

# Adverse Witness

A PUBLICATION OF THE COLLIER COUNTY BAR ASSOCIATION

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## **Adverse Witness**

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*The Adverse Witness is pleased to feature articles submitted by Collier County Bar Association members, affiliates and the general public that may be of interest to Collier County Bar Association's membership. The Collier County Bar Association does not verify the accuracy of the information contained in the articles published in the Adverse Witness, nor are the articles published in the Adverse Witness intended to express the views of the Collier County Bar Association. If you have any questions or concerns about information contained in articles published in the Adverse Witness, please contact the author of the article directly.*

# **Adverse Witness**

October 2011

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On the cover:

**An original photo  
submitted by  
Patrick White.**

### **Cover Art**

This month's cover photo is courtesy of CCBA member Patrick White, taken on September 10, 2011 at the Flight 93 National Memorial near Shanksville, Pa, where the Memorial Plaza and Wall were lined with luminaries for each of the 2,977 souls lost due to the attacks on September 11th. Patrick, Of Counsel at Porter, Wright, has been able to devote more than 2,000 hours of pro bono time to the Flight 93 Memorial in honor of his cousin, Louis "Joey" Nacke, II, as one of the 40 heroic passengers on highjacked Flight 93, who rushed the cockpit and tried to regain control of the plane from the terrorists.



## PRESIDENT'S MESSAGE

By Maggie McMorrow, Esq.



### Thanks to our sponsors!

With this newsletter, you will be receiving the 2012 annual sponsorship form. If you were one of our annual sponsors last year, please consider renewing. If you have not been an annual sponsor in the past, please consider signing up this year. There are many benefits associated with becoming an annual sponsor, which are outlined in the sponsorship form. One advantage is that the annual sponsorship is less expensive than sponsoring each event individually. Perhaps the most important benefit is that you will not be contacted by the Bar Association throughout the year for additional sponsorships. Our 2011 annual sponsors are listed below.

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*"Because of the support of our members and our sponsors, we were able to continue to provide quality programs and events."*

Thank you to all of our annual sponsors, and to all of you that have sponsored our events. We have just completed the annual membership renewals, and we are thrilled to have over 700 members thus far this year. We appreciate the continued support of our legal community. Because of the support of our members, and our sponsors, we are able to continue to provide quality programs and events. One of those quality programs is the annual Fishing Tournament sponsored by the Collier County Bar Foundation. Thanks to Carlo Zampogna, Mark Huling and Lisa Mead for their hard work in making this event a huge success every year! Even if you do not fish, you can come have lunch with us at the Hamilton Harbor Yacht Club. Thank you to all of this year's sponsors for the event. Look for highlights of the event in an upcoming issue.

Hope to see you at the Fishing Tournament or one of our other upcoming events!



Legal Aid Service of Collier County is committed to working alongside the private bar and membership of CCBA to make the Collier Lawyers Care pro bono attorney program the best of its kind in the State of Florida. Two immediate goals they want to achieve are increasing the number of pro bono volunteer attorneys in the CLC program, and expanding public awareness about CLC and the impact Legal Aid Service of Collier County has on the community by offering free civil legal services to the underserved population of Collier County. To learn more about LASCC and Collier Lawyers Care, contact Mr. Jeffrey A. Ahren or Ms. Ana de la Cruz at (239) 775-4555.

## October breakfast to benefit Foreclosure Assistance

**Please support Legal Aid and our efforts to assist families facing foreclosure by attending our Fundraiser Breakfast on Wednesday, October 19, 2011 from 7:45 a.m. to 8:45 a.m. at the Hilton in Naples.** Tickets are only \$35, and can be secured by calling (239) 298-8143 or emailing adelacruz@legalaid.org. This Fundraiser breakfast is being jointly sponsored by Legal Aid Service of Collier County (LASCC) and the Housing Development Corporation of Southwest Florida, Inc. (HDC). All proceeds from the event will equally benefit these two non-profit agencies to provide much needed ongoing foreclosure assistance to eligible clients in Collier County. Come join us for a delicious buffet breakfast, complimentary valet parking, and support a great cause!

Since 2009, the LASCC Housing Attorneys and HDC HUD-certified counselors were able to assist hundreds of Collier County homeowners and their families by saving homes from foreclosure, securing loan modifications, facilitating short sales, obtaining deficiency waivers and otherwise negotiating settlements. The grant which made these services possible was not funded for a third year. **We need your support to keep these free services available to homeowners in need.**

### Daniel K. Capes, Esq. named 'Attorney of the Month' by Legal Aid

Daniel K. Capes, Esquire, a shareholder in Dunwody, White & Landon, P.A., has been selected as Legal Aid's 'Attorney of the Month' for October, 2011. Dan has been performing pro bono work through Legal Aid for years – furnishing legal services in the area of Trusts and Estates Law for our low-income clients. Dan has always accepted pro bono assignments when presented, and our entire organization is grateful for his willingness to 'give back' to those less fortunate through the Collier Lawyers Care Pro Bono Program operated by Legal Aid.

Mr. Capes and the firm of Dunwody, White & Landon, P.A. also participate annually in Legal Aid's 'Adopt-A-Family' Holiday Gift Program – furnishing toys and gifts to needy families each year in December. We appreciate this generosity, which extends beyond the giving of his time through pro bono service. Please join us as we congratulate Daniel K. Capes, Esquire, as our newest 'Attorney of the Month'!

### Legal Aid's 5th Annual 'Adopt-a-Family' Holiday Gift Program is in full swing!

Since 2007, Legal Aid and the Collier County Bar Association have joined forces to bring joy to very needy children and their families each Holiday season through the 'Adopt-a-Family' Holiday Gift Program. **Thanks to your amazing generosity over the years** approximately 450 children who would have received little to nothing over the holidays had their dreams come true through this initiative.

How does the program work? It is very simple. During the year, the staff at Legal Aid gathers a list of **particularly needy** client families with children in Collier County. These families are asked if they would like to participate, and if so, if they would provide a 'wish list' of gifts for each child, and clothing and shoe sizes. The information on these families is then passed on to willing donors, who identify the size of the family they would like to 'adopt.' Alternatively, donors who do not choose to adopt an entire family can simply drop off a toy or other gift or gifts. **There is no 'minimum donation' to participate.** The gifts will be collected in advance, to facilitate the gift exchange process. All gifts must be received at Legal Aid by no later than November 30, 2011. **To learn more about how you can become involved, or to register as a donor, please call (239) 298-8143 or email adelacruz@legalaid.org.**

### Other Legal Aid News and Notes

LASCC is sponsoring a **free** Continuing Legal Education event on October 4, 2011 from 11:30 a.m. to 1:30 p.m. at the Naples Botanical Garden. The topic of the CLE event is "Overview of the Law and Practice Tips for Pro Bono Attorneys Representing Clients at (Civil) Injunction Hearings in Domestic Violence Cases." This 2 hour seminar has been approved for CLE cred-

*continued page 12*



## MARK YOUR CALENDAR

**Register for any event  
through Hilda Taylor.**

**Phone: 239-252-8711**

**htaylor@colliercountybar.org**

**www.colliercountybar.org.**

### Event Policy

*It is the policy of the Collier County Bar Association to request that all reservations for our events are placed at least two days prior to the event.*

*We are always willing to accommodate our members; however, event sites must order food two days prior to an event.*

*Also, it is the policy of the Collier County Bar Association to issue refunds ONLY if a member cancels a reservation two days prior to an event. If a member cancels the day before, or the day of an event, a refund will not be issued.*

*We appreciate your consideration of this policy.*

## OCTOBER

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| <ul style="list-style-type: none"> <li>4 Trial Law Section Luncheon<br/>McCormick &amp; Schmick's, 12:00 p.m.<br/>TL Section Members - \$25; Non-members - \$30</li> <li>6 Trusts and Estates Section Luncheon<br/>Northern Trust, 12:00 p.m.<br/>Free Event - Bring your own lunch</li> <li>8 CCBF Fishing Tournament<br/>Hamilton Harbor Yacht Club<br/>Luncheon Begins at 1:00 p.m.<br/>Details to follow</li> <li>11 Young Lawyers Board Meeting<br/>Thai Basil, 12:00 p.m.</li> <li>12 Trial Law Board Meeting<br/>St. George and the Dragon, 12:00 p.m.</li> <li>13 Annual DCA Dinner<br/>Port Royal Club, 6:00 p.m.<br/>\$100 per person</li> </ul> | <ul style="list-style-type: none"> <li>14 Mental Illness Primer for the<br/>Criminal Justice Professional<br/>Admin. Building - Gov't Complex<br/>8 hours of CLE<br/>8:00 a.m. - 4:00 p.m.<br/><i>This is a free event - Space is limited</i></li> <li>18 CCBA Board Meeting<br/>CCBA Offices, 7:30 a.m.</li> <li>18 CCB Foundation Board Meeting<br/>CCBA Offices, 8:30 a.m.</li> <li>18 Inns of Court<br/>Naples Bay Resort, 6:00 p.m.</li> <li>26 CCWBA Luncheon<br/>Northern Trust, 12:00 p.m.</li> </ul> |
|--|---|

## NOVEMBER

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|---|---|
| <ul style="list-style-type: none"> <li>3 Trusts and Estates Section Luncheon<br/>Northern Trust, 12:00 p.m.<br/>Free Event - Bring your own lunch</li> <li>5 Free Legal Clinic<br/>RCMA Charter School, 10:00 a.m. - 12:00 p.m.<br/>Volunteers needed<br/>Lunch Provided</li> <li>8 Young Lawyers Board Meeting<br/>Thai Basil, 12:00 p.m.</li> <li>8 Trial Law Section Luncheon<br/>Bonefish Grill, 12:00 p.m.<br/>TL Section Members - \$25; Non-members - \$30</li> <li>9 Trial Law Board Meeting<br/>St. George and the Dragon, 12:00 p.m.</li> <li>10 Real Estate Landscape Seminar<br/>The Club at the Strand<br/>8:00 a.m. - 4:30 p.m.<br/>RE Members - \$100; Non-members - \$125<br/>Binders - \$30, electronic materials will be available</li> <li>11 CCBA Offices Closed for Veterans' Day</li> </ul> | <ul style="list-style-type: none"> <li>15 CCBA Board Meeting<br/>CCBA Offices, 7:30 a.m.</li> <li>15 CCB Foundation Board Meeting<br/>CCBA Offices, 8:30 a.m.</li> <li>15 Inns of Court<br/>Naples Bay Resort<br/>6:00 p.m.</li> <li>18 CCBA Membership Luncheon<br/>Carrabba's<br/>12:00 p.m.<br/>Members - \$20; Non-Members - \$25</li> <li>23 CCWBA Luncheon<br/>Northern Trust<br/>12:00 p.m.</li> <li>24 &amp; 25 CCBA Offices Closed<br/>for Thanksgiving</li> </ul> |
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### *Preserve error, protect the record and prepare the report*

***"I don't generally like running. I believe in training by rising gently up and down from the bench." - Satchel Paige***

Throughout the 20th Circuit, the general magistrates hear matters referred under the civil, family, probate and juvenile rules of procedure. It may state the obvious but is worth emphasizing: a magistrate is only as useful as the content of the report or recommended order filed by the magistrate. Without an accurate recital of factual findings and the basis for legal conclusions to be reviewed by the Circuit Judge, the record of the matter heard by the magistrate is incomplete, if not fatally so.

Whether the matter heard by the magistrate is an evidentiary hearing or a hearing involving motion practice, the report of the magistrate must include the essentials. Particularly in civil matters where there is no requirement the hearing be recorded, how does a party or a reviewing circuit judge know what the ruling was based upon if there is nothing but, "Motion to dismiss denied. Twenty days to file answer." Where a motion raises multiple grounds for relief and some issues are not argued or the magistrate grants or denies relief on only some but not all grounds, the report should be very specific. The best practice is to include all findings of fact and conclusions of law forming the recommendation of the magistrate. The form that is often supplied by our office upon request includes instructions for completion of a proposed report for the magistrate. The section which states "list the findings of fact and conclusions of law" in bold and italicized print implies that counsel draft the report for the magistrate and delete the instructions.

Court Smart records all family hearings before the magistrate. Many of the statutes applicable to family law hearings before the Circuit Judge or the magistrate require findings of fact. While not intended to be all inclusive the most common applications of statutory fact-finding mandates before the family magistrates or the Circuit Judge include the following legal issues: equitable distribution (F.S.61.075), alimony (F.S.61.08), child support (F.S.61.30), attorney fees (F.S.61.16, F.S.57.105), and parental relocation (F.S.61.13001). The trial lawyer who fashions a proposed recommended order or an order for the judge without accurately reciting the pronouncement of the court runs the risk of failing to preserve for appellate review those findings which the lawyer claims were erroneous. Losing the hearing does not mean the client lost the case; the lawyer who crafts findings of fact and conclusions of law (whether or not the lawyer prevailed) which are accurate, preserves the matter for review and for the opportunity to correct judicial or quasi-judicial error.

The entry of a default admits all well pled allegations in the pleading. But in family court the entry of a default does not grant relief on a silver platter. The practitioner preparing for a default final hearing on issues regarding assets and liabilities and a parenting plan for timesharing of minor children still has a full course menu to present to the court. A careful review of the provisions of the court-approved parenting plan found at [www.flcourts.org](http://www.flcourts.org) will serve to remind the attorney the more complete the plan, the less likely the parents will resort to the court for clarification, modification or enforcement. The entry of a default does not relieve a party of the obligation to present evidence to support findings of fact setting the dates for valuation of marital assets and debts, valuation of same, and their distribution - if unequal there must be another set of findings with reference to statutory factors. Preparing a detailed report for the family magistrate protects the client's interests and promotes closure, particularly when the other party did not appear for final hearing.

To preserve magistrate error the specific issue must have been raised in order to argue the grounds for the timely filed exception. *Rosen v. Wilson*, 922 So.2d 401 (4th DCA 2006). The failure to make the precise legal argument before the trial court or magistrate now

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## Take back your life - 20 minutes at a time

### Imagine this scene.

It's a late afternoon in early autumn. The warmth of the day is fading away into a "just cool enough" evening. You're sitting poolside at your favorite resort - or lodge - or cabin - or your own backyard - whatever works for you. The sun is sinking in a beautiful orange and pink sky. You lean back in your comfy Adirondack chair and watch as day turns into night. You're sipping your favorite beverage. You are relaxed. You are grateful for your life and your practice. And you are particularly grateful that this is the beginning of a six-week vacation that you've been looking forward to this year.

"Fantasy!" you say? Not at all. This scene can be a reality in your life if you'll just "Snap out of it!" (Think: Cher slapping Nicholas Cage in *Moonstruck*, one of my favorite flicks.) and get your interruptions under control.

### Here's the truth about what interruptions are stealing from you.

For years I've been telling my clients that each unnecessary interruption they deal with is costing them, on average, 10 minutes. Well, it looks like I've been wrong. It's more like 20 minutes. According to research in Winifred Gallagher's new book, *Rapt: Attention and the Focused Life*, it can take the brain up to 20 minutes to recover from an interruption. So, if you're dealing with only six unnecessary interruptions during your day, you're losing up to two hours. Two hours - gone. Two hours you could be billing. Do that math over the course of a year! And those two hours a day add up to over twelve 40-hour weeks a year. Weeks you could be spending with your loved ones or golfing or biking or on your boat. You get the idea. But there is something you can do about it.

### Here are three things you can do right now to manage your interruptions and take back your life.

1. Create a Power Hour for yourself each day. Actually, I'd like to see you create a "Power 90." A Power 90 is 90 minutes of uninterrupted, focused work time each day. One of the first steps in gaining the laser-like focus you need to be most effective is to start your work day by concentrating for 90 minutes on your most important tasks. Schedule these 90 minutes into your calendar, and make it a habit to stick to them. After 90 minutes your brain needs a break, so shift your focus to other work, like answering emails or returning phone calls. (See #2 below.) Schedule another Power 90 in the afternoon, if you can. And if you're easily distracted by voices or sounds in your office, wear ear plugs or listen to music with headphones during your Power 90. I began using ear plugs or listening to music to block out distractions when I was studying for the bar. And I recommend this strategy to my clients, as well. Using ear plugs or listening to music can dramatically improve your focus and productivity.

### 2. Batch similar tasks like answering email, returning phone calls and reviewing your mail.

The research in Gallagher's book makes crystal clear that the idea of multi-tasking is a myth. Our brains cannot multi-task. They can only focus on one thing at a time. And as we age, our ability to jump quickly from one task to another diminishes, sometimes resulting in costly mistakes. Maybe you've experienced this first-hand by accidentally hitting "Reply to all" while simultaneously talking on the phone and returning emails. In addition, industrial researchers have determined that when similar tasks are grouped together we can complete them up to four times faster!

### 3. Ask your staff to batch their questions and bring you at least one suggested answer.

Asking your staff to batch their questions is one of the most powerful things you can do to begin to take control of your time. It's also a wonderful way to educate and empower your staff. Here's how it works. Rather than allowing your staff to interrupt you every time they have a question, ask them to keep a list of their questions for you, together with suggested answers. Then, set aside a couple of 10-15 minute huddles with your staff to address their questions. I say "address" rather than answer because the goal is to get them to the point where they can answer most of their own questions. Making huddles a habit will make a tremendous impact on the effectiveness of everyone in your office. You owe this communication time to your staff. Without it, they'll be forced to following you to the restroom or to your car when you're on your way to a meeting in order to discuss their questions with you.

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Got news?  
Contact Lisa Mead by  
calling 252-8711 or  
drop an email  
line to lmead@  
colliercountybar.org

### CLASSIFIED

**OFFICE FOR RENT:** Attorneys (5) and other professional (1) with one executive office to rent. Attractive building/offices in great location at Pine Ridge and Airport Road, Naples, FL. Space for an assistant, shared conference room with law library and shared kitchen is included in rent of \$700 per month. Call Rob or Kathy at 239-593-1444.

### ANNOUNCEMENTS

The national law firm of *Quarles & Brady LLP* announced that **Benjamin B. Brown**, an attorney in the firm's Naples office, has achieved board certification in Business Litigation from The Florida Bar Board of Legal Specialization & Education. Mr. Brown practices in the area of commercial litigation at both the trial and appellate levels. He focuses primarily on complex real estate disputes, including title claims, construction defects, landlord/tenant matters, insurance disputes, as well as enforcement of judgments.

**Nicole L. Goetz**, of *Nicole L. Goetz, P.L.*, in Naples, Florida, recently received the Keeper of the Flame Award for her extraordinary and selfless service to the Family Law Section of The Florida Bar. Ms. Goetz limits her practice to family law, including traditional representation and collaborative family law, and appeals.

**Jeff E. Wright**, Assistant County Attorney, has obtained board certification by the Florida Bar in City, County and Local Government Law.

*Dunwody, White & Landon, P.A.* is pleased to announce that **Alfred J. Stashis, Jr.**, an attorney in the firm's Naples office, has met the standards of certification as a Board Certified Specialist in Wills, Trusts and Estates Law.

The law firm of *Grant, Fridkin, Pearson, Athan & Crown, P.A.* is pleased to announce that **Kevin W. Pendley** has joined the firm as Special Counsel in its Litigation practice group. Mr. Pendley's areas of practice include insurance defense litigation, general liability defense litigation, and commercial litigation.

**Laird A. Lile**, a wills, trusts and estates attorney in Naples, was a speaker at the 30th annual Attorney/Trust Officer Liaison Conference presented by The Florida Bar Real Property, Probate and Trust Law Section. Lile's presentation covered the framework of the decanting statute, which makes it easier to address shortcomings in irrevocable trusts.

The Florida Supreme Court has certified Naples mediator **Robin Doyle** as an Appellate Mediator. Mediation is increasingly used to help alleviate the backlog of cases facing the courts and Appellate Mediation is used for cases that are on appeal after a trial. The goal of mediation is to assist the parties in exploring settlement options while preserving their right to self-determination. A resolution crafted by the parties with the assistance of a mediator removes all risk of litigation and can be structured in way that is more beneficial than a court decision.

**Jeanne L. Seewald**, managing partner of the Southwest Florida offices of *Hahn Loeser & Parks LLP*, has been named president of the board of directors of the Collier County Bar Foundation. The Foundation, a 501(c)(3) charitable organization affiliated with the Collier County Bar Association, raises funds to benefit qualified individuals for law-related activities, encourages and promotes community awareness of the law, and assists the youth and underprivileged populations in Southwest Florida. Ms. Seewald also was named president-elect of the board of directors of the Collier County Bar Association.



## MEET YOUR DIRECTORS

By Andrew Solis, Esq.



### *Things you may not know about me*

Born: Lakeland, Florida

Hometown: Gainesville, Florida (no, he is not a Gator)

In Naples since 1993.

Undergrad: University of Alabama (Roll Tide)

Law School: Florida State University College of Law (Go 'Noles)

Sports: 2-time All American University of Alabaman (Tennis); Studied Martial Arts for over 20 years

Family: Wife: Melanie; Daughter: Danielle (yes, she is a Gator); son: Jack (Roll Tide)

Languages: English, Spanish, and "Southern" (language spoken in N. Florida, Georgia and Alabama)

Best experience as a lawyer: Recently obtained visas to the US for over 50 Buddhist monks and nuns being persecuted by the communist government in Vietnam, pro bono. They were being persecuted for simply wanting to practice their religion in their own way and to be of service. It was an opportunity to use my training as a lawyer to fundamentally change someone's life in a positive way. It reminded me of why I wanted to be a lawyer in the first place.

### *Remember when ...*



OCTOBER 2006 FAMILY LAW LUNCHEON - Reuben Doupe presents a plaque to Tamara Nicola for her service as Chair of the Family Law Section.



## *Shula's*

When you think of Don Shula, you think of a legend who performed his coaching duties with quality, integrity, and success.

The same qualities go for his steakhouse in Naples. I went to his first one when it opened in Miami Gardens and thought it would be a success as a sole stand-alone because of Shula's popularity in Miami and the quality of his steaks. When he opened one in Naples, I did not think it would stand other chain competition - who across the county cared about Shula and the Dolphins? They probably resented him. Why would they eat his steaks? I was wrong. Those who go care about great steaks and great service, in that it makes you feel you are dining in a grand champion tradition - despite the now tired use of a football as a menu.

You don't have to be a football fanatic. You don't even have to know who Don Shula is. But upon leaving his namesake restaurant, you'll have a pretty good sense of the famed coach's other passion: beef.

The framed memorabilia of the 1972 Miami Dolphins' perfect season is tastefully placed within décor of flowing fabrics and rich wood accents. The Shula's Steak House's main claim to fame is its premium black angus beef and proprietary aging process, and the sport-themed kitsch does not distract from the steakhouse atmosphere.

Before it was "what's for dinner," steak meant a special occasion, and that's how it's treated at Shula's. For most folks, it's not a weekend supper with the kids kind of place. From the quality of the food, to the impressive wine list and extensive liquor offering, nothing's cheap. But it is an honest-to goodness American steak house fit for an elegant client dinner or special anniversary with the spouse.

Shula's is open for breakfast and lunch, too. It also offers special events for an additional way to get a feel for its overall dining philosophy while mingling with fellow diners. Through the summer, it presents a special tasting menu available on select days of the month. Sixty five dollars plus tax and service charge gets each attendee four courses.

Starting with a champagne welcome, you'll be treated to a blackened tenderloin tip with béarnaise sauce and BBQ shrimp wrapped in bacon and stuffed with basil for the first course. Second course is NY strip with creamed spinach and baked potato wedge. The third course: spinalis steak, steamed broccoli with hollandaise drizzle, blackened salmon and lobster mashed potatoes. And for dessert, a cooling almond florentine basket with mixed berries and fresh whipped cream, garnished with the requisite mint leaf. If it sounds a bit intimidating, don't worry - this is a tasting menu, after all, and each portion is three to six ounces.

Shula's bills it as an opportunity to sample all of its signature dishes in one sitting. Other upcoming events include wine tastings, vodka tastings, and an Oktoberfest beer and burger tasting. To register and for more information, visit [www.ShulasNaplesEvents.EventBrite.com](http://www.ShulasNaplesEvents.EventBrite.com).

However, if you are beyond intimidation, and want to exhibit your beef-eating bravado, you can do so by becoming a member of the 48 Ounce Club. It is a club of challenge. When the Naples eatery first opened, my very competitive 16-year-old daughter, all 5'1", 110 lbs. of her, polished off one of these 48 oz. steaks without any adverse after effects and without offering me a bite - and has her name etched on the very first 48 Ounce Club plaque, of which there are now many. That was 14 years ago and she is still a petite carnivore. If you can finish a signature 48-ounce porterhouse, you will be congratulated by the staff for becoming one of "36,828 beef lovers of America and counting." I think that counts toward some serious bragging rights, if not some serious indigestion. The alka-seltzer, please!

The place can make you feel so expansive that one night taking my family of six out, each ordering a big steak, I ordered a large lobster tail as an appetizer for all - I am sure it was the martini coupled with the elegant yet clubbish atmosphere and the warmth and glow of the company - until the \$145 bill for the lobster came on top of the regular bill for steaks, dinner and drinks. The place can do that to you so be careful not to get too expansive and expensive.





## Turn Me Off: Responsibly connected

Every summer blockbuster movie seems to have the same line of dialog. Usually, an invention of some sort spins out of control and is about to cause global destruction, and a scientist exclaims, "We spent all those years asking COULD we do it. Maybe we should have asked SHOULD we do it!"

If recent journalism is any yardstick, we seem to have reached a similar reflection point with our relationship with the Internet. After the Web pulled us into its clutches in the late nineties, it swallowed us whole in the past couple of years with the combined irresistible forces of amazing smartphones and sticky social networks.

It's as though we're powerless to resist the pull of the connected world. Internet writer Nick Carr, in his new book *The Shallows*, writes that on a biological level, we crave connectedness and prize newness, so we're constantly checking email, sending email, or engaging in another typical form of 21st century communication. Owning the newest gadget or having the most connections on LinkedIn or Facebook elevates one's status. We gladly share our personal lives, day-to-day banalities, hearts and souls to anyone who wants to pay attention.

Journalism from the past year suggests we may be suffering a toll for all of our online activity. We're witnessing life and death issues: distracted driving is claiming thousands of lives when drivers use cell phones while operating vehicles. Bullying has reached horrible new depths: What used to be restricted to the schoolyard is now 24-7 globally-accessible cruelty.

Internet overuse interferes with work and personal life. Personal privacy and reputation have never been more threatened. Lack of awareness of email or social media etiquette can threaten careers and personal relationships. Studies even show an effect of Internet usage on our fundamental cognitive abilities. In other words, our brains are actually changing and morphing thanks to our obsession with the worldwide web.

### Life and Death - Distracted Driving

No discussion of the hazards of connectivity is complete without talking about physical harm. People who engage in unsafe activities with electronic devices often suffer terrible results. A bus driver in Seattle was recently fired for reading a Kindle while driving. A teenage girl in New York walked into an open manhole while texting. In 2008, 26 passengers on a Metrolink train died because the engineer missed a stop signal while texting. What message could have been that important?

According to the Insurance Institute for Highway Safety, drivers talking on a cell phone are "four times as likely to get into crashes serious enough to injure themselves." For truck drivers who text while driving, "the odds of a traffic conflict, lane drift, near-crash, or crash were 23 times higher".

Perhaps one of the more startling statistics is the relative risk of drunk driving versus distracted driving: "4 out of every 5 accidents (80%) are attributed to distracted drivers. In contrast, drunk drivers account for roughly 1 out of 3 (33%) of all accidents nationally." And the odds translate to dead and injured drivers: "In 2008 almost 6,000 people were killed and a half-million were injured in crashes related to driver distraction."

Most people recognize that using hand held devices while driving is a bad idea for one's safety, much as they also realize that cigarette smoking is bad for one's health. Yet 81% of drivers admit to using a phone while driving and only 19% smoke cigarettes. So while we recognize that we're risking our own life and limb to type "OMG! LOL" while careening down a highway at 70mph, we somehow believe it's worth it.

### Suggestions

It's easier said than done, but it's critical to make a resolution that could prevent you, statistically speaking, from being killed or injured or doing the same to others. Make a pact with yourself that once your car starts, **you aren't allowed to touch your phone**. Put it in a pocket, purse, or cup holder, but the second you turn that engine on your fingers cannot make contact with the phone. If you have Bluetooth or the ability to voice activate or speed dial phone calls, you can operate

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## View from the Bench

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argued as grounds for reversal before the higher court could be fatal. It can inhibit full appellate review if counsel omits one ground at the exception hearing but argues another before the Circuit Judge. *Garcia v. Garcia*, 743 So.2d 1225 (4th DCA 1999). (The “Topsy Coachman” favors an appellant, not an appellee). The Third District has upheld the trial court’s refusal to permit a party to raise an issue which that party failed to plead in the exception – a boilerplate allegation may be insufficient and a Circuit Judge may require a short and plain statement of the ultimate facts under rule 1.100(b)(2), Fla. Rules of Civil Procedure. Perhaps notably, the opinion in *Penton v. Perez*, 800 So.2d 639 (3rd DCA 2001) has not been cited by any appellate court since publication.

What is the best way to protect the record of the hearing before the magistrate? Make your factual record clear and complete, state succinct evidentiary grounds for objections, and make all the legal arguments upon which you may rely if you do not prevail. Draft the report to include all – whether favorable or not – of the factual findings and set forth in the conclusions of law how the court determined what factual findings it relied upon or even what weight it gave to some facts versus others. Make all the arguments before the trial court or magistrate before seeking review (or call your carrier). The failure to file for rehearing may or may not waive appellate error if the family order appealed from omits findings of fact. The District Courts of Appeal are in conflict on this evolving issue. Rather than be the Appellant in Lakeland where you have provided a full transcript and record on appeal but failed to ask for rehearing before the trial court, the recommended course is to timely ask the trial judge for rehearing to add all required factual findings to the order to be appealed. Compare *Esaw v. Esaw*, 965 So.2d 1261 (2nd DCA 2007) with *Mathieu v. Mathieu*, 877 So.2d 740 (5th DCA 2004) and with *Dorsett v. Dorsett*, 902 So.2d 947 (4th DCA 2005).

The benefit of preserving error is very personal to me. Many years ago as a private practitioner in Fort Myers I represented a man charged with aggravated battery. We developed his alibi, relying on both live witnesses and circumstantial evidence. The State had no physical evidence. But there was the victim, a sympathetic woman who never asked to be beaten and whose memory of the events was refreshed with hypnosis (yeah, I objected). The jury found him guilty and he was remanded by the late Circuit Judge Isaac Anderson. During cross-examination of a key state witness, the prosecutor’s objections to a series of my questions were sustained. The judge denied my multiple requests to approach and proffer outside the presence of the jury what the answers would have disclosed. Thankfully, I got a second chance to emphatically argue at the hearing on my Motion for New Trial how important this evidence was and how clearly erroneous the Judge’s rulings were. The Motion was granted, my client was released, and he was never retried.

***The motto is to preserve error, to protect the record, to prepare the report, and to defend with your daily diligence the reputation of the legal profession.***

## Legal Aid Notes *continued from page 4*

it by The Florida Bar. The purpose of the seminar is to equip and train pro bono attorneys who are willing to assist clients in need of assistance in this area of family law. The expert panel will include Sara Pacheco-Cotton, Esquire (of Legal Aid); the Hon. Elizabeth Krier (Circuit Court Judge), Richard Montecalvo, Esquire (Assistant State Attorney), Linda Oberhaus (Executive Director, The Shelter for Abused Women & Children), and Prof. David Steckler, Esquire (Florida Gulf Coast University). **RSVP required for this free CLE seminar. Please call (239) 298-8143 or email [adelacruz@legalaid.org](mailto:adelacruz@legalaid.org) to reserve your seat at this event. Complimentary lunch provided.**

**Upcoming** – the Annual Immokalee Pro Bono Legal Clinic is scheduled for Saturday, November 5, 2011 at the Redlands Christian Migrant Association (RCMA) Charter School. This clinic is sponsored by the Collier County Bar Association and is co-sponsored by Legal Aid. **Pro bono attorneys are needed!** Please contact Lisa Mead, Executive Director of the CCBA at (239) 252-8711 to volunteer. This is a wonderful outreach event that has provided much needed legal assistance to some of the poorest and most vulnerable members of our community over the years. Those who have participated in the past know that the camaraderie is always special – and that the food provided at the end of the event is awesome (last year was authentic Mexican food from Lozano’s). Please help us ‘make a difference’ once again this year!

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## Take Back Your Life

*continued from page 7*

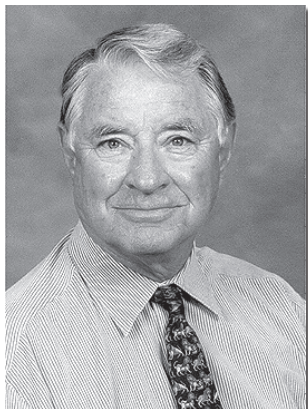
**Here’s the bad news: These things may be simple, but they are not easy. Here’s the good news: You can do this.**

Bad news first. These strategies are deceptively simple, but simple is often not easy. The key to taking back your life 20 minutes at a time is to actually put these strategies to work. So, take it one day at a time. Put Power 90s in your calendar and honor them. Ask your staff to help you stick to them even if that means pushing you back in your office when you come out to “check on things.” Schedule times to answer your email and return phone calls, then really use that time to do those tasks. And have those huddles like clockwork every day, whether you think you need them or not. Put someone else on your staff in charge of making sure they happen at the appointed time.

OK, so now you’re thinking, “Great, I can take a six-week vacation, but how is my office going to run while I’m away?” Well, that’s a topic for another day. For now, just know that if you can begin to manage your interruptions, you’ll begin to take back your life - 20 minutes at a time.

*Nora is a business coach and practice advisor with Atticus. She has practiced as an employment law attorney and certified mediator and has served as an adjunct professor at both Stetson University College of Law and the University of South Florida. She has also served as the executive director of a voluntary bar association with over 1,000 members. Nora is a graduate of the Leadership Development Institute at Eckerd College, and is certified in the Conflict Dynamics Profile® developed by The Center for Dispute Resolution to help individuals and organizations learn how to deal with conflict constructively. She is also certified in the DISC Behavioral Style Assessment. Visit Nora online at [www.reallifeppractice.com](http://www.reallifeppractice.com) and [www.atticusonline.com](http://www.atticusonline.com).*

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## *Remember when?*

I'm often asked what it was like to practice law in Naples during the late 50's and 60's with my partners Toby Carroll and Harold Smith. There were only about a dozen or less attorneys in Collier County and much of the substantial business was handled by law firms from Fort Myers. The City of Naples itself had only a population of 10,000 or fewer people. The County Seat was in Everglades City, with only an annex in Naples for non-jury cases and motion hearings. The annex was in a wooden building on 3rd Street South which is now empty, but the last I remember it was Fantozi's Cheese Shop. The Courthouse itself was in Everglades City, which is where all jury trials took place.



At that time, there were no resident Circuit Judges and our Circuit was the 12th, the largest in Florida including Sarasota, Bradenton, Desoto, as well as what is now the 20th Judicial Circuit. There were two resident judges in Lee County, Judges Gerald and Odom, and they would travel to the southern part of the Circuit which included Glades, Hendry, and Collier Counties. During the middle of the summer there was no court because at times the heavy rains would overflow U.S. 41, particularly in the Estero and Bonita area, making it difficult or impossible for the judges to get to Collier. Of course, there was no I-75 or Alligator Alley. For jury trials, there were two soundings of the docket during the year in Everglades City in order to set the cases for trial, and all criminal cases were in Everglades City.

The Courthouse in Everglades City was reminiscent of the movie "To Kill a Mockingbird." There was no air conditioning - an additional reason for no cases to be heard during the summer. The Circuit Judge assigned to the trials would bring the official Court Reporter, as there weren't any locally and the criminal cases needed the "official reporter's as the Court Reporter." There was only one in the southern part of the Circuit.

From the moment I started practicing law with Harold Smith, who was also the County Attorney and City Judge, we worked on the moving of the County Seat from Everglades City to Naples. The only legal guide on moving a County Seat was a one page statute that left a lot to be desired. Many times I would ride to the county commission meetings with Harold Smith. His stories would fill a book. The county meetings began late in the morning. First the Commissioners would go through the preliminary tasks and then would get to the substantive agenda. At that point it was around 11:30 a.m., and they would break for lunch. Mr. Janes was on the Commission at that time and lunch was at Janes' Restaurant on Highway 29 just north of U.S. 41. There was a long table and the press sat at the table while the Commissioners discussed the agenda. Mr. Janes made martinis and some of the Commissioners complimented his drink making. Note - most of the Commissioners did not partake in the martinis or any other kind of alcoholic drink.

The discussion of the pending items would eventually be completed, and the Commissioners would go back to the commission chambers where they would go through the rest of the meeting, which lasted probably less than thirty minutes since they already discussed the matters and had answered the questions from the press during lunch. The newspaper reporters were Tom Morgan from the Miami Herald, Fred Winters from the Fort Myers News Press, and the Collier County News, which later became the Naples Daily News, which was not then daily. The Collier reporter varied and once one came in a torn shirt and I asked "What happened?" He replied, "They don't pay me enough to buy a shirt."

Eventually, at one meeting, the Commissioners voted to move the County Seat and an election was held and the voters passed the moving of the Courthouse. The persons voting against were the "keep things as they are" vote and some "Neapolitans", who were against bringing the "jail" to Naples. At that time, people from Naples were known as "Neapolitans". Mrs. Angie Levay, who was a new Naples resident, was asked at a cocktail party if she was a Neapolitan and she replied, "No, I'm from Sicily."

**See "Newly Assigned," page 14**



## Remember when? *from page 13*

The vote brought on litigation from Mr. Hunt, a prominent Dade County attorney, who represented residents from Everglades City that objected to the removal of the Courthouse. Eventually a hearing was set for September 10, 1960. Mr. Hunt wrote the Court and wanted the hearing delayed. One of his reasons was that, "September is a particularly bad month for hurricanes."

I objected and wrote him back and told him that was the dumbest reason I've ever heard. The Court granted the continuance and as you may have guessed, Hurricane Donna - the fiercest hurricane Naples has ever had - hit on that particular day. So much for my stupid letter! Later, Harold Smith went on to be our first resident Circuit Judge. Architect Nelson Faerber designed a campus-like Courthouse on the corner of Airport and U.S. 41, which was property that the Collier Corporation sold to the county. The Courthouse was built with segregated restrooms and water fountains. This was at the insistence of the County Commissioners who resided in Ochopee.

In 1961 Harold Smith told me I should run for the countywide position of County Prosecutor. I did so, and so did Walter Sorokoty, a local attorney. The vote ended in a tie and in the absentee ballot Walter won by ten votes. County wide campaigning was an education to me. In Immokalee I walked into a store and a few people kept staring at me. I passed out my campaign literature and was leaving when the store owner, who only had a few green teeth in his mouth, asked if I were a greaser. At first I didn't realize my Hispanic heritage could be an issue with the voters. As I was going out the door, he asked if the guy running against me "So-ro-ko-ty, was a Jew?" I just left his store and thought, "Is this what politics is all about?" Walter was actually a Catholic, despite this gentleman's assumptions.

On July 1, 1961, the Governor appointed me to be Assistant State Attorney, which meant that I became the prosecutor for all the felonies in Collier and Hendry Counties. I had trial experience in my three years in the Marine Corps, so I was comfortable with the position. It was a part-time position and no office was provided. As the position was appointed directly by the Governor, I had little contact with the State Attorney who was from Manatee County and came down very few times. His only initial piece of advice to me was not to do anything that would embarrass him. For some reason the two Circuit Judges that we had in Fort Myers, Judge Gerald and Judge Odom, did not get along with the State Attorney, so the Assistant State Attorneys from the southern part who were Mr. Jack Schooner, Mr. Emmitt Anderson and myself, were sort of on our own and cooperated with each other without much advice from the State Attorney. Now the State Attorney appoints his own assistants.

There was also no Public Defender's office and the Gideon case had yet to be decided by the U.S. Supreme Court. This case required that defendants in serious crimes had to have representation. The effect was that the prosecutors had to go back two years and all who were jailed and not represented by an attorney had to be either retried or turned loose if reason was shown to the court. Some were brought back and a plea negotiated. In going over the cases I found two persons who were in jail because they had intimate relations with a cow. When I spoke to the judge he said, "Oh that was the old Fort Myers prosecutor who had a thing about those kinds of cases. At least that's better than the prosecutors from the north part of the Circuit who wanted to exhume a bunch of cadavers," said the judge. I filed a motion to dismiss charges since they could not retry the case because I could not find the victim.

Until the new Courthouse was built, court hearings were still at the Courthouse Annex which also housed the School Board, the Naples Medical Center, and other county offices such as the Library. The courtroom was at best 8' x 10', which made for cozy relationships.

The walls were not sound proof, which sometimes added to the problems. For example, one of the physicians at the Naples Medical Center, Dr. Bruce Boynton, was at odds with Bill Reynolds, the School Superintendent. Sometimes their arguments would be heard throughout the building.

As to the court system, other than the Circuit Court, we had a County Court and the City of Naples had its own. There was also a Justice for the Peace Court in Immokalee. The presiding magistrate there was Ollie Hancock, the local barber in Immokalee, and hearings were held in his barber shop.

One day a very upset man came in to my office. He said Mr. Sapp, the owner of the Immokalee Theater, had slandered him. This Mr. Sapp was not in any way related to Chris Sapp, an attorney who later practiced in Immokalee. I basically tried to talk him out of pursuing the problem legally, but he wanted very badly to proceed. I then told him that it would cost the large sum of \$800.00 to hire me and he reached in his pocket and came out with that amount in cash.

The facts were that my client, Mr. Wells, the local cab driver, and a few others would play poker. After the game, Mr. Sapp, who had lost, was upset and got on his microphone with the theater's outdoor speakers turned up and blared into the open street that my client was a SOB, liar, and a thief who cheated at cards. In order to prove publication, I called someone who was at the fire tower several miles away who had heard the claims!

The reason the movie theater speakers were also set to play the movie soundtrack outdoors was because Mr. Sapp thought it was a good form of advertising, and that it really didn't create much of a problem. The entire community could hear the soundtrack of the movie that was playing and, when there was a shoot out in the film, it sounded like Immokalee was being attacked.

Mr. Sapp showed up for the trial with his attorney. Mr. Sheppard was a former State Senator from Fort Myers whom I'll never forget. He drove a light blue Cadillac and wore a powder blue suit. Somehow we had to impanel a jury, so the barber (who was also the Judge) had the deputy go out in the street and round up a six-person jury. The jurors sat through the trial, some with their groceries in their laps and others in the barber chairs.

I noticed that Mr. Sheppard, who was impeccably dressed, always turned his head when he spoke to his client to make sure his ear faced the client. At a break I apologized to Mr. Sheppard, telling him that I didn't realize that he had a hearing problem and that I would try to speak up. Mr. Sheppard said he didn't have a hearing problem and didn't know why I thought so. I explained that I always saw him turning his ear towards his client. He replied "George, my client has such bad breath I can't stand it any other way." He also told me to make sure I didn't drink the water in Immokalee because the septic tanks and the potable water wells were very close together. I thought that was very good advice. After a few hours, the jury deliberated and came back as a hung jury. I suspect the clients were equally disliked within the community. I didn't think Mr. Sheppard wanted to try this again, and I knew that I didn't. I contacted Collier County Sheriff Doug Hendry and with the help of Representative Lorenzo Walker, he had the Florida Legislator pass a "local" act. We didn't have self rule at the time. So the Florida Legislature passed an act that outlawed barking dogs, "B" girls, and outdoor speakers. That did away with the case, thank heavens. "B" girls, for those that don't know, meant bar girls.

In the early 60's, I helped get a local bill and a Small Claims court was created for Collier County, which was separate from the County Court. Mr. Davis (of now Davis Boulevard) who was a retired attorney

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# Turn Me Off *from page 11*

the phone without touching it, though your risk of accident is still increased. But you can't look people up, dial them, read an email, respond to an email, text, or do anything involving you touching the phone.

## Internet Overuse - And Possibly Addiction

Is it possible to actually have an addiction to our connected technologies? The American Medical Association thinks so, though using the word "addiction" ruffles some feathers in the psychology community. Nonetheless, Internet addiction disorder (IAD) has its own Wikipedia entry, and is described as "excessive computer use that interferes with daily life."

While psychologists debate the technical validity of classifying IAD as an addiction, they agree that excessive Internet usage can be pathological and interference with daily life can be substantial. Psychologists also believe Internet overuse is not limited to over-indulgent gambling, pornography, or gaming, as many might think, but also includes the use of the medium itself as a coping mechanism for anxiety or depression.

Dr. Kimberly Young, director of the Center for Internet Addiction Recovery ([netad-dict.com](http://netad-dict.com)), offers a self-assessment test on her website. She asks questions such as:

- How often do you check your e-mail before something else that you need to do?
- How often do you find that you stay on-line longer than you intended?
- How often do you lose sleep due to late-night log-ins?
- How often do you snap, yell, or act annoyed if someone bothers you while you are on-line?

Addiction aside, Internet consumption is so wholly integrated into everyday life that using it has become akin to using electricity. The Internet is now a utility that's always available. Rather than plugging in to consume power, we plug in to consume information and communication, and we're doing it at all age levels and at all times of the day.

An article in *The New York Times* earlier this year, "[Breakfast Can Wait. The Day's First Stop Is Online](http://nyti.ms/aOsn3)" (<http://nyti.ms/aOsn3>) discusses how morning routines of families now revolve around checking email and plugging into social networks. The evidence is more than just anecdotal: Internet service providers, who used to see the daily spike in usage start at the beginning of the workday, now see the spike occurring around 6AM as their customers begin to climb out of bed.

However, the personal stories in the article seemed eerily familiar. The profiled family formerly "sat together and chatted as they ate breakfast. They read the newspaper and competed only with the television for the attention of their two teenage sons." Now, says Dorsey [the family's mother], "Things that I thought were unacceptable a few years ago are now commonplace in my house, like all four of us starting the day on four computers in four separate rooms."

Whether we're addicted to, or overusing the Internet or not, one thing is clear: time spent online is reallocated from some other activity. And if we're not careful, we erode hours spent with loved ones or time needed to maintain our health.

## Suggestions

If you're finding Internet usage interfering with personal relationships, becoming a cause of procrastination, or eating up more time during the day than you'd like, do some research and see if you

might be exhibiting signs of IAD. Netaddict.com offers a self-guided test and questions to consider. Some of the same treatments for anxiety and depression, including medicine and therapy, can be used to treat IAD.

For the household, the same tactics to limit television can be applied to the Internet. If family time suffers at the expense of connectivity, try implementing blackout periods, such as meal times, when devices must be turned off. Use a television timer to automatically turn off your router at specified times of the day so you don't stay up too late surfing the web. If your job allows for it, charge your mobile device nightly in a location other than your bedroom, and choose a time each night when the device is shut off.

## Privacy Concerns

An advertisement for Aristotle Industries, a consumer data company specializing in voter information, ran an ad reading, "We can't tell you what they eat for dinner. But we can tell you where they live. And their phone number, who they live with, whether they have voted, and much, much more." What's surprising about this ad is that it ran in 1991, the same year that a gifted computer scientist named Tim Berners-Lee created the first web page.

The consolidation of data to form holistic profiles of consumers predates the web, but the Internet, where nearly every click is recorded in a database, pours gasoline on that fire. Google records every click of every search result. Your LinkedIn and Facebook profiles, including who you associate with, what products you like, and what entertainment you enjoy, lie fallow for advertisers. If you read books on a Kindle, Amazon knows what books you're reading, what page you're on in those books, and what you've deemed important via your highlights and bookmarks. Any online retailer where you have an account knows what you've browsed and bought.

The U.S. government is in the snooping business as well, seeking greater ability to eavesdrop into personal conversations. Through a 1994 law, the federal government requires telecommunication companies to build hooks into their platforms for the purposes of wiretapping private conversations. Now, according to *The New York Times*, the U.S. seeks to add to this law "...Internet companies that enable communications — like Gmail, Facebook, BlackBerry and Skype — under the law's mandates for the first time, a demand that would require major changes to some services' technical designs and business models."

On one hand, it doesn't take a privacy freak to become unnerved by government and corporate America's ability to peer into our lives. On the other hand, some people believe that if they do nothing wrong, then they have nothing to hide. Privacy, however, extends to opinions, political beliefs, sexual orientation, financial information, and interests that people may not wish to intentionally reveal. For example, an MIT study, called "Project Gaydar", was able to accurately predict the sexual orientation of Facebook users who didn't reveal their sexuality by analyzing the profiles of the friends in their network.

## Suggestions

The good thing about Internet privacy awareness is that it can help curb Internet over-use. Once consumers learn that every click is recorded, they tend to eye their usage differently. Education is by far the most important tool in your belt for online privacy issues. Organizations like the Electronic Frontier Foundation ([eff.org](http://eff.org)) offer resources and monitoring of invasive privacy policies.

Also, it's important to know the policies of the companies you use online. Before hopping onto a cloud provider, for example, do

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## Remember when? *from page 15*

ney from Georgia became the Judge. When he retired, that court merged into the County Court. Judge Davis was elderly and ran the court in a very small wooden building, a little bit bigger than an outhouse. Attorneys, parties, and witnesses normally waited outside until their case was called. When you went inside you noticed Judge Davis had hung his hat on the American flag pole. I told you the place was small. I was surprised since I had just spent three years in the Marine Corps. Once he told me, "Jawge, (his pronunciation for George) I practiced law in Georgia for 43 years, and I spent 32 of them looking for lost papers." I thought it was funny and laughed. I no longer think it's funny as I follow in those footsteps looking for lost papers.

As the city grew, Judge Smith would occasionally have criminal gambling cases in the City Court. These activities took place in Lily Williams' Green Top Social Club in McDonald's Quarters, and were routinely dismissed by Judge Smith. When pressed for a reason, Judge Smith stated that he knew as a matter of fact that people in the Naples Yacht Club gambled on card games and when the police brought a gambling case from the Naples Yacht Club he would consider a case from McDonald's Quarters. Judge Smith was a member of the Naples Yacht Club and hated hypocrisy.

Thomas R. Brown succeeded Judge Smith as the City Judge. I believe Tom got the feel of things in Naples when he was stopped for speeding more than once, and neither time was he speeding. The police apologized, saying that by looking at his car they thought he was someone else. I guess that fellow needed correcting.

One of Tom Browns' memorable cases was when the police brought in a defendant charged with pulling a knife and threatening Johnnie Bonjovani, the local cordovox player, at Nick's Swamp Buggy Lounge. The lounge was a small place located in the back of the liquor store. The Prosecutor read the charge and Judge Brown replied, "So, have you ever heard him play? You can't even think what he is playing so loudly. Case dismissed."

Eventually a campus-like courthouse was built and the Sheriff's Department and the other departments moved to Naples. Soon thereafter, every time the Greyhound Bus came into town another attorney would come in, or at least it seemed that way. Shortly thereafter, Larry Ingram succeeded Tom Brown as City Judge. The City of Naples soon decided they didn't need a City Judge and decided to use the County Court. I do not know of a relationship between these two items.

In Immokalee, Ollie Hancock, still a barber, was also the Justice of the Peace and handled low level criminal cases. For example, if someone was picked up on disorderly conduct for being drunk, they would take the accused to the County Jail which was in Everglades City. Since there was no holding area in Immokalee, a wire was placed between two trees and the accused was handcuffed with his arms over the wire. Since there was a serious mosquito problem in the area, I guess this also served as part of the punishment. Eventually a van of some kind would shuttle the previously hanging individual to the County Jail. Needless to say, the County Jail was not a very elaborate place either and not immune to heat or mosquitoes. I think there were only six deputies in all of the county and two highway patrolmen.

In approximately 1981 or 1982, when I was the Assistant State Attorney, I was trying cases in Labelle, which was the County Seat for Hendry County. If I were the "Traveling Fork" I would tell you about the great pies at Flora and Ella's. Once, when there was a lunch break, Circuit Court Judge Gerald - who had driven over with Barney Schultz - the office Court Reporter, invited me to go to lunch with them. I jumped into the car and I went to the back seat.

Barry was in the front seat. Some way or other, when Judge Lynn Gerald was telling us a story he drove down the wrong way on a one way street. Barney's eyes grew very wide and he turned to me and gave me a pleading look to tell the judge he was going to wrong way. I returned his looking telling him he was in the death seat so you tell him! Both of us did not dare correct Judge Gerald, who was a strict and marvelous judge, well respected by all of us.

In the early days, all judges were very accessible and had no security. In a pretrial conference, both attorneys were often called into chambers to informally discuss a pending case. Usually the first question was "What is the case all about?" which lead to settlement with the judge's guidance. It was pleasant to practice when the judges were not overrun with cases, the attorneys were friends, and we lived in a small town.

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## Turn me off *from page 15*

some due diligence and find out a bit about the company and read their terms of service, subscription agreements, or privacy policies. Resist the urge to swat away disclaimers and privacy warnings like flies.

### **We're Changing. Get Used to It.**

The Internet is changing both our society and our biology. According to neurological research Carr presents in *The Shallows*, our online activity physically alters the makeup of our brains. When we constantly interrupt our work or train of thought to perform another action, we actually train our brain to jump around to the detriment of our faculties to maintain deep thought. As a result, "frequent interruptions scatter our thoughts, weaken our memory, and make us tense and anxious".

Everything's a trade off. Obviously, the benefits of the Internet and the web are without question. The web is here to stay, but now that we've been using it for roughly 15 years as a society, there's nothing wrong with taking a step back, examining how we're using it and how we can become more responsibly connected.

The bottom line is this: we can be safe online. It just might take a little more effort than we're used to. We've created fire, and now it's now our responsibility to learn how to best use it without burning down our homes and workplaces. You can start doing this by knowing when to turn yourself off.

### **About the Author**

Larry Port is the Founding Partner of Rocket Matter, a provider of online legal practice management software, and editor of the Legal Productivity (<http://legalproductivity.com>) blog. He has published extensively in legal publications, including Law Technology News, Legal Management, Law Practice Today, ILTA's Peer to Peer, and others.

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## Traveling Fork *from page 10*

Shula's Steak House at the Hilton Naples & Towers  
5111 Tamiami Trail North • Naples, FL 34103

Your comments or contributions to this column are welcome; you can email [johnncardillo@ckblaw.com](mailto:johnncardillo@ckblaw.com), write to Cardillo, Keith & Bonaquist, P.A., 3550 Tamiami Trail East, Naples, Florida 34112, or fax to (239) 774-2494.



# 2011

## Collier County Bar Association

*Attorney Support Services*

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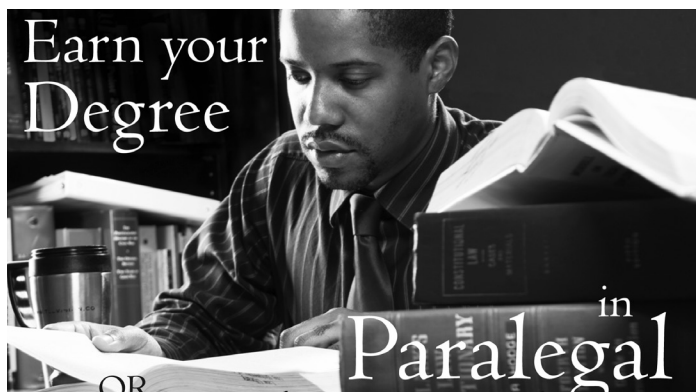
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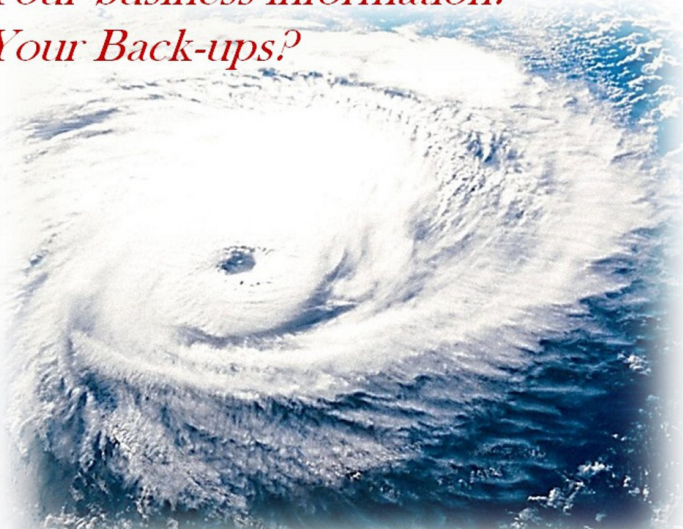
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