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Clarifying Broker Liability

I found "Securities Broker Liability in Texas" (March, p. 178) a timely and interesting read. However, the author's comments regarding a Registered Representative's (securities broker) duty not to make unsuitable recommendations to a client seemed to suggest that the duty applies only to discretionary accounts.

NASD Rule 2310 does not make such a distinction; rather, it applies to all brokerage accounts, whether discretionary or not. A representative who fails to make suitable recommendations in a non-discretionary account will have the same exposure as the representative who makes an unsuitable recommendation in a discretionary account.

The author may not have intended such a narrow application of the "Know Your Customer" rule, and registered representatives likely understand the full scope of the rule since training on this issue is generally a core component of a broker dealer's compliance department's continuing education program. Any representative who does not appreciate how broadly the securities regulators apply this concept should be very concerned about their liability exposure in Texas.

Richard Bennett
Fort Worth

This Won't Work

I just read the Texas Access to Justice Foundation's newsletter for March 2009

reporting on the dramatic decrease in the annual funding from lawyer IOLTA accounts, due to low interest rates being paid, for legal services for the poor, from \$20 million in 2007 down to an estimated \$1.5 million for 2009.

This won't work. I support the IOLTA concept and I support the work of Texas RioGrande Legal Aid and other legal aid providers furnishing legal services to the poor. If the first isn't working right now, I call on the legal community to make up the difference.

According to the State Bar of Texas website, there are about 83,000 lawyers in Texas. If each one will match my \$200 donation to the Texas Access to Justice Foundation, that's \$16.6 million, which will make up most of the shortfall. I'll send another \$200 next year.

For those needing a personal incentive, the donation, I believe, is tax deductible. Keeping legal aid agencies up and running will also lessen the likelihood of future mandatory pro bono requirements. For those, like me, who don't need a personal incentive, it's just the right thing to do. I'm a solo practitioner and I don't make a lot of money, but for those of my brother and sister lawyers making a lot more, please try to donate even more than \$200. Thanks.

Edward M. Lavin
San Antonio

Challenging Bigotry

It's probably mere coincidence, but you printed side-by-side letters from Peter J. Riga and Jerry J. Hamilton taking umbrage, respectively, to the stripping of Judge Samuel Kent's pension benefits for "sexual offenses" and your failure to mention in the Lincoln issue that president's reliance on his "enduring [Christian] faith" (April, p. 248).

Mr. Riga claims Judge Kent's debenching was "punishment enough" and that he deserves mercy, as his "sins are

not unforgiveable." The problem with the Christian concept of remission of sin is that one can go to church on Sunday and go to hell on Monday. As long as one knows one can commit any crime, no matter how heinous, what is the incentive to quit sinning?

Mr. Hamilton refers to the doctrine of separation of church and state as "mythical." It is not. America was founded by persons fully cognizant of the tyranny of religious persecution. Many of the founding fathers were deists, at best, and some, including John Adams and Thomas Jefferson, were critical of Christianity in particular. The problem with claiming that Lincoln "was raised on the Holy Bible" and had "enduring faith" is that it misstates what we know of this Christ-like president. Lincoln had his agnostic moments. When chiding those who supported abolition because of a belief that "God is on our side," Lincoln reminded them that the South claimed the same belief. Obviously, either one side had to be wrong or else God is somewhat arbitrary.

Mr. Hamilton's letter was particularly offensive. One needn't believe in God to be moral, ethical, or "right." To claim otherwise is a form of bigotry that should not go unchallenged by those of us who consider ourselves free-thinkers.

James M. Martin
Corpus Christi

Blasts from the Past

I found myself in a time warp reading the "Letters" page of the April issue. First, Jerry J. Hamilton of Taos, N.M., writes about the "mythical cloud" of the Constitutional doctrine of church-state separation and the *Texas Bar Journal's* inattention to Lincoln's Christianity (not an avid churchgoer, Lincoln's faith was more pragmatic than Hamilton would have us believe). Then John Cornelius blasts Lincoln for "Saving the Union,"



making his argument for Southern secession in the same issue that features Rhonda Hunter on the cover. Being a native Texan, I went all the way through high school buying Cornelius' argument, but then I grew up, read a few books (I recommend James McPherson's *Battle Cry of Freedom*), and realized that the Civil War was more than about leaving the South alone. Lincoln was our greatest president. I applaud the *Journal* for honoring him in whatever way it can.

James Taylor
Dallas

Lincoln's Contradictions

Contrary to the assertions of Jerry J. Hamilton, history provides a different portrait of Abraham Lincoln on the issues of racial equality, faith, and secession.

In 1862, after the death of his son, Willie, Lincoln wrote a longtime friend: "My earlier views of the unsoundness of the Christian scheme of salvation and the human origin of the scriptures have become clearer and stronger with advancing years, and I see no reason for thinking I shall ever change them."

Lincoln's opposition to slavery was pragmatic. His decision to issue the Emancipation Proclamation was a strategy to prevail in the war and not based upon its "moral evil." In his first inaugural address, Lincoln stated his position in exact terms: "I have no purpose directly or indirectly to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so."

In a speech in Charleston, Ill., in 1858, Lincoln exposed his true feelings about race: "I am not now, nor ever have been in favor of bringing about in any way the social or political equality of the white and black races. I am not now nor ever have been in favor of making voters or jurors of Negroes, nor of qualifying them to hold office, nor of intermar-

riages with white people. There is a physical difference between the white and the black races which will forever forbid the two races living together on social or political equality."

Finally, on the issue of secession, Lincoln changed his position like a seasoned "flip-flopper." In 1848, he made the following statement on the floor of the House of Representatives: "Any people anywhere, being inclined and having the power, have the right to rise up and shake off the existing government and to form one that suits them better. Nor is this right confined to cases in which the people of an existing government may choose to exercise it. Any portion of such people that can, may make their own of such territory as they inhabit. More than this, a majority of any portion of such people may revolutionize, putting down a minority intermingling with or near them who oppose their movement."

Were Lincoln's contradictory statements and positions just cynical ploys to get elected or maintain power? Perhaps he and modern-day politicians are not so different as politically correct historians would have us believe. Lincoln is lionized enough in the popular mythology; let's not add to the inaccuracy as a profession.

Michael W. Eaton
Southlake

Not Easy Being Green

While I applaud Haynes and Boone's desire to "go green" with its new offices (April, p. 256), I wonder how green it is to move from a location downtown, convenient to rail and bus lines and within easy walking distance of every courthouse in town, to a location not currently served by a rail line and on the other side of a highway from the courthouses, such that employees who used to take the train and attorneys who used to walk to court now must drive? Were not some of the efforts in place at the new offices

(e.g., recycling bins) not an option at the old offices? Could eco-friendly disinfectants not be used in less green older construction? Could not an older building have been retro-fitted with low-flow toilets? Was it, on balance, greener to have built this new building rather than renovate an older building? Again, I applaud the green efforts of the firm. Desiring to protect the planet is a laudable goal. I just wonder if the net effect of this move is really all that green after all.

Meredyth A. Kippes
Dallas

Using the Scientific Method

Readers of the *Texas Bar Journal* deserve to be given something other than the Al Gore agenda ("The Carbon Revolution," April, p. 272). The carbon dioxide controversy is a scientific problem, which should be solved by the 1,000-year-old scientific method.

The four steps to the scientific method are 1) observe and describe a phenomenon; 2) formulate a hypothesis to explain the phenomenon; 3) use the hypothesis to predict; and 4) perform experimental tests of predictions to obtain reproducible test results. It is an unproven hypothesis to say that climate change is caused by man-made carbon dioxide. Reproducible test results have not been obtained. That is the dirty little secret about carbon dioxide, which the mainstream media hides from the public.

The 2009 International Conference on Climate Change was given no publicity by the mainstream media. With more than 31,000 U.S. scientists signing the Oregon Institute of Science and Medicine petition project, it is inaccurate for the article to state "there remains a vocal minority of scientists" in disagreement. It appears the majority of U.S. scientists are in disagreement.

Seldon B. Graham
Austin