

# FORUM 8

Volume 67, No. 6

Eighth Judicial Circuit Bar Association, Inc.

February 2008

## President's Letter



by John Whitaker

By the time you read this you will be one month into your New Year's resolutions. Hopefully they are still resolutions on the way to being completed. I usually make it to May before I fall apart and go back to my pre-resolution ways. Best of luck.

Senate Bill 1088 update!

For those of you who don't recall, this was the Legislature's attempt to change court appointed conflict counsel by creating five new regional conflict offices, basically a new bureaucracy created to replace private attorneys in an attempt to save money. I won't rehash all the reasons why I and many others thought it was a bad idea. The reason I bring it back up is that S.B. 1088 has been found unconstitutional on grounds never mentioned in my original letter last fall. Seems the legislature didn't realize that Public Defenders must be elected under the Florida Constitution. Therefore, the five new heads of the Regional Conflict Offices, in effect five new Public Defenders, must be elected and not appointed as dictated by S.B. 1088. The Florida Association of Criminal Defense Lawyers brought this Quo Warranto action that was granted by Circuit Judge Davey in the Second Circuit. It has been appealed by the state and both sides are waiting to see if the Florida Supreme Court will hear the appeal directly. Special thanks to FACDL, Todd Doss and Sonya Rudenstine (who practices here in Gainesville) for their work on the petition. The system of checks and balances still appears to be working in Florida. Thanks also to FACDL president Russell Smith whose memo on this subject I have borrowed extensively for this letter.

On another note, at least one county in Florida

has refused to provide office space free of charge for the Regional Conflict Office as required by S.B. 1088, but once again apparently in contradiction with Revision 7 of Article 5 of the Florida Constitution, which shifted costs for conflict counsel from the county to the State.

Where does this leave us? If I knew the answer to that I would probably be on a beach somewhere drinking a beer and counting the vast sums of money I would have accumulated due to my ability to predict what government will do next.

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## CG-AWL Elder Assistance Holiday Project

CG-AWL would like to recognize and thank the following individuals and firms that so generously donated their time and money to fulfill wish lists in CG-AWL's Elder Assistance Holiday Project. Their generosity made a significant difference to the 28 needy elders who received gifts:

Harvey Baxter, Sam Boone, Susan Lindgard, Sheree Lancaster, Zelda Hawk, Huntley Johnson, Marilyn Peterson, Melissa Murphy, Charles Carter, Judge Elsie Sanders, Lucy Goddard-Teel, Michelle Farkas, Becky O'Neill, Shands Legal Services, Howard Rosenblatt, Cynthia Swanson, Scott Walker, Judy Collins, Nancy Baldwin, Robin Davis, Beverly Graper, Jean Conway, Marcia Green, , Glorinda Fletcher, Therese Truelove, Kevin Daly, Monica Brasington, Kathryn Lancaster, Tom Williams, Gail Sasnett, Jon Adcock, Leslie Haswell, Sharon Spurling, Clayton-Johnston, Fine, Farkash & Parliapiano.

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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 5<sup>th</sup> of the preceding month and can be made by email to [dvallejos-nichols@avera.com](mailto:dvallejos-nichols@avera.com).

### About This Newsletter

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

Eighth Judicial Circuit Bar Association, Inc.  
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Gainesville, FL 32602-0127

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Any and all opinions expressed by the Editor, the President, other officers and members of the Eighth Judicial Circuit Bar Association, and authors of articles are their own and do not necessarily represent the views of the Association.

News, articles, announcements, advertisements and Letters to the Editor should be submitted to the **Editor** or **Executive Director** by Email, or on a CD or CD-R labeled with your name. Also, please send or email a photograph with your name written on the back. Diskettes and photographs will be returned. Files should be saved in any version of MS Word, WordPerfect, or ASCII text.

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**Deadline is the 5th of the preceding month.**

# The Case for Black History Month



by Aubroncee Martin

The study of history has always fascinated me. I love the sense of romance and mystery that the passage of time seems to bestow upon even the most mundane of events. Now that the month of February is upon us and along with it the annual commemoration of Black

history, you would think that I as an American of African lineage (aka a black man), would relish the opportunity to spend an entire month, even if it is the shortest month of the year, reflecting upon the struggles and cheering the triumphs of black folk as they strive to capture a little bit of the “American Dream.” However, this year my enthusiasm for the event is somewhat muted.

Each year, the debate over the continued relevance of a Black History Month grows sharper. One side argues that Black History Month is an empty and somewhat insulting gesture that relegated the history of African Americans to a single month, thereby fostering the very segregation the institution was intended to counteract. Another side counters that Black History Month is an important reminder of the outstanding contributions that black people have made to this country, which in turn adds richness and flavor to the American cultural mosaic that has been metaphorically described as “The Great American Melting Pot.”

It is clear that both sides of the debate make passionate and compelling points. No one can reasonably deny that in the 50 plus years since the United States Supreme Court handed down the “Holy Grail” of the civil rights movement, Brown v. Board of Education of Topeka, 347 U.S. 483 (1954), African Americans have made tremendous advancements in all facets of life. I personally enjoy a level of social mobility that was unimaginable by my grandparents. My two sons will grow up with role models such as Barack Obama, Oprah Winfrey, Condoleezza Rice and Tiger Woods, all of whom transcend simplistic racial classifications. It is also quite apparent, however, that we are far from being an undivided nation. Even the most casual observer could not help but notice the numerous instances of divisiveness portrayed in the media. A few examples are the racially charged

incidents associated with the school and court systems in Jena, Louisiana, Don Imus’ derogatory statements concerning the Rutgers University women’s basketball team, Michael Richard’s (Cosmo Kramer) inexplicable meltdown of racial slurs during his comedy act, and the widespread perception in the African American community that the government’s poor response to the Katrina tragedy was racially motivated.

Since I find validity in both positions, my criticism does not flow from the fact that a debate exists; rather, what I find troubling is the underlying premise implicit in both arguments, a premise which essentially poses the question: **How should African Americans view Black History Month?** I respectfully submit that such a question, which focuses solely on the black person’s perspective of the event, completely misses what is most important about the study of history, as well as the original intent of Black History Month. Dr. Carter Godwin Woodson, the recognized founder of Black History Month, said the following in reference to the purpose of Black History Month “We should emphasize not Negro History, but the Negro in history. What we need is not a history of selected races or nations, but the history of the world void of national bias, race hate, and religious prejudice.”

Dr. Woodson made it abundantly clear that paying homage to the wisdom of the past is not unique to any particular race; countless individuals over many generations have gone to great lengths to record history through newspapers, diaries, journals, saved letters and family bibles, all with the goal of creating a continuous narrative of human events connecting the past to the present in a meaningful way. It has often been said that history is analogous to a mirror into which mankind sets its collective gaze in the hope of finding guidance and inspiration in the reflection. Black History Month gives us all the opportunity, irrespective of race, to relive acts of sacrifice, compassion, courage, and fierce determination; acts which should be held out as examples to our children of the best that this nation has to offer. White and Black children alike should be equally enthusiastic in their efforts to incorporate these core values into their own lives. Black History Month is a time to celebrate ideals which bring us together, not on things that drive us apart.

# The Florida Bar Board of Governors Report



by Carl Schwait

## Dear Colleagues:

At its December 14 meeting in Amelia Island, The Florida Bar Board of Governors:

- Heard a preview of legislative issues for the upcoming Regular Session of the Florida Legislature, with the main assessment being that budget issues will dominate. The Bar is committed to continuing to support adequate funding for the court system and opposing budget cuts that would cripple its ability to timely handle cases.
- Approved the Bar strategic plan for 2008-11, setting as the Bar's top goals the protecting of the judiciary, promoting the legal profession, ensuring access to the courts and the legal system, and enhancing Bar services for its members.
- Heard a report on the implementing of a new program that has all grievance complaints, written as well as telephonic, screened through the ACAP program. Preliminary results show a dramatic drop in the number of cases referred to Bar counsel for investigation, which is expected to lead to a better use of Bar resources.
- Approved overturning a Bar advertising staff ruling on whether an attorney can answer legal questions posed to a group in an Internet chat room. The Board Review Committee on Professional Ethics is studying the underlying advertising opinion on which that ruling was based.
- Heard a report from the Investment Committee, including the fact that none of the Bar's investments are in mortgage-back securities, and hence the Bar's holdings are not affected by the ongoing subprime mortgage crisis.
- I continue to serve on the Disciplinary Review Committee and the Board Review Committee on Professional Ethics.

Please call me with any questions or comments in reference to the Florida Bar.

# Ted Burt receives the Florida Bar President's Pro Bono Service Award

by Marcia Green

Gilchrist County attorney Theodore Mark "Ted" Burt received the Florida Bar President's Pro Bono Service Award representing the Eighth Judicial Circuit at a ceremony in Tallahassee on January 31. The presentation, held at the Supreme Court of Florida, was in conjunction with the Tobias Simon Pro Bono Service Award Ceremony with Chief Justice R. Fred Lewis presiding.

Mr. Burt has represented clients through Three Rivers Legal Services Volunteer Attorney Program since the early 1990s. Over the past several years, he has accepted several cases and has provided more than 100 hours of services. As a legal practitioner since 1974, Mr. Burt has practiced in rural Gilchrist County where he is aware of the small number of attorneys and the need for services to the poor.

Through referrals from Three Rivers Legal Services, Mr. Burt has helped several individuals and families maintain ownership and homestead exemption of their property through probate and has advised and assisted local residents with their legal needs. In rural areas, where public housing is rare, family property, homesteads and farms are often mired in poor estate planning. Mr. Burt's practice in the area of real property and probate law is of great benefit in our efforts to preserve family home ownership for low income rural residents.

Mr. Burt is a member of the Rotary Club of Trenton, the Suwannee River Shrine Club, the Mason-William Carlton Lodge and has been recognized numerous times by his community for work in rural north central Florida.

Nominated by Three Rivers Legal Services, Mr. Burt was recognized for his support of the Volunteer Attorney Program, his understanding of the needs of those who are trying to get out of the cycle of poverty, and his recognition that a lawyer has a unique expertise to offer, which has made him a valuable asset to the rural community.

## Advertisements

**Gainesville Executive Center**, 309 NE 1st Street, has space and virtual offices available. Please contact Patricia at 352-374-7755.

**2 Offices Available** for Rent w/Receptionist in law office building 155 & 105 sq.ft. Building secured by alarm system. W. Newberry Road area. Call (352) 331-4922.

# Holiday Project 2007: Another Great Success

by Margaret Stack

The Holiday Project that gives local attorney Carl Schwait an opportunity to be Santa Claus is one that the EIGHTH JUDICIAL CIRCUIT BAR ASSOCIATION started several years ago when Carl was the President of EJCBA. The year we started this project had been designated as THE YEAR OF THE CHILD by The Florida Bar. We wanted to do something for the children in our Circuit and since the holiday season was approaching, we decided to put together stockings for some needy children.

We selected Duval Elementary as our project school because it had the highest ratio of free lunches in the Circuit - therefore the most poverty. Our original goal was 25 "stockings". We had commitments for that many before we left our monthly luncheon. The donations rolled in and we quickly realized that "stockings" were not large enough for all the toys we received and we changed from stockings to BAGS! We ended up providing gift bags to the entire 500 students at Duval.

At that time, Duval had just gone from being an "F" school to gaining an "A" rating. If you are familiar with Duval you know what an extraordinary school it has become.

Last year we started buying books and every child got at least one book. It was such a hit that this year we continued the tradition and gave 500 books by author ROBERT LITTLE to the kids at Duval: Grandma's Biscuits for Kindergarten and First Grade; Jamal's Lucky Day! for the Second Grade; Fun Day in Mrs. Walker's Class for the Third Grade and What Can I Be? for the Fourth and Fifth Grade. These are great books and I'd love to show them to you if you have time to stop by the office sometime.

In order to make the book giving to the 4<sup>th</sup> and 5<sup>th</sup> grades extra special, E.J.C.B.A. member Huntley Johnson arranged for five Gator football players to come to Duval and talk to the kids and sign autographs. As you can imagine, the kids were thrilled.

For the Kindergarten through third graders, Carl Schwait once again donned the Santa suit and thrilled the excited children by calling each child's name individually and handing out gift bags with the assistance of his trusty elves. Once again, EJCBA members stepped up to the plate, donating money and gift bags filled with toys so that holiday wishes could come true. Also included in every bag were books and other educational items such as art sets, coloring books, flash cards, etc. In addition to the extra books supplied by members, EJCBA bought another 500+ books. A large portion of these

went to the 135 HEAD START KIDS AT PRAIRIE VIEW ELEMENTARY, who also received bags of toys.

So, all in all, the EJCBA gave gifts this year to approximately 635 children...it was another huge operation which was once again housed at the State Attorney's Office. My boss, Bill Cervone, has very kindly allowed us to turn the State Attorney's Office into Santa's Workshop and our staff has been gracious in having our office routine disrupted by Santa's Elves.

Thank you to all of our members (and staff members) who donated their time, money, gifts and assistance in our effort to once again make the wonderful holiday season brighter for as many kids as possible.



Michelle Farkas, Cynthia Swanson (front) and their paralegals, Connie Elgin and Darcy Kochanowsky (rear), pose with the great cache of educational materials brought by guests to Cynthia's holiday open house in December. The materials were added to others from EJCBA and donated to the Prairie View Academy preschool. Special thanks to Jill Conti's niece and nephew, who donated dozens of wonderful children's books. More special thanks to Ted Curtis and Judge Jaworski for carting them around for us.

# Family Law on the Internet



by Cynthia Stump Swanson

The Family Law Section did not meet in December, and we haven't had our January meeting at the time this column is due. So, I'm searching my brain on something to write about. The Legislature has not yet met, so that great source

of material is not quite ripe yet. However, there is no dearth of interesting family law information available on the internet. To start off, here are three tidbits from recent news reports which I found by looking through some weird, but interesting, family law blogs:

## **Legal marriage beomes illegal when husband has surgery.**

First, we all know that Florida is one of only – what is it now? two?-- states which prohibit adoption by homosexuals. But only one state (Massachusetts) allows marriage of homosexuals (several other states provide for 'civil unions'). Here is an interesting immigration twist on the prohibition of same sex marriage restrictions. An immigrant woman married an American from Wisconsin. Due to birth defects, for most of the American's life, this individual could have been denominated either a male or a female, but his original birth certificate designated him a male. Prior to the marriage, he had surgical removal of male genitalia, reportedly solely for health reasons and not for a sex change. His birth certificate was subsequently amended (at his request) and his gender was re-designated as female. The month after the marriage, the American went to court to amend the birth certificate to again designate him as male. The American argued that the original amendment was an error. But the trial court and, later, an appellate court, refused, holding that the American was time-barred from challenging the original amendment of the birth certificate. The couple's marriage license was revoked and the marriage annulled, because same sex marriage is not legal in Wisconsin. As a result, the New Zealand woman was denied a visa to remain in the US. The American is quite distressed over this, and vows further appeals. He owns a Green Bay demolition and renovation company called Tool Belt Divas (thus lending even more oxymoronic

irony to this story, and isn't there a show on the DIY network by that name?). For more information on this story, go to [www.stuff.co.nz/AAMB1/aamsz=760x120/4313417a11.html](http://www.stuff.co.nz/AAMB1/aamsz=760x120/4313417a11.html).

## **Public defenders in divorce cases?**

Quite a few years ago, I had a client who wanted a jury trial in his divorce case, and was certain the constitution guaranteed that to him. He wanted to know who had changed that provision without his knowledge or permission. Surprisingly, I haven't had any clients who expected the State to provide them with an attorney (a la the public defenders) for their divorce. However, a woman in Washington made a pretty good argument for that right. She lost primary residential custody of her children to her husband in their divorce. He had an attorney. She didn't - because she couldn't afford one. On appeal, the mother argued that the state should have provided her with a lawyer, just as it provides lawyers to indigent criminal defendants. Her rationale was that the state requires people to go through complex public court proceedings to obtain a divorce, and ordinary people cannot be expected to participate in them effectively without counsel. The Washington Supreme Court affirmed, finding no obligation by the state to furnish counsel in a divorce which is a "voluntary action," contrasting it with cases initiated by the state which threaten fundamental constitutional rights, such as personal freedom or termination of parental rights cases. The Washington court majority did note that the legislature may wish to consider enacting enabling legislation for the state to make counsel available to divorcing indigents. Both the dissenting opinion and the Washington state bar association echoed the mother's sentiments. In a strongly worded dissent, one justice agreed with the mother, and noted that it was a good thing lawyers had agreed to represent her for free during her appeal, saying that the mother's emotions got in the way when she tried to represent herself, and that did her case harm. We never see anything like a client's emotions getting in the way of things, do we? For more on this one, go to [www.komotv.com/news/local/12234366.html](http://www.komotv.com/news/local/12234366.html).

*Continued on page 7*

**Child support warrants on the internet.**

There was a story that the Flagler County Sheriff's Office is posting on their website the names all persons who are subjects of a warrant there, including parents who don't pay child support. Mike McCormick of the American Coalition for Fathers and Children says this is "misguided." Awww.... I really wasn't aware of these databases, but found that the Alachua County Sheriff also has such names and photos posted on their website: [www.alachuasheriff.org/most\\_wanted/warrants.aspx?type=Deadbeat](http://www.alachuasheriff.org/most_wanted/warrants.aspx?type=Deadbeat).

Other blogs offer interesting tidbits for case strategy. For example, should you advise your clients to keep a record of those angry cell phone voice messages from his or her ex? The now infamous Alec Baldwin voicemail message to his daughter (in which he berates his daughter) illustrates how advances in technology can help introduce evidence into child custody battles. In some situations, this evidence can point out character flaws that aren't always obvious to the courts. As we all know, in Florida, tape recording a conversation without the other person's consent is illegal, and thus the recording would be inadmissible. However, when an angry ex is leaving a voice mail message, they know it's being recorded. The technological problem for us is how to get that information to the Judge.

How many of you have had your clients hold their cell phones out to you and ask you to listen to messages? Or maybe they brought in the tapes from their home answering machines. The client has probably been saving them every few days. If not, the message service will probably erase them permanently after 30 days. The problem is that eventually, they have saved so many messages that there is no room for more messages. This frustrates everyone and makes the angry caller suspicious. So, that leaves us with the question of "how do I get these voicemail messages onto a CD?"

According to one Georgia family law blogger [www.gafamilylawblog.com/](http://www.gafamilylawblog.com/), there are four options:

OPTION 1 - VoIP Service + Phone Recording Software. This is where you have your computer call your voicemail and you record the message directly into your computer.

OPTION 2 - Cable Connection + Phone

Recording Software. This is where you hook up cables between your phone and your computer and you record the message directly into your computer.

OPTION 3 - Receive Voicemail as Email Attachment. This is where you sign up for a third party service that has a feature that can literally grab your voicemail and send it to you as an mp3 in an email attachment.

OPTION 4 - Voicemail Transfer Service. This is where you hire someone to do it for you.

I have actually used (or had used against my client) voice mail in two recent hearings. In one, my client's ex-husband had apparently enjoyed a few too many adult beverages over a period of perhaps a month or so, and had filled up several standard size cassettes on the ex-wife's home answering machine. I had a paralegal intern listen to them and transcribe them – it turned into about 8 pages of single spaced typing. To say the language was colorful is an understatement. In court, I merely offered our "in-house" transcriptions, but the ex-husband wanted the actual messages played out loud (he was not represented by an attorney and may have indulged in some adult beverages before coming to court that day). I had brought along a tape player, so play them we did. I pretty much didn't have to do any further work in court that day.

In another matter, my client's ex-husband wanted to offer voice mail messages left by my client on his phone. He actually had that service mentioned above as Option 3, but he had then personally transcribed the message. Thinking I had the mild-mannered client, I objected to the transcription being admitted, because it was the husband himself who had typed it up. However, this may have been the same tactical error made by the ex-husband in my other case, because the Judge did not allow the transcription, but did allow the ex-husband to play the message in court. Again, to say the language was colorful is an understatement. And to hear my otherwise mild-mannered client cussing and calling names like a sailor was an eye opener for me. I guess this is a corollary to the warning to never ask a question of a witness to which you do not already know the answer. So, I guess the new rule is, "Never agree to playing a voice mail message in court which you have not already heard."

*Continued on page 8*

# An Accident Waiting to Happen



by Stephen N. Bernstein

The resources made available by the legislature for crime labs have not kept pace with the demands of Police Departments and prosecutors. Just ask Bill Cervone when it comes to determining the budget priorities for law enforcement,

whether DNA science or drug analysis technology are any match for patrol cars and police on the beat. Long backlogs for analysis of DNA, fingerprints, fibers, drugs and other types of forensic evidence are the rule at our publicly funded crime labs around the country. Imagine your doctor ordering a blood test and saying, "you'll have the results in six months to a year," that is the sort of time frame that police and prosecutors now face routinely in cases getting ready for trial.

The backlogs have contributed to occasional miscarriages of justice, including the probability of guilty suspects walking free and others, wrongfully charged, who languish in jail from want of timely forensic analysis. Such cases grab the headlines, leaving little room on the public's agenda for more prosaic problems such as crime labs so overburdened with work and short on staff that they accept only evidence in homicide and rape cases while refusing work related to lesser crimes. One obvious problem is the legislature's inadequate spending in this area. This also applies to less glamorous types of forensic testing, which represent ninety percent or more of the work performed by most labs.

Problems plaguing crime labs are broader and deeper, however, than a simple shortage of cash. What's popularly known as "the CSI effect", the widely inflated expectations of jurors who expect real-life investigations to be as crisply resolved and subject to scientific certainty of the television variety. A congressionally mandated committee, convened under the office of the National Academy of Sciences, is examining the range of challenges facing practitioners of forensic science, including inadequate training and education of technicians; fraud testing techniques; insufficiently rigorous standards of evidence analysis; spy proficiency testing; and erratic accreditation regimens. This committee could perform a real service by highlighting what has become a dire problem at all levels of law enforcement, by recommending some badly needed standards for a fast-growing field of

science, and recommending that our legislature step up to the plate and fairly fund our criminal justice system. Trying to do it on the cheap is simply a "train wreck waiting to happen" from the crazy new conflict counsel arrangement to law enforcement's needs for accurate scientific equipment and personnel.

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## Family Law

*Continued from page 7*

Via regular email, Pam Schneider sent along a note that there will be collaborative law training seminar in Gainesville on Feb. 29 - March 1, 2008 from 8:30 am to 5:30 pm each day. This will be held at the UF law school, and costs \$500. Collaborative law training is open to all attorneys, law students, mental health professionals, and financial professionals who are interested in learning to work as part of a collaborative divorce team that assists a divorcing couple in their journey through the divorce process without litigation and high conflict.

Unlike a conventional divorce, Collaborative Divorce Practice offers a team of skilled and compassionate professionals who help the divorcing couple to manage the many aspects of their divorce — the legal issues, the emotional turmoil, the concerns for children and the financial/property questions. With such support, the couple retains control of their divorce process and is better equipped to begin a new life once the divorce is final.

So, that's it for our tour of the family law related internet for today. Please come to the next meeting of the Family Law Section (January 30, 2008 or February 27, 2008, depending on when this newsletter arrives on your desk) at 4:00 p.m. in the Chief Judge's Conference Room in the Alachua County Family and Civil Justice Center. Our meetings are always on the last (not necessarily the fourth) Wednesday of the month at 4:00 p.m. I send out email notices and if you're not already getting them and want to receive them, send me an email saying so – [cynthia.swanson@acceleration.net](mailto:cynthia.swanson@acceleration.net). Likewise, if you have some ideas for speakers, programs or topics for discussion, please send me those ideas, and I'll see what I can do to set up something.



# Using Arbitration and/or Mediation Provisions In Your Contracts and Estate Planning Documents



by Shannon M. Miller

Do you remember waaaayyy back in the 1990's when we all feared MANDATORY ARBITRATION? When the requirements to arbitrate were hidden in business contracts, medical admission forms and nursing home contracts, and proscribed the certain arbitration associations as the arbitrators and specific business and employer biased arbitration rules for arbitration? Do you remember when you got your first COURT ORDERED MEDIATION, and you resented it? You thought, there is No Way that this case is going to settle at mediation. Do you remember how defensive we all were at first– take away our trials???? Preposterous!!

Today, 90% of all cases referred to mediation settle at mediation or shortly thereafter. Arbitration is usually a shorter, less costly, less heart-wrenching process than judicial litigation. Most of us now bring up mediation with our own clients!! We all see the benefits of settling cases, as opposed to trying them.

Arbitration is no longer a process that people are tricked into by secret hidden provisions in their never-read-the-fine-print contracts. More and more, arbitration is seen as a tool for resolution of convoluted complex issues– wouldn't you rather have the retired litigator, who did nothing but business law for 30 years arbitrate your business law case? Using experienced experts as arbitrators is one of the many advantages to the process.

As discussed at length last month by the Sr. and Jr. CBCs, the new arbitration provisions under [Florida Statutes](#) section 44.103 will provide new teeth and incentives to Judges and attorneys for Non-binding Arbitration referrals in the same fashion that Offers of Judgment did previously. Beating the Non-Binding Arbitration ruling by 25% is going to be a great incentive to encourage clients to accept the Non-binding Arbitration order and resolve the case.

But, we clearly have untapped opportunities for advancing these alternative forms of dispute resolution in drafting contracts, estate planning, even real estate contracts that all of us should consider. By requiring mediation and/or arbitration in these documents, we have the power to resolve our cases

for less– less money, less energy, less heartache. Now, don't have a heart attack; it's not necessary for us to insert binding provisions initially, as we know that change takes time and patience.

In the Estate Planning world, my regular suggestion has been to advance a general provision for Non-Binding Arbitration in my estate planning documents; then, to require mediation should the election be made for a trial "de novo." As you may recall, once the election for a new trial is made, the 25% plus attorney fees provision will apply. This lends another tool for settlement to the mediator (or the attorney trying to wrap up the case.) It also allows for a trial if all else fails, and/or we have one side that is behaving in an unreasonable fashion (or they are in the case for "the principle of the matter".)

When I have clients who are firm on their beneficiaries resolving any disputes outside the Courthouse, we utilize a provision that requires binding arbitration to settle any dispute. We do not insert any requirements for who the arbitrators should be, nor what arbitration rules should be applied. Frankly, arbitration is a new and evolving beast, and I do not want my clients locked into one set of arbitrators or rules, especially if they don't update their estate plans for several years.

I recently posted a request for input into this issue on my National Network of Estate Planning Attorneys listserve. The response was mostly negative (not unexpected). Attorneys in other states lambasted certain arbitration groups, stating their fees were astronomical or that the non-attorneys were not able to grasp certain legal issues. Many more were not happy with the informal and seemingly arbitrary process. It appears that Florida is really on the cutting edge as it relates to Alternative Dispute Resolution. Eventually, arbitration will be something we suggest to our clients, similar to mediation. Our circuit, once again, is also on the cutting edge, with a list of arbitrators in various areas of expertise, ready to serve.

I look forward to these new alternatives to litigation. I hope you will all consider inserting some form of alternative dispute resolution into your document drafting. The small amount of time required now should provide substantial benefits to you and your clients for many years to come.

# Criminal Law



by William Cervone

Now that it's February we are well entrenched in the new year, but it's still not too late for a bit of an update on some of those major cultural achievements of 2007 that may have escaped your notice.

Thus, I present to you a compendium of the noteworthy, along with the perhaps not so noteworthy. You decide.

To begin with, although it has been nearly two years since I wrote about the selection of "truthiness" as the American Dialect Society's 2005 Word of the Year, that esteemed organization has not been deterred by my neglect of its work and has continued with its recognition program. I am please to inform you that in 2006 the Word of the Year was "plutoed." This, of course, means to be devalued or demoted, as the former planet Pluto was that year. To follow a method taught to me long ago by a nun at the elementary school I attended, this can better be explained and understood by using the word in a sentence. So I offer "That judge plutoed my best argument!" exclaimed the deflated attorney." Or "FSU plutoed through a second consecutive unhappy football season." I will admit that I'm not sure if "plutoed" is a noun, a verb, an adjective, or something else.

The runner-up, which "plutoed" beat in a run-off, was "climate canary," which I understand to mean something whose poor health indicates a looming environmental catastrophe. I'm not bothering to use "climate canary" in a sentence but check with me next August when I melt my way from a broiling car through steaming humidity and blazing sun to an overly warm public building that has windows that don't open and I might. Disappointingly, the 2007 Word of the Year has not been released as of when I write this. I'm sure all of you will wait anxiously for word of the winning Word.

In a similar vein, the Yale Book of Quotations has announced that the 2007 memorable Quote of the Year is, you guessed it, "Don't Tase me, bro." What an honor to live in a place where we were the first to experience all that this memorable quote encompassed. Clearly "Don't Tase me, bro" is light years ahead of the runner up quote, which was uttered by a Miss Teen America contestant who was asked why she thought 20% of Americans could not locate the United States on a map. Her answer? "I personally believe that U.S. Americans are unable to do so because some people

out there in our nation don't have maps and I believe that our education like such as in South Africa and Iraq and everywhere like such as and I believe that they should our education over here in the U.S. should help the U.S. or should help South Africa and should help Iraq and the Asian countries so we will be able to build up our future for us." What? Maybe she should have stuck with just the "They don't have maps" part of her answer.

I will conclude with some observations by one Mike Hosey, who I do not know but who wrote a column last Fall in the High Springs Herald that I am sure most of you missed. He offered several neologisms, those being newly coined words, after observing that both schizophrenics and teenagers are prone to neologisms. My personal favorite from his offerings is "agnorant," meaning to be simultaneously arrogant and ignorant. A close second is "multi-slacker," the antonym for multi-tasker. Also of note is "brainkiller," meaning one who makes things confused, especially by talking, or anything that is hard to understand. Many is the legal argument or arguer that could be called a brainkiller. Finally, Mr. Hosey gives us "accountabilabuddy," defined as a friend who you get in trouble with and who is sometimes responsible for your actions. That's just a different word for "co-defendant" but it has a nice alliterative sound to it. I'll be waiting for a report back from my staff as to which of our defense bar colleagues can first use "accountabilabuddy" in a sentence at a sentencing hearing.

Where all of this leads us I don't know. Reflecting back on several past columns in which I've suggested a need for plain speak, which might actually be a neologism, I'd suggest that those of you who don't want to do that weave agnorant into your next brainkiller of an argument or risk being plutoed as a multi-slacker.

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## CG-AWL

Please note that CG-AWL meets on the first Thursday of each month at 5:30 p.m. at Amelia's Restaurant in the Sun Center. CG-AWL stands for the Clara Gehan Association for Women Lawyers, but you do not have to be a woman to join!! Anyone who wants to learn what we are about can attend a meeting or two before deciding whether to join!! We'd love to see you there!!

# The Gainesville Area Federal Bar Association (FBA) is Sponsoring Two Continuing Legal Education Seminars

## Internet Crimes Against Children

Presented by Assistant United States Attorney

Frank Williams

February 8, 2008

Brief remarks at EJCBA Luncheon from 11:45 a.m. – 1:00 p.m.

In-depth presentation from 1:30 – 3:30 p.m.

Steve's Café American, 12 West University Avenue

Assistant United States Attorney Frank Williams will present *Internet Crimes Against Children* at the Eighth Judicial Circuit Bar Association (EJCBA) Luncheon on February 8, 2008. Immediately following his brief luncheon presentation, Frank will present additional information on this topic for an anticipated two hours of free continuing legal education credit, including an overview of child pornography laws, a discussion of the impact the internet has had on crimes involving children and the harms associated with child pornography, specific examples and case summaries of victimization of children over the internet, and general guidance on how to protect children from being victimized over the internet. The presentation is co-sponsored by the FBA and EJCBA and will take place at Steve's Café American.

To attend the luncheon portion of the presentation, the cost is \$12.00 for EJCBA Members and \$14.00 for EJCBA Non-Members. Register for the luncheon and remit payment for the luncheon to:

EIGHTH JUDICIAL CIRCUIT BAR ASSOCIATION, INC.

P.O. Box 127

Gainesville, FL 32602-0127

Fax: 866-436-5944

To register for the **FREE** *Internet Crimes Against Children* CLE presentation from 1:30-3:30 p.m., please submit your contact information to Elizabeth Waratuke at [waratukeea@cityofgainesville.org](mailto:waratukeea@cityofgainesville.org) or Stephanie Marchman at [marchmansm@cityofgainesville.org](mailto:marchmansm@cityofgainesville.org) or (352) 334-5011. Attendees will be permitted to register for the 1:30 p.m. presentation at the time of the presentation so long as space is available.

## A View From The Bench

March 6, 2008, 1:00 – 5:00 p.m.

Mark's, 201 SE 2<sup>nd</sup> Avenue

Would you like to know when it is appropriate to contact a federal judge's chambers staff or law clerk? Do you ponder why some motions are ruled on by the United States Magistrate Judge, while others are ruled on by the United States District Judge? Do you want to know how a panel of circuit judges is selected to consider your appeal? Do you want clarification on how to correctly electronically file motions and exhibits?

Find out the answer to these questions and more on March 6, 2008, when the FBA will host *A View from the Bench* from 1:00 to 5:00 p.m. This seminar is an invaluable resource for any local attorney practicing in federal court, either regularly or on occasion. The seminar will include information on federal practice, including appellate practice, and the do's and don'ts in federal district court from the perspective of the clerk. In addition, United States District and Magistrate Judges from the Ocala and Gainesville Divisions will serve on a panel to discuss such topics as chambers procedures and protocol, scheduling, pretrial and trial practice and procedure, and professionalism. It is anticipated that this seminar will earn attendees four hours of CLE credit, including credit in professionalism and ethics. The FBA will host a reception immediately following the seminar.

To register for *A View from the Bench*, please complete a registration form and remit the appropriate payment to:

GAINESVILLE AREA FEDERAL BAR ASSOCIATION

c/o Stephanie Marchman

City Attorney's Office

P.O. Box 1110

Gainesville, Florida 32602

For additional information regarding *A View from the Bench*, please contact Elizabeth Waratuke at [waratukeea@cityofgainesville.org](mailto:waratukeea@cityofgainesville.org) or Stephanie Marchman at [marchmansm@cityofgainesville.org](mailto:marchmansm@cityofgainesville.org) or (352) 334-5011.

## February 2008 Calendar

- 4 Deadline for submissions to March newsletter
- 4 EJCBA Board of Directors Meeting, Ayers Medical Plaza, 720 SW 2d Ave., North Building, Third Floor conference room, 5:30 p.m.
- 7 Clara Gehan Association for Women Lawyers, 5:30 p.m., Amelia's in the Sun Center
- 8 EJCBA luncheon – Steve's Courtyard Café, 11:45 a.m. – US Attn. Frank Williams, speaker
- 8 CLE – Internet Crimes Against Children – Steve's Courtyard Café – 1 p.m.
- 13 Probate Section Meeting, 4:30 p.m., 4<sup>th</sup> Floor, Family & Civil Courthouse
- 18 President's Day – Federal Courthouse closed
- 27 Family Law Section meeting, 4:00 p.m in the Chief Judge's Conference Room (former Grand Jury Room) of the Family and Civil Courthouse
- 29 Collaborative Divorce Training Seminar, UF Law School, 8:30-5 (day 1 of 2)

## March 2008 Calendar

- 1 Collaborative Divorce Training Seminar, UF Law School, 8:30-5 (day 2 of 2)
- 3 EJCBA Board of Directors Meeting, Ayers Medical Plaza, 720 SW 2d Ave., North Building, Third Floor conference room, 5:30 p.m.
- 4 Deadline for submissions to April newsletter
- 6 CLE – A View From the Bench (FBA), 1-5 p.m., 201 SE 2d Avenue (Mark's)
- 6 Clara Gehan Association for Women Lawyers, 5:30 p.m., Amelia's in the Sun Center
- 12 Probate Section Meeting, 4:30 p.m., 4<sup>th</sup> Floor, Family & Civil Courthouse
- 14 EJCBA luncheon – Steve's Courtyard Café, 11:45 a.m. – speaker TBA
- 26 Family Law Section meeting, 4:00 p.m in the Chief Judge's Conference Room (former Grand Jury Room) of the Family and Civil Courthouse
- 28 EJCBA Professionalism Seminar at UF Levin College of Law, 8:30 – 12 noon, Edward M. Waller, Jr., Esq., speaker, "The Legacy of Atticus Finch: Higher Standards for New & Experienced Lawyers Alike"

Have an event coming up? Does your section or association hold monthly meetings? If so, please fax or email your meeting schedule 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](mailto:dvallejos-nichols@avera.com).



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