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Spring 2017

Editor's Corner

Miriam R. Albert

Maurice A. Deane School of Law at Hofstra University

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Recommended Citation

Miriam R. Albert, *Editor's Corner*, 54 5 (2017)

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American Business Law Journal
Volume 54, Issue 1, 5–8, Spring 2017

Editor's Corner

My family, like many others, is obsessed with the Broadway musical, *Hamilton: An American Musical*.¹ We have been lucky enough to see the show, and we listen to the show's CD on an endless loop; as a result, we know virtually all the words, which on a CD of rapid-fire rap and hip hop is no small feat indeed. The opening number ends with all the main characters singing their connection to Hamilton: George Washington sings, "Me? I trusted him." John Laurens sings, "Me? I died for him." His wife Eliza and sister-in-law Angelica sing, "Me? I loved him." And the villain in the piece, Aaron Burr, sings, "And me? I'm the damned fool that shot him."²

So imagine our surprise when watching the PBS documentary *Hamilton's America*³ to hear an old mixtape of Lin-Manuel Miranda performing this song at the White House in 2009.⁴ He sings all the parts, and when he gets to Burr's line at the end of the song, in this version, he sings, "And me? I'm the damned genius who shot him." My thirteen-year-old daughter Kassie flipped out—this was not the lyric we heard in the show; this was not the lyric we had sung over and over along with the CD. How could this happen?

¹HAMILTON: AN AMERICAN MUSICAL, <http://www.hamiltonbroadway.com> (last visited Oct. 30, 2016).

²CAST OF HAMILTON, *Alexander Hamilton, on HAMILTON, ACT I* (Atlantic Records 2015), <https://warnermusicgroup.app.box.com/s/98o13fsg1vrb2wxqe1zel2ugw7ppryv9/1/4712017338/38329317274/1>.

³*Hamilton's America* (PBS television broadcast Oct. 21, 2016), <http://www.pbs.org/wnet/gperf/hamiltons-america-documentary/5048/>.

⁴The White House, *Lin-Manuel Miranda Performs at the White House Poetry Jam*, YouTube (Nov. 2, 2009), <https://www.youtube.com/watch?v=WNFF7nMIGnE>.

I was presented with a teachable moment. I explained to Kassie how works get edited and revised over time, and how word choice can make a huge difference in getting the author's points across. We concluded that in the first version, when Aaron Burr called himself a "genius," he was being wry and sarcastic, and probably not really characterizing himself as a true genius. We agreed the self-deprecation he was trying to convey was better demonstrated by the revised wording of "damned fool."

I explained to her that this was exactly what I had been doing, holed up in my office for the past four weeks—making sure that the *American Business Law Journal* (ABLJ) authors' words conveyed their ideas as clearly as possible. That is the process of editing. And with this, my first issue as editor in chief, I faced a big adjustment. As an articles editor for the past few years, I typically had one manuscript per issue to edit, and I had the luxury of digging into that one piece and polishing it to perfection. I had the comfort of knowing that the editor in chief was going to start from scratch on my piece, and check every footnote for substantive accuracy and adherence to *The Bluebook*, down to the last italicized period.

It's quite a different view from the editor in chief chair. Thankfully, I have the help and support of my diligent and hardworking fellow board members: Julie Magid, Gideon Mark, Terence Lau, and David Orozco, and the complete support and assistance of our wonderful managing editor, Laurie Lucas. I am also grateful for my unbelievably hardworking and bright team of research assistants: Chris Cash, Keith Dominguez, Michael Schechner, and Victoria Short.

They have all done their part. And now I have the privilege of signing off on the articles in this issue and the responsibility for owning any mistakes that sneak through. That is quite a bit of stress. So I harkened back to my more youthful days as a stand-up comic and recalled a truth I figured out back then: nervousness and excitement feel the exact same way in our bodies—it is all how we spin it to ourselves. I share that lesson with my students when I cold-call them in large lecture classes—I advise them to spin the experience as excitement!

And so, with great excitement, I present four timely and well-written pieces that I believe will inform you, and inspire debate and discussion, making a contribution to the relevant literature.

In our first piece, "Puerto Rico's Debt Dilemma and Pathway Toward Sovereign Solvency," Stephen Kim Park and Tim R Samples

examine Puerto Rico's debt dilemma, shaped by the legal limbo of its status as a U.S. territory. Amidst the legal and political uncertainty facing Puerto Rico, this article examines the process by which Puerto Rico has engaged in negotiations with its creditors. The authors argue that Puerto Rico's debt crisis has potentially far-reaching implications for sovereign debt finance, an undisputedly important corner of the international financial system. They argue that Puerto Rico's restructuring may potentially offer a blueprint for creditor engagement and coordination in future sovereign debt workouts.

In our next piece, J. Haskell Murray examines the social business forms that have proliferated over the past decade in "Adopting Stakeholder Advisory Boards." He advocates for the mandatory adoption of stakeholder advisory boards, endowed with certain corporate governance rights, by large social enterprises, and encourages the voluntary adoption of such stakeholder advisory boards by small social enterprises and by traditional, socially focused, firms. He argues that stakeholder advisory boards have many potential benefits, including opening communication lines between directors and peripheral stakeholders, and increasing stakeholder voice, creative ideas, and loyalty. Finally, he argues that adopting and empowering stakeholder advisory boards would create a revised corporate governance framework more aligned with the purported goals of social enterprises and socially conscious businesses.

Our next piece tackles recent efforts to end the "too-big-to-fail" status of systemically important financial institutions (SIFIs). In "Credible Losers: A Regulatory Design for Prudential Market Discipline," John Crawford argues for the creation of new classes of "loss-absorbing" creditors. He identifies key criteria that must be met for the loss-bearing function of creditor claims on a SIFI to be credible—criteria that had not previously been satisfied but that are arguably met by a proposed new rule requiring certain U.S. SIFIs to issue long-term debt out of their parent holding companies. He concludes that the rule is largely successful in meeting the three criteria for establishing "credible losers" and argues that the existence of "credible losers" among SIFI claimants not only makes SIFI failure less damaging when it happens, but can also make failure less likely to occur in the first place. After explaining how market discipline can play a useful supporting role for prudential regulators, and why establishing such discipline for SIFIs has proven so challenging, he presents his framework for establishing

credible losers and uses this framework to evaluate the aforementioned rule. He argues that the rule holds a great deal of promise for meeting the criteria to establish “credible losers” among the debt claimants of a global systemically important bank holding company—simultaneously protecting taxpayers in case of failure and making failure less likely by promoting market discipline.

In our final piece, “Amicus Curiae in the Trans-Pacific Partnership,” Fernando Dias Simões examine the Trans-Pacific Partnership provisions on amicus curiae intervention and discusses to what extent they balance the perceived benefits and potential drawbacks of this mechanism of public participation in the investment arbitration process. The author argues that amicus curiae participation may increase the transparency, accountability, and openness of investment treaty arbitration, helping investment tribunals to render better awards. However, it may also disrupt the consensual nature of arbitration, make the peaceful settlement of disputes more difficult, disrupt the ordinary timeline of arbitration, and create an imbalance between the disputing parties.

I hope these articles spark thoughtful discussion among all of us and in the relevant literature!

—Miriam R. Albert
Editor in Chief, *ABLJ*