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When an Alleged Wrong Becomes a Protected Right: Casey Anthony's Life-story and Future Book Rights Are Property of the Bankruptcy Estate

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WHEN AN ALLEGED WRONG BECOMES A PROTECTED RIGHT: CASEY ANTHONY'S LIFE-STORY AND FUTURE BOOK RIGHTS ARE PROPERTY OF THE BANKRUPTCY ESTATE

ABSTRACT

First-degree murder. This was one of the charges facing Casey Anthony during trial for the alleged murder of her two-year-old daughter, Caylee, in 2008. After living through three years branded as a child murderer, Ms. Anthony was acquitted by a jury in 2011 and disappeared from the spotlight. Two years after this traumatic experience, she filed a chapter 7 bankruptcy, with about $1,000 in listed assets and $792,000 in debt. Absent from Ms. Anthony's list of assets are intellectual property rights in a book that she has stated she will write based on her life-story. Those rights may have a significant commercial value.

No court has addressed the issue of whether a life-story and future book rights should be considered property of the bankruptcy estate. This Comment aims to solve this issue by drawing upon several sources to show that these assets rightly belong in the bankruptcy estate. The sources include legal arguments based on 11 U.S.C. § 541(a)—the section of the Bankruptcy Code that addresses property of the bankruptcy estate—copyright law, labor theory, and the right of publicity. These sources also include arguments based on real-world practice and public policy, such as the entry of intellectual property into the public domain and Son of Sam statutes. After determining that Ms. Anthony's life-story and future book rights should be considered property of the bankruptcy estate, this Comment also argues that a market-based approach to valuation is the appropriate method to be used for assessing the value of intellectual property rights of this sort.

INTRODUCTION

Casey Anthony's story is well known to many Americans. Accused of murdering her two-year-old daughter, Caylee, Ms. Anthony's trial and eventual acquittal in 2011 was in the national spotlight for several years.[1] Most Americans do not know, however, that Ms. Anthony filed for chapter 7 bankruptcy in 2013, claiming only about $1,000 in personal assets available to pay off about $792,000 in debts owed to over eighty creditors.[2] Most of this debt was due to the legal fees incurred during the murder trial.[3] One item conspicuously absent from Ms. Anthony's claimed assets was a book that she intends to write detailing her life-story and trial experience.[4] She has not written any parts of this book yet, and has not signed any book deal with a publisher.[5] However, this asset potentially has a huge value. The trustee of Ms. Anthony's bankruptcy estate moved to include the rights to publicity and commercialization of a future life-story as property of the estate, which would make this asset a source of profit to be used to pay off her creditors.[6] Ms. Anthony and her lawyers fought to dismiss this motion.[7] To avoid lengthy litigation over whether this asset is property of the bankruptcy estate, the bankruptcy judge allowed Ms. Anthony to pay $25,000 into the bankruptcy

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[1] Tamara Lush, *Casey Anthony Speaks at Bankruptcy Hearing*, ASSOCIATED PRESS: THE BIG STORY (Mar. 4, 2013), http://bigstory.ap.org/article/casey-anthony-comes-out-seclusion-meeting. Ms. Anthony was the main suspect in the investigation of the murder of her two-year-old daughter, Caylee. Ms. Anthony waited a month before reporting Caylee missing and also lied to the detectives during the investigation. Although Ms. Anthony was acquitted of murdering Caylee, she was convicted of lying to investigators and sentenced to four years in jail. Ms. Anthony served only about three years in jail. *Id.*; *see Casey Anthony Trial: Timeline of Key Events in the Murder Trial of the Florida Mother*, ABC NEWS (July 6, 2011), http://abcnews.go.com/US/casey-anthony-trial-timeline-key-events/story?id=13990853&page=4; *see also* Jessica Hopper, *Listen to Casey Anthony's Top Ten Lies*, ABC NEWS (June 2, 2011), http://abcnews.go.com/US/casey_anthony_trial/casey-anthony-top-ten-lies/story?id=13742643 (listing Ms. Anthony's top ten lies during her trial). *See generally Casey Anthony Coverage*, ORLANDO SENTINEL, http://www.orlandosentinel.com/news/local/caylee-anthony (last updated Feb. 7, 2015).

[2] Bankruptcy Petition at 9, *In re* Anthony, No. 8:13-bk-00922 (M.D. Fla. July 31, 2013), ECF No. 1.

[3] *Id.* (showing a $500,000 claim by Anthony's trial attorney); Lush, *supra* note 1 ("Anthony's listed debts include $500,000 for attorney fees and costs for Baez, her criminal defense lawyer during the trial; $145,660 for the Orange County Sheriff's . . . ; $68,540 for the Internal Revenue Service for taxes, interest and penalties; and $61,505 for the Florida Department of Law Enforcement for court costs.").

[4] *See* Bankruptcy Petition *supra* note 2, at 11.

[5] Lush, *supra* note 1.

[6] *See* Trustee's Motion Sell Property of the Estate and Approve Auction Procedures, *In re* Anthony, No. 8:13-bk-00922 (M.D. Fla. July 31, 2013), ECF No. 34; Mike Schneider, *Casey Anthony Will Pay $25,000 Not to Sell Her Life-story*, HUFFINGTON POST (Aug. 1, 2013, 12:16PM), http://www.huffingtonpost.com/2013/08/01/casey-anthony-life-story_n_3689734.html.

[7] Debtor's Response to Trustee's Motion to Sell Property, *In re* Anthony, No. 8:13-bk-00922 (M.D. Fla. July 31, 2013), ECF No. 51.

estate so that the estate would "relinquish any right to publicity and commercialization of [Ms. Anthony's] story."[8]

Courts have not determined whether rights to a life-story and a future book based on that life-story are property rights to be included in the bankruptcy estate. This unprecedented situation is in need of a solution because determining whether this asset should be included in the bankruptcy estate has the potential to drastically alter the division of Ms. Anthony's assets. Several authorities support the conclusion that this asset is property of the bankruptcy estate.

These authorities include 11 U.S.C. § 541(a)—the section of the Bankruptcy Code (the "Code") that addresses property of the bankruptcy estate—copyright law, and labor theory and the right of publicity. The practical authorities are based on real-world practice and public policy arguments draw from the public domain and Son of Sam Statutes. This Comment will use these sources to argue that Ms. Anthony's life-story and future book rights are property of the bankruptcy estate.

Part I is divided into two subparts. Part I.A focuses on the legal sources of authority: § 541 of the Bankruptcy Code (the "Code"), labor theory and the right of publicity, and copyright law. Part I.B focuses on the practical sources of authority: real-world practice and public policy arguments based on the entry of intellectual property into the public domain and Son of Sam Statutes. Next, Part II is divided into four subparts. Part II.A and Part II.B analyze and apply each source of authority directly to Ms. Anthony's case. Part II.C addresses arguments that suggest Ms. Anthony's life-story and future book are not property of the bankruptcy estate; and Part II.D addresses the proper method to value of an intangible asset, such as a life-story.

[8] Order Granting Joint Motion to Approve Compromise of Controversy at 1, *In re* Anthony, No. 8:13-bk-00922 (M.D. Fla. July 31, 2013), ECF No. 127.

I. BACKGROUND FACTS AND LEGAL DOCTRINE

A. Legal Theory Arguments in Favor of Confirming a Property Right in a Life-Story

1. 11 U.S.C. § 541(a)—Property of the Estate

Section 541(a) of the Code is the governing provision that controls what is property of the bankruptcy estate.[9] Section 541(a)(1) defines property of the bankruptcy estate as "all legal or equitable interests of the debtor in property as of the commencement of the case."[10] This includes, as stated in § 541(a)(6), all "[p]roceeds, product, offspring, rents, or profits of or from property of the estate, except as such are earnings from services performed by an individual debtor after the commencement of the case."[11] Judges have interpreted § 541(a)(6) to include future royalties or profits earned by a debtor arising from prepetition services or agreements.[12] The relevant dividing line for § 541(a)(6) is whether the item or service from which the royalties or profits arise was created before or after the debtor filed for bankruptcy.[13]

The scope of § 541(a) is broad and should not be construed strictly.[14] A debtor's interest can be property of the estate even if it is "novel or contingent."[15] This means that a debtor's interest is not excluded from the bankruptcy estate based solely on the fact that the debtor's interest has not yet been addressed by a court and specified as property of the bankruptcy estate.[16] In addition, a debtor's interest is not excluded from the bankruptcy estate based solely on the contingency of an interest upon future events occurring before that asset materializes.[17] Courts have developed three tests to determine

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[9] 11 U.S.C. § 541(a) (2012).

[10] *Id.* § 541(a)(1).

[11] *Id.* § 541(a)(6).

[12] *See, e.g.*, Cusano v. Klein, 264 F.3d 936, 945 (9th Cir. 2001) (holding that future royalties earned by the debtor with respect to songs he had written prepetition were assets of the bankruptcy estate).

[13] 11 U.S.C. § 541(a)(6).

[14] *See* Paige v. Jubber (*In re* Paige), 443 B.R. 878, 898 (C.D. Utah 2011), *aff'd in part and rev'd in part on other grounds*, 685 F.3d 1160 (10th Cir. 2012); *see also* Segal v. Rochelle, 382 U.S. 375, 379 (1966); Chappel v. Proctor (*In re* Chappel), 189 B.R. 489, 493 (B.A.P. 9th Cir. 1995).

[15] *Paige*, 443 B.R. at 898; s*ee also Segal*, 382 U.S. at 379; Canessa v. Kislak, Inc., 235 A.2d 62, 70 (N.J. Super. Ct. 1967).

[16] *See Paige*, 443 B.R. at 898; *see also Segal*, 382 U.S. at 379; *Canessa*, 235 A.2d at 69–70.

[17] Jess v. Carey (*In re* Jess), 215 B.R. 618, 620–21 (B.A.P. 9th Cir. 1997); *see also Segal*, 382 U.S. at 379; *Paige*, 443 B.R. at 898.

whether contested assets are property of the bankruptcy estate: (1) the entanglement test; (2) the control test; and (3) the dissection test.[18]

The first of these tests, the entanglement test, emphasizes that the main purposes of the bankruptcy process—fair treatment to creditors and the debtor's fresh start[19]—must be taken into account when determining what should qualify as property of the bankruptcy estate.[20] The entanglement test was originally defined and addressed by the U.S. Supreme Court in *Segal v. Rochelle*.[21] The Court held that the debtors' tax refunds were property of the bankruptcy estate because these refunds were "sufficiently rooted in the prebankruptcy past" and "so little entangled" with the debtors' ability to make an unencumbered fresh start that they should be regarded as property of the bankruptcy estate.[22] The Court reasoned that the refund existed at the time the bankruptcy petition was filed since the debtors had both a prior net income and a net loss and would have deserved an immediate refund had their tax year terminated on that date.[23] The fact that the tax year terminated later did not remove the refunds from the bankruptcy estate.[24] Thus, the entanglement test is a balancing test that factors in both of the purposes of the bankruptcy process.

The entanglement test was also used by the bankruptcy court in *In re Dillon*, which involved property rights to future royalties from songs that the debtor had written prior to filing for bankruptcy.[25] The court reaffirmed the entanglement test as a two-prong balancing test that should be used to determine whether an asset is property of the bankruptcy estate.[26] This test weighed (1) whether the debtor's asset was "sufficiently rooted" in the debtor's pre-bankruptcy past and (2) whether the debtor's asset was "so little entangled"

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18 *See Segal*, 382 U.S. at 380 (applying the entanglement test); *In re* Dillon, 219 B.R. 781, 784 (Bankr. M.D. Tenn. 1998) (applying the entanglement test); *Paige*, 443 B.R. at 898–99 (applying the control test); Towers v. Wu (*In re* Wu), 173 B.R. 411 (B.A.P. 9th Cir. 1994) (applying the dissection test).

19 *See, e.g.*, BFP v. Resolution Trust Corp., 511 U.S. 531, 563 (1994).

20 *Segal*, 382 U.S. at 379; *see also* Andrews v. Riggs Nat'l Bank of Wash. D.C. (*In re* Andrews), 80 F.3d 906, 909–10 (4th Cir. 1996).

21 382 U.S. at 380.

22 *Id.*

23 *Id.* at 381.

24 *Id.*

25 219 B.R. 781, 784 (Bankr. M.D. Tenn. 1998); *see also* Tully v. Taxel (*In re* Tully), 202 B.R. 481, 484 (B.A.P. 9th Cir. 1996) (holding a real estate broker's commission to be property of the bankruptcy estate because "the bulk of [the real estate broker's] efforts occurred pre-petition, over a five year period, not within the three week period following the bankruptcy filing").

26 *Dillon*, 219 B.R. at 784.

with the debtor's ability to make an unencumbered fresh start.[27] The court reasoned that the plaintiff's royalty rights to songs that she had written prepetition were "plainly rooted in, and grew out of, [the debtor's] prepetition activities."[28] In this case, the court added the language "*and grew out of*" to signify that a later payment, like a royalty, can grow out of prepetition assets, meaning that in addition to being rooted in the past, the profits also expanded from the past. While the profits themselves did not exist prepetition, they grew out of an asset that did exist prepetition.[29] Since the written songs were property of the estate, the court held that the profits that grew out of the songs were property of the estate as well.[30]

The second of the tests used by bankruptcy courts to define the scope of § 541(a)(6) is the control test. The control test was defined and used by the court in *Paige v. Jubber* (*In re Paige*) to address whether an Internet domain name was property of the bankruptcy estate.[31] Under the control test, "property that is titled in the name of the debtor and that is under the debtor's 'dominion of control' is presumptively property of the estate. The debtor has dominion or control if he has 'the ability to direct the disposition of [the transferred property].'"[32] Since the debtor in this case directed who could use the domain name, he controlled it.[33] Because he controlled it at the time his bankruptcy was filed, the court held that the domain name was property of his estate.[34]

The third test used by bankruptcy courts to define the scope of § 541(a)(6) is the dissection test, which was defined and used by the court in *Towers v. Wu* (*In re Wu*).[35] In this case, it was unclear whether a portion of the debtor's earnings existed prepetition or postpetition.[36] The court acknowledged that earnings based completely on prepetition performance are property of the debtor's bankruptcy estate.[37] Where the earnings were based on both

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[27] *See id.* ("[W]hether the bankrupt's claim to the asset is sufficiently rooted in the prebankruptcy past and so little entangled with the bankrupts' [sic] ability to make an unencumbered fresh start that it should be regarded as property [of the estate]." (internal quotation marks omitted)).

[28] *Id.* (emphasis added) (quoting *Andrews*, 80 F.3d 906, 910–11 (4th Cir.1996)).

[29] *Id.*

[30] *Id.*

[31] 443 B.R. 878, 898 (C.D. Utah 2011), *aff'd in part and rev'd in part on other grounds*, 685 F.3d 1160 (10th Cir. 2012).

[32] *Paige*, 443 B.R. at 898 (quoting *In re* Marshall, 550 F.3d 1251 (10th Cir. 2008)).

[33] *Id.* at 898–99.

[34] *Id.*

[35] 173 B.R. 411 (B.A.P. 9th Cir. 1994).

[36] *Id.* at 414–15.

[37] *Id.* at 414.

prepetition and postpetition efforts, the court rejected an "all or nothing approach."[38] Using the dissection test, the court instead separated the earnings into two categories: (1) the parts that were based on prepetition services are property of the bankruptcy estate, and (2) the parts that were based on postpetition services are not property of the bankruptcy estate.[39] This dissection test allowed the bankruptcy court the flexibility needed to divide the debtor's assets and thus more accurately assign the asset to the estate or to the debtor.[40]

2. Labor Theory and the Right of Publicity

Labor theory is based on John Locke's theory of property ownership.[41] Locke's argument is that a person can create a property right through his or her unique labor, by expending personal time and effort.[42] Thus, labor theory can provide an explanation of how an intangible asset can be included in the Code's definition of property by analyzing the individual debtor's unique labor and effort.

The right of publicity stems from labor theory.[43] A celebrity's right of publicity stems directly from the individual labors expended in living his or her life, especially those labors that catapulted that celebrity into the public eye.[44] A celebrity's right of publicity is a kind of property interest,[45] and, as such, is assignable during life and descendible at death.[46] This right of publicity includes the celebrity's name, likeness, and other aspects of his or her unique identity.[47] Courts most often recognize a right of publicity to prevent unjust enrichment by the unauthorized use of a celebrity's name to market a

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38 *Id.* at 414–15.

39 *Id.*

40 *See id.*

41 John Locke, THE SECOND TREATISE ON CIVIL GOVERNMENT 20 (Prometheus Books 1986) (1690) ("The labour of his body and the work of his hands . . . are properly his. . . . It being by him removed from the common state Nature placed it in, it hath by his labour something annexed to it that excludes the common right to other men.") (internal quotations omitted).

42 *Id.* The classic example is that of a farmer who creates a land ownership property right by working a piece of land, planting crops, harvesting them, and generally caring for and living on the land. *Id.* at 22.

43 *See* Uhlaender v. Henricksen, 316 F. Supp. 1277, 1281 (D. Minn. 1970); RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 46 (1995).

44 *See Uhlaender*, 316 F. Supp. at 1281.

45 WESTON ANSON, IP VALUATION AND MANAGEMENT 109–10 (2010).

46 RESTATEMENT (THIRD) OF UNFAIR COMPETITION, *supra* note 43, at § 46 cmt. g.

47 *Id.* at § 46.

product,[48] since it is the celebrity's name that causes the product to become more sought after.[49]

One case addressing a celebrity's property rights that are created through his or her labor is *Uhlaender v. Henricksen*.[50] In *Uhlaender*, the court addressed a baseball player's ability to protect and exercise control over his statistics and career experiences.[51] The court held that "a celebrity has a legitimate proprietary interest in his public personality" that he or she creates through his or her labor.[52] The court reasoned that a celebrity must be understood to have invested years of practice and competition in developing a public personality, which may eventually reach marketable status.[53] That public personality, which includes his or her name, likeness, statistics, and other personal characteristics, has been created through his or her personal labors, experiences, and decisions.[54] It is this public personality that the court in *Uhlaender* considered a type of property.[55]

The right of publicity was also acknowledged as a property right in *Hirsch v. S.C. Johnson & Sons, Inc*.[56] In this case, the court determined that a star athlete with the nickname "Crazylegs" had a property right in the right of publicity in his nickname.[57] The court awarded the plaintiff this property right even though he had not yet tried to use it for his own commercial gain.[58] The court reasoned that an unauthorized use of a celebrity's nickname was damaging to that celebrity regardless of whether she had already tried to use the nickname for profit or even if she was ever planning on using the nickname for profit.[59] This holding demonstrates that the property right created by a celebrity's right of publicity is not limited to preexisting commercial use.[60]

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48 ANSON, *supra* note 45.
49 *See* Canessa v. Kislak, Inc., 235 A.2d 62, 70 (N.J. Super. Ct. 1967).
50 *See* 316 F. Supp. 1277, 1281 (D. Minn. 1970).
51 *Id.*
52 *Id.* at 1282.
53 *Id.*
54 *Id.*
55 *Id.*
56 *See* 280 N.W.2d 129, 134 (Wis. 1979).
57 *Id.*
58 *Id.*
59 *Id.*
60 *See id.*

3. Copyright Law

Copyright law exists to give the creator of an original work exclusive use over that work. Copyrights are included as property of the bankruptcy estate.[61] Copyright law may be considered by bankruptcy courts in three ways to give a debtor legal rights to intangible assets, such as a life-story, so that these assets become property of the bankruptcy estate.

First, while copyright law does not extend copyright protection to mere ideas or concepts, copyright law does extend rights and protection to their expression.[62] A common method used to obtain rights conferred by copyright law is to embody those ideas in a tangible form, such as a writing.[63] If an author reduces his or her unique ideas to a written draft, the written draft and its contents may be eligible for copyright protection against infringement.[64] Thus, a debtor's interest in her expressed, tangible ideas would be included in the bankruptcy estate because assets that are protected by copyright law, among other intellectual property, are considered property of the bankruptcy estate.[65]

Second, copyright law doctrine recognizes property rights in unregistered copyrights.[66] The question of whether a copyright is registered is not relevant to determining whether the copyright is considered property of the estate. This is because registering the copyright with the U.S. Copyright Office[67] does not create the right to the copyright; it simply provides prima facie evidence that ownership of the copyright exists.[68] The basic requirements needed to register for copyright protection include originality and fixation in some tangible

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61 United States v. Inslaw, 932 F.2d 1467, 1471 (D.C. Cir. 1991).

62 17 U.S.C. § 102(b) (2012).

63 *Id.* § 102.

64 *Id.* § 102(b); Harper & Row Publishers, Inc. v. Nation Enters., 471 U.S. 539, 546–47 (1985) (holding that copyright does not extend to mere facts or ideas).

65 *Inslaw*, 932 F.2d at 1471 ("It is undisputed that [the bankruptcy estate] encompasses causes of action that belong to the debtor, as well as the debtor's intellectual property, such as interests in patents, trademarks and copyrights.").

66 *See* Aerocon Eng'g, Inc. v. Silicon Valley Bank (*In re* World Aux. Power Co.), 303 F.3d 1120, 1128 (2002) (reasoning that unregistered copyrights are, indeed, property, but state law may govern certain rights associated with them, such as the perfection of security interests on those unregistered copyrights).

67 The U.S. Copyright Office is a department of the Library of Congress. The U.S. Copyright Office accepts and approves or rejects copyright registrations. *See* 17 U.S.C. § 701.

68 *See id.* § 410(c); ANSON, *supra* note 45, at 20–21.

form.[69] Thus, if a work meets those requirements, property rights may exist absent a remedy for infringement under federal copyright law.[70]

Third, there is case law precedent establishing that an author's research may be copyrightable to the extent that the research is considered an original expression.[71] The court in *Miller v. Universal Studios, Inc*. held that research is not copyrightable to the extent that it is just "obtaining facts," reasoning that the author's individual labor in gathering and collecting facts for research is insufficient to establish a copyright.[72] While the facts themselves are not copyrightable, when the facts are collected in a compilation of research and uniquely expressed in a tangible form, the expressed research may be copyrightable.[73]

B. Practical Arguments in Favor of Confirming a Property Right in a Life-Story

1. Looking to Real-World Practice

Property has been defined as any commodity that can be bought and sold.[74] The fact that an asset can be transferred between a willing buyer and a willing seller creates value for that asset.[75] This market exchange is both a stimulus to and consequence of the legal doctrine of property ownership.[76] Such a free market exchange exists for life-stories.[77]

In the entertainment industry, for example, life-story rights are bought and sold as the inspiration for dramatic works.[78] Given the demand of the media to have exclusive stories first, networks are often willing to go to extreme lengths

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[69] *See* 17 U.S.C. § 102; Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 362 (1991) (finding insufficient originality because work in question lacked a modicum of creativity).

[70] *See* 11 U.S.C. § 102; *World Aux. Power Co.*, 303 F.3d at 1128 (holding that state law governs unregistered copyrights to the extent that federal law does not govern the rights of the parties).

[71] Miller v. Universal City Studios, Inc., 650 F.2d 1365, 1368 (5th Cir. 1981).

[72] *Id.* at 1371 (citing Rosemont Enters., Inc. v. Random House, Inc., 366 F.2d 303, 310 (2d Cir. 1966)).

[73] *Id.* at 1369–70.

[74] George M. Armstrong, Jr., *The Reification of Celebrity: Persons as Property*, 51 LA. L. REV. 443, 448 (1991).

[75] *In re* Cent. Ark. Broad. Co., 170 B.R. 143, 146 (Bankr. E.D. Ark. 1994) (holding that a radio broadcasting license, an intangible property asset, had considerable value to the debtor because it could be transferred to a third party).

[76] Armstrong, Jr., *supra* note 74.

[77] MARK S. LEE, ENTERTAINMENT AND INTELLECTUAL PROPERTY LAW § 13:31 (2014).

[78] *Id.*

to secure a story.[79] Generally, before a producer can create a movie based on a public figure's life, the producer must first acquire rights to a person's life-story through a contract.[80] These contracts generally contain a "Property Defined" section, which describes the time frame or event of a person's life that he or she is selling to the producer.[81] This industry-standard procedure shows that the life-story is considered a valued property asset.[82]

In addition, life-stories are often bought and sold in the marketplace before they have been written into a publishable story. An example of this is seen in *Harper & Row Publishers v. Nation Enterprises*.[83] In *Harper & Row*, the petitioners had contracted with former President Gerald Ford to publish his as-of-yet-unwritten memoirs, which were to include the President's experiences and reflections on the Watergate scandal.[84] The Supreme Court held this contract fully valid and enforceable.[85] While the bulk of this case addressed a claim of copyright infringement stemming from the contract,[86] this case acknowledges that there is a property right in a future book prior to being written.[87]

2. *Assessing the Public Policy Implications*

Public policy arguments are based on public morals—what is right and what is fair.[88] Public policy arguments, based on the exclusive control over the dissemination of a life-story and Son of Sam statutes, provide support for the proposition that a life-story and future book rights are property of the bankruptcy estate.

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[79] Teri N. Hollander, Comment, *Enjoining Unauthorized Biographies and Docudramas*, 16 LOY. L.A. ENT. L. REV. 133, 134 (1995).

[80] Jacqui G. Grunfeld, *Docudramas: The Legality of Producing Fact-Based Dramas—What Every Producer's Attorney Should Know*, 14 HASTINGS COMM. & ENT. L.J. 483, 522 (1992).

[81] *Id.* As an example, "[T]he 'Property' shall include Owner's life-story, specifically including but not limited to the events and incidents surrounding Owner's car accident and subsequent struggle to recover and situations resulting therefrom." *Id.*

[82] *Id.*

[83] 471 U.S. 539, 542 (1985).

[84] *Id.*

[85] *Id.*

[86] *See id.* at 542–69.

[87] *Id.* at 555 ("The author's control of first public distribution implicates . . . his property interest in exploitation of prepublication rights . . . .").

[88] *See* 25 DAVID K. DEWOLF ET AL., WASH. PRAC. § 7:4 (2d ed. 2013).

a. Exclusive Control and the Dissemination of a Life-Story

The public domain includes "information which is published and which is generally accessible or available to the public."[89] The public domain can be defined as the absence of ownership.[90] A person loses ownership of intellectual property or other property once it enters the public domain.[91] According to *Black's Law Dictionary*, the definition of property is "the right to possess, use, and enjoy a determinate thing; the right of ownership."[92] This ownership is lost when that property enters the public domain.[93]

A person controls whether his or her personal life-story is revealed to the public because it contains his or her unique emotions, thoughts, and reactions. The control aspect is especially relevant when addressing an individual's life-story because the presentation of that life-story will differ based on whose perspective is being told. This control over the life-story is indicative of the fact that he or she has a property right in the life-story.

b. Son of Sam Statutes as an Analogue

Son of Sam statutes address the situation that occurs when alleged or convicted criminals write books or make movies about their crimes and then profit from selling their stories.[94] Son of Sam statutes provide that the profits from the sale of such books or movies are to be seized by the court and placed into an escrow account for the victims of the publicized crimes.[95] These laws were enacted in response to public outcry over alleged or convicted criminals profiting from publicizing their stories and glamorizing their crimes. The first Son of Sam statute was enacted in New York in response to public outrage after serial killer David Berkowitz, known as the "Son of Sam," was offered large amounts of money to write a book detailing the story of his crimes and victims.[96] These laws do not prevent criminals from writing their life-stories

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89 22 C.F.R. § 120.11 (2014).

90 Tyler T. Ochoa, *Origins and Meanings of the Public Domain*, 28 U. DAYTON L. REV. 215, 256 (2002).

91 *See id.* at 217–21.

92 BLACK'S LAW DICTIONARY 1335–37 (9th ed. 2009).

93 *See* Ochoa, *supra* note 90, at 217–21.

94 *See, e.g.*, Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd., 502 U.S. 105, 118, 121, 123 (1991) (holding New York's Son of Sam law unconstitutional because it was presumptively inconsistent with the First Amendment and not narrowly tailored to the State's objective of compensating victims of crime).

95 *See id.* at 108.

96 *See id.*

because such prevention would violate First Amendment rights.[97] However, these laws can prevent criminals from profiting off their stories, and instead transfer the profits to the victims.

Currently, forty-five states have Son of Sam laws, including Florida.[98] This is evidence of strong public support for the idea that criminals should not profit from publicizing their crimes. While Florida's Son of Sam statute applies only to convicted criminals,[99] several states' Son of Sam laws are broader in scope and also apply to alleged or accused criminals.[100]

II. PROOF OF CLAIM

A. Legal Theory Arguments in Favor of Confirming a Property Right in Ms. Anthony's Life-Story and Including That Right in the Bankruptcy Estate

This Part argues that Ms. Anthony has a property right in her life-story and future book that is rightly considered property of the bankruptcy estate. While legal rights to a life-story have not been addressed in bankruptcy, they can be implied from several legal theory sources. These sources include (1) 11 U.S.C. § 541(a); (2) copyright law; and (3) the right of publicity. Each of these sources supports the argument that Ms. Anthony's life-story and future book rights are property of the bankruptcy estate.

1. 11 U.S.C. § 541(a)—A Life-Story as Property of the Bankruptcy Estate

The scope of § 541(a), defining property of the bankruptcy estate, is broad and should not be construed strictly.[101] Case law has interpreted § 541(a)(6) to include any future royalties or profits earned by a debtor arising from

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[97] *See id.* at 114–18 ("A statute is presumptively inconsistent with the First Amendment if it imposes a financial burden on speakers because of the content of their speech.").

[98] *See* Lindsey R. Hammitt, Comment, *What's Wrong with the Picture? Reviewing Prison Arts in America*, 30 ST. LOUIS U. PUB. L. REV. 575, 578 (2011).

[99] *See* FLA. STAT. ANN. § 944.512 (West 2014).

[100] *See 'Son of Sam' Statutes: Federal and State Summary*, NEWSEUM INST. (Mar. 23, 2012), http://www.newseuminstitute.org/son-of-sam-statutes-federal-and-state-summary; *see also* 1A ALEXANDER LINDEY & MICHAEL LANDAU, LINDEY ON ENTERTAINMENT, PUBLISHING AND THE ARTS § 4:22.30 n.16 (3d ed. 2014); Suna Chang, Comment, *The Prodigal "Son" Returns: An Assessment of Current "Son of Sam" Laws and the Reality of the Online Murderabilia Marketplace*, 31 RUTGERS COMPUTER & TECH. L.J. 430, 446 (2005).

[101] *See* Paige v. Jubber (*In re* Paige), 443 B.R. 878, 898 (C.D. Utah 2011) (citing Parks v. FIA Card Serv., N.A. (*In re* Marshall), 550 F.3d 1251, 1255 (10th Cir. 2008)), *aff'd in part and rev'd in part on other grounds*, 685 F.3d 1160 (10th Cir. 2012); *see also* Segal v. Rochelle, 382 U.S. 375, 379 (1966); Chappel v. Proctor (*In re* Chappel), 189 B.R. 489, 493 (B.A.P. 9th Cir. 1995).

prepetition services or agreements.[102] Even a debtor's "novel or contingent" interest can be property of the estate.[103]

According to § 541(a)(1), Ms. Anthony's life-story is property of the bankruptcy estate because she had a legal and equitable interest in it at the commencement of her bankruptcy case.[104] Under § 541(a)(6), all future proceeds and profits stemming from her life-story are also property of the estate.[105]

There are three different tests for determining whether a particular asset is property of the estate: (1) the entanglement test; (2) the control test; and (3) the dissection test.[106] The entanglement test is the most appropriate test when assigning life-stories.[107] It acknowledges both of the fundamental policies of the bankruptcy system—addressing the debtor's need for a fresh start while ensuring a fair distribution to creditors.[108] The other two tests are not as appropriate for determining whether a particular asset is property of the estate. The control test does not address the debtor's fresh start, nor does it address the prepetition timing requirements of § 541(a).[109] The dissection test, while allowing a court greater flexibility in determining property of the estate, is not feasible for an intangible property right that is difficult to divide into prepetition and postpetition parts.[110] Instead, the dissection test is best suited for easily divided assets such as earnings, wages, or bonuses.[111]

In *Dillon*, the court applied the entanglement test.[112] In that case, the plaintiff argued that her song royalties were "her only means to accumulate

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[102] *See* Cusano v. Klein, 264 F.3d 936, 945 (9th Cir. 2001) (holding that future royalties earned by the debtor with respect to songs he had written prior to the filing of his bankruptcy petition were assets of the bankruptcy estate); *see also* Berry v. Hoffman, 189 A. 516, 518 (Pa. Super. Ct. 1937) (holding that property rights in a literary production before publication are exclusively in the author).

[103] *See Paige*, 443 B.R. at 898 (citing *Marshall*, 550 F.3d at 1255); *see also Segal*, 382 U.S. at 379; Canessa v. Kislak, Inc., 235 A.2d 62, 70 (N.J. Super. Law Div. 1967).

[104] 11 U.S.C. § 541(a)(1) (2012).

[105] *Id.* § 541(a)(6).

[106] *See Segal*, 382 U.S. at 380 (entanglement test); Towers v. Wu (*In re* Wu) (dissection test), 173 B.R. 411, 414–15 (B.A.P. 9th Cir. 1994); *In re* Dillon, 219 B.R. 781, 784 (Bankr. M.D. Tenn. 1998) (entanglement test); *Paige*, 443 B.R. at 898 (control test).

[107] *See Segal*, 382 U.S. at 380; *Dillon*, 219 B.R. at 784.

[108] *See* BFP v. Resolution Trust Corp., 511 U.S. 531, 563 (1994).

[109] *See Paige*, 443 B.R. at 898; *see also* Parks v. FIA Card Serv., N.A. (*In re* Marshall), 550 F.3d 1251, 1255 (10th Cir. 2008).

[110] *See Wu*, 173 B.R. at 414–15.

[111] *See id.*

[112] 219 B.R. 781, 784 (Bankr. M.D. Tenn. 1998).

'new wealth' and that she [would] be unable to support herself if the rights [were] included as property of the estate."[113] The court dismissed this claim and held that the rights accrued prepetition since they were "plainly rooted in, and grew out of [the debtor's] prepetition activities," and were also not so entangled with the debtor's fresh start.[114]

Similar to the court in *Dillon*, the entanglement test should be applied to Ms. Anthony's bankruptcy case.[115] Under this test, Ms. Anthony's life-story and future book rights are property of the estate because both prongs of the entanglement test are satisfied: (1) the life-story and future book rights are "sufficiently rooted" in her prebankruptcy past and (2) the life-story and future book rights are "so little entangled" with her ability to make an unencumbered fresh start.[116]

To satisfy the first prong of the entanglement test, the court must hold both Ms. Anthony's life-story and future book rights to be "sufficiently rooted"[117] in her prebankruptcy past. Ms. Anthony's life-story is rooted in her prebankruptcy past because the experiences that compose her life-story, namely the alleged crime, the trial, and its aftermath, occurred prepetition. Ms. Anthony's future book rights are also rooted in her prebankruptcy past because these book rights will "grow out of"[118] her life-story.

To satisfy the second prong of the entanglement test, the court must hold Ms. Anthony's life-story and future book rights to not be entangled with her ability to make an unencumbered fresh start after bankruptcy. This prong tests whether the debtor needs a particular asset to make a fresh start.[119] Ms. Anthony does not need to retain profits from her future book or her life-story rights to make an unencumbered fresh start. While they may be an easy source of income after bankruptcy, there is nothing about these particular assets that suggests they are necessary for a successful fresh start.

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113 *Id.*

114 *See id.* at 784 (quoting Andrews v. Riggs Nat'l Bank (*In re* Andrews), 80 F.3d 906, 910–11 (4th Cir. 1996)).

115 *See id.*

116 *See id.*

117 *Id.*

118 *Id.*

119 *Id.*

Therefore, since Ms. Anthony's life-story and future book rights satisfy both prongs of the entanglement test, both assets are property of the bankruptcy estate under § 541(a)(1) and (6).

2. Applying Labor Theory and the Right of Publicity to Ms. Anthony's Life-Story

Labor theory can be applied in the context of a person's life-story. Under labor theory principles, it is possible for a person to create a property ownership in a personal experience, since it was through his or her individual and unique labor and effort that the particular experience occurred in that specific way.[120] Experiences are shaped constantly by the decisions and thoughts of the person living through them, and these decisions and thoughts necessarily require labor and effort to be made. Even simple decisions require labor and effort, such as whether to snooze an alarm clock, what to eat for breakfast, even choosing between picking up coffee on the way to work or making coffee at home requires some labor and effort.[121] Thus, every choice a person makes to do something is an active decision that requires labor and effort. The combined consequence of these efforts and decisions creates a unique experience of each day and each event. The experience is unique because no other person would make the same exact decisions for the same exact reasons. The labor expended in shaping the experiences arguably creates an ownership right in those experiences.[122] These experiences combine to create a life-story. Thus, labor theory can extend to creating ownership rights in a life-story.

If the simple decisions described above qualify as labor to create a property right, then Ms. Anthony's unique decisions do as well. Deciding how to proceed with her murder trial and her reactions to murder accusations are each more involved than deciding what to eat for breakfast. Thus, since her decisions required more contemplation and effort than the example decisions above, it follows that Ms. Anthony's decisions required effort that created a property right in her life-story.

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120 Michelle E. Lentzner, Comment, *My Life, My Story, Right? Fashioning Life Story Rights in the Motion Picture Industry*, 12 HASTINGS COMM. & ENT. L.J. 627, 645 (1990).

121 Karen I. Vaughn, *John Locke and the Labor Theory of Value*, 2 J. LIBERTARIAN STUD. 311, 313 (1978) ("[Labor includes] any act of appropriation of natural resources, from the simple act of bending over and picking up acorns . . . to the launching of a complicated process of production . . . . Anytime any human effort, no matter how trivial, is expended in purposeful action, it is defined as labor.").

122 *Id.*

This conclusion is supported by several courts that have applied labor theory in awarding property rights to individuals who created those rights through the labor of their careers.[123] It is through an individual's labor that she shapes her public persona, identity, and career, which are then protected as property rights through the right of publicity doctrine.[124] The following two cases address situations in which self-made public figures secured a property right in their life experiences primarily because of the labor and effort expended.

In *Uhlaender v. Henricksen*, the court recognized a property right vested in the plaintiff because of his labor in creating his public image and career.[125] In *Uhlaender*, the plaintiff's labor during his professional baseball career created a protectable property right in the public image and statistics he created throughout that career.[126] Similar to how the baseball player's labor in *Uhlaender* created an ownership right in his career statistics and likeness,[127] Ms. Anthony's labor in her murder trial (her thoughts, decisions, and actions during this time) created an ownership right in her experience of living through this event. A baseball player's public personality is similar to an alleged criminal's public personality in that both are public personalities self-made through those individuals' efforts and decisions.

In *Hirsch v. S.C. Johnson & Son, Inc.*, the court also awarded a property right to the plaintiff even though he had not yet tried to profit from his public image.[128] *Hirsch* made it clear that whether a property right is created in a public image is not dependent on the intended future use of that asset.[129] This distinction is important because it makes irrelevant the fact that Ms. Anthony has not yet tried to use her life-story for personal profit.

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123 *See, e.g.*, Uhlaender v. Henricksen, 316 F. Supp. 1277, 1282 (D. Minn. 1970) (holding that plaintiffs, professional baseball players, had a property interest in their names and likenesses resulting from their professional baseball careers); Hirsch v. S.C. Johnson & Son, Inc., 280 N.W.2d 129, 134 (Wis. 1979) (holding that plaintiff, a professional athlete, had a property interest in his name and likeness). *See generally* White v. Samsung Elecs. Am., Inc., 971 F.2d 1395 (9th Cir. 1992); Palmer v. Schonhorn Enters., Inc., 232 A.2d 458 (N.J. Super. Ct. 1967).

124 *See, e.g.*, *Uhlaender*, 316 F. Supp. at 1282 (holding that plaintiffs, professional baseball players, had a property interest in their names and likenesses resulting from their professional baseball careers); *Hirsch*, 280 N.W.2d at 134 (holding that plaintiff, a professional athlete, had a property interest in his name and likeness). *See generally White*, 971 F.2d 1395; *Palmer*, 232 A.2d 458.

125 *See* 316 F. Supp. at 1282.

126 *See id.*

127 *See id.*

128 270 N.W.2d at 138–40.

129 *See id.*

These two cases demonstrate how labor theory ties into the right of publicity to create a property right in a person's life-story, persona, and identity. Under labor theory, Ms. Anthony's labor creating her life-story—her efforts, decisions, and experiences during the time leading up to the death of her daughter, the trial, and its aftermath—occurred prepetition. This labor created a prepetition right in her life-story, which is property of the bankruptcy estate.

3. Applying Copyright Law to Ms. Anthony's Life-Story

Upon filing, the debtor's copyrights become property of the bankruptcy estate.[130] If Ms. Anthony had copyrighted her life-story, in some eligible form, before filing her petition, that copyrighted work would have been property of the bankruptcy estate. However, applying copyright analysis to Ms. Anthony's case would take the evaluation of property rights one step further than Ms. Anthony and her trustee took in their compromise.[131] That said, even without a formally registered copyright, Ms. Anthony would have a prepetition property interest—akin to copyright—in her expression of her life-story in letters she wrote in prison. Arguably, this interest would be property of the bankruptcy estate.

First, copyright law does not extend copyright protection to mere ideas or concepts.[132] It extends protection only to the expression of ideas or concepts.[133] Accordingly, a person's life-story must be expressed in some tangible form, such as in a writing, before it can be granted copyright protection.[134]

Ms. Anthony wrote several letters while she was in prison describing her intent to write a book about her life-story, including her experiences before, during, and after her murder trial.[135] These letters may contain enough detail and description to qualify as an expression of her ideas in tangible form. If these letters do contain sufficient expression, Ms. Anthony may have effectively developed her ideas and reduced them to a tangible written form

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130 United States v. Inslaw, 932 F.2d 1467, 1471 (D.C. Cir. 1991) ("It is undisputed that [the bankruptcy estate] encompasses causes of action that belong to the debtor, as well as the debtor's intellectual property, such as interests in patents, trademarks and copyrights.").

131 Order Granting Joint Motion to Approve Compromise of Controversy, *supra* note 8.

132 17 U.S.C. § 102(b) (2012); Baker v. Selden, 101 U.S. 99 (1879).

133 17 U.S.C. § 102(a); *see Baker*, 101 U.S. 99.

134 17 U.S.C. § 102(a); *see* Harper & Row Publishers, Inc. v. Nation Enters., 471 U.S. 539, 547 (1985).

135 Emily Friedman, *Casey Anthony Writes About Wanting More Babies*, ABC NEWS (July 6, 2011), http://abcnews.go.com/US/casey-anthony-children/story?id=14009375.

eligible for copyright protection.[136] Ms. Anthony's expression of her life-story in her letters may also be eligible for copyright protection if those letters are characterized as akin to an author's research gathered before writing a new book. Historical facts and events are part of the public domain and, like ideas, are not entitled to copyright protection.[137] However, an author's research is not simply a collection of historical facts or events and may be entitled to copyright protection once that research is uniquely expressed in a tangible form.[138]

Second, the fact that Ms. Anthony has not yet registered a copyright in her letters does not exclude her from using copyright law to protect her letters from infringement. Copyright protection simply affirms that a property right already exists; it does not create a property right.[139] Therefore, if it could be shown that Ms. Anthony met all the requirements for a copyright in her life-story as expressed in her letters, then this life-story, to the extent it was expressed in her letters, would be eligible for copyright protection.[140]

The basic requirements needed to register for copyright protection include originality, creativity, and fixation in some tangible form.[141] The letters expressing Ms. Anthony's life-story arguably satisfy the originality and creativity requirement because her expression of the facts, reactions, emotions, and thoughts are unique. The letters also satisfy the fixation requirement because she has written letters stating her intent to write a book about her life-story and has also identified some content of this life-story in these letters.[142] Even though Ms. Anthony has not yet registered for a formal copyright, she still seems to have fulfilled all the requirements necessary to file for one.

Therefore, to the extent that Ms. Anthony's letters satisfy originality and tangibility requirements for a formal copyright—all of which would be part of the bankruptcy estate—the copyright in her letters should be considered property of the estate.

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136 *See Harper & Row Publishers*, 471 U.S. at 547; Lentzner, *supra* note 120, at 643.
137 Feist Publ'ns, Inc. v. Rural Tele. Serv. Co., 499 U.S. 340 (1991).
138 *Id.*
139 *See* ANSON, *supra* note 45, at 20–21.
140 *See id.*
141 *Feist Publ'ns, Inc.*, 499 U.S. at 345, 355.
142 Friedman, *supra* note 135.

B. Practical Arguments in Favor of Confirming a Property Right in Ms. Anthony's Life-Story

In addition to the legal theory sources addressed in Part I.A, legal rights to a life-story can also be found and implied from several sources based on both real-world practice and public policy arguments that include exclusive control over the dissemination of a life-story and Son of Sam statutes.

1. Treatment of Life-Stories in Real-World Practice

There is a market for alleged criminals to write and sell books and other creative works based on their alleged crimes.[143] As an example, O.J. Simpson's book *If I Did It*, based on his alleged murders of Nicole Simpson and Ronald Goldman, has sold over 100,000 copies earning hundreds of thousands of dollars.[144] Additionally, life-story rights are commonly bought and sold in the entertainment industry as the basis for dramatic works.[145] Willing buyers and sellers in this market indicate the existence of a property right in Ms. Anthony's life-story. Thus, her life-story and future book rights are property rights as indicated by the exchange functions of this market.

In addition, the fact that Ms. Anthony's life-story has not yet been written is irrelevant to the traditions of real-world practice. It is common to contract for books that are yet to be written.[146] Similar to how the parties in *Harper & Row* contracted for President Ford's life-story before he wrote it, parties remain free to contract for Ms. Anthony's life-story before she writes it.[147] This contract between a willing buyer and seller recognizes a property right of ownership that does not depend on whether the life-story has been written.

2. Public Policy

The public policy of fairness supports including Ms. Anthony's life-story as property of the bankruptcy estate. This public policy argument is based on analyzing the exclusive control over the dissemination of a life-story and the policy behind the Son of Sam Statutes.

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143 *See* LEE, *supra* note 77; *see also* Tamara Lush, *Casey Anthony's Life Story: Bankruptcy Trustee Files to Sell Story Rights to Pay Debts*, HUFFINGTON POST (Mar. 18, 2013, 5:06 PM), http://www.huffingtonpost.com/2013/03/18/casey-anthony-life-story_n_2902538.html.

144 Lush, *supra* note 143.

145 LEE, *supra* note 77.

146 *See* Harper & Row Publishers, Inc. v. Nation Enters., 471 U.S. 539, 542–43 (1985).

147 *See id.*

a. Exclusive Control and the Dissemination of a Life-Story

A person having control of when others can exploit an asset indicates that person's ownership of a property right in that asset.[148] Personal ownership is lost when that asset enters the public domain.[149] To argue that Ms. Anthony has a property right in her life-story, it must be established that (1) she has control over her life-story and her future book rights and (2) because she has that control, she should have a property right.

First, controlling the use of an asset indicates the existence of a property right in that asset.[150] For example, a person's money is her property because she decides how to spend it; a person's business is her property because she decides what to sell, what services to offer and at what price, and who to hire. Similarly, a person's life-story should be her property because she decides whether or not to share it with others.

The key consideration here is that unless Ms. Anthony decides to share her personal life-story, it will remain unknown. Her life-story is unique because she has sole access to information that no one else is privy to, such as her thoughts, emotions, personal reactions, and individual decisions. Any reporter could report the objective facts, arguments, and the final outcome of the trial. However, the only way this reporter could report Ms. Anthony's personal reactions and internal thoughts to the public is by Ms. Anthony first revealing them. Therefore, because Ms. Anthony controls whether or not her personal life-story enters the public domain, she has a property right in it.

b. Son of Sam Statutes as an Analogue

The policy behind Son of Sam statutes suggests that the rights to Ms. Anthony's life-story should be part of the bankruptcy estate because she should not profit from her alleged crimes. Son of Sam statutes divert profits from criminals or alleged criminals and give them to the victims or their families.[151]

In this case, the money cannot go to the victim Caylee or her family because Caylee was Ms. Anthony's daughter. Giving the profits to Caylee's estate would return the money to Ms. Anthony. Allowing the money to divert

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148 *See* Ochoa, *supra* note 90, at 257, 262–66; *see also* Paige v. Jubber (*In re* Paige), 443 B.R. 878, 898 (C.D. Utah 2011), *aff'd in part and rev'd in part on other grounds*, 685 F.3d 1160 (10th Cir. 2012).

149 Ochoa, *supra* note 90, at 263.

150 *See id.* at 257, 262–66; *see also Paige*, 443 B.R. at 898.

151 *See* Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd., 502 U.S. 105, 111 (1991).

back to Ms. Anthony instead of her creditors would accomplish the opposite of the Son of Sam statutes, because she would be profiting from her own alleged crime.[152]

On its face, the Florida Son of Sam statute does not apply to persons who have not been convicted of crimes.[153] However, several states' Son of Sam statutes apply to alleged and convicted criminals.[154] The theory behind these statutes is that regardless of having been found innocent or guilty, an accused person should not profit from any victim's misfortune.[155] Even though Florida's Son of Sam statute does not apply to Ms. Anthony, she should not profit from the ordeal. By analogy, in the context of Ms. Anthony's bankruptcy, any profits should belong to the bankruptcy estate.

C. Legal Arguments Against Confirming a Property Right in Ms. Anthony's Life-Story and Including That Right in the Bankruptcy Estate

This Part presents three counterarguments asserting that Ms. Anthony's life-story and future book rights are not property of the bankruptcy estate. These counterarguments are based on the right of publicity and an alternative interpretation of § 541(a)(6) of the Code.

1. An Argument Against Recognizing a Property Right in Ms. Anthony's Life-Story.

a. Zacchini*: Livelihood and the Right of Publicity*

Generally, courts recognize the protection of a person's livelihood when determining whether a property right exists. In *Zacchini v. Scripps-Howard Broadcasting Co*., the plaintiff's livelihood was the live performance of his acrobatic act.[156] In this case, the plaintiff sued defendants for filming his entire act without his permission and broadcasting it on television for free.[157] The Court reasoned that this broadcast had a negative effect on the profitability of

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[152] *See 'Son of Sam' Statutes: Federal and State Summary*, *supra* note 100.

[153] FLA. STAT. ANN. § 944.512 (West 2014) (providing for a state lien on a convicted person's proceeds from stories recounting crimes committed).

[154] *See* LINDEY & LANDAU, *supra* note 100; *'Son of Sam' Statutes: Federal and State Summary*, *supra* note 100; *see also* Chang, *supra* note 100.

[155] *See* Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd., 502 U.S. 105 (1991); *see also* Chang, *supra* note 100; *'Son of Sam' Statutes: Federal and State Summary*, *supra* note 100.

[156] 433 U.S. 562, 576 (1977).

[157] *Id.* at 562.

the plaintiff's performance.[158] The Court held that the plaintiff had a right of publicity in his act and this right allowed him to prevent others from exploiting the act.[159]

The recognition of the plaintiff's right of publicity in *Zacchini* could be compared to the rights Ms. Anthony may have in her life-story. In *Zacchini*, the plaintiff's livelihood was his act because it was done for the sole purpose of making money.[160] This does not appear to be true for Ms. Anthony. Arguably, her life-story and future book rights are not sufficiently related to her livelihood. Here, Ms. Anthony did not express the facts surrounding her trial to support herself as Zacchini did with his act.[161] As a result, a court may be less willing to recognize a property interest in Ms. Anthony's life-story.

b. Uhlaender*: Labor and the Right of Publicity*

The tradition of buying and selling life-stories is not enough to grant a property right in a life-story.[162] In *Uhlaender*, the court held that tradition plus extra individual labor could establish a property right.[163] The baseball player in *Uhlaender* invested years of labor and effort in his career. This labor combined with the real-world tradition of licensing names and statistics created a property right.[164]

In Ms. Anthony's situation, the tradition of buying and selling life-stories, by itself, does not create a property right in her life-story. It is not readily evident that Ms. Anthony invested the sort of labor into her expression and likeness that the plaintiff in *Uhlaender* did.[165] And, while this tradition combined with her labor—developing her experience of the murder trial with her thoughts, decisions, and actions—may create a property right in her life-story, the law is sufficiently unclear to cast doubt on such a proposition.

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158 *Id.* at 562–63. ("The broadcast of a film of petitioner's entire act poses a substantial threat to the economic value of that performance.").

159 *Id.*

160 *Id.*

161 *See id.* at 575.

162 *See* Uhlaender v. Henricksen, 316 F. Supp. 1277, 1281 (D. Minn. 1970) ("A history of the successful licensing of such names and statistics by the plaintiff association to other game manufacturers obviously does not establish that plaintiffs have any such legal right [of publicity].").

163 *Id.*

164 *Id.* at 1282 ("[A] celebrity has a legitimate proprietary interest in his public personality. . . . That identity, embodied in his name, likeness, statistics and other personal characteristics, is the fruit of his labors and is a type of property.").

165 *Id.*

2. An Alternative Interpretation of Property of the Estate

Assuming a court finds a property right in Ms. Anthony's life-story, § 541(a)(6) may exclude from the bankruptcy estate any future profits resulting from the life-story. This Code section states that the bankruptcy estate shall include all "[p]roceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor *after* the commencement of the case."[166] This provision distinguishes between profits from prepetition services, which are property of the estate, and profits from postpetition services, which are not.[167]

Here, Ms. Anthony's further development of her life-story and any publishing deal must occur postpetition. So, any profits would be the result of these postpetition services. Consequently, any future profits from this developed life-story would not be property of the estate under § 541(a)(6).

D. Valuation of Ms. Anthony's Property Interest

Assuming the court had recognized Ms. Anthony's property right in her life-story and assuming the court had then included it in the bankruptcy estate, the court would then be faced with determining the value of that right. Valuation of a property right can be a difficult computation.[168] This difficulty is especially true for Ms. Anthony because no book has been published nor has any publishing deal been finalized.[169] Therefore, a court must look to other sources to determine how much Ms. Anthony's life-story and future book would be worth.

The goal of valuation is to determine the amount that a willing purchaser would pay to a willing seller.[170] No single approach to valuation of intellectual property assets exists.[171] In fact, an intangible asset may have multiple correct

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166 11 U.S.C. § 541(a)(6) (2012) (emphasis added).

167 *Id.*

168 ANSON, *supra* note 45, at 41; *see also* Brandt v. nVidia Corp. (*In re* 3dfx Interactive, Inc.), 389 B.R. 842, 865 (Bankr. N.D. Cal. 2008).

169 Lush, *supra* note 1 (reporting that such a publishing deal would be especially valuable to this discussion because the deal would define how much the book would be worth in the eyes of the publishing industry).

170 Gen. Dynamics Corp. v. Bd. of Assessors, 444 N.E.2d 1266, 1273 (Mass. 1983) (quoting Bos. Edison Co. v. Assessors of Watertown, 439 N.E.2d 763 (Mass. 1982)).

171 *Id.* at 35; *see* ANSON, *supra* note 45, at 41; *see also 3dfx Interactive, Inc.*, 389 B.R. at 865 (citing Peltz v. Hatten, 279 B.R. 710, 737 (D. Del. 2002), *aff'd sub nom.*, Peltz v. Hatten (*In re* USN Comm., Inc.), 60 F. App'x 401 (3d Cir. 2003)).

values at the same time.[172] Adding to the difficulty is the fact that most intellectual property assets can be divided into different pieces, each of which may have different values based on their proposed use.[173] For example, Ms. Anthony may decide to sell her pre-trial life-story to a publishing company and her post-trial life-story to a movie producer.

There are two approaches that an assessor may use to determine the value of intangible property. The first approach is the market approach, which compares actual market sales, licenses, rents, and other transactions.[174] The market approach is appealing because it relies on actual market transactions.[175] Here, the market approach may involve comparing prepetition offers for the asset with publishers' assessments of Ms. Anthony's life-story and future book rights.

The second approach is the cost approach, which measures the replacement cost of the asset.[176] The cost approach considers actual monetary costs and various relevant cost factors, such as production and overhead costs.[177] However, the cost approach is not feasible in Ms. Anthony's case because her life-story told from her perspective is unique.

Of these two approaches, the market approach is the more appropriate method of calculating the value of Ms. Anthony's life-story. To determine the value of Ms. Anthony's life-story under the market approach, a court must address four factors.[178]

Uniqueness is the first factor.[179] This factor may influence valuation by inflating the price because the asset is difficult or impossible to replace.[180] As an example, the Mona Lisa has immense value because it is a one-of-a-kind piece of artwork. As discussed above in Parts I.A and I.B, Ms. Anthony's life-story is unique. Life-story rights have the potential to have a high commercial value.[181] Since Ms. Anthony is a controversial public figure, her life-story is

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172 ANSON, *supra* note 45, at 43.
173 *Id.* at 108.
174 *See id.* at 51–53.
175 *See id.* at 53.
176 *Id.* at 49.
177 *Id.*
178 *Id.* at 48.
179 *Id.*
180 *See id.*
181 *See* Roger L. Armstrong & Mark S. Lee, *Documentaries, Docudramas and Dramatic License: Crossing the Legal Minefield*, 8 SW. J.L. & TRADE AM. 21, 22 (2001–2002).

more unique. This uniqueness increases the potential commercial value of her life-story.[182]

The second factor looks to available and verifiable valuation data.[183] A court applying this factor would compare the available information, e.g., prepetition offers, publisher estimates, and similar cases.[184] In Ms. Anthony's case, this information might include various market offers to purchase the rights to her life-story and any future book. These prepetition offers have ranged from $10,000 to $12,000.[185] Various publishers estimate the value of a book based on her life-story at approximately $750,000.[186] In addition, a court could also compare how much money other alleged criminals' books earned. For example, O.J. Simpson's book has sold over 100,000 copies, earning hundreds of thousands of dollars in sales.[187] In the actual case, Ms. Anthony and the trustee reached a compromise allowing Ms. Anthony to retain her life-story rights for a much lower price of $25,000.[188] Looking at this factor alone, the average of the highest prepetition offer ($12,000), highest publisher's estimate ($750,000), and the settlement value ($25,000) results in a rough estimated value of $262,333 for Ms. Anthony's life-story.

The third factor considers the context of the valuation.[189] The value of assets liquidated in chapter 7 bankruptcy is deflated because the assets must be sold quickly.[190] Directly marketing these assets may address the deflationary pressures of chapter 7 liquidation.[191] In Ms. Anthony's case, directly marketing her life-story may be feasible; however, since there have already been several

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182 *See* Canessa v. Kislak, Inc., 235 A.2d 62, 75 (N.J. Super. Ct. 1967) (noting that a person can make herself a public figure by the commission of a crime).

183 ANSON, *supra* note 45, at 48.

184 *See, e.g.*, LTV v. Erie Indus. (*In re* LTV Steel Co.), 285 B.R. 259, 266–67 (Bankr. N.D. Ohio 2002). The court looked at prior and current bids on the asset involved, appraisals by experts, and comparisons between the debtor's real estate assets and similar assets. *Id.*

185 Kyle Hightower, *Casey Anthony Update: Judge Undecided on If She Can Sell Her Story*, HUFFINGTON POST (Apr. 9, 2013, 5:26PM), http://www.huffingtonpost.com/2013/04/09/casey-anthony-update-judg_n_3047710.html.

186 Sheila Marikar, *How Casey Anthony Could Turn Pariah Status into Profit*, ABC NEWS (July 6, 2011), http://abcnews.go.com/Entertainment/casey_anthony_trial/casey-anthony-make-750000-book-deal/story?id=14009296.

187 Lush, *supra* note 143.

188 Order Granting Joint Motion to Approve Compromise of Controversy, *supra* note 8; *see* Schneider, *supra* note 6.

189 ANSON, *supra* note 45, at 48.

190 *Id.* at 108.

191 *Id.* at 47; *see, e.g.*, *In re* Dillon, 219 B.R. 781, 786 (Bankr. M.D. Tenn. 1998) (determining that directly marketing the asset to the public would be the best way to value the assets at issue).

offers for her life-story and future book rights, it is more efficient to look to the second factor and not expend effort to directly market the asset.[192]

The fourth factor considers expert valuation.[193] Experts estimate the value of intangible assets, especially when there are no offers or bids on the asset to use in calculating value.[194] However, in Ms. Anthony's case, there are several prepetition offers that can be compared, so experts are not necessary to determine the value of this asset.

After evaluating all four factors of the market approach, Ms. Anthony's life-story is arguably worth approximately $262,333.[195] The market approach to valuation, emphasizing the second factor, is the most appropriate because preexisting publishing offers have been made and other market data is available for comparison. While $262,333 is arguably a low estimate, it is offered simply to demonstrate a method of valuation. Ms. Anthony's life-story may be worth more, but that will depend on how well her book would sell and other factors such as the extent of marketing.

CONCLUSION

This Comment argues that Ms. Anthony's life-story and future book rights are property of the bankruptcy estate. This argument is based on 11 U.S.C. § 541(a), labor theory, the right of publicity, copyright law, and practical public policy considerations. Each basis provides strong support for confirming Ms. Anthony's life-story and future book rights as property of the bankruptcy estate.

Determining Ms. Anthony's life-story and future book rights to be property of the bankruptcy estate will have two positive consequences. First, concluding that a life-story and future book rights are property of the bankruptcy estate will clarify the application of § 541(a)(1) and (6). This Comment argues that other areas of law such as labor theory, the right of publicity, and copyright law, are applicable to recognizing a property right and placing that property in the bankruptcy estate. A failure to do so will result in the bankruptcy system unpredictably and unfairly assigning assets to the debtor or to creditors.

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192 ANSON, *supra* note 45, at 108.

193 *Id.* at 48.

194 *See* Holber v. M&T Bank (*In re* Scheffler), 471 B.R. 464, 478 (Bankr. E.D. Pa. 2012); *In re* Cent. Ark. Broad. Co., 170 B.R. 143, 146 (Bankr. E.D. Ark. 1994); Trial Motion, Memorandum and Affidavit for Debtor, *In re* Cengage Learning, Inc., No. 13-44106 (ESS), 2013 WL 6058087 (Bankr. E.D.N.Y. 2013).

195 *See supra* Part II.D.

Second, this Comment seeks to clarify the process for assessing the value of an intangible property right in a bankruptcy proceeding. Without using a defined procedure to value such assets, both creditors and debtors may be harmed when the value of an asset is incorrectly assessed. The market valuation process outlined in this Comment should be applied when the value of an asset is undefined or contested.

Casey Anthony's murder trial and story are well known to most Americans. Her bankruptcy is not. Her case has presented the bankruptcy system with a unique situation, one that involves an alleged criminal's rights to her life-story. For the reasons stated above, Ms. Anthony's life-story rights should be considered property of the bankruptcy estate. Were a court to make such a conclusion, it would be the first step toward establishing precedent for administering a bankruptcy estate involving life-stories of public figures.

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