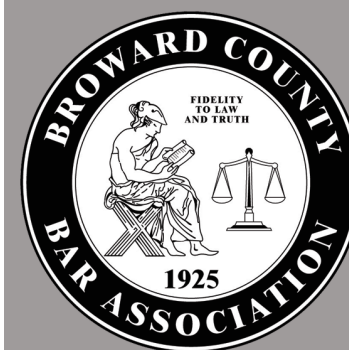




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# Broward County Bar Association BARRISTER

November 2008

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VOLUME 39, ISSUE 10

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## PRESIDENT'S MESSAGE by Christopher M. "Chris" Neilson

It's hard to believe that November and the Holiday Season are already upon us once again. It seems like summer just flew by, with all of its attendant heat, humidity, rain and accompanying storms. As I write this article in advance of our publication deadline, I am so grateful for the first real hint of fall which is in the air, and it feels just great...drier and cooler for the first time in many months. What a relief!

You don't know what you don't know. To provide just a little bit of insight, our Officers meet in Executive Committee in advance of our monthly Board Meetings. Since BCBA has grown to such a formidable organization, there is much which needs to be discussed at these meetings, which have been averaging around 3 hours, so with travel time it is a half-day. I just wanted to again thank our Executive Committee for all of their voluntary unpaid hard work and dedication.

Our Board meets monthly, and the meetings usually last over an hour, after work, so with travel time you can count on two to three hours. So, again, I just wanted to again thank the entire BCBA Board of Directors, and staff, for their efforts. I would be remiss if I did not include our Executive Director, Mr. Art Goldberg and his entire staff, since they somehow always seem to magically put it all together in time for our Board meeting. And when I say put it together, believe me, with over two dozen board members and multiple documents coming in at the last minute to review it is no small task.

Thanks to our Secretary Jordana Goldstein, who prepares great minutes, which, in order to save time at our meetings, are emailed to our Board to review in advance. Thanks to our Treasurer Bruce Weihe, who spends hours meticulously reviewing our finances with our bookkeeper Tish Guiffreda (thanks Tish). They are continuing to improve upon the demands of our growing organization. And much thanks to our workhorses, President-Elect Carlos Llorente and Past President Barbara Sunshine who are always willing to jump in with both feet and help on any and all projects. And, I wanted to again thank our members for voting to bifurcate our Secretary and Treasurer into two separate positions, which is working out fantastically.

We held our October Board meeting last evening, and the Board unanimously approved the long overdue cleaning and sealing and painting of our two buildings. Thanks to our Building Chair Deborah FitzGerald, Barbara Sunshine, Donna Benckenstein, and our Decorator Irene-Eva Absher for their suggestions for improving the look of BCBA and for taking bids and recommending the colors to paint BCBA. Thanks to their recommendations and shopping, we now

have a nice new couch to complete the entrance/waiting area in our front building, as well as a nice surprise color scheme to paint our buildings. We spoke with the painter today, and the project should begin, weather permitting, within the next week or so. We hope to have all of the work completed well before Thanksgiving and our Holiday Party, which will be held on December 12<sup>th</sup> at 5 p.m.

The Board also approved building a 6 foot shadow-box wooden fence on the south side of the Norma B. Howard center. The fence will not only protect our property from theft and vandalism, but also comply with the code requirement of keeping our new generator sheltered from sight. The fence will also prepare and expand that part of the property to utilize for future events. Art Goldberg has obtained fence estimates, and actually saved us around \$1000 by shopping around.

On September 23rd, we honored all of our BCBA Section and Committee Chairs with a lunch meeting at BCBA.

Again, on October 2nd, we honored all of the Broward County Voluntary Bar Leaders with a lunch meeting at BCBA. It was great to have everyone attend these events, where we discussed ways to continue to improve services and benefits to our members and the citizens of Broward County. We provided everyone with a master calendar for the upcoming year for planning purposes, and encouraged everyone to use our website calendar for planning events, and to provide to us any dates they may plan for inclusion in our Barrister and on-line calendars.

In November we will be hosting a BCBA Past President's lunch meeting. In addition to honoring our volunteers for their service, these events prove worthwhile and provide priceless ideas and input to continue to improve BCBA from the legacy of our leaders' brain-trust.

On Oct. 16, 2009, we will again be having our Quadrennial BCBA Bench and Bar Conference at the Broward County Convention Center, which offers a full day of CLEs, Seminars, Breakfast, Lunch, Reception, Exhibitors, door prizes, etc. Our last event was held there in October 2005, the Friday before Hurricane Wilma hit us here, and even then was still so popular that it was attended by 500 judges and lawyers. We hope to have closer to 1000 attend next year. I have already met with all of the Section and Committee Chairs, and requested that they begin planning seminars to showcase their areas.

Thanks to Bench and Bar Committee Chair Michael Fischler, Sponsorship/Exhibitor Chair Robin Moselle, Past Convention

*Continued on Page 3*

## CALENDAR OF EVENTS

NOVEMBER 2008

### Saturday, November 1st:

The 5th Annual Minority Mentoring Picnic. Amelia Earhart Park. 401 E. 65th St. in Hialeah.

### Saturday, November 1st:

Twenty First Annual Young Lawyers Charity Golf Tournament. Sponsored by: The Broward County Bar Association Young Lawyers Section. Proceeds to Benefit: Healthy Mothers, Healthy Babies Coalition of Broward County, Inc. For more information contact: David Hirschberg at (954) 967- 5458 or email DLH@MJALAW.NET.

### Thursday, November 6th:

South Broward Bar Association Luncheon. Noon. The Ark Restaurant in Davie. Speaker: Paul Finizio.

### Thursday, November 6th:

The Florida Bar Continuing Legal Education Committee and the Real Property, Probate and Trust Law Section Present: ABC's and XYZ's of Guardianship Seminar. CLE Credits: General: 6.5 Hours, Ethics: 1.0 Hour. Hyatt Pier 66, 2301 SE 17th St. Ft. Lauderdale, 33316. 8:30a.m.- 5:00p.m. To register log on to [www.floridabar.org/CLE](http://www.floridabar.org/CLE).

### Tuesday, November 11th:

BCBA Board of Directors Meeting. Norma B. Howard Center. 1051 SE 3rd Ave, Ft. Lauderdale.

**Wednesday, November 12th:** Solo/ Small Law Firm Dinner. At Dave and Busters, 3000 Oakwood Boulevard, Hollywood, FL 33020. 6:00p.m. Cocktail, 7:00p.m. Dinner. \$35.00 Members, \$40.00 Non-members.

### Wednesday, November 12th:

The Florida Bar Continuing Legal Education Committee and the Real Property, Probate and Trust Law Section present: Asset Protection in Florida. CLE Credits: General: 6.0 Hours, Ethics: 0.5 Hours. 8:30a.m.- 4:30p.m. Hyatt Pier 66, 2301 SE 17th St. Ft. Lauderdale, 33316. To register log on to: [www.floridabar.org/CLE](http://www.floridabar.org/CLE).

### Wednesday, November 12th:

1st Annual Elder Law Forum. 1:00p.m.- 4:30p.m. Classic Residence by Hyatt in Boca Raton, 22601 Camino Del Mar. 561-416-2724. Registration: \$20.00 by November 5, \$25.00 if received after November 5, 2008. Contact Leslie Lautin Davis 561-750-3850. Or email at LDavid@ElderLawAssociates.com.

### Thursday, November 13th:

Workers Comp Section Meeting, Noon. \$10.00 for lunch. Broward County Bar Association. RSVP to Rich Wagenheim, [richw@sportsinjurylaw.com](mailto:richw@sportsinjurylaw.com).

### Thursday, November 13th:

Broward County Hispanic Bar Association, Appreciation Luncheon. 11:45 a.m. Riverside Hotel, 620 Las Olas Blvd. Ft. Lauderdale, FL 33301. Admission: \$25.00. RSVP by November 10th to: [Carmen@Velasquez-Law.com](mailto:Carmen@Velasquez-Law.com).

### Friday, November 14th:

Managing Critical Elements of E Discovery, 1:00p.m. Lunch included. \$10.00. One hour CLE. Norma B. Howard Bar Center. RSVP to BCBA at (954) 764-8040 x 202 or 210.

### Friday, November 14th:

Raising the Bar Family Law Seminar. Full day with Judges and General Magistrates. Fort Lauderdale Renaissance Hotel. RSVP to BCBA at (954) 764-8040. Sponsorship opportunities available.

### Sunday, November 16th:

Broward County Justice Association's Family and Friends Picnic at Tree Tops Park in Davie. Noon – 5:00p.m. For more information contact Laura Silverman at 954-522-1662 or visit [www.browardjustice.net](http://www.browardjustice.net).

### Tuesday, November 18th:

Bench and Bar Committee Meeting. Noon. At the Broward County Bar Association. 1051 SE 3rd Ave, Ft. Lauderdale.

### Tuesday, November 18th:

Fourth DCA Judicial Reception. 110 Tower, 7th Floor Atrium. 110 SE 6th Street. 4:00- 6:00p.m. Cost: \$35.00. Hosted by Broward County Bar Association. For more information contact Art Goldberg at 954-764-8040.

### Thursday, November 20th:

Construction Law Committee meeting. 12:00p.m.- 1:30p.m. At Norma B. Howard Center, 1051 SE 3rd Ave, Ft. Lauderdale. Lunch will be served at the cost of \$10.00. RSVP to [lcherubin@Smithcurrie.com](mailto:lcherubin@Smithcurrie.com). Members and non-members are welcome. For more information contact Brian A. Wolf, Chair at (954) 761-8700.

### Friday, November 21st:

The Broward County Chapter of the Federal Bar Association is hosting the First Biennial Southern District of Florida Bench and Bar Conference. At The Westin Diplomat Resort & Spa, Hollywood, Florida. For registration and more information visit: [www.sfcfba.org](http://www.sfcfba.org). Registration Fees: \$150 for FBA Members; \$185 for Non-Members; \$35 for Public Sector Lawyers; FREE for Judicial Officers.



# Lawyers in the LIMELIGHT

**Richard J. Fidei of Colodny, Fass, Talenfeld, Karlinsky & Abate** in Ft. Lauderdale has been elected vice president of the Gulf States Chapter of the Association of Insurance Compliance Professionals.



**Rae E. Chorowski, Esquire, of Chorowski & Moore, P.A.** in Fort Lauderdale, has been appointed to serve on the Board of Directors of Legal Aid Service of Broward County, Inc. and Coast to Coast Legal Aid Service of Florida, Inc.

**Leisa Morrill-Wintz, MS, JD,** named a 2008 Equal Justice Works Fellow by Equal Justice Works and the Florida Bar Foundation, has launched a unique project, the Broward Teen Advocacy Project (BTAP), it was announced by Barbara Prager, Executive Director, Coast to Coast Legal Aid of South Florida (CCLA), the administering agency for the project that Ms. Wintz designed.

**Ann Siegel, Esq.,** Senior Attorney, Education Legal Rights Project, a project of the Children’s Advocacy Unit, Legal Aid Service of Broward County (LAS), has been selected as the 2008 Disability Awareness Award recipient for the category of “Advocate of the Year.”

## Lawyers on the move

**Stephen C. Hunt** joined **Arnstein & Lehr** in Ft. Lauderdale. Hunt joins as a partner and will focus his practice in the areas of bankruptcy, creditors’ rights, and business litigation.

**Adorno & Yoss** in Ft. Lauderdale has added seven telecommunications industry litigation attorneys.

The Law Firm of **GrayRobinson** recently added two acclaimed shareholders to its Ft. Lauderdale office- **Howard M. Camerik** and **Steven A. Lessne**- bringing the office to a total number of 15 shareholders.

**Brandan J. Pratt** has become an associate with the law firm of **Miller & O’neill**. Pratt will focus his practice in the areas of Estate, Trust, Guardianship and Fiduciary Litigation.

**Kerstin Henze** has joined the law firm of **Patrick J. Murphy & Associates, P.A.** in Deerfield Beach and Naples, Florida concentrating in the areas of Trusts, Wills, Family Law and Estate Planning.

## BARBARA K. SUNSHINE FOR THE FLORIDA BAR BOARD OF GOVERNORS



**Barbara has proven her commitment and dedication to the members of the Broward County Bar Association by serving as a Director since 1997.**

**Barbara was President of the Broward County Bar Association from 2007-2008; she served as President-elect from 2006-2007, and was elected Secretary-Treasurer for the term 2005-2006.**

***“I will bring my leadership and energy to The Florida Bar if elected to Seat 5 of the Board of Governors, Seventeenth Judicial Circuit.”***

**Ballots will be mailed on or before March 1, 2009.**

Chair M. Ross Shulmister, as well as to the entire Bench Bar Committee, who have already begun planning and working on this event, by booking the Broward County Convention Center, developing a theme, acquiring Sponsors and Exhibitors, planning the program, searching for a keynote speaker, etc. Save the date now, and don’t miss this one!

Our Association is heavily driven by membership dues. I have appointed Ed Holodak as Membership Chair, and have implemented new area Co-Chairs, who are: for the Southeast, Michele Cavallaro; West, Michael Vines; Southwest, Diana Santa Maria; Central, Edwina Kessler; Northwest, Jorge Hurtado; and Northeast, Patrick Giunta.

Actually, we are all responsible for recruiting new members, to help our great organization to grow and flourish. We need to restore the image of our profession, and we can accomplish much more with more members. With around 8,000 lawyers in Broward County, we are fortunate that approximately 2,500 are currently members. Frankly, I honestly believe that all 8,000 should be members. We are all ambassadors of BCBA. Please take the time to speak to others about joining BCBA. It is as easy as small talk while waiting in line to go into the Courthouse. Ask the attorneys next to you if they are members of BCBA, memorize our phone number 954-764-8040, and write it down on your card for them and tell them to ask for our Executive Director Art Goldberg (or anyone else) and to introduce themselves, or just ask them to go to [www.browardbar.org](http://www.browardbar.org) to apply. They can even charge it to their American Express card!

While we are a voluntary Bar Association, I believe we have an obligation to continue to improve our profession as well as to give back to it. BCBA offers so much, by way of serving our community (i.e. we provide necessary Guardianship Courses) and our members (i.e. we provide seminars for necessary CLEs). BCBA also offers our Lawyer Referral Program, which helps the public locate an attorney as well as our members to obtain new clients. BCBA helps and supports Broward County Legal Aid which, I have been advised, we actually created 35 years ago.

BCBA has numerous events to network with our members in all practice areas, has a fabulous Holiday Party and Annual Dinner, as well as other signature events. BCBA provides members with our great Barrister monthly magazine, which is full of good information. BCBA also offers our members an opportunity to make a difference by becoming involved in our many sections, committees, and events.

On a personal note, I can say that BCBA has absolutely helped me to continue to develop both personally and professionally, and to make numerous great friends. I am

pleased to say that we have revised our web site and now provide a master calendar for all Broward County Bar Associations for planning purposes. It is so very personally rewarding to know that you can make a difference, and to contribute to a worthwhile cause.

We are in the process of finalizing a review and revision of the BCBA Associate Member program, including screening of potential members. After all, as attorneys, BCBA regular members have all been screened by The Florida Bar. We would really like to expand our Associate Member program with our revised procedures, which we expect to happen very shortly!

All the best! Chris



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RECENT DEVELOPMENTS IN THE LAW

by Nancy Little Hoffmann

**1.Criminal Law/Miranda Warning**  
**State v. Powell,**  
33 Fla. L. Weekly S778 (Fla.  
September 29, 2008)

The Supreme Court, answering a certified question from the Second District, has held that the failure to unequivocally inform a defendant of the right to have counsel present during custodial questioning violates Miranda as well as the Florida Constitution. A suspect must be clearly informed of the right to have a lawyer present during questioning, and merely advising that he has the right “to talk to a lawyer before answering any of our questions” was impermissibly narrow. The Supreme Court further held that its decision was not to be applied retroactively to cases that were already final on the date of the opinion.

**2.Economic Loss Rule/Pollution Damages**  
**Curd v. Mosaic Fertilizer, LLC,**  
33 Fla. L. Weekly D2193 (Fla. 2nd DCA September 17, 2008).

The Second District has certified to the Florida Supreme Court the question of whether commercial fishermen can recover for economic losses proximately caused by the defendant’s negligent release of pollutants, despite the fact that the fishermen do not own any property damaged by the pollution. The court also certified the question of whether section 376.313, which regulates the discharge of pollution, affords such a cause of action. The Second District held that since the fishermen do not own the fish, nor were they bodily injured by the pollution, the fertilizer company owed the fishermen no duty. Recognizing that the issues were of great public importance, the court certified them so that they could be reviewed by the Supreme Court, further noting that the legislature could act to redress the situation.

**3.Evidence/Spontaneous Statement**  
**Deparvine v. State,**  
33 Fla. L. Weekly S784 (Fla. September 29, 2008).

In affirming a conviction of first degree murder, both the majority and dissenting justices engaged in a lengthy discussion of the spontaneous statement exception to the hearsay rule. The majority rejected the view that startling event is necessary in order for the spontaneous statement exception to apply, holding

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that such a requirement is contrary to the underlying principles embodied in the evidence code.

**4. Legal Malpractice/Abandonment by Failure to Appeal**  
**Technical Packaging, Inc. v. Hanchett,**  
33 Fla. L. Weekly D2305 (Fla. 2nd DCA September 26, 2008).

After losing a summary judgment in federal court based on the statute of limitations, the client did not appeal but instead sued its counsel for malpractice. Counsel raised the defense of abandonment, claiming that by not appealing the adverse judgment the client had waived any malpractice claims. After surveying the cases on this subject, the Second District reversed, holding that counsel had the burden of establishing that an appeal by the client in the underlying lawsuit “in all likelihood” would have ended in the client’s favor. The court rejected the argument that complete appellate review of the underlying litigation is a condition precedent to every legal malpractice action.

**5.Settlement/Assignment of Cause of Action**  
**Wachovia Insurance Services, Inc. v. Toomey,**  
33 Fla. L. Weekly S770 (Fla. September 29, 2008).

Answering a certified question from the Eleventh Circuit, the Supreme Court upheld the validity of a settlement agreement between two parties that simultaneously assigned causes of action against a third party insurer and releases the insured on the same causes of action. The court held that under the settlement, the assignees could bring those causes of action against the insurer and would not be barred by Fidelity & Casualty Co. of N.Y. v. Cope, 462 So. 2d 459 (Fla. 1985).

*Nancy Little Hoffmann is a Board-Certified Appellate Lawyer practicing in the Fort Lauderdale area since 1974. She may be contacted at 954-771-0606 or by e-mail at NLHappeals@aol.com.*

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## ***Broward County Bar Association's Young Lawyers Section Lunches***

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December 11, 2008**

**Chief Judge Tobin  
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## **AMENDED § 61.13, FLA. STAT. (2008) EXPANDS SHARED PARENTAL RESPONSIBILITY AND DIGNIFIES THE PARENTING PROCESS BETWEEN DIVORCING PARENTS**

by Jorge E. Hurtado

Effective October 1, 2008, the Florida legislature eliminated undesired terminology in Chapter 61 that defined parental relationships between divorcing parents and their children, and replaced it with positive phraseology and substantive changes in its enactment of the new Florida parenting plan law. Prior to its effective date, Florida had § 61.13, Fla. Stat. (2007) "Custody and support of children; visitation rights; power of court in making orders." Now we have for analysis amended § 61.13, Fla. Stat. (2008) "Support of children; parenting and time-sharing; powers of court."

The new law makes significant changes to numerous sections of the Florida Statutes related to custody, visitation, and child support. For example, it redesignates Chapter 61, Florida Statutes, as "Dissolution of Marriage; Support; Time-Sharing." More significantly, it deletes definitions of the outdated terms "custodial parent," "primary residential parent" and "noncustodial parent," and further creates a definition for new terms such as "Parenting plan," "Parenting plan recommendation" and "Time-sharing schedule." The new law amends all applicable sections of Chapter 61, Part I, to delete the terms "custodial parent" and "noncustodial parent" replacing references to either term with the term "parent," "obligee" or "obligor". It also replaces existing references to "custody order" or "visitation order" with either "parenting plan" or "time-sharing plan." The new law repeals § 61.121, relating to rotating custody, amends sections of Chapters 409, 414, 445, 741, 742, 753, and 827 to conform to changes in the new terminology contained in the redesignated Chapter 61.

According to its legislative analysis, the new law "empowers" families "[b]y eliminating what is considered by many to be outdated and negative terminology related to divorcing parents and their children." As a result, the legislative expectation is that the bill "may reduce animosity in relationships between and among family members and thus improve family circumstances for children." See CS/HB 1075 "Child Custody and Support." The change in the antiquated terminology is a positive step forward that may preserve the parental dignities of the litigants in divorce cases, but I doubt that it will reduce "animosity" between divorcing parents in the divorce arena.

Certainly, one hope is that these changes will provide an empowering outlook to divorcing parents that will influence their typical antagonistic dispositions to convert them into more cooperative parenting partners. Another hope is that the resulting accord between the litigants should discourage family litigiousness which negatively impacts the minor children who dangle in the process. I firmly believe that it is not the legal system nor the divorce process that harms the children when parents decide to give up on their marriage. It is the continuous conflict between the great majority of divorcing parents at all levels of the social spectrum that effectively disrupts their parenting roles and creates anxiety and suffering on their children and on themselves.

Significantly, the new law appears to bring effective change to the human-nature aspect of the judicial analysis and of the litigants' expectations. It requires the court and the litigants to dwell in numerous common sense factors that affect the welfare and interests of the minor children involved in the dueling process. There are seven additional factors that the courts must consider and the old thirteen factors were substantially revised. When deciding upon a time-sharing schedule, and thus an effective parenting plan, the new

factors under § 61.13(3)(a)-(t) that guide the judicial mechanism in determining what is in the best interest of a minor child appear to be more interesting and of great practical use. The revamping of § 61.13(3) does bring a welcomed common sense approach in the manner in which the courts must determine what is in the child's best interest. The easy to read and understand language with new words such as "honor," "child's friends," "teachers," "daily activities," "favorite things," "discipline, and daily schedules for homework, meals, and bedtime," "child's school and extra curricular activities," adds to the positive development of the human-nature aspect in the process, attracts reasonableness, and should discourage discord between the litigants.

The ability of divorcing parents who are living apart coupled with their desire to work together in harmony, in a cooperative manner, with each other will lessen the negative impact of the emotional trauma that a divorce brings on their children. Such congenial attitude should also be the compass that will enable children to adequately and quickly adjust to their new circumstances. The new law should enhance that approach.

The primary consideration for the purpose of establishing or modifying parental responsibility and creating, developing, approving, or modifying a parenting plan, that will govern the parents' relationship with their child and with each other with regard to their child, continues to be "the best interests of the child" standard. Also, the parenting plan must be detailed and contain satisfactory resolutions to issues dealing with the children's education, health care, physical, social, and emotional well-being. The parenting plan must include a "time-sharing schedule" with defined descriptive roles of place, date, activity and responsibility which yields the desired result of having both parents substantially involved in all of their children's affairs with both parents, now as equals, having the clear opportunity to play and develop an evenly matched role and thus remain equanimous.

The new law appears to demonstrate the desire on the part of the Florida legislature to bring further sensitivity into the highly challenging area of the law and deaden the emotional thorns that a divorce protrude into the lives of children and their parents. On the other hand, the new law also opens the door wide to those divorcing parents, especially fathers, who want to become more proactive in their children's lives. Notwithstanding the erroneous conclusion that divorcing fathers do not get a fair shake when it comes to their children in a divorce, the stigma felt by fathers during the past decades has been that fathers are not preferred by the courts when it comes to their children. It does appear to be a gain to divorcing fathers that have such view. The new Florida parenting plan law confirms the trend of maintaining a gender-neutral law when determining and deciding child access, contact and related issues. Let us trust that this new law encourages divorcing parents on becoming effective parenting partners for the benefit of their children and of themselves.

*Jorge E. Hurtado is a Certified Family Law Mediator and a private attorney practicing in Broward County since 1990. He may be contacted at (954)341-2230 or by e-mail at [jorgelegal@aol.com](mailto:jorgelegal@aol.com).*



# Reasonably Foreseeable Mench v. Meshuganuh

By Art Goldberg



Don t you love those TV ads featuring celebrities singing praise of prescription remedies? On screen you see a smiling, recognizable face highlighting benefits, downplaying risks of some miracle medication. “Here s a fantastic, surprising, never- tried before therapy for bone loss, constipation, baldness or bad breath!” Never mind the downside: someone utters behind the scene the potential for peril. “Side effects include hematoma, sudden fainting, heart attack or stroke.” I appreciate their honesty. OK, avoiding a fall supersedes my desire not to be bald; I favor the forewarning provided by the voiceover.

Full disclosure of high risk was not what we received when we placed our faith in fund managers who gambled recklessly in the unregulated marketplace. The risks of the derivatives market were known. Nearly fifteen years ago a House Subcommittee was discussing a bill entitled “The Derivatives Soundness and Safety Supervision Act of 1994.” Those testifying that systematic risk was minimal were clearly in the majority, but there was a small minority that tried to sound the warning of the potential for catastrophe.

Charles A. Bowsher, US Comptroller General, gave this testimony in 1994: Given the gaps and weaknesses that impede regulatory preparedness for dealing with a financial crisis associated with derivatives, we recommend that Congress require federal regulation of the safety and soundness of all major US OTC derivatives dealers. The immediate need is for Congress to bring the currently unregulated ODC derivatives activities of securities and insurance firm affiliates under the purview of one or more of the existing federal financial regulators and to ensure that the derivatives regulation is consistent with and comprehensive across regulatory agencies.

That bill never did pass.

What was the ethical standard adopted by the denizens of Wall Street? Was the plummet of portfolios foreseeable in fact, or did investment bankers frolic irresponsibly? Did Lehman Brothers CEO Richard S. Fuld, Jr. act most reasonably (or tortuously) by cashing out his millions, just in the nick of time? He told Congress last month that “We did not mislead our investors.”

Despite his business acumen, in actuality, Fuld led Lehman into bankruptcy on September 15th. The question – was intentional deception part of their game? It seems that Lehman Brothers was not adverse, no, rather perverse (and not alone) in their

willingness to bet the house on derivatives while concealing the fact there were no hard assets to back up any run on the bank.

It s clear that deregulation not only allowed risky gambling and voracious profit-taking, but the government s failure to oversee the sophisticated markets allowed risk of sudden collapse to accrue. Where was The Fed, so-called Watchdog? Barking up the very wrong tree?

Alan Greenspan favored free-market deregulation, and his nickname was The Oracle. His reputation for foresight and wizard-like expertise - he advised last four US presidents - was irreproachable. For him, any movement towards imposing new regulation was targeted as anti-free market. Congress followed his lead.

Here s the back story - the New York Times (Oct 9, 2009) identified another individual – a second mentsch (Translation: admirable person) who very valiantly tried, but ultimately failed, to waive a warning sign. In 1997, attorney Brooksley E. Born, head of the Commodities Futures Trading Commission (CFTC) warned Congress that unregulated trading could undermine the economy. Her prophesy was to propose new rules, yet she eventually became a trying pariah to the fiduciaries at the Fed and the Treasury. Eventually, Congress stripped the CFTC of any and all power to regulate speculation in derivatives.

Jump ahead eleven years. Today, Mr. Greenspan states that his past presumption was that Wall Street would always act responsibly. He has come around today to blame the bankers - the Wall Street Tortfeasors - for raking in cash while the door to the Treasury was left unlocked. How stupid is this? Who doesn t know that kids left unchecked in the candy store will eventually suffer the cavities? Who was minding the rich supply of chocolate silver dollars? It certainly wasn t the Fed or the decommissioned CFTC. It s meshuganuh! (Translation – It s crazy!)

I guess the bottom line for me is that a few reasonable people did foresee potential problems - yet their warnings were ignored while the executives like Mr. Fuld were compensated beyond their wildest dreams. Here s a question - where s the compensation for those facing obliteration of their retirement accounts? Their dream of a safe, secure retirement has been unduly compromised. Excuse the pun - in poker you FOLD when your hand is bare pickings, unless that is, you want to pull off an outrageous big bluff, just like Lehman s Fuld. Apparently, on Wall Street, one could make a quick killing by shuffling around with the rules.

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## A CRIMINAL DEFENSE ATTORNEY'S PERSPECTIVE

BY JEFF HARRIS, CHAIR: CRIMINAL LAW SECTION

"How could you?" I am often asked this question by relatives, close friends and not so close friends. "What do you mean?" I reply. "How could you represent them?" "Who's them?" "You know, the robbers, rapists and murderers." I think to myself about all the other categories left out by the speaker. "Well, that's my job," I respond. "Well, I don't know how you can do it," is the typical retort.

I follow up with a question to the speaker. "What if you were arrested and you didn't commit the crime?" They usually say, "Well, I'd tell them I didn't do it." "Very good," I say, "but how do we know you're telling the truth?" They usually respond with, "I would be emphatic by saying, 'I really didn't do it, honestly!'" I tell the speaker, "Well, everyone says that; how do I know you're telling me the truth?" Usually at this point a glazed look and blank stare comes across their face. Eventually, they see the light when I ask, "How do you prove the negative –I didn't do it?" While my point is made, the person is not usually truly convinced until either they or a loved one is arrested and in need of a criminal defense attorney.

This typical exchange often makes me question whether the administration of justice concept is really that complex? Is what I am doing as significant as "putting people behind bars"? Is my job truly important? Upon reflection, my answer is clearly "yes" to all the above.

Just ask Wilton Dedge these same questions. It was the afternoon of December 8, 1981, when a 17-year-old girl came home; while changing clothes, she heard a sound and turned to find a man armed with a knife. Her clothes were cut off her body and she was repeatedly raped. Without going into further details, a more heinous crime could not have been committed. The young lady's boyfriend immediately took her to the emergency room where she was examined, a rape kit prepared and her clothes collected.

Four days after the crime, the 17-year-old told her sister that she saw a man in a convenience store that resembled her assailant. Through a convoluted evolution of dialogue between the victim, the victim's sister and the

police, Wilton Dedge's photograph was placed before the young lady, and she immediately identified Mr. Dedge as the attacker. This was quite odd since the victim's initial description of her assailant was 6 feet tall, approximately 160 pounds with a muscular build. At the time of the arrest, Wilton Dedge weighed 125 pounds and was 5 feet, 5 inches tall.

Nevertheless, a Brevard County jury found him guilty largely based upon the eyewitness identification, hair identification testimony, dog sniff evidence and testimony from a jail house snitch. Finally, eight years after he requested post conviction DNA testing, Mr. Dedge was released from prison during the early morning hours of August 12, 2004. Only with the help of the Innocence Project, was Mr. Dedge exonerated and released after falsely serving 22 years in state prison.

Just ask Brandon Mayfield these same questions. On May 6, 2004, this 37-year-old immigration attorney was arrested in Portland, Oregon as a material witness with respect to a federal grand jury investigation of a March 11, 2004, terrorist bombing in Madrid, Spain. His crime causing detention, public scorn and ridicule, humiliation, as well as economic devastation to his legal practice, was allegedly leaving a fingerprint on a bag in Spain which contained detonation devices similar to those used in the Madrid bombings. Only due to superb lawyering by Federal Public Defenders for the District of Oregon was Mr. Mayfield released from federal custody after being wrongfully detained 18 days.

What did Mr. Dedge say when he was arrested? What did Mr. Mayfield tell the FBI agents as they were slapping on the handcuffs? Of course, their response was, "I really didn't do it, honestly!" But how would we really know if it was not for the criminal defense attorney? So now I hope my relatives and friends get it when I say I am a criminal defense attorney and that I am very proud of this fact.





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3. "Trial Attorneys" will represent homeowners sued for foreclosure to present defenses and negotiate settlements. Volunteers in this category should have some experience in real estate litigation and should be familiar for example with consumer protection statutes such as the Truth in Lending Act.

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About the Author: Margaret Grisdela is President of the South Florida legal marketing agency Legal Expert Connections, Inc. She is the author of “Courting Your Clients,” and 2008 Co-Chair of the Legal Marketing Association, South Florida City Group. Email her at [mg@legalexpertconnections.com](mailto:mg@legalexpertconnections.com).



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The Board of Directors of the Broward County Bar Association would like to thank  
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# NEW CLIENTS IN THE NEW YEAR

Grow Your Client Base, Starting Wednesday, January 14th

By Loring Spolter

It's more difficult than ever locating the types of clients you want to do business with. Even during the best of times, clients capable of providing you with lucrative fees weren't standing on line to your law firm's door. In these challenging economic times, the success of your practice is dependent upon the letter "I." Ask yourself: "what am **'I'** willing to do differently or more effectively to find quality clients?" Your answer needs to include a willingness to **I**nnovate your marketing philosophy and **I**nteract with people who can refer clients who can add value to your law firm.

Have you considered offering to provide food, coffee, soft drinks and one hour of time to groups meeting weekly or monthly to discuss issues of importance to their attendees? A relatively small time and monetary **I**nvestment can be rewarding:

- \* Personal injury and workers compensation attorneys can acquire introductions to clients by acquaint themselves with groups to support groups for caregivers of injured and ill persons.
- \* Intellectual property practitioners can create new pathways to case acquisition by mingling with people needing to protect written, artistic or technical works. You should be spending time with writers seeking to have works published, organizations catering to inventors and persons employed in advertising agencies.

\* Attorneys representing homeowners being foreclosed upon will meet potential clients

at groups providing job leads and other advice to people seeking work.

**I**nteracting with other attorneys has been creating a steady source of case referrals - when other lawyers learn about the types of cases you handle and your high level of devotion to your clients. The Solo / Small Law Firm Networking Group has proven itself to be "a client generation machine," according to Art Goldberg, BCBA Director. "The low drop-out rate shows that steady attendance pays off," says Goldberg, who frequently meets with Networking Group participants. "Bar associations in other Florida counties look with envy at the large turn-outs at our centrally located dinners and at 'neighborhood networking lunches' held in Weston, Coral Springs, Pompano, Fort Lauderdale, Hollywood and Plantation," reports Loring Spolter, the Networking Group's founder and chairperson who has spoken to event coordinators representing other bar groups. "At every lunch and dinner meeting, we hear how the Networking Group is successful at bringing in new clients," Spolter added.

Participation is open to all attorneys in firms having four or fewer lawyers. The next Solo / Small Law Firm Networking Group dinner program meets at 6:00PM on Wednesday, January 14, 2009, at Dave & Busters, located in Oakwood Plaza, just east of I-95 and between the Stirling Road and Sheridan Street exits. Participation is just \$35 for BCBA members. Phone BCBA at **954-764-8040** for more information.

## Broward County Bar Association Preferred Lender Program



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#### Panel Member Profile



Rose-Ann Flynn is a Certified Circuit and Family Mediator as well as Qualified Arbitrator. She graduated from Nova Southeastern University Shepard Broad Law Center (JD 1985) and got her undergraduate degree from State University of New York at Stony Brook (BA 1981). She also has an Associate in Applied Science in Nursing and is a Registered Nurse. Private practice has included all types of civil litigation including personal injury/wrongful death, medical malpractice, nursing home, products liability and commercial litigation as well as insurance defense. Ms. Flynn is available for Civil Circuit and Family mediation and all types of arbitrations.

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#### BROWARD COUNTY BAR ASSOCIATION INVITES YOU TO BENEFIT FROM PARTICIPATION IN THE SOLO / SMALL LAW FIRM NETWORKING GROUP

6:00 PM, Monday

**NOVEMBER 17, 2008**

\* For Attorneys in Firms with Four or fewer Lawyers

#### WHAT WE OFFER:

- Functions Foster Interactive Networking
- Promote Your Law Firm / Enhance Visibility
- Development of Referral Relationships

#### WHY WE'RE DIFFERENT:

- No Outside Speakers
- You and other Participants of the Solo / Small Law Firm Networking Group are our "Guest Speakers"
- Pre-meal Business Card Exchange Session
- Choice of Chicken, Fish or Fruit Platter.

#### NEW LOCATION

Dave & Buster's 3000 Oakwood Blvd. Hollywood, FL 33020

When reserving at least 48 hours in advance: \$35 for Broward County Bar Association members and \$40 for non-members.

At door, \$5 more on a space available basis. Credit card and check payments accepted. For further information contact Broward County Bar Association (954) 764-8040.



#### APPRECIATION LUNCHEON

Sponsored by:  
Broward County Bar Association  
Broward County Hispanic Bar Association  
Mujeres Latinas  
Puerto Rican Bar Association  
Puerto Rican/Hispanic Chamber of Commerce

DATE: Thursday, November 13, 2008

TIME: 11:45 a.m.

LOCATION: Riverside Hotel  
620 Las Olas Blvd., Fort Lauderdale 33301

ADMISSION: \$25

Please RSVP by November 10 to:  
[Carmen@Velasquez-Law.com](mailto:Carmen@Velasquez-Law.com)

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**COAST TO COAST LEGAL AID OF SOUTH FLORIDA  
LAUNCHES UNIQUE BROWARD TEEN ADVOCACY  
PROJECT (BTAP)**

Equal Justice Works Fellow Leisa Morrill Wintz Administers BTAP Project

Plantation, FL – October 6, 2008 – Leisa Morrill-Wintz, MS, JD, named a 2008 Equal Justice Works Fellow by Equal Justice Works and the Florida Bar Foundation, has launched a unique project, the Broward Teen Advocacy Project (BTAP), it was announced today by Barbara J. Prager, Executive Director, Coast to Coast Legal Aid of South Florida (CCLA), the administering agency for the project that Ms. Wintz designed.

BTAP provides legal education, advice and representation at various outreach sites to teens, ages 13-19, facing legal issues which include dissolution of marriage, custody, child support, visitation, and public benefits, as well as Injunctions for Dating, Domestic, Repeat and Sexual Violence (DDRSV).

“We are proud to launch this unique project that addresses real-world issues such as cyber-bullying and excessive or insulting texting and serves a population not currently receiving legal services of this nature,” Ms. Prager said. “Not only does BTAP educate teens and their parents on their legal rights and protections, but also on how to recognize the signs of and techniques to prevent dating violence and bullying. Non-legal resources, such as counseling referrals are also provided.”

Prior to joining CCLA Ms. Wintz was Director of Parenting and Juvenile Services for Fifth Street Counseling in Plantation where she designed, implemented and facilitated all parenting and juvenile programs having worked there previously as a marriage and family therapy intern. Earlier, she served as intake clinician, individual and family therapist, for the Bayview Center for Mental Health in Davie.

In 2003 Ms. Wintz was a legal intern for case management with the Domestic Violence Division of the 11<sup>th</sup> Circuit County Court in Miami. Prior to that she was a case manager for Central Arizona Shelter Services in Phoenix, AZ.

Ms. Wintz is a cum laude graduate of the Shepard Broad Law Center at Nova Southeastern University in Fort Lauderdale, where she earned her Juris Doctorate. Prior to that she was a student at the University of Miami School of Law in Coral Gables, FL. She earned a B.S. degree in 2000 from the College of Charleston in South Carolina.

**Equal Justice Works (EJW)**, a nonprofit, nonpartisan 501 (c) (3) organization, was founded in 1986 by law students dedicated to working for equal justice on behalf of underserved communities and causes. Today EJW is the national leader in creating summer and postgraduate public interest opportunities for law students and lawyers as well as in urging more public interest programming at law schools.

**Coast to Coast Legal Aid Of South Florida (CCLA)** is a 501(c)(3) not-for-profit law firm and has been providing free civil legal services to Broward County families and senior citizens since 2004. Last year, CCLA assisted over 2,000 people at no charge.

###