FORUM 8

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President's Message

By Cherie Fine

As we get ready to welcome spring in earnest, I realize that it is the perfect time to look forward and plan for the future. In this new decade of the 2020's, change is a constant. With the ever-growing number of attorneys in Florida, having a strong vision for our future is more important than ever. In 1980, when I was in law school, there were only approximately 27,000 lawyers in Florida, but by 2000 that number had grown to 60,900 and by December 2019, there were 89,407 attorneys eligible to practice in Florida.

That is a lot of lawyers, but there is a lot of need to be met and many folks in our state are not getting the legal representation they need. I recommend you find your niche and work toward it and consider giving back through pro bono service. The EJCBA is working to help you do just that and hopefully make the practice of law a service to the state and a positive experience for our members. That is the purpose of our Gather – Grow – Give organizational plan!

I am in two book clubs and I know many of you enjoy reading as well. Not surprisingly, it seems most of the books chosen in both my groups deal with the hurt caused by those in power to folks who are identified as "other." When I think about why, I think it's because it seems so unfathomable that apartheid, the holocaust or slavery and Jim Crow could have happened and that atrocities continue to occur. At the same time, the fact that injustices exist is an embodiment of our fears. As lawyers, we should work to be anti-racists, as Ibram X. Kendi, African American History Professor and National Book Award Winner for *Stamped from the Beginning: The Definitive History of Racist Ideas in America*, encouraged us when he spoke in 2017. Particularly if we want to uphold the rule of law and support the constitution - which we have sworn to do. (All men are created equal and all that.)

As we look forward and plan the future I think we should consider our Oath of Admission to The Florida Bar:

> "I do solemnly swear: **I will support the Constitution of the United States** and the Constitution of the State of Florida; I will maintain the respect due to courts of justice and judicial officers; I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law; I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval; **To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications**; I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged; **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.** So help me God."

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Contribute to Your Newsletter!

From the Editor

I'd like to encourage all of our members to contribute to the newsletter by sending in an article, a letter to the editor about a topic of interest or current event, an amusing short story, a profile of a favorite judge, attorney or case, a cartoon, or a blurb about the good works that we do in our communities and personal lives. Submissions are due on the 5th of the preceding month and can be made by email to dvallejos-nichols@avera.com.

About this Newsletter

This newsletter is published monthly, except in July and August, by:

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Alternative Dispute Resolution

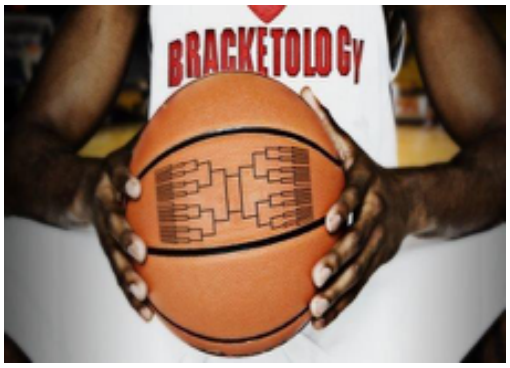
By Chester B. Chance and Charles B. Carter

"March Madness and Mediation"

NCAA March Madness means one word: Bracketology. Well, as our spell check informs us, that one word is not really a word. It is a made-up ESPN word like trickanation. But, maybe you need to make up a word in order to capture the unique atmosphere surrounding the NCAA Basketball playoffs.

At the end of this article we will list some local attorneys with their prediction as to which school will prevail in this anticipated March ritual. We were disappointed to learn no one in this group has ever predicted the actual winner but maybe this year is the exception.

In case you forgot, and we admit we almost forgot, the title of this article is March Madness and Mediation. What is the connection? Bracketology. Or specifically to mediation, the use of brackets as a negotiation technique.



We know that some mediation participants do not like to use brackets. We know some mediation participants do not understand brackets even though they like to use them. The purpose of this article is to explain and clarify what a bracket is, the benefits of a bracket, and, when to use a bracket in mediation/ negotiation.

Bracketing is a means of suggesting an area of possible resolution in a mediation. A bracket suggests an upper and a lower limit where a party is willing to negotiate. A plaintiff might suggest that she would be at $400,000 if the defendant were at $200,000. Those two numbers set the parameters for negotiation.

What are the benefits of bracketing? Bracketing is an attempt to encourage further negotiation by making the gap between the two sides smaller. Also, if one side knows the range of the other party they are less inclined to make an extreme offer. Many times, suggesting a bracket breaks up a negotiation log jam.

Of course, no bracket is perfect. It may in fact be counterproductive if the bracket itself is perceived as extreme by the party receiving the bracket. However, even when each side suggests brackets that are far apart (no overlap) each side receives information and can make a decision about whether there is hope or no hope in reaching resolution.

Brackets allow a party to make a significant move because the bracket requests a large move by the other side. Thus, there is reciprocity. It addresses the fear that a big move by one party will not be reciprocated in the other side's response.

If a bracket is proposed by a party, the other party has multiple options. It can accept the bracket, at which point the offering party must make the next move. The bracket can be rejected and a different bracket is proposed; or, the bracket can be rejected and both sides return to making offers and demands.

We have seen brackets suggested as the first offer or first demand at mediation. There is no rule as to when a bracket might be suggested. We agree that usually a bracket is offered to unblock a frustrating situation or merely to speed up the negotiation process. We recall one mediation where the first four offers and demands were all brackets and the case resolved on the fifth move.

We merely suggest that you do not reject the use of brackets out of hand. When you use them is up to you. Sometimes the mediator may suggest a bracket move for a variety of efficacious reasons. If you are playing chess, you have 16 pieces you can move. In negotiation, you primarily have two pieces: a single amount offer, or, a bracket. Why strap yourself to only one mediation technique when the options are at best limited.

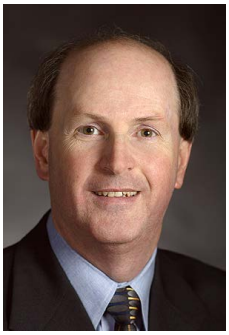
Now to the March Madness part of this article.

Below are the names of some local lawyers and their prediction for the winner of the NCAA March Madness basketball championship. The winner gets either a bottle of wine or a bottle of prosecco. If there are multiple winners, all will get a bottle of wine or prosecco although probably smaller bottles.

William Cervone: Duke
Brian Schackow: Butler
Eric Nieberger: Kansas
Mike Rywant: Gonzaga
Norm Bledsoe: Mich. State
Nick Zissimopolous: Florida
David Delaney: Baylor
Jeanne Singer: Kansas
Dawn Vallejos Nichols: Duke
Toby Monaco: Kansas
Ryan Gilbert: Gonzaga
Stacey Scott: F.S.U.
Neal Gambler: Kansas
Aaron Baker: Gonzaga
Dan Nee: Louisville
Paul Brockway: L.S.U.
Stephanie Hines: North Carolina

Criminal Law

By William Cervone



In the ever and fast changing technological world that we all live in it is unavoidable that trials and evidence are impacted. Our rules don't necessarily match what we're dealing with. This has been so with a variety of things, and today's topic will be one that I've not previously seen, at least in our local courtrooms: facial recognition technology as an investigative tool.

For background, let me introduce you to Willie Lynch. Willie, a common Jacksonville drug dealer who operated under the nom de plume Midnight, made the error in judgment of selling some crack cocaine to two undercover officers one evening in 2015. The officers, as they are wont to do, were simply driving around the proverbial high crime area when Willie flagged them down. I assume that just like police know how to spot a corner drug dealer, corner drug dealers know how to spot a potential customer, although they occasionally make the mistake Willie made as to who that customer really is. In any event, the officers were not totally set up with all of their routine recording equipment when Willie came to them, so the best they could do while conducting the drug transaction was snap a couple of surreptitious cell phone pictures of Willie. As is also their wont, after the deal was done they drove off, electing not to arrest Willie on the spot so as not to reveal their identity as narcs.

Afterwards, the cell phone photos, along with the name Midnight, were submitted to an agency crime analyst. She diligently searched law enforcement databases for a "Midnight" without luck, at least in terms of anyone who looked to her like the dealer who had been photographed. She then put the photographs through a facial recognition computer program along with some limiting factors such as sex and race since those were knowns, "hit search, and it gives you a photo - almost like a photo lineup." Voila - it was Willie! Apparently the software assigns a number of stars to the photos it spits out indicating the likelihood of a match, but the analyst testified that she had no idea how all of that worked, didn't know much if anything about the star system, and recalled only that the computer suggested matching picture of Willie had only one star but in her judgement was him, which she reported to the narcs. They, of course, recognized Willie's photo as being Midnight and promptly caused his arrest. Of course he was convicted or there would be no discussion such as we are having.

On appeal, Willie's issues really skirted the facial recognition technology system. He claimed that the State hadn't preserved and given him any other less likely matches than his single star photo that he could use for some unknown purpose, which got him nowhere because he couldn't show any reasonable probability of a different outcome even if he'd had those. And he also complained in some fashion that the opinion doesn't clarify all that much that it was all just unfair and overly suggestive, suggesting that the narcs only identified him because his was the only facial technology-generated matching photo that the narcs had. This, of course, also went nowhere under traditional rules of analysis as to potentially suggestive photo displays - the narcs said they'd seen Willie when he made the deal and that it was indeed his photo and, at trial, him in the flesh regardless of how they came to discover who he truly was.

Notably absent from the First DCA's opinion is any apparent attack on or ruling over the simple reliability or propriety of the technology at issue, leading me to wonder if it was challenged at the trial court level or not. Because there was some pre-trial testimony as I've outlined about the technology as a part of Willie's efforts to knock out the identification, I have to assume this was at least explored. In many ways, this is no different than fingerprint database evidence - a CODIS hit is just the start of a process that ultimately results in an examiner making a traditional comparison. Suffice it to say that as far as I'm concerned in the absence of something to the contrary, my position is that facial recognition technology is now appellate-approved acceptable evidence. It makes sense to me. I don't need to know how a car runs to make it run, and I don't have to explain a microscope to have an analyst say he used one. I'm sure some enterprising defense attorney will take a dim view of all of this but for now I'm pretty good with it.

It's that time again!

The Eighth Judicial Circuit Bar Association Nominations Committee is seeking members for EJCBA Board positions for 2020-2021. Consider giving a little time back to your local bar association. Please complete the online application at https://goo.gl/forms/0rYVqBeg1u4XuwLR2. The deadline for completed applications is April 20, 2020.

Inclusion of Transgender Employees in the Workplace

By Laura A. Gross

As younger generations move into the workplace, they bring an increasingly more fluid perception of gender identity. These employees are miles ahead of federal and state statutes which do not explicitly protect transgender employees in the workplace, though the Equal Employment Opportunity Commission (EEOC) and federal courts have found that workplace discrimination based on sexual orientation or gender identity is unlawful sex discrimination. In Gainesville and Alachua County, transgender employees are also protected by ordinances prohibiting employment discrimination based on sexual orientation and gender identity and, as to the County only, gender expression. For employers seeking to support gender diversity in the workplace, here are five steps to take.

1. Modify policies against employment discrimination and harassment to specifically protect sexual orientation and gender identity and expression.

2. Use gender inclusive language. Eliminate references to male and females (or include options beyond male and female) and use gender neutral pronouns like they/them/their instead of he/she/his/hers in personnel policies, forms and communications. Be sensitive to learning and using an individual's chosen name and pronouns.

3. Adopt a policy ensuring that transgender employees have equal access to a common bathroom that corresponds with their gender identity. The EEOC's Bathroom/Facility Access and Transgender Employees policy states that transgender employees may not be restricted to a single-user restroom. Determine if there are opportunities to include gender-neutral restrooms in your building. Consider converting single-staff restrooms to all-gender facilities. Use ADA-compliant signage that doesn't reinforce binaries, such as an image of a toilet instead of gendered pictograms.

4. Adopt a gender neutral dress code. It can be as simple as: "The Company does not have dress codes that restrict employees' clothing or appearance on the basis of gender. Transgender and gender non-conforming employees have the right to dress in a manner consistent with their gender identity or expression."

5. Approach each transition individually. Transition steps and timing and the desire for privacy vary based on the individual. Accommodating and supporting a transitioning employee should be an interactive process.

President's Message

Continued from page 1

The EJCBA works to present programs that explore and address these matters we took oaths to abide by. I hope you were able to join us in celebrating the vision and professionalism of our circuit where distinguished lawyers and jurists had a panel discussion with Chief Judge James P. Nilon, Senior Circuit Judge Stan Morris, Retired Circuit Judge Toby Monaco, and State Attorney William Cervone, speaking on "Reflections on Professionalism Over the Course of Our Careers," moderated by Richard Jones, Esq. and Jennifer Lester, Esq.

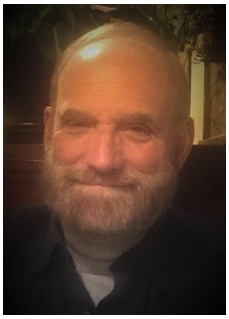
To help us appreciate the challenges experienced by diverse lawyers and clients alike, we are proud to present on March 13, 2020 this year's Diversity and Inclusion Roundtable, "Getting to Know You: Implicit Bias in the Jury Process – *How the jury process illustrates the significance of implicit bias in all areas of the practice of law*." Bill Cervone, Esq., Simone Chriss, Esq., Robert Folsom, Esq., Judge Walter Green, Lora Levett, PhD and Stacy Scott, Esq., will participate in the panel and our luncheon keynote speaker will be Ben Crump, Esq., author of *Open Season: Legalized Genocide of Colored People*. Hope you all can attend!

I hope you made it out to the 2020 EJCBA Charity Golf Tournament "The Gloria" where the funds raised go to youth in our community who are in the dependency system through the Guardian Foundation. There are so many ways the EJCBA works to provide services to our members, the community and the world. Mentorship is always key to bringing forward the next generation of lawyers, and Magistrate Jodi Cason and volunteer attorney mentors are working with students at the Levin College of Law to inspire volunteerism and promote the ethical practice of law. If you are interested in participating next year – please let us know!

So, Happy Spring to us all! As we strive to provide our members with programs, events and social interactions that enhance the profession, I invite you to let me hear from you with any ideas you think should be explored or projects that should be undertaken. And if you want to join the board, please fill out an application!

“Stand-Alone Justification” and “Castle Doctrine” Statutes

By Steven M. Harris



In this third article on “self-defense” related topics I briefly examine: (1) F.S. § 782.02, the standalone deadly force justification statute, and (2) F.S. § 776.013, the ostensible codification of the Castle Doctrine,

Under F.S. § 782.02, a person is justified in using *deadly* force when “resisting any attempt to murder such person or to commit any felony upon him or her or upon or in any dwelling house in which such person shall be.” Although the statute sounds in self-defense and Castle protection, it does not invoke imminence, necessity, or duty to retreat, nor allow for reasonable belief. It narrowly addresses contemporaneous resistance to actual felonious conduct. The statute included self-defense language long ago; *see Bagley v. State*, 119 So.2d 400 (Fla. 1st DCA 1960). F.S. § 782.02 has not been replaced or repealed by any Chapter 776 amendment; *see Pileggi v State*, 232 So.3d 415 (Fla. 4th DCA 2017).

F.S. § 782.11 would impose a necessity constraint (and mitigate murder to manslaughter) in circumstances where F.S. § 782.02 could apply. Curiously, however, case law has made F.S. § 782.11 inapplicable to situations purely of self-defense. *See State v. Kadet*, 455 So.2d 389 (Fla. 5th DCA 1984).

Language from F.S. § 782.02 is in the Standard Jury Instructions. In 7.1, necessity is imposed (see above) and the phrase “or upon” (with reference to dwelling house) is omitted. In 3.6(f), its scope is limited by an introduced predicate -- “. . . reasonably believed that the force was necessary to prevent imminent death or great bodily harm. . . .” There is no case law necessitating those deviations from the language of F.S. § 782.02.

The “home protection” statute, F.S. § 776.013, generally applies the usual rules for threatening and using non-deadly and deadly force. It applies to a “dwelling” or “residence.” Per F.S. § 776.013(5): A *dwelling* is “a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.” A *residence* is “a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.” Of note: Use of non-deadly force in a dwelling is governed by F.S. § 776.013(1)(a), not F.S. § 776.031(1); *see Garcia v. State*, - So.3d – (Fla. 2d DCA, November 27, 2019). Also, there is no duty to retreat before using deadly force when lawfully in one’s dwelling or residence, even though one is engaged in criminal activity. (F.S. § 776.013(1)(b), which also authorizes use of deadly force to prevent the imminent commission of a forcible felony, e.g., arson, burglary, or home-invasion robbery).

There are two state of mind presumptions which apply when force is used inside a dwelling or residence. One applies to the person who threatens or uses defensive force, the other to the malefactor. The former is presumed to have held “a reasonable fear of imminent peril of death or great bodily harm” if the person against whom the defensive force was used or threatened was in the process of unlawfully and forcefully entering or so entered; or, had removed or was attempting to remove another against that person’s will, and the person who uses or threatens to use defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred. F.S. § 776.013(2). A malefactor who attempted to or did so enter is presumed “to be doing so with the intent to commit an unlawful act involving force or violence.” F.S. § 776.013(4). The presumptions also apply to an “occupied vehicle.” Vehicle is defined as a “means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.” F.S. § 776.013(2)(a) and § 776.013(4).

The first presumption is inapplicable against one who has a right to be in or is a lawful resident of the dwelling or residence, is a child or grandchild, or is known to be an identified law enforcement officer who enters or attempts to enter in the performance of official duties. F.S. §§ 776.013(3)(a), (b), (d). The presumption is also inapplicable when the person who uses or threatens to use defensive force is engaged in criminal activity or is using the dwelling or residence to further criminal activity. F.S. § 776.013(3)(c).

The presumptions, intended to be conclusive, properly diminish second-guessing of necessity and reasonableness. Case law suggests they may be moot once a malefactor no longer presents a threat. *See, Reagan v. Mallory*, 429 Fed.Appx. 918 (11th Cir. 2011); *State v. Heckman*, 993 So.2d 1004 (Fla. 2d DCA 2007). F.S. § 776.013 and the presumptions were analyzed in *Derossett v. State*, - So.3d - (Fla. 5th DCA, November 7, 2019), a writ of prohibition appeal from denial of pretrial immunity.

Oops ... that Client you had to Write-Off was Not Pro Bono!

By Marcia Green

Attending the Pro Bono Service Awards Ceremony at the Florida Supreme Court is always special to me. It affirms my love for my job as pro bono coordinator with Three Rivers Legal Services and enforces my strong appreciation of the people I am fortunate to work with.

Eating dinner with colleagues after the ceremony, however, brought up a lively discussion of "what exactly *is* pro bono?" and "what about those cases where the attorney never gets paid ... is that pro bono?"

Pro bono legal services are "direct free legal assistance to an eligible client or client group or free legal services to charitable, religious or educational organizations whose overall mission and activities are designed predominately to address the needs of the poor." Eligible clients include the "poor" and the "working poor." A good-faith determination should be made that the financial situation is such that "access to the legal system will be unavailable without" such assistance. In the early 1990s, the Florida Supreme Court ruled that Florida attorneys should aspire to do 20 hours of pro bono work annually; in lieu of service, attorneys are asked to contribute $350 to a legal aid program.

Although the aspirational goal was never mandatory, Florida attorneys are *required to report* their pro bono hours and/or contributions. Since the Court's ruling, however, the numbers of Florida attorneys have increased but the numbers of hours donated have been fairly stagnant. In the Eighth Judicial Circuit, recently released statistics from The Florida Bar show that just greater than half of the members-in-good-standing of the Florida Bar provided pro bono legal services or made contributions during 07/01/2018-06/30/2019.

Don't get me wrong! We're very grateful to the volunteer attorneys who provide advice, brief services, representation, mentorship and contributions on behalf of the low income residents of our Circuit. I understand, of course, that not all of the pro bono hours and donations come through Three Rivers and there are other ways in which attorneys contribute.

What is most important, however, is that *only lawyers have the unique skills and knowledge needed* to secure access to justice through the legal system. For low income people, whose enormous unmet legal needs are well documented, the pro bono attorneys who work with the legal services programs have the ability to help to bridge the gap. Legal services programs reach out to the low income communities to let them know about available help; the social service agencies refer those in need to the legal services offices. Most low income residents will not contact a private attorney to secure pro bono help; they will contact the local legal aid.

The Eighth Circuit is a unique part of Florida – very rural with a hub of highly educated individuals and an abundance of attorneys who love this community. But north central Florida experiences an extremely high rate of poverty and the need for legal services among the poor is overwhelming. According to the American Bar Association, at least 40 percent of low and moderate income households experience a legal problem each year, yet studies show that the collective civil legal aid effort meets only about 20 percent of the needs of low income people. Steps are being taken to provide advice to through Florida Free Legal Answers and self-help centers at courthouses across the state, but for the majority of the poor, these services are not enough.

So, back to my original comments and the discussion with my colleagues. If pro bono is (according to Wikipedia) "professional work undertaken voluntarily and without payment," then the case that was taken initially "for payment" does not fit into this definition. Attorneys who are willing to accept referrals from the legal aid programs or assist those clients who walk into their office, knowing that their specific skills as professionals to provide services to those who are unable to afford them and knowing that they are taking the case at no charge to the client ... that's pro bono!

Want to become a pro bono attorney? Contact Marcia Green at Three Rivers Legal Services marcia.green@trls.org or log onto http://floridaprobonomatters.org/ to find a case in one of the counties of the Eighth Judicial Circuit.

2020 Professionalism Seminar speakers, from left to right: Sr. Judge Stan Morris, Chief Judge James Nilon, Richard Jones, Esq. (moderator), Jennifer Cates Lester, Esq. (moderator), Ret. Judge Toby Monaco and State Attorney Bill Cervone

A New Standard for Summary Judgment?

By Siegel Hughes & Ross

The Florida Supreme Court has accepted for review the decision of the Fifth District Court of Appeal in *Lopez v. Wilsonart, LLC,* 275 So.3d 831 (Fla. 5th DCA 2019) which questions whether, under certain circumstances, Florida courts should apply a new standard for summary judgment. Lopez's estate sued Wilsonart and its employee/driver, Rosario, for negligence in causing a traffic accident. Rosario had been driving a Freightliner which was struck from behind by Lopez's vehicle, resulting in Lopez's death. Rosario testified he was traveling in the center of three eastbound lanes and began to slow down as he approached an intersection when he felt an impact to the rear of his truck. Plaintiff presented testimony of an eyewitness who testified the truck suddenly changed lanes just prior to impact. The estate also presented the affidavit of an expert who concluded, largely on the testimony of the eyewitness, that the truck was in the right lane when the collision occurred.

A classic dispute of fact precluding summary judgment, right? However, there was one more fact. The truck was equipped with a forward-facing dashboard camera which showed the truck traveling straight in the center lane. There was no evidence or suggestion that the video footage was modified in any way. The trial court granted defendants' motion for summary judgment. The Fifth District reversed on the traditional grounds that the court must draw "all proper inferences in favor of the party against whom summary judgment is sought," and "If the record reflects even the possibility of a material issue of fact, or if different inferences can be drawn reasonably from the facts, that doubt must be resolved against the moving party." *Id.* at 833. It concluded that, "By granting final summary judgment, the trial court completely negated the Estate's evidence based on the perceived strength of Appellees' video evidence and, thus, improperly encroached into the jury's province." *Id.* at 834. However, in light of the increasing use of video and digital evidence the Fifth District certified to the Supreme Court the following question:

> Should there be an exception to the present summary judgment standards that are applied by state courts in Florida that would allow for the entry of final summary judgment in favor of the moving party when the movant's video evidence completely negates or refutes any conflict in evidence presented by the non-moving party in opposition to the summary judgment motion and there is no evidence or suggestion that the videotape evidence has been altered or doctored?

The U. S. Supreme Court already has adopted this approach under the more lenient federal standard for summary judgment. *Scott v. Harris,* 550 U.S. 372 (2007). That case was a 1983 action against a sheriff's deputy who had forced plaintiff off the road resulting in serious injury. The deputy defended that plaintiff was fleeing law enforcement in a reckless way which endangered other motorists justifying the use of deadly force. Plaintiff denied he had been driving in a way that created a danger to others. The district court denied the deputy's motion for summary judgment and the Eleventh Circuit affirmed. Justice Scalia noted that on summary judgment the court usually [actually always before this opinion] was required to adopt the plaintiff's version of the facts. "There is, however, an added wrinkle in this case: existence in the record of a videotape capturing the events in question." *Id.* at 378. The Supreme Court reversed, holding that "The Court of Appeals should not have relied on such visible fiction; it should have viewed the facts in the light depicted by the videotape." *Id.* at 380-81.

Under the long-established law on summary judgment in both the federal and state systems a court may not weigh the evidence. Yet that is exactly what the U.S. Supreme Court has done and what the Fifth District is asking the Florida Supreme Court to decide. "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Id.* at 380. Under the new federal and the possible new state standard video evidence is weighed differently than other evidence. If it is on video and has not been altered it is of greater weight than other evidence and cannot be disputed. This proposed change comes just at the time when technical experts question the ability to detect fraudulent videos.

> Top artificial-intelligence researchers across the country are racing to defuse an extraordinary political weapon: computer-generated fake videos that could undermine candidates and mislead voters during the 2020 presidential campaign.
>
> And they have a message: We're not ready.
>
> "Top AI Researchers Race to Detect 'Deepfake' Videos: 'We are Outgunned,'" Washington Post, June 12, 2019.

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A New Standard for Summary Judgment?

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This also raises the question of what other types of evidence might be considered irrefutable. Is an audio recording less reliable than a video? Do ten disinterested eyewitnesses come close enough to video to render a single interested witness unreliable for purposes of summary judgment? If not, is there a number that would reach this standard? On a practical level such a change seems unnecessary. In the vast majority of cases parties facing "irrefutable" video evidence will not present their case at trial but will dismiss their case, drop their defense, or, at least, agree to an appropriate settlement. If they refuse to do so and the evidence clearly is "irrefutable," does §57.105, *Fla. Stat.* not provide an adequate remedy for the aggrieved party? It will be interesting to see how the Supreme Court addresses these issues.

[1] *Wilsonart, LLC v. Lopez*, 2019 WL 5188546 (Fla. 2019)

*** NEW MAILING ADDRESS ***

Please take note that EJCBA's mailing address has been changed. Effective immediately, the new address is as follows:

EJCBA
P.O. Box 140893
Gainesville, FL 32614

Nominees Sought for 2020 James L. Tomlinson Professionalism Award

Nominees are being sought for the recipient of the 2020 James L. Tomlinson Professionalism Award. The award will be given to the Eighth Judicial Circuit lawyer who has demonstrated consistent dedication to the pursuit and practice of the highest ideals and tenets of the legal profession. The nominee must be a member in good standing of The Florida Bar who resides or regularly practices law within this circuit. If you wish to nominate someone, please submit a letter describing the nominee's qualifications and achievements and submit it to Raymond F. Brady, Esq., 2790 NW 43rd Street, Suite 200, Gainesville, FL 32606. Nominations must be received in Mr. Brady's office by Friday, May 1, 2020 in order to be considered. The award recipient will be selected by a committee comprised of leaders in the local voluntary bar association and practice sections.

Leadership Roundtable: The Eighth Judicial Circuit's Diversity Conference

Getting to Know You: Implicit Bias in the Jury Process

How the jury process illustrates the significance of implicit bias in all areas of the practice of law

The roundtable will feature a panel discussion and workshop. Roundtable admission is free for members of the EJCBA and sponsoring organizations and $50 for non-members.

The discussion will continue at the EJCBA's luncheon. The featured speaker is attorney Ben Crump, author of *Open Season*. Participants must separately pay and register for the luncheon. Space is limited and priority will be given to roundtable attendees. CLE and CJU credit is anticipated.

For more information contact: Mary K. Wimsett: mkwimsett@adoptionlawfl.com

Ben Crump, Esq.
Luncheon Speaker

Bill Cervone, Esq.
State Attorney

Simone Chriss, Esq.
Southern Legal Counsel

Robert Folsom, Esq.
Eighth Judicial Circuit

Judge Walter Green
Alachua County Court

Lora Levett, PhD
University of Florida

Stacy Scott, Esq.
Public Defender

Friday, March 13, 2020
Register Online: www.8jcba.org

Roundtable: 8:30 - 11:30
Alachua County Criminal Justice Center
Jury Assembly Room
Registration and breakfast at 8:15
Free for members of sponsoring organizations.

Luncheon: 11:45 - 1:00
Big Top Brewery
201 SE 2nd Avenue
Priority registration given to Roundtable participants.

Sponsored by: Eighth Judicial Circuit Bar Association, Florida Association For Women Lawyers, Eighth Judicial Circuit Chapter, The Florida Bar Diversity Leadership Grant, Josiah T. Walls Bar Association, North Central Florida Chapter of the Federal Bar Association

March 2020 Calendar

4 EJCBA Board of Directors Meeting, Three Rivers Legal Services, 1000 NE 16th Avenue, 5:30 p.m.
5 Deadline for submission to April Forum 8
11 Probate Section Meeting, 4:30 p.m., Chief Judge's Conference Room, 4th Floor, Alachua County Family & Civil Justice Center
13 Leadership Roundtable: EJCBA's Diversity Conference, "Getting to Know You: Implicit Bias in the Jury Process," panel discussion and workshop 8:30-11:30 a.m., Jury Assembly Room, Alachua County Criminal Justice Center
13 EJCBA Luncheon, Ben Crump, Esq., Big Top Brewing Company, 11:45 a.m.
17 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center

April 2020 Calendar

1 EJCBA Board of Directors Meeting, Three Rivers Legal Services, 1000 NE 16th Avenue, 5:30 p.m.
6 Deadline for submission of articles for May Forum 8
7 EJCBA SPRING FLING! Location TBD, 6-8 p.m.
8 Probate Section Meeting, 4:30 p.m., Chief Judge's Conference Room, 4th Floor, Alachua County Family & Civil Justice Center
10 Good Friday – County Courthouses closed
20 Deadline to apply for EJCBA Board and/or Committee Membership
21 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center

Have an event coming up? Does your section or association hold monthly meetings? If so, please fax or email your meeting schedule to let us know the particulars, so we can include it in the monthly calendar. Please let us know (quickly) the name of your group, the date and day (i.e. last Wednesday of the month), time and location of the meeting. Email to Dawn Vallejos- Nichols at dvallejos-nichols@avera.com.