Quotes provided for the sarcasm impaired.
10. And what could be quicker than a series of paraphrased excerpts from someone else's writings edited and cite-checked in such detail that any original writing on the part of the author is reduced to the biographical note? See supra note *.
11. They might as well have just copied the dissenting opinions word-for-word and lay in one big, fat citation, followed by a bunch of Ids.
12. Don't even think that the footnotes get glanced at. If they were really important, they'd print them in regular sized type.
much less cited, and the tenure or the appointment will be denied anyway, because of race, gender or lack of country club contacts.

II. OUTLINE: WHAT YOU WILL BE READING BEFORE YOU READ IT

Having presented an overview of its thesis, this article will now present an overview of itself. Then an overview of the overview will be presented. Section II will be followed by Section III which will deal with the typical facts of the cases in question, and the opinions interpreting those facts. Then, in Section IV, the erroneous nature of those opinions will be presented in detail, along with snide, pseudo-intellectual remarks about the judges who wrote those opinions. Finally, Section V will conclude with a line-by-line reiteration of this section, only in past tense.

III. THE LAW IN QUESTION: THE CRUX OF THE ARTICLE

A. A Brief Factual Detour From the Argument Just to Fill Space

The trend in the law in question, hereinafter referred to as "The Trend," appears in cases, hereinafter referred to as "The Trend Cases," which have a similar fact pattern, hereinafter referred to as "The Similar Fact Pattern" or "Cap'n Bubba." The facts are simple; a client comes into a lawyer's office claiming he has been wronged. After accepting a large


14. See supra notes 4-13 and the accompanying text (what you just read.)

15. See supra notes 14-20 and the accompanying text (what you're reading now.)

16. See supra notes 21-56 and accompanying text (what you will be reading next.)

17. Duh, I can count to three in Roman Numerals, George. Now can I play with the rabbits? See STEINBECK, OF MICE AND MEN, 28-33 (1937).

18. We're also planning a puppet show.

19. And maybe some dirt from their personal lives.

20. Don't worry. You'll never get that far.

21. No one really knows why.

22. As are the people who bring them to you.


24. Id.

25. Id.

26. Id.

27. Client v. Attorney, 123 Malpractice Reports 45, 67 (1989). Aren't you glad I didn't say "Id" again?


29. I take that back. People who publish case reporters might get a kick out of it.


31. Thanks to the principles of stare decisis, and the uniform rule of law, the circuit come up with contradictory rulings.

32. Not to mention with angry protesters screaming at each other and wielding unnecessarily nasty caricatures of recently appointed justices. I guess placard painters would be happy right now, too.

33. Because these variant facts are potentially hazardous to the author's overall thesis, they will be presented in a confused, garbled, and unintelligibly obtuse way so that no one could understand them, much less use them in a counter-argument. Pity, shrewd, eh?

34. The reader should know up front that those facts are distinguishable from the earlier facts.

35. 123 Dub. Lars. 45, 67 (1939). I told you they would be confusing.
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B. Another Subsection to Justify Including Subsection III. A.

Having exhausted a discussion of "The Similar Fact Pattern" of "The Trend Cases," it will now be necessary to describe a variation on the facts. These facts are derived from the case of Finnegun v. Riverrun Funeral Home.

Someguy, master’s son—homecoming . . . Seize [his] best Fred, aiding and abetting Mrs. Someguy. (Mid-wifing.) Wifespeaks,

14. See supra notes 4-13 and the accompanying text (what you just read).
15. See supra notes 14-20 and the accompanying text (what you’re reading now).
16. See supra notes 21-56 and accompanying text (what you will be reading next).
17. Dub. I can count to three in Roman Numerals, George. Now can I play with the rabbits? See STEINBECK, OF MICE AND MEN, 28-33 (1937).
18. We’re also planning a puppet show.
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21. No one really knows why.
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29. I take that back: People who publish case reports might get a kick out of it.
31. Thanks to the principles of stare decisis, and the uniform rule of law, the circuits come up with contradictory rulings.
32. Not to mention with angry protesters screaming at each other and wielding unnecessarily nasty caricatures of recently appointed justices. I guess placard painters would be happy right about now, too.
33. Because these variant facts are potentially hazardous to the author’s overall thesis, they will be presented in a confused, garbled, and unintelligibly obtuse way so that no one could understand them, much less use them in a counter-argument. Pretty strewed, eh?
34. The reader should know up front that these facts are distinguishable from the earlier facts.
35. 123 Duh. Laws. 45, 67 (1939). I told you they would be confusing.
sassy, "Oh oh, big mouth’s here. Now the whole neighborhood will know."36

Clearly, these are distinguishable facts from "The Similar Fact Pattern" and should not be considered in a discussion with "The Trend."37 In every one of "The Trend Cases," the higher court either affirmed or reversed the trial court verdict. This astonishing pattern was based on a standard of review which will be examined in the next section.

IV. BAD HEARINGS: WHY I'M SMARTER THAN THE SUPREME COURT

In the last section, an astonishing pattern of review based on a typical fact pattern was examined. Having discussed the typical fact pattern,38 stating superfluously that the fact pattern was, in fact, discussed,39 and then reiterating that statement a third time for comic effect,40 it is evident that the courts have applied a standard of review in these cases. For years, this standard of review has been the "Burden of Proof" standard.41 This standard states that the standard brought to bear is the standard that a reasonable man would bring to bear if a reasonable man could bear to bring the standard to bear.42 The courts have called this old standard "The Old Standard." Unfortunately, "The Old Standard" violates an older standard of common law known as 2 lex principus latinus bous.43 Accordingly, it is unacceptable for numerous,44 profound45 reasons.

A new standard of review is warranted. This new standard will be called "The New Standard."46 Interestingly, commentators47 and several lower courts48 have espoused this so-called "new" standard for some time54 making it, in effect, an "old" standard. Nevertheless, the old "new" standard is still superior to the new "old" standard.60 Furthermore, it fulfills the classic three-pronged test for adoption of a new standard.51 Accordingly, it behooves courts to reject "The Old Standard" in favor of "The New Standard."52

V. CONCLUSION: FINAL THOUGHTS

Having previewed, overviewed, viewed, and reviewed the relevant facts, laws, and standards, it is evident63 that the thesis of this article has been proven.64 Accordingly, a conclusive paragraph would seem in order.

Welcome to that paragraph. Can I offer you a drink? Perhaps some No-Doe? No? How about a quote from a notable Supreme Court Justice's famous dissenting opinion? Alright . . . In conclusion, courts reviewing "The Similar Fact Pattern" in "The Trend Cases" must buck "The Trend" and abandon "The Old Standard" in favor of "The New Standard" and, in so doing, adopt the words of the immortal65 Justice Pierce Butler, "The judgment of the lower court is reversed. Now, when do we get the rabbits, George?"66

48. See Dick Run.
49. Run, Dick, Run.
50. The new old standard is found in Old Newsstand v. Standard News, 123 U.S. 45, 67 (1890) and is not to be confused with Learned Hand's hands at Standard Grant in Grandstand v. American Bandstand, 19 N.Y. Met. 69, 86 (1926), or those old standards, "Mr. Sandman" and "Stand By Your Man" in Chordettes v. Wynette, 1 K.C. Kasem 40 (1989).
51. See AMERICAN LAW INSTITUTE, REPORT ON THE ADOPTION OF NEW STANDARDS 929 (1959). The three prongs are 1) it’s new, 2) it’s a standard, and 3) it fulfills the three-pronged test.
53. Nay, indisputable.
54. And even if it hasn’t, isn’t it nice to see a page where there’s more text than footnotes?
55. Actually, he died in 1939.
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A new standard of review is warranted. This new standard will be
called "The New Standard." 46 Interestingly, commentators 47 and several

36. Apologies to James Joyce and Jake La Motta.
37. The reader is inclined to believe this otherwise absurd assertion for several reasons:
   a) It is the second time it was asserted (see supra note 34), b) it began with the word
   "clearly" so it must be true, and c) believing it means getting to the end of the article faster.
38. See infra note 39.
39. See supra note 38.
40. Weren't we supposed to have a puppet show somewhere in here?
42. But see "The Woodchuck Standard" in Woodchuck Local 385 v. Packard Saw Mill,
   123 U.S. 45, 67 (1899).
43. Look, George, I can speak Roman, too. Now can I play with the rabbits?
44. Too numerous, in fact, to mention.
45. Also, too profound to mention.
46. Aside from everything else, this standard makes the "Reasonable Man" a
   "Reasonable Person" and is, therefore, politically correct.
47. See Dick.
From Tedium to Trendy: A Tax Teacher's Triumph

Gail Levin Richmond
Carol A. Roehrenbeck

Prologue: Previously on Avon Law

When we last visited Avon Law School, Marian Paroo and Mark Eisner were making the world safe for tax research and Hart and Ford were back at school, after solving their fraternity's tax problem. Much has happened in the past year: Paroo established a tax alcove in memory of Professor Helvering; Eisner produced five major articles on totally esoteric tax topics; and the Contract Renewal Committee voted to renew Eisner’s contract.

Unfortunately, all is not well at Avon, for the students are about to revolt. It seems that both the faculty and the Dean ignored Eisner’s STUDENT EVALUATIONS. These ranged from “BORING” to “NOT AS BORING AS WE’D BEEN WARNED—MORE BORING!!!!”

Join us now, as we return to Avon Law School, where our friends, Hart and Ford, are plotting to save the day. As we begin, they are engaged in a heated discussion over how they can prevent open warfare, show the faculty how to teach, prove the value of student evaluations, and still graduate.

Cast of Characters
(in order of appearance)

FORD: a third year law student
HART: a third year law student

* Charles M. Sevilla, Disorder in the Court 242 (1987) (Illustration by Lee Lorenz).

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2. As if anyone really cared.