

4-1-2008

## A Narrative of *Butler v. Wolf Sussman, Inc.*

John T. Gaubatz

Follow this and additional works at: <https://repository.law.miami.edu/umlr>



Part of the [Law Commons](#)

---

### Recommended Citation

John T. Gaubatz, *A Narrative of Butler v. Wolf Sussman, Inc.*, 62 U. Miami L. Rev. 707 (2008)  
Available at: <https://repository.law.miami.edu/umlr/vol62/iss3/3>

This Article is brought to you for free and open access by the Journals at University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

# ARTICLES

## A Narrative of *Butler v. Wolf Sussman, Inc.*

JOHN T. GAUBATZ\*

Since 1974, most law students at the University of Miami have started their legal education by reading *Butler v. Wolf Sussman, Inc.*,<sup>1</sup> a case that has become known by students as the “diamond ring case.” During the initial weeks of the semester, students spend many hours in their Elements course studying a four-page judicial opinion that was written by the Indiana Supreme Court in 1943. It’s a good case for introducing students to the structure of law and the importance of analyzing every detail of a judge’s opinion; it includes references to common law, statutes, rules of civil procedure, and the Indiana Constitution as well as the U.S. Constitution; it has dicta not clearly consistent with the stated facts; and it illustrates the importance of ratio decidendi.

The case was initially brought by a woman whose husband had pawned her diamond ring for \$35 without her permission. The facts are simple, relayed in only a few sentences:

In 1920 the appellant inherited a diamond ring from her mother. She afterwards married and lived with her husband for thirteen years, separating on January 8, 1940. They [were] not divorced but the husband’s whereabouts [were] unknown. While packing her possessions at the time of the separation, the appellant missed her ring. She made a demand for it upon her husband and threatened to sue him, whereupon he produced and delivered to her a ticket disclosing that on November 18, 1938, he had pledged the ring as his own to the appellee, a licensed pawnbroker, for a loan of \$25, which was afterwards

---

\* [During his thirty years teaching Elements at the University of Miami School of Law, Professor Gaubatz spent the first three weeks of Elements examining *Butler v. Wolf Sussman, Inc.* with his students. See generally John T. Gaubatz, *Of Moots, Legal Process, and Learning To Learn the Law*, 37 U. MIAMI L. REV. 473, 484–86 (1983) (discussing the use of *Butler v. Wolf Sussman, Inc.* in the Elements course). In 2005, Professor Gaubatz decided to look beyond the legal implications of the case, and he began to research the parties and attorneys involved in the case by scanning census information, city directories, newspaper articles, and by talking with relatives of the people involved in the case. See Irwin P. Stotzky, In Memoriam, *John T. Gaubatz*, 62 U. MIAMI L. REV. 705 (2008). This article, which Professor Gaubatz was in the process of completing when he passed away in July 2007, is a culmination of that research. Corey Lazar and Lauren E. Abbott, Juris Doctor candidates at the University of Miami who took Elements with Professor Gaubatz as 1Ls, graciously assisted in completing the article.—Ed.]

1. 46 N.E.2d 243 (Ind. 1943).

increased to \$35. This was without the prior knowledge of the appellant.<sup>2</sup>

These facts ingrain many critical legal concepts in the students' minds at an early point in their legal education. For example, the plaintiff wife was permitted to bring her case against the defendant pawnbroker specifically because her husband's whereabouts were unknown. Thus, she never had to sue her estranged husband. Also, the plaintiff was able to establish her legal standing against the defendant pawnbroker because her husband had pawned the ring to the pawnbroker without her knowledge.

Besides their pedagogical function, the facts tell a compelling story. Students generally feel a sense of sympathy for the plaintiff, a woman forced to leave her miscreant husband only to find that he had pawned off her deceased mother's ring. As one of the very first cases they read in law school, students repeatedly express the sentiment that justice has been served when they understand that the Indiana Supreme Court ruled in the plaintiff's favor. After teaching the case for so many years, I decided to find out what I could about the background behind the case, things that don't appear in the judicial opinion but always made me wonder. With some help,<sup>3</sup> I was able to reconstruct the following details.

On December 18, 1906, Louis Rosenberg and Willie Lee Burden, two young tailors in Cincinnati, Ohio, married. Until shortly before their marriage, Willie Lee had lived across the river in Covington, Kentucky, and after their marriage, the couple returned to Covington, where they had three children: Eleanor in 1908, Karl in 1910, and Louis Byron in 1914 or 1915. By 1917, the family had moved to Indianapolis, Indiana. Louis and Willie Lee's daughter, Eleanor, is our plaintiff.

Louis Rosenberg initially described his occupation as "Secret Service Operator," but by 1921 he was a general practice attorney who regularly represented finance companies until the Great Depression. Rosenberg would continue practicing law until his death in Indianapolis in 1956. This explains one of the aspects of the case that always puzzled me: Eleanor Butler could afford a lawyer to litigate her case against a local business all the way to the Indiana Supreme Court because she had her father representing her. What a coup! Before sharing this detail with students, I require them to become familiar with the bound reporters in the library by looking up the *Butler* case and writing down the

---

2. *Id.* at 244.

3. Special thanks to retired professor and genealogical researcher, Jim Rice, as well as to many members of the Butler, Rosenberg, and Sussman families who were willing to provide details about their relatives.

names of each attorney who's listed as appearing before the Indiana Supreme Court for the case. When they return to class with the list, I tell them that Rosenberg wasn't just Eleanor's lawyer, but her father as well.

I also alert students to the fact that Wolf Sussman—unlike Eleanor who relied on her father to represent her—retained a three-man team of accomplished attorneys. Theodore R. Dann<sup>4</sup> was a leading appellate lawyer in Indianapolis who had received an LL.M. from Harvard Law School and whose name still appears on the letterhead of the current Indianapolis firm of Dann Pecar Newman & Kleiman;<sup>5</sup> Taylor E. Groninger was one of three siblings who were members of the bar, and he often represented the state bar, the City of Indianapolis, and the Indianapolis Water Company in front of many courts, including the U.S. Supreme Court;<sup>6</sup> Alfred K. Berman, the third attorney on the Sussman team, was less well known. Students enjoy comparing the father–daughter plaintiff team with the seasoned three-man defense team, especially since the Indiana Supreme Court ended up siding with Eleanor.

On April 21, 1920, four days before Eleanor's twelfth birthday, her mother, Willie Lee, died. This is the year the *Butler* case reports that Eleanor inherited the diamond ring from her mother.<sup>7</sup> It's likely that the ring held great sentimental value to Eleanor, especially since her mother died when Eleanor was very young. In 1928, at age twenty, Eleanor married a local boy, William Douglas Butler (the husband who is unnamed by the Indiana Supreme Court), just days short of his twenty-second birthday. It was to be a long marriage—lasting until Eleanor's death in 1987 in Colorado Springs, Colorado, where they had moved in the 1950s.

Less than a year after their marriage, the Butlers had a son, William Louis Butler, whom they referred to as Willie. He was their only child. Eleanor, William, and Willie lived together until Eleanor and William separated on January 8, 1940. At that point, Eleanor took young Willie and moved in with her brother for a few months. It's unknown if they

---

4. Mr. Dann's son told me that according to family legend, his father had to argue an appellate case on January 6, 1943—the date of the son's birth. It's likely that that was the *Butler* case, which was decided on February 3, 1943.

5. See Dann Pecar Newman & Kleiman, <http://www.dannpecar.com> (last visited Apr. 8, 2008).

6. See *McCardle v. Indianapolis Water Co.*, 272 U.S. 400 (1926) (listing Groninger as counsel for the Indianapolis Water Company); *State ex rel. Indianapolis Bar Ass'n v. Fletcher Trust Co.*, 5 N.E.2d 538 (Ind. 1937) (same); *Henry v. Greenwald*, 155 N.E.2d 922 (Ind. App. 1927) (same); *City of Indianapolis v. Nat'l City Bank of Indianapolis*, 148 N.E. 675 (Ind. App. 1923) (same).

7. 46 N.E.2d at 244.

remained separated through the end of the appeal. The 1941 city directory lists an Eleanor Butler as living alone, and the 1945 and 1947 directories mention only "William D." living with "Billie L."<sup>8</sup>

The Butler's marital troubles may have stemmed from William's penchant for gambling. According to relatives of the family, William was a very friendly, well-liked, and happy man with a wonderful sense of humor. According to the city directory, his occupations varied from year to year between telephone repairman,<sup>9</sup> general repairman,<sup>10</sup> machine operator,<sup>11</sup> and laboratory technician.<sup>12</sup> When he wasn't working, William picked up a habit for gambling, and he became quite proud of his reputation as a small-time gangster, claiming that he used to run numbers for the Capone gang. Looking at a photo of the couple in 1928, one can imagine that Eleanor felt a bit rebellious having married the good-looking, dangerous man that William appeared to be. Perhaps William's disappearance during the time of the diamond-ring litigation could be explained by this dangerous lifestyle that he so enjoyed.

It was no coincidence that Louis Rosenberg decided to represent his daughter, Eleanor, in a suit to recover her mother's (and Louis's deceased wife's) diamond ring after William had pawned the ring at Wolf Sussman's pawn shop. Louis frowned on William's mischievous ways, and he probably hoped that the diamond-ring litigation would not only restore the family property, but that it would also seal a permanent separation between Eleanor and William. It didn't. William gave up gambling later in life and reconciled with Eleanor to live out the last forty-seven years of their marriage together.

William also gave up any involvement he may have had in organized crime. In the mid-1940s he began working for the family-owned Victoreen Instrument Company in Cleveland, Ohio.<sup>13</sup> When the Victoreen family moved to Colorado Springs in the 1950s to establish a research laboratory, William followed, helping to build the laboratory and then managing the production of various medical devices.<sup>14</sup> At least one local newspaper recognized the critical role that he played in creating instruments that allowed deaf people to hear:

---

8. See CITY OF INDIANAPOLIS, INDIANA, INDIANAPOLIS DIRECTORY (1947); CITY OF INDIANAPOLIS, INDIANA, INDIANAPOLIS DIRECTORY (1945); CITY OF INDIANAPOLIS, INDIANA, INDIANAPOLIS DIRECTORY (1941).

9. See CITY OF INDIANAPOLIS, INDIANA, INDIANAPOLIS DIRECTORY (1930).

10. See CITY OF INDIANAPOLIS, INDIANA, INDIANAPOLIS DIRECTORY (1939).

11. See CITY OF INDIANAPOLIS, INDIANA, INDIANAPOLIS DIRECTORY (1945).

12. See CITY OF INDIANAPOLIS, INDIANA, INDIANAPOLIS DIRECTORY (1947).

13. *William D. Butler Retires in March*, VCONTACT (Colorado Springs, Co.), June 1969, at 1.

14. See *id.*; see also *Bill Butler with Vicon Since Its Founding in 1952*, GAZETTE TELEGRAPH (Colorado Springs, Co.), Mar. 10, 1968, at 9E.

[William Butler and the Victoreen family] began building hearing instruments, the first of which was . . . completed in 1956. In 1957, the company had a regular production line with Bill in charge.

In their early work, he and Dr. Victoreen got help from youngsters at the Deaf and Blind School. But the youngsters got a lot more help from them.

“It was the first time some of those kids had ever heard a noise,” Bill said, “and some of them cried when they heard their first sound.” He blinked a little when he admitted that he had cried right along with some.<sup>15</sup>

After twenty-five years of working with the Victoreen family, William retired in 1969.<sup>16</sup> After Eleanor’s death in 1987, he moved to California to be closer to their son. William died in 2001.

Less is known about the defendant in the *Butler* case. Wolf Sussman, the shop owner, was a jeweler and, evidently, a licensed pawnbroker. An immigrant from Austria, he was about seventy-three years old when the *Butler* case was decided in 1943. Sussman was also married to an Austrian woman who was much younger than him. After his death, the widow appears in city directories of the 1940s as the president of jewelers for Wolf Sussman Inc.,<sup>17</sup> which she continued to operate with their son.

Finally, nobody knows what happened to the famous diamond ring. Various rings are in the family, but none seems to fit the facts well. Eleanor had a history of hiding things, and one theory is that she squirreled the ring away. If there’s ever a dispute about its discovery some day as the object of treasure trove, perhaps new generations of law students will be able to continue learning from the same object that has already mystified generations of past law students.

So there you have it.

---

15. *Id.*

16. See *William D. Butler Retires in March*, *supra* note 13.

17. See, e.g., CITY OF INDIANAPOLIS, INDIANA, INDIANAPOLIS DIRECTORY (1947).