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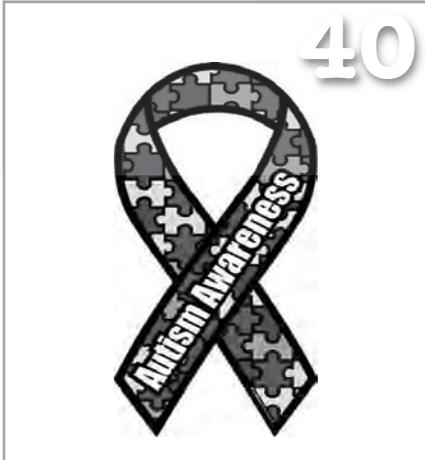
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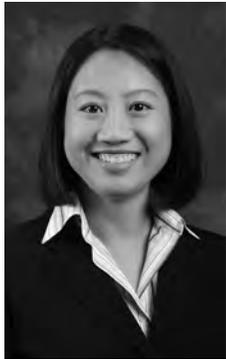
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about the cover

The 106-year-old building featured on the cover has served as a post office and U.S. Customs House. With its classical architecture, towering hallways, ornate ceilings, marble walls and floors, it is a local treasure listed on the National Register of Historic Places. Do you know what was housed in the building prior to its closing in 1974? Check page 54 for the answer.

Photo by Dawn McConnell



From Courtrooms to Guest Rooms



Some judges and lawyers shared comments with me about the historic courthouse.

On January 5, 2012, Tampa Mayor Bob Buckhorn announced that the old federal courthouse on Florida Avenue would become a hotel by next summer. “From Day One, I’ve been dedicated to restoring the federal courthouse. We want to do the courthouse justice with this redevelopment and honor its history—including all the judges and lawyers who worked in that building,” said Mayor Buckhorn.

The old federal courthouse is listed on the National Register of Historic Places and has a Local Historic Landmark designation. It originally functioned as a post office and customs house before being a federal courthouse.

Some judges and lawyers shared comments with me about the historic courthouse:

■ “Notwithstanding the nostalgia for what once was a busy hub of legal activity as a magnificent federal courthouse, but is now only a silent, empty shell, it is an exciting prospect to imagine it rising like the Egyptian phoenix to be a magnet for the business community again and a source of pride for the city of Tampa.”

—Hon. William J. Castagna,
Senior U.S. District Judge

■ “U.S. Magistrate Judge Mark Pizzo and I were the first Assistant Federal Public Defenders in Tampa after that office was created in 1977. Our offices were in the former district court clerk’s office on the building’s first floor. I particularly recall the ornate, hand-painted trim on the

ceilings of the courtrooms and hallways and the loud tile hallways. My fondest memory when trying cases before Judges Hodges, Castagna, Carr, Krentzman, and Kovachevich is the much anticipated afternoon break from trials. I would treat myself to a frozen Butterfinger candy bar at the blind services snack bar in the basement, right next to where stamps could be purchased through the post office customer service windows. The basement always seemed damp and musty, as was customary in older office buildings at the time. One of the elevators still had the folding screen partition which ostensibly prevented you from stepping out before the doors opened or closed.”

—Hon. James D. Whittemore, United States
District Judge

■ “I hope the hotel conversion is successful. The former post office and courthouse is one of the oldest buildings in downtown and should be preserved. I remember characters—including Jimmy Hoffa, the infamous president of the Teamsters union—being in the building. There may be some ghosts haunting it!”

—Wayne Lee Thomas, attorney and law clerk
(1971-1973) to Judge Ben Krentzman

■ “I remember that in the early 1960s, the basement of the courthouse was being used as the post office, but it also was a potential fallout shelter in case of a nuclear war. There were several big green cans containing what I assumed were water and supplies. I wonder what ever happened to all those big green cans, and what did they contain?”

—Marvin E. Barkin, Founding Partner, Trenam, Kemker

■ “The Old Federal Courthouse is a beautiful and iconic building. It is wonderful that the city of Tampa is supporting its conversion into a boutique hotel so that it can once again be enjoyed and appreciated by Tampa’s residents and visitors.”

—Lara Tibbals, attorney



Doing Your **CIVIC DUTY**



Last year, I had the privilege of being summoned for jury duty. Now, there is never a convenient time for anyone to serve as a juror, but this was a particularly bad time for me as I was preparing to be installed as HCBA President, was in the middle of construction on our office space, was finishing up our firm's first year of existence, and, most importantly, was facing upcoming scheduling deadlines in a case set for trial in the coming months. Nonetheless, I decided that rather than use one of the lawyers' tried and true excuses to beg out of jury duty, I would present myself to serve. After all, if a trial lawyer is not willing to serve, then how can we expect others to serve? That, and the fact that I did not want Judge Holder to issue a warrant for my arrest 😊.

This was not the first time, nor will it be the last, that I have been summoned. The first time I was called, I was a second-year lawyer. I remember having to tell Larry Stagg that I would not be at work on Monday because I had jury duty. To this day, I still believe he thinks it was an excuse to get out of one of the many daunting tasks that he had assigned to me.

As we went through voir dire, I was asked one particularly open-ended question and, as a second-

After all, if a trial lawyer is not willing to serve, then how can we expect others to serve?

year lawyer who thought he had it all figured out, I got on my soapbox and started pontificating about the burdens of proof and the scales of justice. I distinctly remember the judge's words to me, "That's quite enough Mr. Bajo, sit down."

As the court was preparing to announce the selected jurors, I remember tapping the person next to me, who happened to be an attorney, and remarking to him that there is no way they are going to pick us. At that moment, I heard my juror number called and said under my breath, "Oh my God." The judge obviously read my lips as she began to chuckle. My initial fear was telling Larry that I was now missing another week of work for jury duty! To his credit, he thought it would be a great experience, and he doled out my assignments to his other minions.

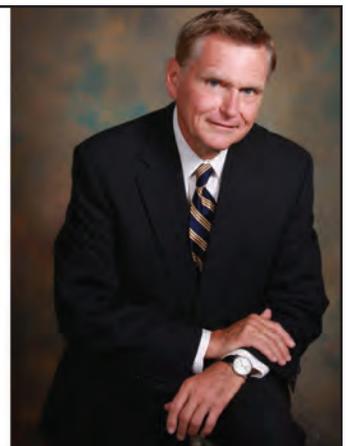
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Continued from page 4

So, I served and probably learned more about trial practice in that week than I had in the previous two years. It was very enlightening to participate in the deliberations and observe the issues that non-lawyers focused on as opposed to issues the attorneys focused on during trial.

Back to my recent experience last year: although I was not ultimately selected, it was every bit as illuminating as my first experience. One of the lawyers was opposing counsel in a very spirited case we concluded a couple of years prior. As the venire walked into the courtroom, I saw his jaw drop and his face turned pale when he saw me. The judge then began describing the jury selection process and asked the standard series of questions—does anyone know any of the plaintiffs' lawyers in this case (I was the only one to raise my hand, and I described my relationship with the plaintiff's lawyers), does anyone know any of the defense lawyers in this case (I was the only one to raise my hand, and I described my relationship with the defense lawyers), does anyone know me (I was the only one to raise my hand, and I described how I had three pending cases before her), does anyone know any of the witnesses in this case (I was the only one to raise my hand, and I described how I had either retained most of the experts or cross-examined most of the experts on several occasions).

By this time, all 80 or so of the venire members had their eyes trained on me. I can only imagine what they were thinking. Once the lawyers began voir dire, I eagerly raised my hand to answer several questions, ever mindful that I was no longer a second-year lawyer and that I truly had not figured anything out. My former opposing counsel, who by now had gone from pale to ashen, skipped over me for about the first hour. Disappointed that I was being ignored, I started waving my hand each time I raised it, and I was considering my best Arnold Horshack impersonation if I was not called on soon. After all, if I was going to sit through the process, I was going to participate—not be ignored! He finally relented and said, "Okay Mr. Bajo, what do you have to say?" Apparently, he was pleasantly surprised by my answer as his hueless face suddenly regained its color. He called on me several times over the next few hours.

Once the defense lawyers began questioning, I was asked several questions as well. It was becoming apparent to me that the defense lawyers wanted me as a juror based on the questions. It was quite educational to observe the attorneys' differing approaches to voir dire. Because we live in the era of the vanishing jury trial, participating in the process from the other side of the rail was informative, to say the least. However, the most interesting part of the day for me was listening to the other venire members answer questions. It provided me with a perspective of how non-lawyers view the entire legal process. At the end of eight hours, a jury had not been selected. We were called back to the courthouse at 9:00 A.M. to resume.

Before the venire was called in, the bailiff told me the judge wanted to see me. Once again, I could only imagine what the others were thinking. My initial thought/fear was that it cannot be good to be summoned to go see the judge. I hearkened back to my first experience and dreaded that I somehow responded to questions inappropriately and that I was going to be castigated once again. Much to my surprise, the judge advised me that all of the lawyers had agreed to strike me and that I was free to go. I must admit to feeling a sense of relief, yet disappointment, at the same time. If not for the timing, I truly was hoping to be selected.

The lasting impression that I have from my two very different experiences was just how committed and intrigued the citizenry was to the process. We may do this every day, but to non-attorneys, this was a unique experience. The jurors in the first case and the venire in the second case listened intently to the instructions and asked salient questions. The jury in the first case was committed to reaching the only decision allowed by the law; I am sure the ultimate jury which was selected in the second case did as well. I understand that jurors do not always get it right, as they are only human; however, I am convinced that they take their civic duty seriously. As practicing attorneys, I would hope each of us does as well. Despite my initial trepidation, I am very pleased to have done my civic duty. I know it may be inconvenient, but I encourage every attorney to do the same. I truly enjoyed the opportunity. I wholeheartedly believe it will be an enlightening experience, whether selected to serve or not.



And The Winner Is ... The HCBA YLD!

We are proud of the recognition the YLD has received and could not have accomplished these great measures without the hard work of our committee and division members.

The Young Lawyers Division has had a very productive year thus far, and the year is far from over! Last fall, we held our annual golf tournament where we raised over \$6,000 to support our community projects. Also, through our Graphic Novels for Grads program, the YLD provided young lawyer volunteers to lead classroom discussions about a law-based illustrated novel with approximately 1,000 Hillsborough County high school students during the 2011 Great American Teach-In. In our continued work with local foster children, we held Holidays in January at Malibu

Grand Prix, which was a huge success. Also, we hosted the annual Honorable Robert Simms High School Mock Trial Competition. Eight local high school teams participated, making our mock trial competition one of the largest in the state. Additionally, we had over 35 young lawyer members pair with local judges for a day in February as part of the annual Judicial Shadowing Program. This is just a sampling of the many programs in which the YLD has been involved this year.

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CHARLES W. ROSS, ESQ. CERTIFIED CIRCUIT AND FEDERAL MEDIATOR

Charles W. Ross, Esq. is a Florida Supreme Court certified mediator for circuit civil and federal mediations. Civil trial lawyer since 1979. Graduate of Harvard Law School Mediation Program (1999), and Harvard Law School Advanced Mediation Program for Lawyers (2001).

Mr. Ross has been recognized by his peers as one of Florida's leading mediators, with a Martindale-Hubbell rating of AV. He was selected by the Florida Trial Attorneys for membership in Florida's Legal Elite and Best Lawyers in America 2010. Member of The National Academy of Distinguished Neutrals.

Graduate of University of North Carolina at Chapel Hill (BA 1975; JD 1978); Phi Beta Kappa. Florida Arbitrator.

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Through each of our projects and programs, the YLD strives to make a difference in the local community and to provide enriching opportunities for YLD members. Recently, the YLD received recognition—locally, statewide, and nationally—for the good work that we do.

At the Florida Bar YLD Affiliate Outreach Conference in January, the YLD received the Public Service Project of the Year award for last year's Cornhole for a Cause tournament benefitting Big Brothers Big Sisters of Tampa Bay. The YLD also received the President's Award for best overall project for our diversity documentary project, "Before the Law was Equal: A Documentary of Desegregation in the Hillsborough County Legal Community."

Additionally, the YLD was honored as a finalist for the 2011 Business Buddies Professional Organization of the Year Award in recognition of the YLD's community service projects. In May 2011, the YLD was the recipient of the Hillsborough County Public School SERVE "Shining Star" award for our annual work through



Law Week to make a difference in the lives of children throughout Hillsborough County public schools. The YLD also received the Florida Bar Young Lawyers Division Most Outstanding Member Program Award in recognition of the YLD's Judicial Shadowing Program and the American Bar Association Young Lawyers Division Award

of Achievement for our outstanding service to the public through Cornhole for a Cause.

We are proud of the recognition the YLD has received and could not have accomplished these great measures without the hard work of our committee and division members. Thank you for your efforts in helping the YLD have such a productive year!

The year is not over yet. Please mark your calendars for upcoming spring events. Look for announcements regarding Steak and Sports Day in April. Also, the YLD Judicial Appreciation Luncheon featuring the Honorable Susan Bucklew as the keynote speaker will be held on May 22nd. You can find detailed information about all of the YLD events on our webpage and on Facebook.



Judicial Luncheon

Judge Bernard C. Silver, circuit judge with the Thirteenth Judicial Circuit in Hillsborough County, presented "Jury Trial Tips" at the HCBA Judicial CLE Luncheon on February 14, 2012 at the Chester H. Ferguson Law Center.





executive director's message
John F. Kynes, Hillsborough County Bar Association

HCBA Continues Strong Support of Local Military



Over the years, lawyers from the HCBA have worked in different ways to support the military personnel at MacDill Air Force Base and their families. Now, with the advent of the nation's global war on terror and the addition of U.S. Central Command (CENTCOM) and U.S. Special Operations Command (SOCOM) on the base, the relationship between the HCBA and MacDill has grown even closer.

"The support of the HCBA, and Tampa community as a whole, has been very important to everyone at MacDill," says Air Force Captain Sherri M. Ohr, Deputy Staff Judge Advocate at MacDill's 6th Air Mobility



"The nation which forgets its defenders will be itself forgotten."

—Calvin Coolidge

Wing. "Unfortunately, members of the military are not immune from the same everyday legal problems and financial pressures that everyone else has to deal with," she said. "It's our job to help servicemen and women work their way through the justice system."

Ohr is an active member of the HCBA and is participating in the HCBA's Leadership Institute this year. Also, she and Air Force Captain Timothy M. Goines serve as co-chairs of the HCBA's Military Liaison Committee. This committee helped put together a special CLE seminar this past November

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on issues important to active duty and retired military. With a focus on helping service members transition back into daily life in Florida, there were presentations on veterans' rights, family law, bankruptcy, and labor and employment. "There is a definite need for this information in the military community, and we hope to put together more programs like this in the future," Goines said.

In addition, as a public service, the HCBA's Lawyer Referral & Information Service (LRIS) waives consultation fees for all active duty members of the military, no matter what their problem.

Furthermore, the HCBA's Community Services Committee, headed by Zachary J. Glaser and Sarah M. Hammett, helped spearhead an effort to assist veterans at the James A. Haley Veterans Hospital. Through donations from HCBA members, they filled 38 veterans' wish lists, and they delivered the items to the grateful veterans, many of whom have no living relatives, on Make a Difference Day in October.

Separately, HCBA member Devin Young, a Marine Corps attorney at CENTCOM, organized a local Hope For The Warriors team. The Tampa team is made up of military and civilian members

who compete in running, cycling, and triathlon events around the state to support wounded U.S. service members and their families. They participate in weekly runs and hold regular meetings at a local restaurant. "The legal community in Tampa has been very supportive," said Young, who is working to raise awareness and support for the organization.

Another link with MacDill was forged this past fall when HCBA President-elect Robert J. Nader was inducted as the Honorary Civilian Commander of the Judge Advocate General's office of the 6th Air Mobility Wing. Nader will serve for two years in the program with other local community leaders who will be paired with different wing commanders and command chiefs at MacDill. He is partnered with Lt. Col. B.J. Cottrell, the Staff Judge Advocate.

"It's been a privilege to participate in the Civilian Commander program and to get to know the outstanding attorneys in the JAG office," said Nader. "I've not only gained a greater appreciation of the work that they do, but also their tremendous sense of patriotic duty to our country," he said.

For that sense of duty, we all can, and should, be eternally grateful.

See you around the Chet.

Welcome New Florida Bar Admittees

On April 27, 2012, HCBA members are invited to the Swearing In Ceremony at the George Edgecomb Courthouse Courtroom 1. The ceremony will begin at 3:00 p.m.

Join your fellow HCBA members in welcoming this distinguished group to the Tampa Bay legal community.





The Rights of the Victim



Until the last few decades, crime victims did not have rights in the criminal justice system. No federal or state laws or constitutions made any mention of the rights of victims. Crimes were committed against the state, and victims were looked at merely as witnesses in a case. However, since 1965, when California passed the first major victims' right law establishing victim compensation benefits, there have been thousands of statutes

Florida has been one of the most progressive states with regard to the rights of victims.

enacted at the federal and state levels which specify and protect victims' rights.

Florida has been one of the most progressive states with regard to the rights of victims. The Crimes Compensation Act was enacted by the 1977

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Continued from page 10

Florida Legislature, thereby acknowledging the need for government financial assistance for victims of crime. The intent of this legislation is "...that aid, care, and support be provided by the state, as a matter of moral responsibility" for crime victims. See §960.02, Fla. Stat. Accordingly, the state provides financial and direct services to victims of crime, administers federal grants to fund victim services at the local level, and provides comprehensive training for law enforcement. In 1984, Congress passed the Victims of Crime Act (VOCA) which became a resource to state and local governments to implement the programs needed to provide services to victims. VOCA was amended in 1988, and the Office for Victims of Crime was created to provide leadership and funding on behalf of victims.

Thanks to this kind of legislation, every agency within the criminal justice system in Florida now has specific guidelines to ensure that all victims of

crime are informed, present, and heard at all crucial stages. Chapter 960 of the Florida Statutes also created the Crimes Compensation Trust Fund designed to assist victims recover expenses for medical bills, lost wages, property loss for elderly and disabled adults, and relocation funds for victims of domestic violence. In the case of homicides, assistance can also be provided to families for funeral expenses and to the victim's dependents for loss of support.

Since 1981, the Office for Victims of Crime has led communities throughout the country in an annual observance to promote victims' rights and to honor all crime victims and those who advocate on their behalf.

This year, National Crime Victims' Rights Week will be observed April 22-28, 2012. The theme for this year is "Extending the Vision: Reaching Every Victim." This is the perfect time for all of us who work within the criminal justice system to remember the victims of crime. At least now, victims no longer have to navigate this system alone.

THE HILLSBOROUGH COUNTY BAR ASSOCIATION

invites you to attend the

LAW DAY MEMBERSHIP LUNCHEON



Featured Speaker: Judge Alex E. Ferrer

Former police officer, attorney and Florida Circuit Court Judge Alex E. Ferrer hosts "Judge Alex" the highly rated court room show on Twentieth Television.

- ◆ Tuesday, May 8, 2012 at 12:00 PM
- ◆ Hyatt Regency Tampa, 211 N. Tampa Street
- ◆ HCBA Members: No Charge Non-Members: \$30

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From the clerk of the circuit court
Pat Frank, Clerk of the Circuit Court



We'll Be There for You

"... you are our customers and we are here to serve you—and serve you well."

Do you remember the theme song from the old television series *Friends*? The refrain was, "I'll be there for you." My hope is that the same is true of your relationship with the Clerk's Office.

When I took office in January 2005, I found in place an outmoded technology system—one which never had been the best fit for our office. I knew from the onset that we had to upgrade—but how best to do it? A nationwide search brought us no real answer—there was nothing on the market at that time to meet our—and, more important—your needs or the needs of the public we serve.

Fortunately, a few years ago, we were introduced to Tyler's Odyssey case management system throughout our Courts area, and we are now in the process of implementing it throughout our operation. Not surprisingly, Odyssey has also been adopted by several other counties in Florida, including Pinellas, Orange, Broward, Dade, and Lee.

Odyssey is but one step—however major—in our transformation to a better way of doing business in the Clerk's Office. We are also implementing efiling, redaction and in-Court electronic tracking, as we progress toward our eventual goal of a paperless operation.

As we move into the electronic mode, this will change the way you do business in your office as well as in the courts. We will keep you aware of these changes and conduct brown bag seminars to walk you through the process.



Until then, please remember that our staffs are smaller and that our work is more intensive as we go through this transition. As we move into efiling, we also have to keep paper files available because the Supreme Court has not allowed us to destroy these files. This requires twice the work, which leads to delays.

I have every confidence that it will all come together. It has been a lengthy process, and you have been very patient. It is not always easy, especially when you have a deadline. Please bear with us, and we will keep you in the loop and up to speed. After all, you are our customers, and we are here to serve you—and serve you well.

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Are You Currently Handling a Pro Bono Case?



Recently, the Thirteenth Judicial Circuit Pro Bono Committee conducted an unscientific survey of Hillsborough County attorneys regarding pro bono work. The survey contained one question: “If you are not currently handling a pro bono case or matter, why not?”

Respondents provided varied explanations for why they are not currently handling a pro bono matter. For example, some explained that they had “time constraints” related to “work demands” or “caring for children and parents.” Others explained that the economy had forced them to focus exclusively on “keeping their practice afloat” because of a shrinking pool of paying clients. Some explained that they would do pro bono but worry about whether the representation would be covered by their malpractice insurance. Others explained that they are reluctant to handle cases outside their practice areas. Finally, some indicated that they had informed agencies of their willingness to take referrals but had received none.

Some of these concerns are misplaced. If you volunteer to take a pro bono case with Bay Area Legal Services (BALS), it provides malpractice

insurance. Moreover, BALS can assign a mentor attorney who specializes in certain fields and can provide training for specialized clinics. Also, some pro bono programs allow you to participate for as little as an hour a month or as your schedule permits. Participating in pro bono work gives you exposure to colleagues in the community who will likely remember you when referring a paying client.

Many respondents stated they are currently providing pro bono services. However, the description of what they are doing demonstrates a misconception of what is qualifying pro bono work. For example, some think that a case in which a client fails to pay them is a pro bono case, not understanding that the decision to provide pro bono service is made at the beginning of the representation, rather than the end. Others think that free consults to friends/family/acquaintances are pro bono services. But free consults are not considered pro bono work unless the service is provided to low income individuals or entities that address the needs of poor persons. Some

Continued on page 15

Florida Bar Business Law Section Announces Pro Bono Contest

Do you have a rewarding pro bono experience that you would like to share with your Florida Bar Business Law Section peers? If so, the BLS Pro Bono Committee wants to hear about it! Each month, one pro bono story will be chosen to be featured as the BLS Gives Back story of the month. The monthly BLS Gives Back story will be shared with BLS members in an email blast to the section and featured on the BLS website. Additionally, each monthly winner will be rewarded with 50% off the registration fee for the 2012 BLS Retreat in Naples. Your story must relate to pro bono work you have done in the last twelve calendar months, and it should be submitted by the 15th of the month to Jen Morando at jmorando@therosenthallaw.com.

Continued from page 14

responded that they devote time to other community service or volunteer projects. Others said they contribute money to pro bono causes such as BALS.

While all of these efforts are commendable, the Committee's focus is on increasing pro bono services that attorneys provide directly to clients. This direct assistance occurs in pro bono clinics like the Family Forms Clinic or with clients referred to them by a pro bono organization such as BALS, St. Michael's Legal Clinic, and the Guardian Ad Litem Program.

Since 1993, the Committee has developed, implemented, and monitored pro bono activities to address the needs in the Thirteenth Judicial

Don't forget our Attorney Oath taken upon admission to the Bar: "I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice."

Circuit. We would like to hear from you about any barriers you experience in handling a pro bono case. In understanding these barriers, we can work with pro bono organizations and other referral sources to expand pro bono opportunities and increase attorney involvement throughout the Circuit. If you are

interested in learning more about pro bono opportunities, contact the Committee or visit www.bals.org for a list of pro bono opportunities both within and outside BALS. Don't forget our Attorney Oath taken upon admission to the Bar: "I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice."

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FLORIDA SOLO PRACTITIONER MEETS THE HIGH COURT

Appellate Practice Section

Chairs: Marie A. Borland, Hill Ward Henderson, and Kristin A. Norse, Kynes, Markman & Felman, P.A.



Justice Alito leaned forward to pose his third straight question that involved a hypothetical scenario whose facts I was beginning to confuse. As I struggled to formulate a coherent response, I was again struck by the intimacy of the courtroom at the United States Supreme Court. I paused before responding and suggested to Justice Alito that the High Court should follow the reasoning he had penned while sitting as a judge on the Third Circuit Court of Appeals. He smiled, leaned back in his chair (I realized they each have their own special chair) and nodded what I took to be his approval of my brilliant point of legal analysis. (Justice Alito later wrote the Court's dissenting opinion against my client—shows how much I know).

On March 29, 2011, I enjoyed and endured a wonderful, bizarre, intense, and harrowing appearance before the United States Supreme Court on a court-appointed case for an indigent client accused of murdering a police officer. After certiorari was granted to the Supreme Court, the case

dominated my life. I had tried and lost the jury trial before the Honorable James S. Moody, Jr., United States District Judge. My dear friend and brief writer extraordinaire, Ken Siegel, had written the brief and argued the case before the Eleventh Circuit Court of Appeals.

When we received word, after the Eleventh Circuit ruled against us on every point, that we were on our way to the Supreme Court, I encouraged Ken to proceed without me. Fortunately for me, Ken was chiefly interested in writing the briefs and insisted that I handle oral argument.

The Moot Court process was required and relentless. Donna Elm, a good friend and the Federal Public Defender for the Middle District of Florida, quickly offered the services of D-Scrap (Defenders-Supreme Court Representation Advocacy Program), a group of appellate specialists who work for the Federal Public Defender's Office. We also accepted Moot Court help from Georgetown Law School. Ken and I corralled nine



"...I enjoyed and endured a wonderful, bizarre, intense, and harrowing experience..."

of our friends, put them in green church choir robes, assigned roles for each "justice," and borrowed a courtroom from Stetson Law School. Special thanks to T.J. Fitzgerald, David Weisbrod, Shelly Reback, Ray Lopez, Sharon Samek, Casey Ebsary, Mike Maddux, Tom Ostrander, and Fred Vollrath.

On the morning of oral argument, we approached the "highest court in the land" and were confronted by over seventy-five (75) television news camera crews and commentators. Alas, they were there to cover the Wal-Mart class action case. Now I know what it is like to be a "B-side of the record" (an archaic phrase—so look it up).

It is an honor to argue a case before the United States Supreme Court. However, having done it, I hope to win the remaining of my cases in criminal court and avoid having to do it again.



Author:
Stephen M. Crawford, Stephen M. Crawford, Attorney At Law

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RAISING AWARENESS

Community Services Committee

Chairs: Zachary J. Glaser, Sponsler, Bennett, Jacobs & Adams, P.A., and Sarah M. Hammett, Saxon, Gilmore, Carraway & Gibbons, P.A.



Members of the Community Services Committee recently attended a fundraising event held by Redefining Refuge, a non-profit organization that raises awareness and support for teen and child victims of sex slavery in America.

Human trafficking is now considered the second largest and fastest growing illegal trafficking activity in the world. Researchers estimate that between 100,000 and 300,000 American children are trafficked within the United States each year. Florida has one of the highest human trafficking rates in the country. We knew little about this epidemic before attending the fundraiser.

Raising awareness is truly a key step to promoting Redefining Refuge's cause and any cause that we, as lawyers, choose to support. In the spirit of raising awareness, the Community Services Committee is sharing information about this worthy cause. Anyone interested in supporting Redefining Refuge can contact Natasha at Natasha@redefiningrefuge.org.

The Community Services Committee is also raising awareness for a cause that HCBA

members are furthering: helping to raise literacy rates in our community. According to the United States Department of Education, 85% of juveniles in the criminal justice system have below-average reading skills. Fortunately, attorneys all over Hillsborough County have the opportunity to improve this sobering statistic through volunteering with the Lawyers for Literacy program.

The Lawyers for Literacy program provides books and reading tutors throughout the year to local at-risk students. One of the program's largest annual events, Lawyers for Literacy Day, will take place on Wednesday, May 23rd. That day, attorney volunteers will travel to Head Start centers around the Tampa Bay area to deliver books and share quality time reading to local students. The event is meaningful to students and volunteers alike, as each student receives a book to take home and each volunteer has the opportunity to leave a positive, indelible impression on a child.

There are three ways you can contribute to Lawyers for Literacy:



Raising awareness is truly a key step to promoting Redefining Refuge's cause, and indeed any cause that we, as lawyers, choose to support.

volunteer to read at a Head Start center on Lawyers for Literacy Day (or as a Lawyers for Literacy tutor throughout the year!), make a monetary donation for the purchase of new books by visiting www.firstbook.org/hcba, or donate new or gently used books. Book donations can be dropped off at the Chester H. Ferguson Law Center or with a member of either the HCBA Community Services Committee or the HCBA Leadership

Institute. This spring, you can also find book donation drop boxes in law offices around the county.

If you are interested in learning more about Lawyers for Literacy or wish to donate time, money, or books to this worthy cause, please contact Sarah Hammett (shammett@saxongilmore.com) or Amy Nath (amy.nath@baycare.org).

Authors: Sarah M. Hammett, Saxon, Gilmore, Carraway & Gibbons, P.A.

(shown above); Amy R. Nath, BayCare Health System (shown left); Zachary J. Glaser, Sponsler, Bennett, Jacobs & Adams, P.A. (shown above)



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ACQUITTED CONDUCT: PERMISSIBLE, BUT GOOD POLICY?

Criminal Law Section

Chairs: Mark P. Rankin, Shutts & Bowen, LLP, and Joseph C. Bodiford, Bodiford Law, P.A.



conduct in *U.S. v. Faust*, 456 F.3d 1342 (11th Cir. 2006). In *Faust*, the court held that, under the Federal Sentencing Guidelines, courts may consider relevant conduct of which a defendant was acquitted, so long as the facts underlying the conduct are proved by a preponderance of evidence. *Id.*

Not everyone on the 11th Circuit agreed with the *Faust* decision. Judge Rosemary

In federal cases, the use of “acquitted conduct” is the introduction at sentencing of evidence of prior bad acts of which the defendant has been acquitted. Many are surprised to learn that a defendant can be punished for something for which the jury acquitted him. The 11th Circuit approved the use of acquitted



Many are surprised to learn that a defendant can be punished for something for acquitted conduct.

Barkett, in her concurring opinion in *Faust*, opined that sentence enhancements based on acquitted conduct are unconstitutional under the Sixth Amendment and the Due Process Clause of the Fifth Amendment. Judge Barkett noted that, in *Blakely v.*

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ACQUITTED CONDUCT: PERMISSIBLE, BUT GOOD POLICY?

Criminal Law Section

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Washington, the Supreme Court held that an individual's Sixth Amendment right to a jury trial | is endangered whenever a judge imposes a sentence that is not based solely on "facts reflected in the jury verdict or admitted by the defendant." 542 U.S. 296 (2004).

Some federal judges have agreed with Judge Barkett's rationale and have refused to enhance sentences using acquitted conduct. In *U.S. v. Pimental*, Judge Nancy Gertner stated that the jury is intended to be the centerpiece of the criminal justice system and that "[d]etermining more than actual truth, guilt, or innocence, its decisions represent a popular conception of a just verdict." 367 F. Supp. 2d 143 (D. Mass. 2005). See also *United States v. Coleman*, 370 F. Supp. 2d 661 (D. Ohio 2005); *United States v. Concepcion*, 983 F.2d 369, 396 (2d Cir. 1992)

(Newman, J., concurring) ("A just system of criminal sentencing cannot fail to distinguish between an allegation of conduct resulting in a conviction and an allegation of conduct resulting in an acquittal.").

Use of acquitted conduct may do more than infringe on an individual's constitutional rights—it may erode public confidence in the jury system. As in the widely publicized *U.S. v. Wilson* case in Washington, D.C., in which a juror wrote to the sentencing judge about his dissatisfaction with the use of relevant acquitted conduct, most jurors are offended by the use of acquitted conduct. After spending time away from their jobs and family to consider a criminal case carefully, they do not appreciate the government and judge disregarding their reasoned decision. The general public is almost invariably shocked and offended by the notion that a defendant can go

to trial, be acquitted, and then nevertheless be punished for that same accusation.

The federal judiciary holds a very powerful tool in acquitted conduct, but with great power comes great responsibility. Although courts have permitted this practice, judges have the discretion to punish with acquitted conduct or decline to do so. In making this decision, courts should seriously consider the defendant's constitutional rights, the respect due to the jury's time and verdict, and whether it is good public policy to punish a defendant based upon acquitted conduct.



Authors:
Mark Rankin,
Shutts & Bowen,
LLP (shown on
page 20); and
Henry Stiles, Shutts
& Bowen, LLP (left)

Bubba
Huerta
Award



The Criminal Law Section honored Eddie A. Suarez with the 2012 Marcelino "Bubba" Huerta, III Award for his professionalism and pro bono service. The award was presented at the Chester H. Ferguson Law Center on February 7, 2012.



Left to right: Michael Maddux, Mark Rankin, Eddie Suarez, Terri Huerta, Jim Felman, and John Kynes

LOCAL SCHOOL OPENS DOORS OF OPPORTUNITY

Diversity Committee

Chairs: Victoria N. McCloskey, Ogden & Sullivan, P.A., and Luis E. Viera, Ogden & Sullivan, P.A.



The late U.S. Supreme Court Justice Thurgood Marshall divided people in two groups: dream makers, who opened doors of opportunity for others, and dream breakers, who kept doors shut. In our midst is an institution, led by a fellow member of the Florida Bar, which serves as a “dream maker” for often marginalized youth.

Since 2003, Lincoln Tamayo has served as Head of School for Academy Prep Center of Tampa, a private school in Ybor City which serves underprivileged 5th to 8th grade students - with stunning results. Lincoln, a graduate of Jesuit High School, knows and practices the Jesuit education

refrain of “give me a child for his first seven years and I’ll give you a man.” Academy Prep students attend school up to 11 hours a day, six days a week, 11 months of the year, experiencing an education often reserved for elite boarding schools. Academy Prep students, coming from areas where less than half the adults hold high school diplomas, boast a high school graduation rate greater than 90%. Most go to prestigious preparatory high schools and colleges, including Columbia University, where a 2008 graduate will attend next fall—after graduating this May from



Academy Prep stands for the proposition that one’s background should have no influence on the standards society expects from them.

goals. Mr. Tamayo then has a few words for the students. After a

Phillips Exeter Academy.

I encourage all members to schedule a visit to see this wonderful school in action. Each morning, at 7:30 A.M., Mr. Tamayo stands at the school entrance and welcomes each student individually. Students greet Mr. Tamayo with a firm handshake. They then gather for their Convocation, where two students speak on their life

Continued on page 23

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LOCAL SCHOOL OPENS DOORS OF OPPORTUNITY

Diversity Committee

Continued from page 22

prayer, the Pledge of Allegiance, and a special school pledge, they go on with their day.

Seeing this predominantly African-American student body at Convocation, I am reminded that Academy Prep continues the work begun of great Americans like Frederick Douglass, Medgar Evers, Lyndon Johnson and others in opening once-closed doors to all, regardless of race.

What is remarkable about Academy Prep is that it achieves the ideal of social justice not through protest or politics, but by affirming what President Calvin Coolidge once said: "Duty is not collective, but personal." Student by student, Academy Prep opens the doors of opportunity, which came at a great price for Americans of prior generations, to its students. But it does so by confronting—without apology—the devastating economic and social pathologies in which these students often live.

Academy Prep stands for the proposition that one's background should have no influence on the standards society expects from them. To Academy Prep, social justice is mutually dependent on society and the individual, and predicated on reciprocity. This is a stern rejection of the "soft bigotry of low expectations."

This is an institution that, as St. Ignatius of Loyola implored of his fellow men and women, gives and does not count the costs, and labors and does not ask for any reward, save that of knowing that it does what is right. It deserves our strong support.

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Author: Luis E. Viera, Ogden & Sullivan



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MEDIATION RULE CHANGES & HOW THEY IMPACT EMINENT DOMAIN

Eminent Domain Section

Chairs: Blake H. Gaylord, Gaylord Merlin Ludovici Diaz & Bain, and Daniel R. Feinman, Kass Shuler, P.A.



As anyone who practices condemnation law knows, the majority of eminent domain cases that make it all the way to mediation are typically settled at mediation. To prepare effectively, lawyers should have a fair understanding of who the decision-makers at the mediation conference will be, and confidence that these individuals will have full authority settle, or not settle, in good faith. “Mediation, like arbitration, is an alternative dispute resolution device. It is not to be engaged in casually or carelessly.” *Tilden Groves Holding Corp. v. Orlando/Orange County Expressway*, 816 So.2d 658, 660 (Fla. 5th DCA 2002) *citing Sponga v. Warro*, 698 So.2d 621, 625 (Fla. 5th DCA 1997).

Recently, the Florida Supreme Court approved significant revisions to Rule 1.720 of the Florida Rules of Civil Procedure, known as the Mediation Procedures Rule, which changes went into effect January 1, 2012. The new language of Rule 1.720(b), now titled “Appearance at Mediation”, requires that a “party or party representative having full authority to settle without further consultation; and...[t]he party’s counsel of record, if any...” be physically present at mediation unless

otherwise permitted by court order or stipulation by the parties in writing.

The revised rule, in 1.720(c), defines having full authority to settle as being the “decision maker with respect to all issues presented by the case who has the legal capacity to execute a binding settlement agreement on behalf of the party.” The imposition of a new notice requirement worth noting is found in what is now 1.720(e), which states that each party, unless waived by stipulation, shall file ten days prior to mediation “with the court and serve all parties a written notice identifying the person or persons who will be attending the mediation conference as a party representative..., and confirming that those persons have the authority...” to settle without the need to seek further approval.

A common issue in eminent domain mediations which involve governmental condemning agencies is the public representative’s ability to enter into a binding settlement. This is addressed by 1.720(d) which defines “Appearance by Public Entity” as “full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making



“... conformance with the new rule can be assessed without delving into any confidential mediation communications.”

body of the entity.”

The failure of a party to appear at a properly noticed mediation without good cause can result in sanctions pursuant to 1.720(f) which states that “the court, upon motion, shall impose sanctions, including award of mediation fees, attorneys’ fees and costs, against the party failing to appear.” Adding even more teeth

to this revised rule, however, is the rebuttable presumption of a failure to appear created if a party fails to comply with the aforementioned notice requirement of 1.720(e), or if the person identified to attend in the notice fails to appear.

According to the Committee Notes, conformance with the new rule can be assessed without delving into any confidential mediation communications. Additionally it is noted that this new rule can easily be modified or revised with the mutual consent of the mediating parties.



Author:
Dean R. DiRose,
Senior Assistant
County Attorney,
Hillsborough
County
Attorney’s Office

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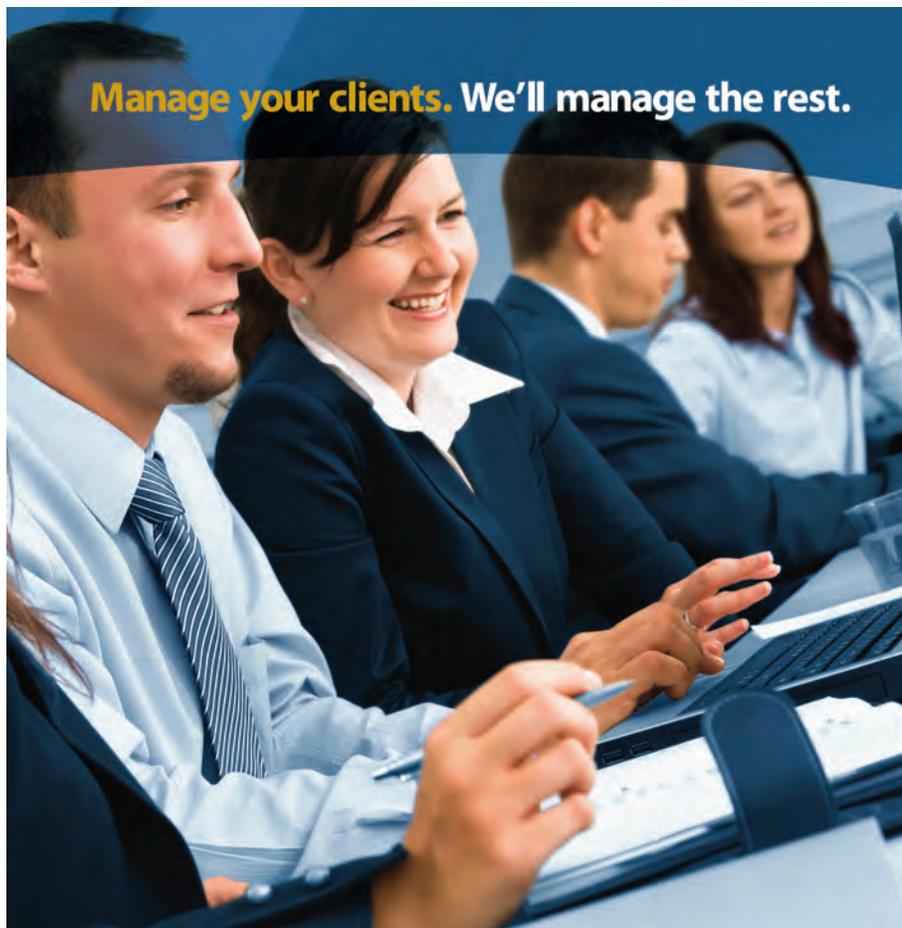
We Florida lawyers share a commitment to justice. The Florida Bar Foundation, a 501(c)(3) public charity, embodies that commitment through its mission to provide access to justice for those least able to afford a lawyer.

The Florida Bar Foundation's mission is accomplished through funding legal aid organizations and other programs across the state that serve Florida's most vulnerable residents. In addition, the Foundation has funded fellowships for young attorneys and law students and supported voluntary bar association efforts to foster public service. If you visit www.floridabarfoundation.org,

you will be impressed with the number and diversity of the Foundation's grantees.

About 30 percent of the total funding for legal aid organizations in Florida comes from The Florida Bar Foundation. To help stabilize the legal aid workforce, the Foundation funds initiatives such as salary supplementation and law school loan repayment programs to help retain legal aid attorneys, while providing professional development and technical support.

Continued on page 27



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Over the past 30 years, Florida's Interest on Trust Accounts ("IOTA") program has distributed more than \$380 million to help hundreds of thousands of poor people receive critically needed free civil legal assistance throughout Florida. Bay Area Legal Services and Gulfcoast Legal Services, legal aid organizations serving multiple counties in the Tampa Bay area, received general support grants from the Foundation in 2010-11 totaling \$1.84 million. They also received Foundation grants targeting children's legal services, affordable housing and other special projects and initiatives, bringing the Foundation's total support for legal services in the area to more than \$2 million.

Over the past several years, IOTA revenue has plummeted, mostly due to the low short-term interest rates triggered by the recession. The numbers are staggering: In 2006-07, IOTA revenue was \$44 million. Since then, it has fallen to about \$5.5 million annually, and it is expected to stay at that level at least into 2013 and possibly as long as 2015.

For the sake of those throughout Florida with nowhere else to turn to for legal aid help, the

Foundation is actively seeking revenue sources to supplement IOTA funding. You can help by becoming a Florida Bar Foundation Fellow. Fellows are core supporters of the Foundation's mission who pledge \$1,000 payable over five years - or 10 years for government, nonprofit, or young lawyers. We are launching a Fellows campaign locally to make sure our bar is well-represented on the long list of supporters of The Florida Bar Foundation, a bedrock funder of legal aid in our area and statewide.

I know many of you regularly support our two local legal aid programs. I hope you will continue to do so and also consider becoming a Foundation Fellow and support the many important grant programs and initiatives that help our legal aid programs do their work.

In addition, I hope The Florida Bar Foundation comes to mind the next time you choose to make a charitable donation. It's truly an organization in which all of us, as Florida attorneys, can take tremendous pride.



Author: Hala Sandridge,
The Florida Bar Foundation



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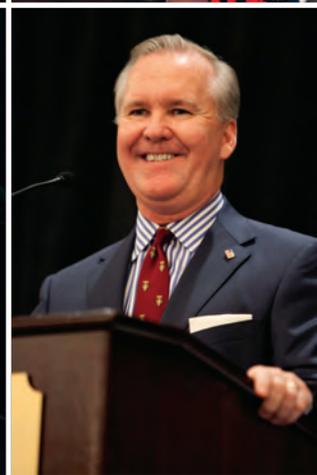
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HCBA Membership Diversity Luncheon

HCBA members and guests were entertained and educated by featured speaker Mayor Bob Buckhorn as he shared his thoughts and stories regarding the diversity of the city of Tampa. The diversity luncheon, an HCBA annual tradition, was held on January 11, 2012 at the Hyatt Regency Tampa. Special guests included Tony Tuntasit, president of the Asian Pacific American Bar Association of Tampa Bay; Henry G. Gyden, president of the George Edgecomb Bar Association; Marielle Westerman, president of the Hillsborough Association for Women Lawyers; Clara Rodriguez Rokusek, president of the Tampa Bay Hispanic Bar Association; and Sumeet Chugani and Tara Rao, president and executive director, respectively, of the South Asian Bar Association of Florida.

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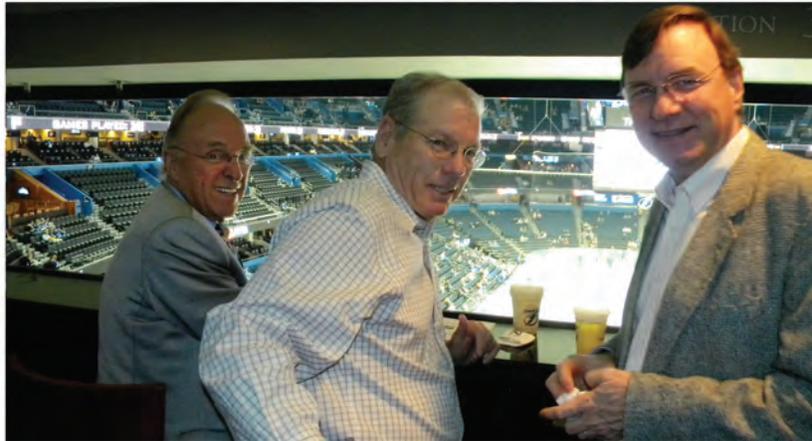
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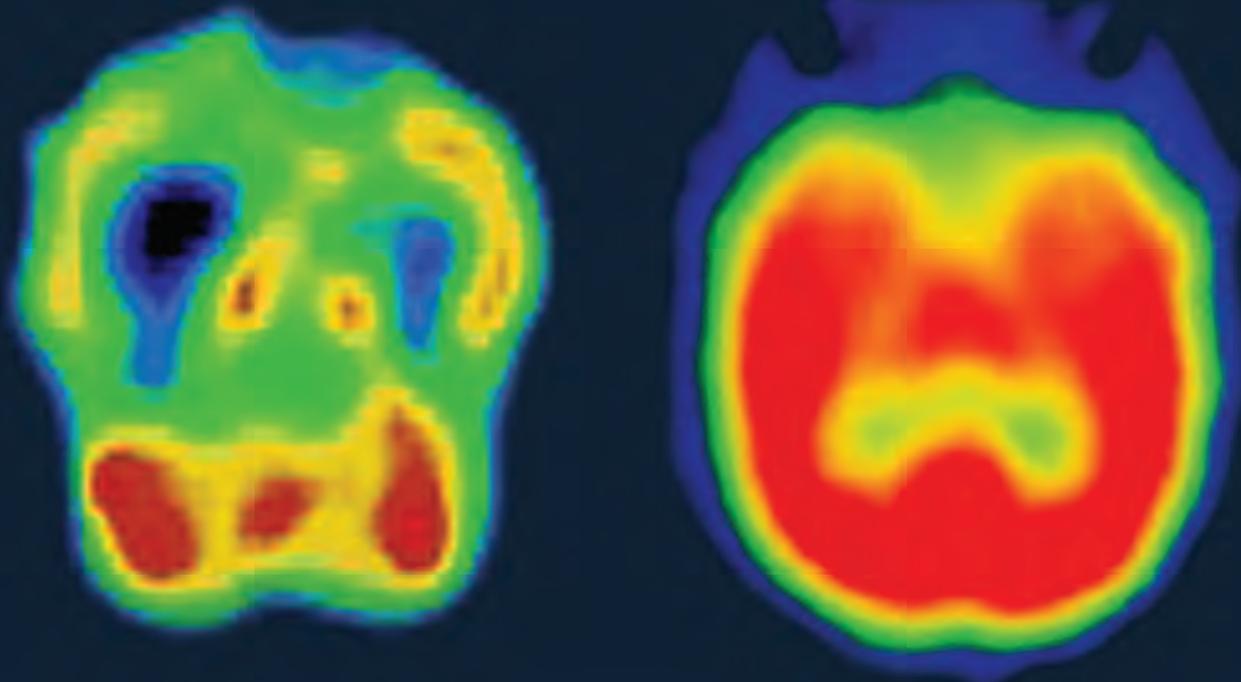
Members and guests enjoyed the HCBA Hockey Night with the Tampa Bay Lightning on February 7, 2012 at the Tampa Bay Times Forum. The crowd erupted as President Pedro Bajo set off the lightning strikes to begin the game!



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IS A TWITTER ACCOUNT A TRADE SECRET?

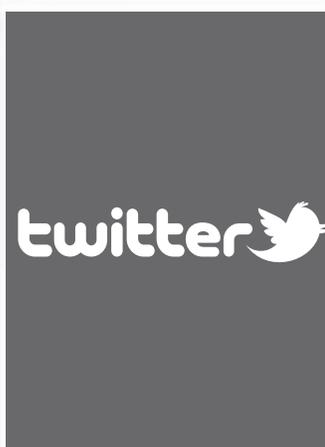
Intellectual Property Section

Chairs: Woodrow H. Pollack, GrayRobinson, P.A., and Dineen P. Wasylik, Conwell & Kirkpatrick, P.A.



the name on the account to his own, @NoahKravitz, and carried on his online conversation.

As of this writing, @NoahKravitz has 24,000+ Twitter followers, a bio that reads "People are not Property. Love over gold," and a lawsuit alleging theft of trade secrets, intentional and negligent interference with prospective economic advantage, and conversion. To invoke Federal Court diversity jurisdiction, Phonedog claims damages of \$2.50 per follower, per month, or \$340,000 over eight months (and growing).



When an employee uses Twitter primarily to talk about their employer, who owns the Twitter account when the employee leaves?

The complaint alleges that the Twitter account's password and "customer list" were trade secrets under the Uniform Trade Secrets Act (USTA). In California, as in Florida, the USTA defines a trade secret as information that derives independent economic value from not being known to the general public and is subject to efforts that are "reasonable under the circumstances" to maintain its secrecy. Kravitz argued in a motion

to dismiss that the list of followers could not be trade secret because

Continued on page 35

What happens when a popular employee, who also happens to be a prolific user of social media site Twitter.com on your behalf, leaves your employment? For mobile phone review website Phonedog.com, the answer was a lawsuit against their former employee. While employed, Noah Kravitz tweeted under the handle @phonedog_noah, and eventually amassed over 17,000 followers. When he left Phonedog in October 2010, Kravitz contends he had an agreement with them to keep the Twitter account so long as he occasionally tweeted nice things about his former employer. He changed

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IS A TWITTER ACCOUNT A TRADE SECRET?

Continued from page 34

the list of followers is available for viewing in the Internet for all the world to see with a few clicks.

The trial court, however, denied the motion to dismiss the trade secrets claims, for the simple reason that making such determinations required it to go outside the four corners of the complaint. *PhoneDog v. Noah Kravitz*, No. C11-03474-MEJ, 2011 WL 5415612 at *7 (N.D. Ca. Nov. 8, 2011).

It will be quite interesting to see whether the trade secrets claim for the “customer list” of Twitter followers can truly survive — it seems pretty clear that posting the list on the Internet makes it public, and thus not subject to reasonable efforts to maintain its secrecy.

The password to login, however, is another matter. Passwords are generally maintained in secrecy, and there is at least an argument that the account derives independent economic value from having the ability to control it limited by a secret password.

But assuming PhoneDog can overcome the hurdle of proving that Kravitz misappropriated the secret, will it have any value when they are through? Is that value tied to PhoneDog or the personality of Noah Kravitz? PhoneDog may well win its battle but lose the war. If it does succeed in eventually requiring Kravitz to turn over the account, it's highly likely that his followers will “unfollow” in droves. The lesson here for employers: have a clear policy regarding use of your brand in social media handles.

*Author: Dineen P. Wasylik,
Conwell & Kirkpatrick, P.A.*

A One-Trick Pony Should Be Sent Back To The Circus It Came From.



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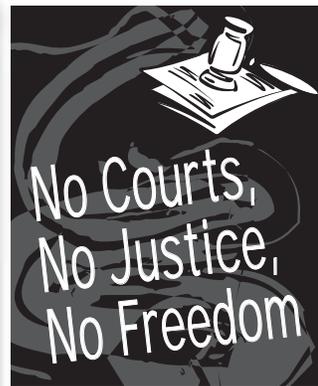
A day in the life of many in our profession involves a constant race to respond to e-mails, attend client conferences, and meet deadlines. In the hustle of everyday life, it may be easy to forget a fundamental principle of why what we do is important: we help provide access to the law, to courts, and to justice for our clients.

This year's Law Week theme, "No Courts, No Justice, No Freedom" aims to shed light on the crucial role our courts play in ensuring access to justice. As such, Law Week 2012 volunteers will educate local youth on the breadth of duties handled by

courts: from balancing deterrence and rehabilitation under criminal law to validating and protecting business contracts under civil law.

Law Week will take place this year from April 30th through May 3rd. Law Week provides opportunities for attorneys all over Hillsborough County to break away from their daily routines to reach out to local students through three different activities: courthouse tours, classroom discussions, and mock trials.

The courthouse tour activity involves leading groups of students through available courtrooms and



In being away from the office for just a short period of time, attorney volunteers have the chance to provide a valuable, practical education to our future leaders.

other areas of the court to give students a glimpse of our judicial system in action. Classroom discussions involve travelling to a local school to lead a class or group of students in a discussion on the law and answer student questions. Finally, volunteers who participate in mock trials team up in groups of three and travel to a local school to work with students in presenting a student-friendly case (such as Goldilocks v.

The Three Bears). Participating schools are located throughout the

Continued on page 37



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The Florida Bar Pro Bono Awards

Continued from page 36

county, and volunteer attorneys are welcome to participate in any of the three activities available.

In being away from the office for just a short period of time, attorney volunteers have the chance to provide a valuable, practical education to our future leaders. It is truly a refreshing and enjoyable experience for both students and volunteers. As any past Law Week volunteer can attest, the enthusiasm of the students they interacted with was incredibly rewarding. The experience was a great reminder of the impact just a small amount of their time could provide.

Please mark your calendars to participate in Law Week 2012. Join your colleagues in teaching local students basic legal principles in a fun and accessible way.

If you are interested in learning more about Law Week 2012 or volunteering as a courthouse tour guide, classroom speaker, or mock trial participant, please contact Young Lawyers Division Law Week Committee Co-Chairs Lauren Raines (lauren.raines@quarles.com), Kevin Elmore (elmomorekevinb@

gmail.com), or Amy Nath (amy.nath@baycare.org).

*Author:
Amy Nath, BayCare
Health System*



Thirteenth Judicial Circuit Judge James M. Barton II was named the 2012 recipient of The Florida Bar Judicial Service Award. The award honoring Judge Barton's outstanding and sustained service to the public, especially as it relates to support of pro bono legal services, was presented by Chief Justice Charles T. Canady.

Rosemary E. Armstrong was the recipient of the 2012 Tobias Simon Pro Bono Service Award, the highest statewide pro bono award, which was presented by Chief Justice Charles T. Canady. The award commemorates the late Miami civil rights lawyer Tobias Simon who was well known as a tireless civil rights attorney.

Adrian J. "Stan" Musial Jr. was honored with The Florida Bar President's Pro Bono Service Award for the Thirteenth Judicial Circuit, presented by President Scott G. Hawkins. The award recognizes those who make public service commitments and provide substantial volunteer services to those who cannot afford legal fees.



Judge Barton



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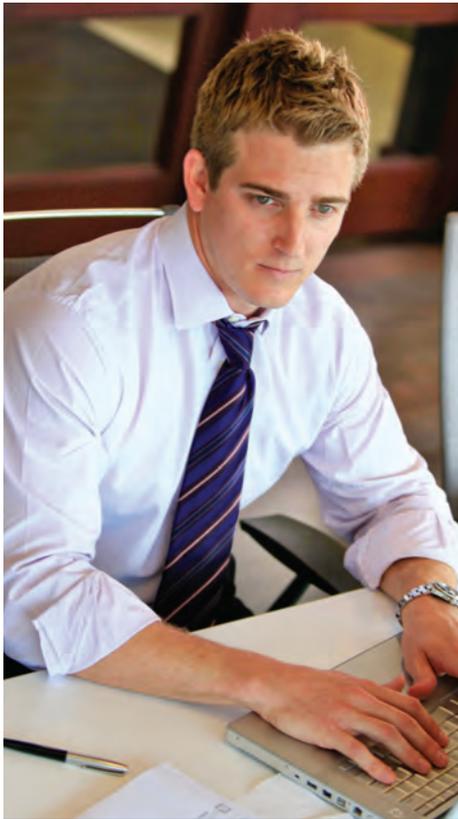
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Children, Autism, and Divorce: Special Considerations for Family Law Professionals

The number of reported cases of children diagnosed with autism has increased dramatically over the past ten years. This increase is largely attributable to changes in diagnostic practices, referral patterns, availability of services, age at diagnosis, and public awareness.¹ Autism is a disorder of neural development characterized by impaired social interaction and communication and by restricted and repetitive behavior. These signs all begin before a child is three years old.² The signs usually develop gradually, but some autistic children first develop more normally and then regress. Autism is a lifelong disorder; however, early behavioral or cognitive intervention is critical and can help autistic children gain self-care, social, and communication skills.³

Due to its increased incidence, it is important that family law professionals become aware of the characteristics involved with this disorder. More importantly, family law professionals should consider the demands placed upon families with autistic children and how this may impact the development of parenting plans. In addition to the

typical custody factors that are considered in determining time sharing arrangements, family law professionals might consider additional important factors in working with cases involving autistic children.

It is significant to examine each parent's acknowledgement and acceptance of the child's autism diagnosis, as opposed to a denial of the condition. Family law professionals should observe each parent's role in obtaining early intervention and therapy for the child and the reasons for any delay. It is also important to look at each parent's ability to reinforce and follow through on daily recommended behavioral interventions for the autistic child and the level of parental participation.

As the manifestations of autism cover a wide spectrum, parents often seek education on the disorder. Therefore, family law professionals might review each parent's history of increasing his or her education on the needs of an autistic child, by attending seminars, joining autism support groups, and seeking professional assistance. It is also important to consider each parent's history of willingness and ability to be an advocate for the child.

Parents of children with autism often have higher levels of stress.⁴ Family law professionals should think about each parent's ability to handle the emotional and psychological stress involved with

Family law professionals should consider the demands placed upon families with autistic children and how this may impact the development of parenting plans.

raising an autistic child on a daily basis. Each parent should have an understanding and appreciation of the importance of early, intense intervention and the potential consequences to the child and family if intervention does not take place. Finally, it is also important to consider the

educational needs of the child (either in public or private school) and the availability of interventions in the educational setting.

¹ Fombonne, E. (2009). Epidemiology of pervasive developmental disorders. *Pediatric Research*, 65(6): 591-598; and, Wing L. & Potter D. (2002). The epidemiology of autistic spectrum disorders: Is the prevalence rising? *Mental Retardation and Developmental Disabilities Research Reviews*. 8(3): 151-61.

² American Psychiatric Association. (2000). *Diagnostic and statistical manual of mental disorders* (4th ed., text rev.). Arlington, VA.

³ Myers, S. M., & Johnson, C. P. (2007). Management of children with autism spectrum disorders. *Pediatrics*, 120(5): 1162-1182.

⁴ Montes, G. & Halterman, J.S. (2007). Psychological functioning and coping among mothers of children with autism: a population-based study. *Pediatrics*, 119(5): 1040-1046.



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This is a continuation of the February 2012 Lawyer article.

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for a minor injury communicates the same message. Be on time. If you are late, call. Finally, if you think mediation is a waste, please tell me privately. In most cases, it is mandatory, and your client may be anxious to share his /her perspective in a setting with a neutral facilitating

discussion. When you mind your manners, prepare your client, and

help me help you, something positive usually will result from the mediation.



*Author:
Betsy S. Singer,
Betsy S. Singer, PA*



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A GOOD OFFENSE IS NOT ALWAYS THE BEST DEFENSE

Real Property Probate & Trust Section

Chairs: Eric E. Page, Hill Ward Henderson, and Jordan G. Lee, Shutts & Bowen, LLP



foreclosure filings have increased, so have association lien foreclosure cases. While the number of lien foreclosure cases that associations have been compelled to pursue has grown, the numbers of creative legal defenses asserted by property owners have also increased.

A recent opinion issued

As the Florida real estate market has continued its sharp decline over the last few years, community associations, including homeowners associations, condominium associations and commercial property associations, have struggled along with their members to stay afloat financially. As mortgage defaults and



“...claims for breach of fiduciary duty, while affirmative claims standing on their own, did not constitute valid defenses to the lien foreclosure action...”

by the Third District Court of Appeal highlighted one unit owner’s unsuccessful attempt at defending a lien foreclosure by adopting that well known sports adage: “The best defense is a strong offense!” Specifically, in *Coral Way Condominium Investments, Inc.*

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Continued from page 44

v. 21/22 Condominium Association, Inc., 66 So.2d 1038 (Fla. 3rd DCA 2011), a commercial unit owner objected to the condominium association's efforts to impose and collect a special assessment. The unit owner refused to pay a special assessment that was required to raise funds for the association to pay for damages to common property caused by a pipe that burst in the air conditioning system of the condominium. The unit owner disputed the need and validity of the special assessment. In defense of its position, the unit owner alleged that directors breached their fiduciary duty by squandering funds in the condominium association's accounts, which could have been used to pay for the repairs to the common property in lieu of imposing a special assessment against the unit owners.

While it is common for property owners in association collection cases to protest vigorously the association's legal efforts by citing, among other things, his or her dissatisfaction with association operations, these claims by the unit owner completely failed in the *Coral Way* case. In its decision, the Court noted that a unit owner's duty to pay assessments is conditioned *solely* on whether the unit owner holds title to a condominium unit and whether the assessment conforms to the association's governing documents, as authorized by Chapter 718, Florida Statutes. *Id.* (emphasis added).

When analyzing the unit owner's legal defenses and arguments, the Court in *Coral Way* explained that, if officers and directors of an association act in an unauthorized manner, the unit owners should seek a remedy through elections or, if factually

supported, in an action for breach of fiduciary duty. *Id.* The Court concluded that claims for breach of fiduciary duty, while affirmative claims standing on their own, did not constitute valid defenses to the lien foreclosure action brought by the condominium association and the counterclaim was properly severed from the lien foreclosure.

In light of the *Coral Way* decision and the legal authority cited by the Court in that opinion, property owners have even fewer legal defenses available to them in similar cases. While this may be unfavorable to many struggling unit owners, it is a positive development for those

associations relying on timely payments from their members.



Author:
Sean C. Boynton,
Bush Ross, P.A.

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TITLE 26'S "TAXING" EFFECTS ON BANKRUPTCY: AN OVERVIEW

Tax Law Section

Chairs: Justin J. Klatsky, Owens Law Group, P.A., and V. Jean Owens, Owens Law Group, P.A.



Bankruptcy¹ and federal income taxation are both statute-derived areas of law,² with each respective statute often interweaving itself into the practice area of the other. And while the Internal Revenue Code ("Tax Code") expressly provides cross-references to some relevant portions of the Bankruptcy Code,³ no similar provision exists in the latter. In order to appreciate the full impact of a bankruptcy filing, the Bankruptcy and Tax Codes must be read in conjunction. The purpose of this article is to raise practitioners' awareness of this interplay by suggesting a few examples.

The commencement of a bankruptcy case operates as a stay which prevents, *inter alia*, acts to collect, assess, or recover claims against the debtor, or against property of the estate, that arose prior to commencement of the

case.⁴ Though the stay applies to "all entities,"⁵ certain acts of "governmental units," which would otherwise be violations of the stay, are expressly allowed by law.⁶ Further, while punitive damages may typically be recovered by a debtor for an entity's willful violation of the stay,⁷ punitive damages may not be awarded against governmental units for a similar violation.⁸ Also, bankruptcy courts are without authority to award damages or attorney's fees to a debtor for a violation of the stay committed by the Internal Revenue Service, unless the debtor has first sought administrative relief within the Service.⁹

The bankruptcy stay also prevents tax court petitions from being filed.¹⁰ The 90-day period within which a taxpayer may



In order to appreciate the full impact of a bankruptcy filing, the Bankruptcy and Tax Codes must be read in conjunction.

contest a notice of deficiency¹¹ is tolled during the bankruptcy stay and for 60 days thereafter.¹² Note that, while the stay prevents a tax court petition from being filed to challenge a determination that a taxpayer was not eligible for innocent spouse relief, it has been held that there is no tolling period.¹³ Also note, however, that tax disputes can be handled wholly within a bankruptcy case, as bankruptcy

courts have the authority to determine the amount or legality of any tax or any tax-related fine, penalty, or addition.¹⁴

A bankruptcy debtor may elect to split the taxable calendar year in which the bankruptcy is filed into two shorter tax years.¹⁵ If the debtor makes this election, the first short tax year ends on the day

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Continued from page 46

before the bankruptcy petition is filed, with the second short tax year beginning on the date the bankruptcy commences.¹⁶ The benefits of making this election are two-fold. First, the election shifts the tax liability for the first short tax year onto the bankruptcy estate. Second, the taxpayer will have the opportunity to utilize certain tax attributes in the first short tax year, such as net operating loss carryovers, rather than lose them to the estate.¹⁷ In order to make this election, there must be a separate taxable estate,¹⁸ and there must be assets available for liquidation.¹⁹ A spouse may join in this election, even if the spouse did not jointly file the bankruptcy.²⁰

Keep in mind that there are many more instances which are beyond the scope of this article. Each situation is different, so advice from a bankruptcy or tax attorney, or both, should be consulted for specific advice.

¹ Any reference to "bankruptcy" within this article shall be a reference to federal bankruptcy cases commenced under Title 11 of the United States Code.

² Titles 11 and 26 of the United States Code, respectively. Any reference to "I.R.C." is a reference to Title 26 of the United States Code.

³ I.R.C. § 7437.

⁴ See generally 11 U.S.C. § 362(a).

⁵ *Id.* § 362(a).

⁶ *Id.* §§ 362(b)(9)(A)-(D).

⁷ *Id.* § 362(k)(1).

⁸ *Id.* § 106(a)(3).

⁹ *In re Kight*, 460 B.R. 555, 565-66 (Bankr.M.D.Fla. 2011) (citing I.R.C. §§ 7430 and 7433(e)).

¹⁰ 11 U.S.C. § 362(a)(8).

¹¹ I.R.C. § 6213(a).

¹² *Id.* § 6213(f)(1).

¹³ *Drake v. Commissioner*, 123 T.C. 320 (U.S.Tax Ct. 2004).

¹⁴ 11 U.S.C. § 505(a).

¹⁵ I.R.C. § 1398(d)(2)(A).

¹⁶ *Id.* §§ 1398(d)(2)(A)(i)-(ii).

¹⁷ *Id.* § 1398(g).

¹⁸ *Id.* § 1398(a).

¹⁹ *Id.* §§ 1398(a) and (d)(2)(C).

²⁰ *Id.* § 1398(d)(2)(B).



Author: Joseph B. Battaglia, The Golden Law Group

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CLASS ARBITRATION UPDATE: NLRB RULES

Trial & Litigation Section

Chair: J. Daniel Clark, Clark & Martino, P.A.



After the U.S. Supreme Court's decision in *AT&T Mobility v. Conception*¹ that mandatory arbitration agreements precluding class arbitration are enforceable, there has been a growing trend of employers using such arbitration agreements to prevent class arbitration of employment-related disputes.

On January 6, 2012, the National Labor Relations Board ("Board") handed down a decision that effectively holds that *AT&T Mobility v. Conception* **does not** apply to certain rights in the employment context. The Board is the federal agency that enforces the National Labor Relations Act of 1935 ("NLRA"), which gives employees the right to self-organize, join and assist labor organizations, bargain collectively, and engage in concerted activities for collective bargaining or for the

mutual aid or protection of employees.² The NLRA makes it an unfair labor practice for **any** employer, except federal, state governments and others subject to the Railway Act,³ to interfere with, restrain or coerce employees for exercising their rights under the NLRA.⁴

Significantly, the Board's attack on mandatory arbitration agreements affords employees another legal theory for challenging such agreements that exclude class claims. The Board expressly held that mandatory arbitration agreements (other than those negotiated in collective bargaining agreements) requiring the waiver of class claims in any forum constitute an unfair labor practice and violate the NLRA.⁵ The Board said, "Employers may



The Board's attack on mandatory arbitration agreements affords employees another legal theory for challenging such agreements that exclude class claims.

not compel employees to waive their NLRA rights to collectively pursue litigation of employment claims in **all** forums, arbitral and judicial."⁶

The ruling was the result of Michael Cuda filing an unfair labor practice against his employer, a home builder, who forced all employees to sign an arbitration agreement requiring that all employment-related disputes be resolved through individual arbitration and waiving the right to a judicial forum.⁷ Cuda attempted to bring a collective action under the

Fair Labor Standards Act, and the employer maintained that the arbitration agreement Cuda signed prohibited class claims in any forum. Cuda claimed that this practice violated the NLRA because it

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YLD STATE COURT TRIAL
June 15, 2012, 1:00 p.m. - 5:00 p.m.
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CLASS ARBITRATION UPDATE: NLRB RULES

Trial & Litigation Section

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interfered with employees' rights to engage in concerted activities for the purpose of mutual aid or protection of all employees. In other words, the arbitration agreement interfered with the employees' rights to join collectively to bring class claims against their employer to improve the terms and conditions of their employment. In the Board's eyes, such a mandatory arbitration agreement unlawfully circumvented employees from exercising their rights to engage in concerted activities.

Notably, the Board's decision does not limit the forum in which class actions may be brought; it only seeks to preserve employees' inherent rights collectively to join litigation to improve the terms and conditions of employment, regardless of whether the action is filed in arbitration or in court.

Given the Board's current stance, plaintiff's employment law practitioners should zealously defend against arbitration agreements that unlawfully infringe upon employees' abilities to engage in concerted activities to resolve employment disputes collectively.

¹ *AT&T Mobility v. Concepcion*, 131 S.Ct. 1740 (2011).

² 29 U.S.C. §157.

³ 29 U.S.C. §152(2).

⁴ 29 U.S.C. §158.

⁵ *D.R. Horton, Inc. & Michael Cuda*, 357 N.L.R.B. 184 (2012).

⁶ *Id.*

⁷ *Id.*



Author: Yvette D.
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Shannon M. Sheppard has joined **Brickleymyer Smolker & Bolves, P.A.**, a law firm concentrating in real estate and property rights representation, as an Of Counsel attorney.

Carlton Fields is pleased to announce that **Andrew W. Lennox** and **Thomas "T.J." Ferrante** joined the firm as shareholder and associate, respectively. Mr. Lennox is a member of the firm's Bankruptcy and Creditors' Rights practice group, and Mr. Ferrante is a member of the firm's Healthcare practice group.

Michael G. Cooke, the former Director of the Division of Air Resource Management for the Florida Department of Environmental Protection, and former General Counsel of the Florida Public Service Commission, has joined the Tampa office of international law firm **Greenberg Traurig**. He joins as an Of Counsel in the firm's Environmental practice group.

The law firm of **Shumaker, Loop & Kendrick, LLP** is pleased to announce that **Kelly A. Zarzycki** has been named partner. She practices primarily in business law with a concentration in health law, corporate matters and litigation.

Adams and Reese Partner **Richard Malchon** has been elected to serve on the Board of Directors of the St. Petersburg Free Clinic, which for more than 40 years has provided temporary assistance to those requiring help with basic needs such as food, shelter, medical care, limited financial assistance, and referral information.

Adams and Reese attorney **Kenneth Curtin** has been appointed to the Governance and Ethics Committee of the Board of Directors of the Glazer Children's Museum.

Julie Sneed of Fowler White Boggs has been elected president of the Tampa Bay Chapter of the Federal Bar Association.

Phelps Dunbar attorney **Kamilah L. Perry** was recently appointed by Mayor Bob Buckhorn to serve on the Mayor's African American Advisory Council.

Brickleymyer Smolker & Bolves P.A. is pleased to announce that **Clayton Brickleymyer** has been made a shareholder. Brickleymyer concentrates his practice in the area of real estate development.

Jill K. Schmidt has joined **Murnaghan & Ferguson, P.A.** as an associate focusing on all aspects of civil litigation with an emphasis on highway construction litigation, product liability, and wrongful death defense.

Adams and Reese Partner **Louis Ursini III** has been selected Partner in Charge of the firm's Tampa office.

Trenam Kemker is pleased to announce that **Jason Baruch** has received the rating of AV Preeminent from Martindale Hubbell.

The Law Firm of **Shutts & Bowen LLP** is pleased to announce the naming of **Peter Franke, Jordan Lee, Nicole Deese Newlon, and Michael P. Silver** as new partners.

Keith W. Brickleymyer of **Brickleymyer Smolker & Bolves, P.A.** has been honored by American Registry in its selection of America's Most Honored Professionals of 2011.

Hill Ward Henderson is pleased to announce the election of three new shareholders **Christopher S. Branton, Allison E. Campbell** and **J. Scott Slater**. Branton practices in the firm's Litigation Group, and his practice includes Products Liability and Commercial Litigation. Campbell practices in the firm's Real Estate Group with a focus in Acquisition and Development as well as Real Estate Finance. Slater practices in the firm's Litigation Group with an emphasis in Professional Liability and Commercial Litigation.



answer for about the cover

Prior to closing in 1974, the building featured on the cover served as the federal courthouse in Tampa. The next time you walk or drive by the structure located at 601 N. Florida Avenue, take a moment to enjoy the architectural detail.

April 2012

HCBA Calendar of Events

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3 12:00 p.m. Criminal Law Lunch & CLE	4	5 7:00 - 9:00 a.m. Ask-A-Lawyer Fox 13	6	7
8	9	10 12:00 - 1:30 p.m. Judicial Luncheon CLE	11 12:00 p.m. Health Care Lunch & CLE	12 12:00 p.m. Real Property Probate & Trust Lunch	13	14 10:00 a.m.- 2:00 p.m. YLD Steak & Sports Day (TBD) 1:00 - 4:00 p.m. Diversity Picnic (HCBA)
15	16	17 12:00 p.m. Trial & Litigation Quarterly Luncheon	18. 12:00 p.m. Labor & Employment Luncheon 1:00 - 5:00 p.m. Labor & Employment CLE	19 12:00 p.m. Construction Lunch & CLE	20	21
22	23	24	25 8:00 a.m. - 6:00 p.m. Thompson Studios Membership Directory Photos	26 8:00 a.m. - 6:00 p.m. Thompson Studios Membership Directory Photos 1:00 - 3:00 p.m. CLE with American Assn of Legal Nurse Consultants	27 3:00 - 4:00 p.m. New Admittee Swearing-In (George Edgecomb Courthouse)	28
29	30					

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JURY TRIAL INFORMATION

For The Month of: January 2012.
Judge: Honorable James D. Arnold.
Parties: Joyce Henderson
Hightower vs. Bentley Systems,
Inc., Ignacio DeAlmagro, III.
Attorneys: For Plaintiff:
Timothy F. Prugh; For Defendant:
Levi Gardner.
Nature of Case: Disputed liability
in collision at intersection;
neck surgery. Offer of
\$200,000.00 before trial.
Verdict: \$365,000.00.

For The Month of: January 2012.
Judge: Honorable Becky A. Titus
(Sarasota County Circuit Court).

Parties: Valda Nadine Morgan vs.
Wilbur E. Bakke III, DDS.
Attorneys: For Plaintiff: James
Randolph Quick; For Defendant:
Charles D. Baval.
Nature of Case: Dental malpractice
alleging negligent placement
and design of dental implants
and prostheses.
Verdict: For the defense on all
counts; motion for fees and
costs for rejecting proposal
for settlement is pending.

For The Month of: January 2012.
Judge: Honorable David A. Demers.
Parties: Mark A. Horne vs. World

Publications, LLC, Terry Snow,
and Bonnier Corporation.

Attorneys: For Plaintiff: G. Donovan
Conwell, Jr. and Brent J. Gibbs;
For Defendant: Michael Crosbie
& Eric Adams.

Nature of Case: Fraud and
breach of contract regarding
Internet fraud.

Verdict: \$5.5 million to Plaintiff
on claim of fraud, \$6 million
in punitive damages, and \$4
million on claim of breach
of contract.

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For the month of: _____

Judge: _____

Parties: _____

Attorney(s) for Plaintiff: _____

Attorney(s) for Defendant: _____

Nature of Case: _____

Verdict: _____

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May 2012

HCBA Calendar of Events

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1 12:00 p.m. Senior Council Lunch 12:00 p.m. Workers' Compensation	2 12:00 p.m. Appellate Law Lunch 12:00 p.m. Environmental Land Use Lunch & CLE 1:00 p.m. Appellate Law CLE	3 7:00 - 9:00 a.m. Ask-A-Lawyer Fox 13	4	5
6	7	8 12:00 p.m. Membership Luncheon (Hyatt) 1:00 p.m. Trial Lawyer CLE (Hyatt)	9 12:00 p.m. Intellectual Property Lunch	10 12:00 p.m. Real Property Probate & Trust Lunch & CLE	11	12
13	14 Supreme Court Swearing-In (Washington DC)	15 12:00 p.m. Judicial Luncheon CLE 12:00 p.m. Tax Lunch & CLE	16 12:00 p.m. Family Law Quarterly Lunch 12:00 p.m. Mediation & Arbitration Lunch 1:00 p.m. Mediation & Arbitration CLE	17 12:00 p.m. Construction Law Lunch & CLE 12:00 p.m. Corporate Counsel Lunch	18	19
20	21	22 12:00 p.m. YLD Quarterly Luncheon	23 9:00 a.m. Lawyers for Literacy Head Start Centers	24	25	26
27	28 Memorial Day HCBA Office Closed	29	30 12:00 p.m. Trial & Litigation Quarterly Luncheon	31		

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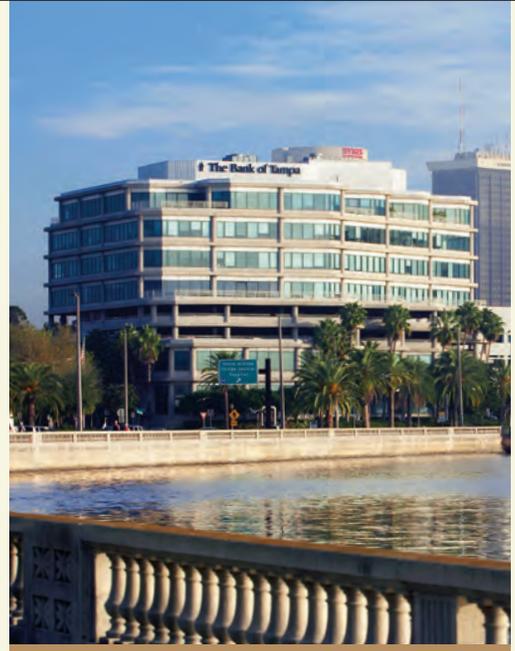
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