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REFERENCES TO CHILDREN'S STORIES AND FAIRY TALES IN JUDICIAL OPINIONS AND WRITTEN ADVOCACY

DOUGLAS E. ABRAMS¹

IN *JONES V. STATE* (2017), THE DEFENDANT UNSUCCESSFULLY SOUGHT REVERSAL OF HIS CONVICTIONS FOR CONSPIRACY TO COMMIT ROBBERY AND FOR ATTEMPTED ROBBERY.² THE CHARGES AROSE FROM HIS PLANS, WITH AN ACCOMPLICE, TO HOLD UP A GAS STATION DURING A NIGHTTIME NEIGHBORHOOD CRIME SPREE THAT IN EARLIER HOURS HAD INVOLVED SEVERAL HOME ROBBERIES WHILE THE RESIDENTS SLEPT.

The jury rejected Jones' defense that he "abandoned" any gas station robbery conspiracy and attempt before commission of these crimes. The unanimous Indiana Supreme Court began its review with a nod to Dr. Seuss' classic children's tale, "How the Grinch Stole Christmas!"³

The policy behind Indiana's statutory abandonment defense, the state supreme court explained, is that "[w]e cherish stories about changes of heart and abandoned criminal endeavors. Take Dr. Seuss's beloved children's tale about the Grinch, whose softened heart and renounced endeavor to steal Christmas ended the story with joyful celebration. [Jones'] case, too, involves an individual going from house to house overnight, stealing property from sleeping inhabitants – as well as opportunities to abandon criminal efforts and escape liability."⁴

The state supreme court affirmed Jones' convictions, however, on the ground that the evidence was sufficient to

sustain the jury's inference that the defendant's purported abandonment of criminal pursuit stemmed at least partly from "extrinsic factors" (the presence of customer witnesses on the gas station's premises), and thus was not "voluntary" within the meaning of the applicable statute.⁵ The supreme court concluded that, unlike the Grinch, Jones did not demonstrate "a change of heart" or a "desertion of criminal purpose" coming "from within."⁶



Douglas E. Abrams

Advice from Prominent Judges

Jones v. State is typical of recent state and federal court decisions that have spiced substantive or procedural points with references to classic children's stories or classic fairy tales. These literary resources have won places in American popular culture and are likely generally familiar to readers, especially when (as in *Jones*) the court provides any necessary context explaining the resource's relevance to the decision.

In previous *Journal of The Missouri Bar* articles, I have written about judges' invocation of an array of influential cultural markers that are generally familiar to Americans. These articles explored written opinions that accompanied substantive or procedural decision-making with references to baseball;⁷ football;⁸ other prominent sports such as basketball, golf, and hockey;⁹ classic television shows;¹⁰ or classic movies.¹¹

This article continues the exploration, with a turn toward popular literature, classic children's stories, and classic fairy tales. The article reiterates the earlier articles' conclusion: "[A]dvocates should feel comfortable following the courts' lead by carefully referencing [cultural markers] to help sharpen substantive and procedural arguments in the filings they submit."¹²

This conclusion reflects advice to advocates delivered by prominent judges. "Think of the poor judge who is reading . . . hundreds and hundreds of these briefs," says Chief Justice John G. Roberts Jr. "Liven up their life just a little bit . . . with something interesting."¹³

Justice Antonin Scalia similarly urged brief writers to "[m]ake it interesting."¹⁴ "I don't think the law has to be

dull.” “Legal briefs are necessarily filled with abstract concepts that are difficult to explain,” Justice Scalia continued.¹⁵ “Nothing clarifies their meaning as well as examples” that “cause the serious legal points you’re making to be more vivid, more lively, and hence more memorable.”¹⁶

This article turns first to written judicial opinions that are spiced with references to children’s stories, and then turns to opinions that are spiced with references to fairy tales. The article provides highlights from each story or tale, and then presents a referencing opinion.

Children’s Stories

“Alice’s Adventures in Wonderland”

In this 1865 novel by British writer Lewis Carroll (1832-1898), young Alice enters down a rabbit hole into an underground fantasy world where she encounters a host of distinctive characters, including the Queen of Hearts, an imperate ruler who hands down death sentences in criminal trials, frequently punctuated with the command, “Off with their heads!”¹⁷

* * *

In *Cannon v. South Atlanta Collision Center, LLC*, the federal district court denied the defendant’s motion to compel arbitration of the employment discrimination claim.¹⁸ The court held that “the arbitration agreement is unconscionable and lacking in mutuality. It is so grossly one sided and unfair that it would make Alice in Wonderland’s Queen of Hearts (‘Off with their heads!’) blush.”¹⁹

“The Adventures of Pinocchio”

This 1883 novel by Italian writer Carlo Collodi (1826-1890) tells the story of a wooden puppet made by wood-carver Geppetto.²⁰ The puppet Pinocchio yearns to become a real boy. He often tells lies to get himself out of trouble from mischief, and his nose grows longer with each lie.²¹

* * *

In *Rivera v. State*, the Florida District Court of Appeal reversed the juvenile defendant’s first-degree murder conviction on the ground that the trial court unduly restricted his cross-examination of his co-defendant, who testified for the state after reaching a sentencing agreement.²² Rivera sought to persuade the jury that the co-defendant on the stand had substantial incentive to lie because of the substantial difference between co-defendant’s hefty potential sentence (40 years to life, with judicial review after 25 years) and the agreement’s sentence (15 years, with a 10-year mandatory minimum). The trial court permitted Rivera to elicit that the co-defendant was convicted of first-degree murder and received the agreed-upon 15-year sentence, but the court denied defense counsel’s request to inform the jury that absent the agreement, the co-defendant’s conviction would have carried a potential 40-years-to-life sentence.²³

The dissenting appellate judge found Rivera’s argument meritless. “Nobody needed to measure Pinocchio’s nose to understand that he often lied, nor did the jury need to know the exact sentence that the convicted [co-defendant] murderer . . . avoided through his deal to understand that [he] was a liar who was highly motivated to provide testimony that would please the State.”²⁴

Dr. Seuss

The dean of contemporary children’s writers is Theodor Seuss Geisel (1904-1991), better known to his young readers as Dr. Seuss, who wrote more than 60 children’s books during his prolific career. He has been called “an American icon”²⁵ and an “intellectual and artistic genius.”²⁶ Themes from some of his gracefully written, entertaining, frequently instructive tales have found their way into state and federal judicial opinions.

*How the Grinch Stole Christmas!*²⁷

We have already introduced “How the Grinch Stole Christmas!,” which attracted the Indiana Supreme Court’s attention in *Jones v. State*. The tale features a lonesome creature, the Grinch, who hates Christmas (“I MUST find some way to stop Christmas from coming!”),²⁸ and tries to ruin the holiday for the townspeople by stealing wrapped gifts from their homes while they slept on Christmas Eve.²⁹ The Grinch has a change of heart, though, when he sees the town’s happiness the next morning, even without the stolen gifts. He returns the gifts, quickly grows to appreciate the holiday, and even carves the roast for the Christmas feast.³⁰

* * *

Jones is not the only decision that draws from the Grinch’s tale of personal redemption.³¹ When one federal district court dismissed a challenge to the constitutionality of a statute that declared Christmas Day a public holiday, the court’s opinion even prefaced its legal analysis with a poem penned by the judge. The poem did not equivocate: “THE COURT . . . REFUSES TO PLAY THE ROLE OF THE GRINCH!”³²

*The Cat in the Hat*³³

This Dr. Seuss tale concerns a tall human-like Cat who, wearing a red-and-white striped stovepipe hat and red bowtie, and sporting an umbrella, arrives at the home of a brother and sister who are sitting alone and gazing out the window while their mother is temporarily away on the cold, wet day. The Cat and two others (Thing One and Thing Two) perform several magic tricks that spread messy chaos in the house.³⁴ Just before the mother returns, the Cat quickly cleans up the debris and leaves the children as they were before the Cat’s arrival.³⁵ When their mother returns and asks how they passed the time while she was out, the children remain calm and give no answer. The story ends with a question: “What would YOU do if your mother asked YOU?”³⁶

* * *

Byrd v. Michael Reese Hospital was a federal civil rights action brought by an employee who had been suspended and then discharged.³⁷ Plaintiff Byrd, a senior computer operator, claimed that the defendant hospital retaliated for racial discrimination complaints he filed with the Equal Employment Opportunity Commission. The hospital countered that Byrd had twice violated its dress code by wearing a hat on the job, a hat that the plaintiff contended his doctors advised was necessary because he would otherwise fall ill from working in a cold room. “Never since Dr. Seuss’s *The Cat in the Hat* has a hat caused such chaos,”³⁸ the federal district court wrote as it held the plaintiff’s discharge unlawful.

*Horton Hears a Who!*³⁹

Horton, an elephant splashing in a pool of water, hears a small voice speaking to him from a speck of dust, seeking help.⁴⁰ Horton learns that the dust speck is actually a settlement called *Who-ville*, with tiny inhabitants called *Whos*.⁴¹ While enduring verbal abuse from the other animals for caring for things seemingly so minuscule,⁴² Horton says that he protects the Whos because “[a] person’s a person, no matter how small.”⁴³

* * *

In *Alpine Homes, Inc. v. City of West Jordan*, the plaintiff property developers contended that the city’s actions against them amounted to a physical taking.⁴⁴ The unanimous Utah Supreme Court held that “[p]hysical takings are per se takings and must be compensated no matter how minimal the impact on the property owner.” Citing “Horton Hears a Who,” the court explained that “[a] taking’s a taking no matter how small.”⁴⁵

*Horton Hatches the Egg*⁴⁶

In *In re Ariel H.*, the California Court of Appeal’s opinion repeated this extended summary of Dr. Seuss’ story: “One day [the elephant Horton] stumbles upon Mayzie, a bird who has no interest in hatching her egg. After coaxing Horton to mount a tree and sit upon her nest, she vanishes. As events unfold . . . , Horton sits resolutely, unbudged by jeers, inclement weather, or nasty humans, who cart him off, tree and all, to be a sideshow in a circus. When Mayzie happens by Horton’s tent and sees that most of the work is done, she demands her egg back. Just then, the egg cracks open and out pops a tiny elephant with wings. Horton triumphantly returns home to cheers with his baby. It’s perfectly clear to all (save Mayzie) who the real parent is.”⁴⁷

When asked to explain his resoluteness, Horton continues to say, “I meant what I said / And I said what I meant. . . . An elephant’s faithful One hundred per cent!”⁴⁸ Courts have quoted Horton’s first sentence to explain their adherence to prior decisions,⁴⁹ and to ascertaining and applying the meaning of legislation.⁵⁰

* * *

In *Ariel H.* itself, the appellate court viewed the meaning of parenthood to be the dispositive issue. The court affirmed an order holding that the unwed 15-year-old biological father’s consent to adoption of his newborn was not required because he was unfit. “While eager to participate in the procreating part – [the unwed father] apparently had unprotected sex with [the 17-year-old mother] at least 40 times – he never made a serious effort to assume the true mantle of fatherhood. After he was told of [the mother’s] pregnancy, he continued to ‘hang out’ with his buddies at the mall and spend what money he earned on compact discs even though he knew she was pregnant and about to give birth. He did not go to see his child, nor did he protest [the mother’s] stated intention of placing the baby with an adoptive family. More importantly, he never told his parents about the baby or otherwise publicly acknowledged his paternity.”⁵¹

Dr. Seuss’ tale about Horton’s resoluteness set the foundation for a lecture by the California appellate court: “[R]eal parents are people who are dedicated and unshakably there

for you, day in and day out. Period. In their limited world view, the parent-child connection is not spun from DNA. Rather, it’s woven with the mundane strands of everyday life, the countless gestures, large and small, that repeatedly reaffirm: I see you, I love you; I am yours, you are mine.”⁵² “Unfortunately,” the court concluded, the 15-year-old father “is no Horton.”⁵³

Fairy Tales

Classic children’s storybooks hold no monopoly on judicial embrace of children’s literature. Written opinions also cite and quote classic fairy tales.

*The Ugly Duckling*⁵⁴

In this 1843 fairy tale by Danish writer Hans Christian Andersen (1805-1875), a newly hatched bird suffers harsh early nipping, pecking, name-calling, and similar abuse from the other farm animals for being large and ugly, “gawky and peculiar.”⁵⁵ After the isolated bird spends a cold, hard winter alone contemplating death near a frozen pond,⁵⁶ spring arrives and the bird sees a flock of beautiful swans land nearby.⁵⁷ To his surprise, the swans accept him. To his equal surprise, his reflection on a pond shows that he too is a beautiful swan and he flies off with his new friends.⁵⁸

* * *

In *In re Clairmont Transfer Co.*, the Chapter 11 debtor sued the law firm that the debtor’s collection agent retained.⁵⁹ The bankruptcy court held that the firm was entitled to a jury trial. “[T]he nature of the remedy that the Debtor is seeking is legal, in the form of monetary damages. The Debtor may label its relief as being in the form of restitution, but such an equitable label does not turn an ugly duckling into a swan.”⁶⁰

*Hansel and Gretel*⁶¹

In this 1812 fairy tale by the Brothers Grimm, Hansel and his sister Gretel live with their poor woodcutter father and his wife (specified as the children’s stepmother in some versions).⁶² Amid hard times, the wife devises a nasty plan (eventually agreed to by the emotionally conflicted father) to counter the family’s poverty by abandoning the two children in the woods so that, with less mouths to feed, she and her husband would not starve.⁶³ Unbeknownst to the adults, the children overhear their conversation and Hansel collects white pebbles to strew along their path into the woods so they can find their way back home.⁶⁴ Their father welcomes them home the next day because he did not want to abandon them in the first place.⁶⁵

Hard times persist, and the wife again plots abandonment deeper in the forest. This time Hansel spreads breadcrumbs along the path so he and his sister can return home. The two become stranded in the forest, however, when little birds behind them eat the crumbs, erasing the trail.⁶⁶ As Hansel and Gretel seek a way out of the woods, they come to a wicked old witch’s small house made of cakes, bread, and sugar. The hungry pair begin to eat the house, and the witch invites them inside and traps them. After enduring the witch’s acts of maltreatment, Hansel and Gretel discover jewels in the house. They return home to their father (his wife having died), and the trio lives happily ever after thanks to the witch’s jewels.⁶⁷

* * *

In *Lanier v. State*, the en banc Florida District Court of Appeal denied the strong-arm robbery defendant's motion for post-conviction relief arising from his claim of ineffective assistance of counsel during his criminal trial.⁶⁸ The concurring judge found the state's evidence "overwhelming."⁶⁹ The judge recited that among other inculpatory evidence, "the roadway between the victim's home and the location where the Defendant was apprehended was littered with the victim's property in a fashion reminiscent of the famous bread crumbs and pebbles left along the path of Hansel and Gretel."⁷⁰

In *Wells Fargo Bank, N.A. v. Russo*, the plaintiff bank brought a foreclosure proceeding against the defendants arising from a home purchase.⁷¹ "Unlike Hansel and Gretel who were able to enjoy the benefits of a gingerbread house and eventually escape the clutches of the wicked witch," the New York Supreme Court observed, "people who borrow money do have an obligation to pay it back and not use the legal system to evade responsibility."⁷²

*The Three Little Pigs*⁷³

In this fairy tale, an old mother sow sends three brother pigs on their way to "seek their fortunes."⁷⁴ Each builds a house, the first pig from straw, the second pig from sticks, and the third pig from bricks. A wolf comes along and calls individually to each of the trio: "Little pig, little pig, let me come in." When refused entry, the wolf threatens each that "I'll huff and I'll puff and I'll blow your house in." The wolf blows down the weak straw and stick houses and gobbles up

their pigs.⁷⁵ But the wolf cannot blow down the sturdy brick house, whose pig traps the wolf and cooks and eats him.⁷⁶

* * *

Frost v. State arose from a bitter neighborhood dispute.⁷⁷ A mother threatened to report the defendant for repeatedly allowing his dogs to soil her family's front lawn without cleaning up after the animals. The defendant retaliated by filing a report with child protective authorities falsely asserting that the mother allowed her two small children to play unsupervised in the street. The Texas Court of Appeals affirmed the defendant's conviction for misdemeanor filing a false report of an emergency.

Referencing "The Three Little Pigs," the *Frost* dissenter focused on the mother's persistence: "So extreme was her angst, that she turned her sights on the good offices of the District Attorney, knocking and knocking on the door, ad nauseam. Repeatedly, she insisted her neighbor at the other end of the block be charged with criminal conduct, wanting not only blood but jail time. It reminds me of the fabled wolf, who persistently huffed and puffed 'til he blew the first two houses down."⁷⁸

*Little Red Riding Hood*⁷⁹

A young girl, called Little Red Riding Hood because of the red cloak that her loving grandmother had made for her, is approached by the wolf as she travels through the woods to

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deliver fresh blueberry muffins to the cottage of the ill grandmother.⁸⁰ The wolf goes to the cottage first and gains entry by ruse, pretending to be the girl.⁸¹ Once inside, he pretends to be the grandmother and invites Little Red Riding Hood in.⁸² The girl and her grandmother, swallowed by the wolf, are rescued alive by a woodsman who knew them both.⁸³

* * *

In *Ricci v. Ricci*, the plaintiff sued his 88-year-old grandmother for injuries he allegedly suffered when he fell on an icy sidewalk outside her home.⁸⁴ While affirming dismissal of the complaint on procedural grounds, the unanimous Rhode Island Supreme Court prefaced its procedural analysis with a tart observation: “Perhaps in days gone by, after a winter’s storm, a dutiful grandson would have been less inclined to sue his octogenarian grandmother and more favorably disposed to help her remove any snow and ice from the sidewalk. But here, in a modern inversion of the Little Red Riding Hood story, plaintiff may have noticed what big insurance coverage his grandmother appeared to have and diverted his cleanup efforts from the sidewalk to her policy.”⁸⁵

*The Emperor’s New Clothes*⁸⁶

This 1837 Hans Christian Andersen fairy tale concerns an emperor whose vanity for his extravagant wardrobe leads him to engage two weavers to make him yet another suit of new clothes. The two are actually swindlers who get paid in advance, make no clothes, but convince the pompous emperor that they have used a fabric that is invisible to his ministers and other onlookers who are unfit or impossibly dull.⁸⁷ The emperor appears in a public procession wearing no clothes but thinking that he is wearing finery. Townspeople and his ministers dare not tell him the truth lest they appear unfit or dull,⁸⁸ but finally a little child says aloud, “But he has got nothing on.”⁸⁹ Other onlookers and the emperor himself realize that the child is right, but the emperor says that “the procession must go on now.”⁹⁰

* * *

In *McClellan v. Franklin County Board of Commissioners*, the parents were charged with felonious assault and endangering a child for intentionally inflicting serious injuries on their young daughter.⁹¹ In the parents’ later civil suit alleging malicious prosecution and negligent and intentional infliction of emotional distress, the Ohio Court of Appeals affirmed an order that granted summary judgment in favor of the defendants. The court rejected the parents’ argument that asserted contradictions between the deposition testimonies of two witnesses created issues of material fact. “This argument brings to mind the parable of the Emperor’s New Clothes, and we find that, after thoroughly reviewing each deposition, the emperor, indeed, has no clothes. In other words, the contradictions appellants claim to exist are simply not borne out by the record.”⁹²

*Jack and the Beanstalk*⁹³

Jack is a farm boy who trades his poor family’s only cow

to a local butcher in exchange for a few shiny magic beans. His widowed mother, needing and expecting cash in hard times, chastises Jack, throws the beans through the window, and sends him to bed without his dinner. Overnight, the magic beans grow into a beanstalk that reaches up toward the clouds. Jack climbs the stalk and enters a giant’s castle, takes two bags of gold coins and other riches, climbs down to his waiting mother, and chops down the stalk causing the giant’s death. With their new treasure, mother and son “both live happily together for a great many years.”⁹⁴

* * *

In *Bank One Chicago, N.A. v. Midwest Bank & Trust Co.*, the U.S. Supreme Court upheld federal subject matter jurisdiction under the Expedited Funds Availability Act.⁹⁵ The majority decided based on the operative section’s language, reinforced by its title and drafting history.⁹⁶

Concurring Justice Scalia would have decided based solely on the statutory language: “In my view a law means what its text most appropriately conveys, whatever the Congress that enacted it might have ‘intended.’ The law *is* what the law *says*, and we should content ourselves with reading it rather than psychoanalyzing those who enacted it. . . . Moreover, even if subjective intent rather than textually expressed intent were the touchstone, it is a fiction of Jack-and-the-Beanstalk proportions to assume that more than a handful of those Senators and Members of the House who voted for the final version of the Expedited Funds Availability Act, and the President who signed it, were, when they took those actions, aware of the drafting evolution that the Court describes; and if they were, that their actions in voting for or signing the final bill show that they had the same ‘intent’ which that evolution suggests was in the minds of the drafters.”⁹⁷

*Cinderella*⁹⁸

“Cinderella” tells the ultimately happy story of Ella, a kind young girl whose recently widowed father marries a woman whose two mean, greedy daughters from a prior marriage are, like their mother, bitterly jealous of Ella’s beauty.⁹⁹ After Ella’s loving father dies suddenly, the trio abuse Ella, relegate her to overworked domestic servant status as she sleeps at the cinders near the hearth (hence the name they gave her, Cinder-Ella). The stepsisters and stepmother continue wearing finery and living in luxury while Cinderella is left with only rags and old clothes.¹⁰⁰

Hoping to find their heir Prince Charming a wife, the king and queen want to have a gala ball for him, with all eligible girls in the kingdom attending.¹⁰¹ Each of the two stepsisters want desperately to be chosen as the prince’s wife, and they crudely dismiss “dirty, ragged” Cinderella’s prospects.¹⁰²

At first, Cinderella did not attend the ball because she had only ragged attire. Then her fairy godmother appears and, with a wave of her magic wand, creates a new gown and other finery complete with a pair of glass slippers, and transforms a pumpkin into a golden carriage with elegant horses created from mice.¹⁰³ But the fairy godmother warns that, precisely at midnight, the coach will turn back into a pumpkin, the horses back into mice, and the clothes back into rags.¹⁰⁴

At the ball, Prince Charming spurns every girl until he sees

the beautiful Cinderella, and he immediately dances and falls in love with her.¹⁰⁵ With midnight fast approaching, however, Cinderella runs away, losing one of her glass slippers in her haste. Prince Charming searches for Cinderella, and matches the lost glass slipper to her when she tries it on. Cinderella becomes a Princess when the two marry the next day.¹⁰⁶

* * *

Several federal and state decisions invoke “Cinderella” to illustrate why timed rights or claims expire on the due date. In *Matter of Lugo*, for example, the bankruptcy court denied the pro se debtor’s motion to reconsider an order that automatically dismissed the case for failure to file required papers within the 45-day period mandated by the Bankruptcy Code.¹⁰⁷ “Much like Cinderella’s pumpkin at midnight, if the required information has not been filed by the statutory deadline the magic ends and the case is automatically dismissed by operation of law on day 46.”¹⁰⁸

Endnotes

1 Douglas E. Abrams, a University of Missouri law professor, has written or co-written six books, which have appeared in a total of 21 editions. Four U.S. Supreme Court decisions have cited his law review articles. His writings have been downloaded worldwide more than 31,000 times. His latest book is *EFFECTIVE LEGAL WRITING: A GUIDE FOR STUDENTS AND PRACTITIONERS* (West Academic Publishing 2016).

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2 87 N.E.3d 450 (Ind. 2017).

3 THEODOR SEUSS GEISEL, *HOW THE GRINCH STOLE CHRISTMAS!* (1957).

4 *Jones*, *supra* note 2 at 453.

5 *Id.* at 458.

6 *Id.* at 458-59.

7 Douglas E. Abrams, *References to Baseball in Judicial Opinions and Written Advocacy*, 72 J. MO. BAR 268 (Sept.-Oct. 2016).

8 Douglas E. Abrams, *References to Football in Judicial Opinions and Written Advocacy*, 73 J. MO. BAR 34 (Jan.-Feb. 2017).

9 Douglas E. Abrams, *References to Spring’s Championship Sports in Judicial Opinions and Written Advocacy*, 73 J. MO. BAR 168 (May-June 2017).

10 Douglas E. Abrams, *References to Television Shows in Judicial Opinions and Written Advocacy (Part I)*, 75 J. MO. BAR 25 (Jan.-Feb. 2019); Douglas E. Abrams, *References to Television Shows in Judicial Opinions and Written Advocacy (Part II)*, 75 J. MO. BAR 85 (Mar.-Apr. 2019).

11 Douglas E. Abrams, *References to Movies in Judicial Opinions and Written Advocacy (Part I)*, 75 J. MO. BAR 244 (Sept.-Oct. 2019); Douglas E. Abrams, *References to Movies in Judicial Opinions and Written Advocacy (Part 2)*, 75 J. MO. BAR 297 (Nov.-Dec. 2019).

12 Douglas E. Abrams, *References to Television Shows in Judicial Opinions and Written Advocacy (Part I)*, 75 J. MO. BAR 25, 25 (Jan.-Feb. 2019).

13 Bryan A. Garner, *Interviews with Supreme Court Justices: Chief Justice John G. Roberts, Jr.*, 13 *SCRIBES J. LEGAL WRITING* 5, 18 (2010). *See also, e.g.*, Wiley B. Rutledge, *The Appellate Brief*, 28 *A.B.A. J.* 251, 254-55 (1942) (“It helps to break the monotony of the printed legal page to add a bit of life now and then.”).

14 ANTONIN SCALIA & BRYAN A. GARNER, *MAKING YOUR CASE: THE ART OF PERSUADING JUDGES* 112 (2008).

15 *Id.* at 111, 112.

16 *Id.* *See also Justice Antonin Scalia: In His Own Words*, BBC News, Feb. 14, 2016 (quoting Justice Scalia: “The main business of a lawyer is to take the romance, the mystery, the irony, the ambiguity out of everything he touches.”).

17 Lewis Carroll, *The Trial of the Knave of Hearts*, from *Alice’s Adventures in Wonderland*, in *THE WORLD OF LAW* 133-42, 142 (Ephraim London ed., 1960). 18 2012 WL 996696 (N.D. Ga. Mar. 22, 2012).

19 *Id.* at *1. Other courts have also invoked Alice In Wonderland references. *See, e.g.*, *Dia v. Ashcroft*, 353 F.3d 228 (3d Cir. 2003) (Board of Immigration Appeals summary affirmances “do not force us to venture ‘through the looking glass’ (like Alice in Wonderland), because we have the [Immigration Judge’s] reasoning and the record necessary to exercise our function of review”); *Laboratory Corp. of Am. v. United States*, 108 Fed. Cl. 549, 554 (Cl. of Fed. Claims 2012) (“Fortunately, unlike the Mad Hatter’s unsolvable riddle for Alice (‘Why is a raven like a writing desk?’), the solution to defendant’s contorted arguments is readily found in the Federal Acquisition Regulations

and binding precedent.”); *United States v. Regenwether*, 300 F.3d 967, 969 (8th Cir. 2002) (Bright, J., concurring) (comparing sentences imposed under the relevant conduct provisions of the Sentencing Guidelines to “an Alice in Wonderland world in which words lose their real meaning and down is up and up is down”); *Tallmadge Bros., Inc. Iroquois Gas Transmission Sys., L.P.*, 746 A.2d 1277, 1293 (Conn. 2000) (McDonald, C.J., dissenting) (“As Alice was told in Wonderland at a mad tea party, saying what one means is ‘Not the same thing a bit!’ as meaning what one says. When Alice went through the looking glass, she learned that when one uses a word it may mean just what one chooses it to mean, ‘neither more nor less.’”) (citation omitted).

20 CARLO COLLODI, *THE ADVENTURES OF PINOCCHIO* (Carol Della Chiesa trans. 1961).

21 *See, e.g.*, Carl Van Doren, *Introduction*, in *PINOCCHIO: THE ADVENTURES OF A MARIONETTE V* (1937).

22 274 So.3d 537 (Fla. Dist. Ct. App. 2019).

23 *Id.* at 539-40.

24 *Id.* at 543 (Edwards, J., concurring in part, and dissenting in part). *See also, e.g.*, *Wells Fargo Bank, N.A. v. Russo*, 2016 WL 1122511 at *3 (N.Y. Sup. Ct. Mar. 9, 2016) (putting mortgage broker under oath “might result in the court having to endure a modern version of ‘Pinocchio’ as witnesses would have to relate the details of this transaction under oath.”); *Brewster v. Dukakis*, 3 F.3d 488, 493 (1st Cir. 1993) (“Put bluntly, fee disputes, unlike Jack’s beanstalk or Pinocchio’s nose, cannot be permitted to grow and grow and grow.”).

25 PHILIP NEL, *DR. SEUSS: AN AMERICAN ICON 1* (2004).

26 Richard H. Chused, *Dr. Seuss As a Vehicle: An Introduction*, 58 *N.Y.L. Sch. L. Rev.* 495, 496 (2013/2014).

27 THEODOR SEUSS GEISEL, *HOW THE GRINCH STOLE CHRISTMAS!* (1957).

28 *Id.* at 5 (emphasis in original).

29 *Id.* at 13-39.

30 *Id.* at 40-48.

31 *Hart v. Sheahan*, 396 F.3d 887, 891 (7th Cir. 2005) (“it would be positively Grinch-like. . . .”); *Hickey v. State*, 928 N.E.2d 647 (Ind. Ct. App. 2010) (upholding criminal sentence of defendant who, “like the Grinch himself, broke into a residence during the holiday season and stole Christmas presents”).

32 *Gamulin v. United States*, 71 F. Supp.2d 824, 825-26 (S.D. Ohio 1999) (footnote omitted) (capitalization and emphasis by the court).

33 THEODOR SEUSS GEISEL, *THE CAT IN THE HAT* (1957).

34 *Id.* at 12-53.

35 *Id.* at 57-59.

36 *Id.* at 61 (emphasis in original).

37 1988 WL 90025 (N.D. Ill. Aug. 22, 1988).

38 *Id.* at *3. *See also, e.g.*, *State v. Dorn*, 1997 WL 369250 at *1 (Ohio Ct. App. July 2, 1997) (affirming the defendant’s conviction for unlawfully entering a store through a broken window and carrying out merchandise; the court noted that the defendant entered the store “wearing a conspicuous red-and-white-striped hat similar to that worn by the feline protagonist in Dr. Seuss’s *Cat in the Hat*.”).

39 THEODOR SEUSS GEISEL, *HORTON HEARS A WHO* (1954).

40 *Id.* at 1-3.

41 *Id.* at 21.

42 *E.g., id.* at 14-16.

43 *Id.* at 6, 16.

44 424 P.3d 95 (Utah 2017).

45 *Id.* at 102-03. *See also Jones v. Commonwealth*, 830 S.W.2d 877, 882-83 (Ky. 1992), amended (Apr. 30, 1992) (abortion appeal: “A person is a person no matter how small,” citing “Horton Hears an Who”).

46 THEODOR SEUSS GEISEL, *HORTON HATCHES THE EGG* (1940).

47 73 Cal. App.4th 70, 75, 86 Cal. Rptr.2d 125 (1999) (quoting Jill Smolowe, *Baby Knows Best: Parenthood is Made of More Than Genetic Material*, *TIME*, at 66 (Aug. 17, 1998)).

48 THEODOR SEUSS GEISEL, *HORTON HATCHES THE EGG*, *supra* note 46 at 16, 21.

49 *See Hydro-Thermal Corp. v. ProSonic LLC*, 2010 WL 1441239 at *1 (E.D. Wis. Apr. 8, 2010) (denying defendants’ motion for reconsideration: “[The court’s] faithful [to its prior decisions] one hundred percent,” citing “Horton Hatches the Egg”).

50 *See Larrabee v. Exxon Mobil Corp.*, 2006 WL 8437040 at *2 (D. Md. July 24, 2006) (“sometimes it is appropriate to conclude that Congress, as stated by Dr. Seuss in ‘Horton Hatches the Egg,’ ‘means what [it] says and says what [it] meant.’”).

51 73 Cal. App.4th 70, 75, 86 Cal. Rptr.2d 125 (1999).

52 73 Cal. App.4th 70, 75, 86 Cal. Rptr.2d 125 (1999) (emphasis by the court) (quoting Smolowe).

53 *Id.*

54 HANS CHRISTIAN ANDERSEN, *THE UGLY DUCKLING* (R. P. Keigwin trans. 1965).

55 *Id.* at 9, 13-18.
 56 *Id.* at 31-33.
 57 *Id.* at 37-39.
 58 *Id.* at 39-41.
 59 117 B.R. 288 (Bankr. W.D. Mich. 1990).
 60 *Id.* at 290. *See also D.C. Healthcare System, Inc. v. District of Columbia*, 2017 WL 6551184 at *1 (D.D.C. July 28, 2017) (“As even schoolchildren know, . . . not everything that at first appears to move like a duck is, in fact, a duck,” citing “The Ugly Duckling”); *Canaveral Port Auth. v. Department of Revenue*, 690 So.2d 1226, 1232 (Fla. 1996) (“Special districts, government entities with important public responsibilities, should not be treated as ‘ugly ducklings’”).
 61 GRIMM’S HANSEL AND GRETEL (Antonella Bolliger-Savella illus. 1981).
 62 *Id.* at 1.
 63 *Id.*
 64 *Id.* at 3.
 65 *Id.* at 5.
 66 *Id.* at 9.
 67 *Id.* at 9-24.
 68 709 So.2d 112 (Fla. Dist. Ct. App. 1998).
 69 *Id.* at 117.
 70 *Id.*
 71 2016 WL 1122511 (N.Y. Sup. Ct. Mar. 9, 2016).
 72 *Id.* at *13.
 73 THE THREE LITTLE PIGS (James Marshall ed. 1989).
 74 *Id.* at 2.
 75 *Id.* at 3-13.
 76 *Id.* at 15-29.
 77 2 S.W.3d 625 (Tex. Ct. App. 1999).
 78 *Id.* at 631 & n.2 (Wittig, J., dissenting). *See also Hart Eng’g Co. v. FMC Corp.*, 573 F. Supp. 1471, 1479 (D.R.I. 1984) (“Hart seeks shelter in the argument that the warranty fell short of its fundamental purpose. It is out of these flimsy materials that the plaintiff constructs its theorem that the temporal limitation should be disregarded. It takes very little huffing and puffing, however, to blow down this particular edifice,” citing “The Three Little Pigs”).
 79 LITTLE RED RIDING HOOD (William Wegman et al. ed. 1993).
 80 *Id.* at 1.
 81 *Id.* at 20.

82 *Id.* at 21-27.
 83 *Id.* at 31.
 84 689 A.2d 1051 (R.I. 1997).
 85 *Id.* at 1051-52. *See also Renaissance Acad. Charter High Sch. v. Westside Med. Park, LLC*, 2007 WL 4395408, at *7 (Cal. Ct. App. Dec. 18, 2007) (“the complainant’s ‘allegations . . . invited the . . . motion like the wolf invited Little Red Riding Hood into grandma’s house’”); *People v. Turnipseed*, 653 N.E.2d 1258, 1261-62 (Ill. App. Ct. 1995) (McCormick, J., dissenting) (finding improbable police officers’ account of tenant’s purported consent to search her apartment: “The tenant’s ‘consent’ proved to be the most enormous fabrication since the wolf told little Red Riding Hood that he was her grandmother.”).
 86 Hans Christian Andersen, *The Emperor’s New Clothes*, in HANS CHRISTIAN ANDERSEN, ANDERSEN’S FAIRY TALES 276 (1900).
 87 *Id.* at 276.
 88 *Id.* at 277-81.
 89 *Id.* at 281-82.
 90 *Id.* at 281.
 91 2009 WL 2438059 (Ohio Ct. App. Aug. 11, 2009).
 92 *Id.* at *7. *See also, e.g., United States v. Harrington*, 947 F.2d 956, 964 (D.C. Cir. 1991) (Edwards, J., concurring) (“Like the Emperor’s new clothes, the Sentencing Guidelines are a bit of a farce.”).
 93 JACK AND THE BEANSTALK AND OTHER STORIES (1903).
 94 *Id.* at 1-12.
 95 516 U.S. 264 (1996).
 96 *Id.* at 272.
 97 *Id.* at 279 (Scalia, J., concurring in part and concurring in the judgment).
 98 CINDERELLA (Perrault ed. 1965).
 99 *Id.* at 3-4.
 100 *Id.* at 4.
 101 *Id.* at 6.
 102 *Id.* at 6-8.
 103 *Id.* at 11-13.
 104 *Id.* at 13.
 105 *Id.* at 15-16.
 106 *Id.* at 29-31.
 107 592 B.R. 843 (Bankr. N.D. Ind. 2018).
 108 *Id.* at 846.

Are Your Trust Accounting Procedures Up to Speed? (A Checklist for Trust Accounting Practices)

Ever wonder if you are keeping your trust account in accordance with every provision of the Rules of Professional Conduct? The Office of Chief Disciplinary Counsel (OCDC) wants to help you protect your clients, reduce risks and avoid (often accidental) overdrafts by providing a self-audit. It is intended to help any firm or solo practitioner set up – and review – trust accounting policies and procedures. This 26-point checklist contains references to Supreme Court rules and comments, and may be downloaded for your law firm’s use.

Questions in the checklist include:

4(a) Before any disbursements are made from my trust account, I confirm that:

A. I have reasonable cause to believe the funds deposited are both “collected” and “good funds.” *Rule 4-1.15(a)(6) and Rule 1.15, Comment 5.*

B. I have talked with my banker and I understand the difference between “good funds,” “cleared funds” and “available funds.” *Rule 4-1.15, Comment 5.*

C. I have allowed a reasonable time to pass for the deposited funds to be actually collected and “good funds.” *Rule 4-1.15(a)(6).*

D. I have verified the balance in the trust account.

6(c). All partners in my firm understand that each may be held responsible for ensuring the availability of trust accounting records. *Rule 4-1.15, Comment 12.*

7(a). As soon as my routine bank statements are received, I reconcile my trust account by carefully comparing these records:

- bank statements;
- related checks and deposit slips;
- all transactions in my account journal;
- transactions in each client’s ledger; and
- explanations of transactions noted in correspondence, settlement sheets, etc. *Rule 4-1.15(a)(7); Comment 18.*

To obtain the self-audit, go to the websites for the OCDC or The Missouri Bar:
www.mochiefcounsel.org/articles or www.mobar.org/lpmonline/practice