



PALM BEACH COUNTY BAR ASSOCIATION BULLETIN

www.palmbeachbar.org

May 2006

Annual installation banquet set for June 3

Mark your calendar now for the PBCBA's Annual Installation Banquet which has been scheduled for Saturday, June 3 at the Breakers Hotel in Palm Beach. A reception will be held from 7:00 - 8:00 p.m. with dinner and dancing immediately following.

Judicial Luncheon Series



The first of three judicial luncheon series was held in March with Judges Timothy McCarthy, Jonathan Gerber and Diana Lewis as guest speakers. Over 40 attorneys attended the event held in the courthouse. Pictured above are Judges McCarthy, Lewis and Gerber; newly appointed County Court Judges Janis Keyser and Reginald Corlew; Greg Keyser; Joe Ianno, Judicial Relations Committee Chair; and Adam Rabin, Chair, Luncheon Series Subcommittee.



It's Time...

... to renew your Palm Beach County Bar Association Membership Dues. Statements were mailed at the end of March. **Only members** can take advantage of these

Discounts:

- CLE seminars and tapes/CD's
- Office supplies
- Movie Tickets
- Theme Park Tickets
- Three free classified ads per year
- Daily Business Review
- Brooks Brothers

and Programs:

- Mentor Program
- Professionalism Council
- Young Lawyers Section
- North County Section

If you did not receive a statement, please contact Shoshana Spence at (561) 687-2800.

Bar seeking old photos?

The Bar Association's Historical Committee is seeking old photos – either of local attorneys, the old courthouse or anything relating to the history of the practice of law in Palm Beach County. If you or someone you know has some old photos that you could share with us, please send them to Patience Burns at the Bar Office (address on back cover). Please let us know if you need them returned and we will be happy to send it back.

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THE
BULLETIN

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The mission of the PBCBA is to foster professionalism, serve its members, and enhance public access to the legal system through education and service.

LETTERS TO THE EDITOR

The Palm Beach County Bar Association Bulletin welcomes your comments on topics relating to the law, the legal profession, the Palm Beach County Bar Association or the Bar Bulletin. Letters must be signed, but names will be withheld upon request. The editor reserves right to condense.

Send letters to:
EDITOR Bar Bulletin
Palm Beach County Bar Association
1601 Belvedere Road, #302E
West Palm Beach, FL 33406



Lawyers Inspire Young Minds to Read

Thirty-five members of our Association recently participated in the Palm Beach County Literacy Coalition's "Read Across Palm Beach County" program. Our lawyers spent their morning reading and talking to children about the importance of education. Here are some pictures from the event:



"It was really funny, when I asked them what a lawyer does for a living. The answers were – 'work, eat, fight, tell people right from wrong, and read.' I told them they were right about all of those things, but mostly lawyers read and that was why I was there – to read to them, because it is so important to learn how to read."

– Amy Cosentino



"Read Across Palm Beach County" was sponsored by the Lawyers for Literacy Committee. With proceeds from last year's Bar Spelling Bee, the committee purchased more than 100 books and donated them to the schools.

Some of the committee members are in this picture:

Seated: Cindy Spall, Lawyers for Literacy Chairperson

Standing: Glory Ross, Mark Goldberg, Melynda Melear, and John Weig.

Thank you to all of our readers:

Tyrone Bongard, Charlotte Burnett, Amy Cosentino, Ken Cutler, Phil Di Como, Rosanne Duane, Thomas Gano, Mark Greenberg, Pamela Giltman, Ellen Goldberg, Mark Goldberg, Pamela Guerrier, Steven Harris, Kim Hines, Jared Levy, Sarah Marks, Melynda Melear, Angela Miller, John Igoe, Georgina Jimenez-Oroso, Stephen Rapp, Robin Rosenberg (and her daughter Sydney McAuliffe), Glory Ross, Rosemarie Scher, Siobhan Shea, Lisa Small, Cindy Spall, Tulio Suarez, Pamela Syx, Nigel Taylor, Richard Tendler, Steven Wallace, John Weig, Keith Williams, and Molly Williams.

President's Message



The Fight For Judicial Independence

By Theodore J. Leopold, President

“Statutes and constitutions do not protect judicial independence – people do”. Those are the words of recently retired Supreme Court Justice, Sandra Day O’Connor in a speech she recently gave. Justice O’Connor was speaking on the issue of judicial independence. I believe, as do many other people, that the attacks on our judiciary and issues related to judicial independence are the most important issue facing us today.

In her speech Justice O’Connor discussed how the judiciary was under attack. She noted that death threats against judges were on the rise and added that the situation was not helped by a senior United States Senator’s suggestion that there might be a connection between the violence against judges and the decisions they make.

The Senator she was referring to is John Cronin, a Republican Senator from the State of Texas, who made his remarks last April, soon after a judge was shot dead in an Atlanta courtroom and the family of a federal judge was murdered in Illinois. Senator Cronin said “I don’t know if there is a cause and effect connection, but we have seen some recent episodes of courthouse violence in this country... and I wonder whether there may be some connection between the perception in some quarters, and on some occasions, where judges are making political decisions yet are unaccountable to the public, that it builds up and builds up to the point where some people engage in violence.”

Justice O’Connor said that if the Courts did not occasionally make politicians mad they could not be doing their jobs, and their effectiveness “is premised on the notion that we won’t be subject to retaliation for our judicial acts”.

Justice O’Connor’s words at a time when our judiciary is under attack could not be more timely. I believe it is incumbent upon all of us to get active in this fight of protecting the independence of our judiciary. It can begin at the most basic level of casual conversations with friends, to writing letters and e-mails to our politicians both in Tallahassee and in Washington. This cannot be a fight that we, as regular citizens or attorneys can lose. Therefore, it is important for all of us to keep in mind the wonderful saying: “if not now, then when and if not me, then who?”



Do You Need a Mentor?

The Palm Beach County Bar Association’s Mentor Program is designed to provide members with a quick and simple way to obtain advice, ideas, suggestions, or general information from an attorney that is more experienced in a particular area of law. The mentors provide a ten-to-fifteen-minute telephone consultation with a fellow attorney, at no fee. Any member of the Palm Beach County Bar, whether newly admitted or an experienced practitioner, can use the program. Call the Bar office at 687-2800, if you need a Mentor.



Visit the Bar’s Website
www.palmbeachbar.org

Board of Directors Meeting Attendance

	July Retreat	Aug	Sept.	Oct. <small>No Meeting Due To Wilma</small>	Nov.	Dec.	Jan.	Feb	March
Leopold	x	x	x			x	x	x	x
Farach	x	x	x		x	x	x	x	x
Poulton	x	x	x		x	x	x	x	x
Suskauer	x	x	x		x	x		x	
Murray	x	x	x		x	x	x	x	x
Whitfield	x	x	x		x	x	x	x	x
Schuler	x	x	x		x	x	x	x	x
Sasser	x	x	x		x	x	x	x	x
Fleck	Beer	x	x			Pineiro		Doner	
Bowden	Pressly		Pressly		x	x	Pressly	x	Guari
Marks	Isaacs	x	x		x		x	x	x

Need CLE Credit?

The Palm Beach County Bar Association has a large library of audiotapes available if you are in need of some extra CLER credit hours.

Be sure to check the Bar’s website at www.palmbeachbar.org/continuing.php to download the complete list of tapes available, see the insert in this issue, or call 687-2800 to have an order form faxed to you.



Who are they?

In continuing with a project started by the Historical Committee, we will continue to run old photos of some of our members. Can you guess who they are?

Answers on page 16



Minutes of the Junior Bar November 6, 1964

On information and belief, the 165th meeting of the Junior Bar Section of the Palm Beach County Bar Association was probably held at the Town House at 12:15 P.M., on or about Friday, November 6, 1964. It is understood that 48 or so members and guests may have attended.

The President introduced various members of the Judiciary and more than likely forgot somebody. An individual thought to be Don Beverly introduced and proposed for membership Dick Abbett who was unanimously accepted to be subject to payment of dues. Don Beverly also introduced as a guest, Tim Abbett, brother of our newest member. Don Kohl introduced John Petty and Marshall Criser introduced Jim Arnold.

Charles Fulton, conceded to be a U.S. District Court Judge, supposedly gave a talk on Voir Dire Examination and it was one of the best we have heard in some time – most likely.

There being no further business to come before the meeting, it was duly adjourned.

Respectfully submitted,

/s/ Angus J. Campbell

Membership Profile: Judge Nelson E. Bailey

This month's membership profile is about Judge Nelson E. Bailey. Judge Bailey is a County Court Judge and is the only judge presiding in the branch courthouse in rural Belle Glade. Judge Bailey has a deep fascination with the state's history, especially with its agricultural heritage and has the distinction of being the only person (and the only Judge) to be listed in the National Storytelling Directory as a celebrated teller of exclusively Florida tales.

In his hundreds of performances throughout the state as a "Florida Cracker Storyteller" of the late 1800s, he shares his knowledge of Florida's uniquely intertwined agricultural history and multi-cultural heritage. He often tells his stories while mounted on his horse, a horse with Spanish bloodlines that go back nearly five hundred years in this state. He often is accompanied as well by his Florida Cur cow-dog named "Cooter," a traditional breed of Southern herding dog used to gather and hold herds of cattle.

Judge Bailey's Florida stories weave together a fascinating multi-colored quilt of Florida heritage and history. He tells stories of the state's Native-American mound builders prior to the 1500's; of Spanish explorers, settlers, and ranchers from the 1500's to the 1800's; of Seminole traditions and of the Black Seminoles of the 1700 and 1800's; of other Black history unique to the state of Florida from the 1500's to the 1900's, and finally, of Florida's cowboys or, as traditionally called in Florida, its "cow hunters" of the 1800's and of today.

Judge Bailey grew up in Tavares, where his father was a commercial honey producer or beekeeper. As a child and young man he worked with his father in their "bee yards" located throughout Central Florida.

Prior to becoming a judge in 1995, he had been an attorney with the Florida Department of Agriculture in Tallahassee, an Assistant Attorney General of Florida in the Tallahassee and West Palm Beach offices, and then a criminal defense lawyer in private practice in West Palm Beach for 22 years. In 1973 Nelson and his friend Lawyer Rendell Brown formed the first White-Black law partnership in the entire history of the state of Florida.

Judge Bailey and his wife Carol live on their small ranch in Loxahatchee. Like the stories he tells, his family life reflects his state's amazing diversity. The Bailey's bi-racial son is a former professional baseball player who now teaches in the public schools of Palm Beach County.



Photo by Warren Resen

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- Served in Circuit Court Civil Division (general trial jurisdiction) for 4 years and will have completed 2 years in Family Division (South County) upon completion of first term in 2006
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Health Law Practitioners Happy Hour

Join the Health Law CLE Committee members for complimentary cocktails and hors d'oeuvres on June 1, 2006 from 6:30 - 8:30 p.m. at Paradise Harbour, Pool Clubhouse, 108 Paradise Harbour Boulevard, North Palm Beach. Directions: I-95 to Northlake Blvd. East., north on U.S. 1, right at first light, right at stop sign, building #108, pool clubhouse on left. Please RSVP to Stephanie Russo at 655-1100.



Movie tickets make great gifts for teachers, clients and staff!

The PBCBA has discount movie tickets available for its members. Remember, these tickets make great gifts for family, babysitters, staff or clients. Savings are available for the following theaters:

- *Muvico Theater - \$7.00 each (\$8.50 at box office)
- *Regal Theaters \$7.00 each (\$8.50 at box office)
- ***NEW* Cobb Theatres \$6.50 each (\$7.75 at the box office)**

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North County Section's "Spring Break Happy Hour"

These are pictures from the North County Section's "Spring Break Happy Hour," which was recently held at the Square Grouper in Jupiter.



Joe Johnson, Bill Johnson, Judge Laura Johnson, Judge Jeffrey Colbath, Pat Dodgin and Judge Amy Smith.



Brain Taillon, Keith Campbell, Carl Spagnuolo, and Michael Slavin



Jon Newman and Catherine Eaton admire their great catch! (Jon released the giant lobster back into the water shortly after the event was over)



Greg Coleman and Judge Jeffrey Colbath



Morris Aherne, Colleen Nelson and Scott Zappolo. Many thanks to Colleen for putting on another great event for our members. The evening included a live band, catered food and cold drinks along the beautiful waterway.



David Glatthorn and Nellie King



Jay Hunston, Bob Hackney, and Judge Art Wroble



David Gaspari, Judge Timothy McCarthy and Fred Cunningham



Discovery and Work Product

by Ted Babbitt

An opinion of the Fourth District Court of Appeals clarifies recent decisions about the work product exception to discovery. Grinnell Corp. v. The Palms 2100 Ocean Boulevard, Ltd., 31 Fla. L. Weekly D726 (Fla. 4th DCA, March 8, 2006) was an action brought under the Florida Condominium Act alleging the defective installation of fire sprinkler pipes in a condominium in Ft. Lauderdale. Interrogatories were sent to the defendant requesting all facts the defendant relied upon in their answer or affirmative defenses and requesting the identification of all records that supported those facts and every witness having knowledge of those facts. The defendant resisted discovery on the basis of work product. The trial court overruled that objection and required answers to the interrogatories and required that the defendant not only produce the requested documents but label them “as a broad general view” as well as identifying pages of deposition testimony that supported the defendant’s affirmative defenses.

The Fourth District affirmed the trial court with respect to its order compelling the answers to the interrogatories but reversed as to the requiring of the labeling and delineating documents and depositions.

The landmark case on work product is Hickman v. Taylor, 329 U.S. 495, 510-11 (1947), which protected from

discovery an attorney’s mental impressions in the preparation of a case. In Northup v. Acken, 865 So. 2d 1267 (Fla. 2004), the Supreme Court of Florida drew a distinction as to the application of the work product exception based upon whether the product of the attorney’s work was to be presented at trial. The Court held that once an attorney, in good faith, expected to utilize information at trial it no longer was protected from discovery based upon work product.

In drawing that distinction, the Supreme Court reviewed an opinion of the Fourth District in Gardner v. Manor Care of Boca Raton, Inc., 831 So. 2d 676 (Fla. 4th DCA 2002). Gardner, *supra*, was a nursing home case in which the defendant sought discovery from the plaintiff and requested that the plaintiff determine which documents, which had already been produced, were relevant to the lawsuit. The Fourth District approved those discovery requests.

In Northup, *supra*, the Supreme Court explained that Gardner went too far in requiring plaintiff’s counsel to evaluate which documents were relevant to the lawsuit. In Grinnell, the Fourth District quotes from the Supreme Court’s opinion in Northup at Page 1272”

“[t]he overriding touchstone in this area of civil discovery is that an attorney may not be compelled to disclose the mental impressions resulting from his or her

Continued on page 19

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Florida Bar Foundation Creates "Kids Deserve Justice" Florida Specialty License Plate

The Kids Deserve Justice specialty license plate funds free legal services to low-income children in Florida, helping them reach their full potential. Examples include legal representation for abused and neglected children, legal help for children transitioning out of foster care or legal assistance for children needing special education testing or access to health care.

The legal services are provided by not-for-profit organizations, including local legal aid societies and volunteer attorneys. The funds can also be used to work with the courts and other groups to improve how the broader justice system serves the needs of Florida's most vulnerable residents.

Every dollar of the Kids Deserve Justice specialty license plate fee of \$25.00 will fund children's legal services. No administrative costs will be deducted by The Florida Bar Foundation. If you have purchased a plate or will be purchasing one, please let us know at info@palmbeachbar.org. For more information, please visit www.flabarfdn.org or call 800-541-2195 ext. 104.

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Your Teeth Might Be Blue, But Your Hands Stay Clean

By Bard Rockenbach, Chairman, Technology Committee

There's wireless, and then there is Wireless. There's handsfree, and then there is Handsfree. The point is that sometimes wireless and handsfree technology isn't really wireless or handsfree. Take, for example, the wireless mouse. I have used two so-called wireless mice, both from Microsoft, and both of which had – you guessed it – a wire! It turned out that the wireless mouse has a wire attached to a transceiver that has to be connected to the computer before the “wireless part” will work. It seemed like a bit of a gimmick to me.

The same with handsfree cell phone earpieces. Have you ever seen someone using one of the models that have the earpiece for listening, and then a microphone on the cord for speaking? People invariably hold onto the tiny microphone part of the cord and push it up toward their mouths. It is instinctive. Even with one of those handsfree devices, the user still needs to pick up the phone to look up phone numbers and dial or answer the phone.

A true wireless technology has existed for several years, called Bluetooth, which solves these problems. Unfortunately, it was very slow to catch on, probably because the Bluetooth ear pieces made the user look like a geek. I was one of the people who refused to buy one for that very reason. I have overcome my prejudice, however, and I am now happy to report that Bluetooth has finally become useful.

The first catalyst for my embrace of Bluetooth was my Acura TL. As I wrote in a previous article, Acura has combined voice recognition and wireless technology to create a technologically advanced and useful car. Other manufacturers,

such as Audi, BMW and Mercedes-Benz, have embraced Bluetooth as well. I quickly bought a new cell phone with Bluetooth and voice command features and hooked it up to the car. I was extremely impressed with the ease of use and the sound quality. With the voice commands, I can tell the car to “Call Home” or “Call the Office” and it will dial the number for me. I can also say “561-721-0400” and it will dial that number. It makes the use of the telephone truly handsfree.

The next step was the geeky earpiece, which my wife bought for me and has now repossessed because she has her own Bluetooth phone. With the earpiece, I am also able to push one button and tell the phone to “Call Home,” except that my phone uses a translation system to turn the typed names of entries in my contacts list to names, which means I don't have to record every name. If I add an entry for “Bill Gates,” the phone knows what those letters sound like together and can find the entry when I ask it to “Call Bill Gates.” (Of course, I rarely call Mr. Gates now because of the restraining order.) Not every phone does that, however, and you will have to research to see if the model you like needs to have the names recorded.

Both these systems are truly handsfree. I can dial the phone, talk and hang up without ever touching the phone. I usually leave the phone in my briefcase or on the charger in the console compartment. The sound quality is excellent. Most callers do not know they are on a handsfree system, even when I am traveling at 70 mph on I-95.

But that isn't the end of my Bluetooth experience. I then purchased a Bluetooth attachment for my laptop computer

Continued on page 16

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Florida Supreme Court Recognizes Local Attorneys for Pro Bono Work

Florida Supreme Court Justice Barbara Pariente and the Florida Pro Bono Coordinators Association in collaboration with the Legal Aid Society of Palm Beach County and with the support of the Young Lawyer's Division of the Florida Bar are proud for the second year, to recognize the efforts of local attorneys who provide pro bono service through a legal services organization. Attorneys to be recognized will receive a lapel pin designating their level of pro bono activity. Three levels will be recognized:

Bronze level - 20 to 49 hours

Silver level - 50 to 99 hours

Gold Level - 100 or more hours

All hours are based on cases closed in the year 2005. The pins, along with a letter of recognition from the Chief Justice of the Florida Supreme Court, will be distributed this spring through the Legal Aid Society. The attorneys will be recognized at the 18th Annual Pro Bono Recognition Evening, additional local recognition for these attorneys is anticipated. A list of the award recipients follows:

Gold

Richard Abedon

Georgiana Dambra

Charles D. Jamieson

Joseph N. Nusbaum

Paul Rampell

Doreen M. Varela

Peter A. Cooke

Ryan S. Copple

David W. Craft

Charlotte Danciu

Michelle Diffenderfer

Donald C. Dowling

Rosanna Ferrari

J. Andrew Fine

Anne H. Ford

John Fenn Foster

Donald S. Fradley

Lawrence M. Fuchs

Isidro Garcia

James C. Gavigan

Garry M. Glickman

Paul R. Golis

Deborah Graham

Robert C. Groelle

John Harrison Hough

Phillip H. Hutchinson

Bonnie Willis Hutton

Robert D. Jones

Judith Ann Just

Lillian Kaminer

John A. Kovarik

Donna Krusbe

Jennifer Labbe

Jason D. Lazarus

Tanique G. Lee

Gordon Leech

Michael Logan

James M. McCann, Jr.

Daniel M. McNalis

Stephanie McQueen

Lonnie J. Martens

Shelley B. Maurice

Scott A. Mersky

Marjorie Miller

Morris G. Miller

Kenneth L. Minerley

Thomas Mullin

John B. T. Murray, Jr.

Gloria O. North

Donall O'Carroll

Nicole Ofstein

Jack Orsley

Bruce Parrish, Jr.

Denise L. Parrotta

Kenneth S. Rappaport

Thomas D. Rielly

Alan B. Rosenthal

Lee Rosenthal

Harry J. Ross

Max Rudmann

Michael J. Ryan

Mark A. Salzberg

David R. Schwartz

Jeffrey Shaffer

G. Mark Shalloway

Ronald L. Siegel

Rod Tennyson

Victoria Vilchez

Robert W. Wilkins

Stuart A. Young

Alan Zangen

Silver

Michael B. Davis

Richard Kleid

John M. Koenig, Jr.

Kevin L. McNamara

Rebecca Mercier-Vargas

James R. Merola

Georgina Orosa

Frank T. Pilotte

Donia Adams Roberts

Elisha D. Roy

Steven D. Rubin

Edward Shipe

Alfred Zucaro, Jr.

Bronze

Laurence M. Abramson

Peter M. Arnold

Jodi G. Barrett

Peter M. Bernhardt

Lawrence Brownstein

John L. Bryan, Jr.

John B. Cleary

Edward B. Cohen

Joel M. Comerford

Pro Bono Cases Closed

We salute the following attorneys that closed their pro bono cases from January through March 2006:

Peter M. Arnold
Joseph R. Atterbury
Benjamin Bedard
Frank J. Benasutti
Flynn P. Bertisch
Jerri M. Blaney
J. Reeve Bright
S. Brian Bull
Gregory Burdick
Barry Carothers
William C. Carroll
Cathy Chimera
Peter A. Cooke
Alan R. Crane
Jeffrey Garber
Eric S. Glatter
Philip Harris
Lisa Z. Hauser
James B. Hayes
Kelly Henderson
Allan Hoffman
Phillip C. Houston
Stuart F. Karden
Ira D. Karmelin
Jason D. Lazarus
James M. McCann, Jr.
John M. McDivitt
Hubert McGinley
Thomas J. Maccari
Ryland F. Mahatney
Daniel L. Monahan
Charles Musgrove
Alice B. Newman
Brian M. O'Connell
Phil O'Connell
Robert E. Oglesby
Joseph Pack
Ann Perry
John E. Peterson
William H. Pincus
Michael J. Posner
Jaime Quick
Sherri L. Renner
Kimberly Rommel-Enright
Robert P. Ross
Allen E. Rossin
Bradley Shraiberg
Russel M. Smiley
Thomas Streit
Tulio G. Suarez
Scott J. Topolski
Joseph J. Ward
Mark Wilensky
Alysia Wolfskeil
June Zhou

Total number of hours: 880



Dr. Kenneth and Robin Bresky

On March 11 attorney Robin Bresky and her husband Kenneth Bresky hosted a Gift Gathering Gala at their home in Boca Raton to benefit the 18th Annual Pro Bono Recognition Evening. Over 85 guests enjoyed the event and donated more than 40 gifts to be auctioned at this year's festivities. The annual event honors outstanding pro bono attorneys and raises much needed funds to benefit Legal Aid and the Sun Sentinel's WB/39 Children's Fund. In addition to excellent food and drink, guests were entertained by students from the Dreyfoos School of the Arts who in keeping with the Studio 54 theme sang Donna Summer and Village People Songs.



Also attending the event were
Matt & Amy Triggs

**Register for Bar Events Online at
www.palmbeachbar.org**

Brooks Brothers Legal Aid Event

On March 15, 135 young professional friends of the Legal Aid Society of Palm Beach County partied and shopped at Brooks Brothers store in the Gardens Mall.

The event benefited Legal Aid's Children's Emergency Project and hosts for the evening were Edrick Barnes, Hampton Beebe, Flynn Bertisch, Jeffrey Devore, Mariano Garcia, David Gaspari, John Howe, Hampton Keen, Scott Murray, David Prather, Grier Pressly, Cater Randolph, Heath Randolph, Scott Suskauer and Matthew Triggs.

The party raised over \$2,500 which will go towards providing clothing, school supplies and medication to children served through Legal Aid's Juvenile Advocacy and Foster Children's Projects.



Pictured above are Joe Galardi, Patti Leonard and Rob Hauser



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Welcome New Members!

The following represents each new member's name, hometown, law school, and date of admission to the Florida Bar and law firm association.

SANGEETA BANERJEE – Hoogezand, Holland; University of Miami Law School, 1995; Associated with Investment Property Exchange Services, Inc. in Pompano Beach.

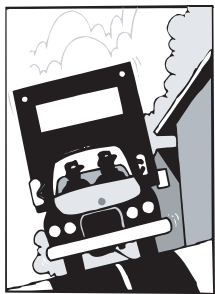
MICHAEL S. BYRNES – Miami, FL; Creighton University School of Law, 2004; Associate with Broad and Cassel in West Palm Beach.

JACQUELINE E. CISTARO – Rahway, NJ; Nova Southeastern University, 2001; Solo Practitioner in West Palm Beach.

CATHY GRANGER – California; California Western School of Law, 1991; Associate in McIntosh, Sawran, Peltz & Cartaya, P.A. in West Palm Beach.

NICOLE SCIMONE – Boston, Massachusetts; Boston College of Law, 2005; Associate with Akerman Senterfitt in West Palm Beach.

MICHAEL S. YASHKO – Ohio; Northwestern University, 1987; Partner with Roetzel & Andress, LPA. in Fort Myers.



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Director's Comments



by V. Lynn Whitfield

This will be my last time to address you as one of your directors. First I would like to thank each member of the Palm Beach County Bar Association for the confidence you displayed in electing me twice as one of your directors. It has been a pleasure to serve you. I hope that my presence on the board has enriched the Bar and that in some small way I have been an asset. This is the best Bar in the State of Florida and I'm grateful for the opportunity that was afforded me.

As I move on, I would like to share a few thoughts with the membership about the future of the Bar. I can comfortably leave the board knowing that the leadership is in great shape. Manny Farach will be an awesome president next year. Manny and I both were elected to the board after the board ceased with the ladder system and opened up the leadership to increase diversity. Manny will be the first Hispanic president to serve this organization. It is sad to think that in 2006, in a county in South Florida, we are just getting a Hispanic president. Over the years I have encouraged black attorneys to become more involved in the County Bar. Unfortunately, due

to the lack of participation, we don't know when we will have the first black president.

The Minority Initiative Program started under the guidance and hard work of Meenu Sasser and it is just one indication of the type of programs she will bring to the Bar as its president in 2007. I see nothing but good things occurring under her leadership. With the leadership of M&M (Manny and Meenu), the Bar will continue to be the premier organization in the state demonstrating the highest level of professionalism and civility.

I encourage each member of the bar to not only continue to stay involved but to become more active. Also more experienced members, reach out to the younger members. Someone mentored you and showed you the way, now is your time to give back. Take the lead, as Meenu did, and don't just talk about diversity, do something about it. Step outside of the box and comfort zone. The leadership needs the help of each member.

Again, thank you for all the support. Good luck to the new board members and to M&M.

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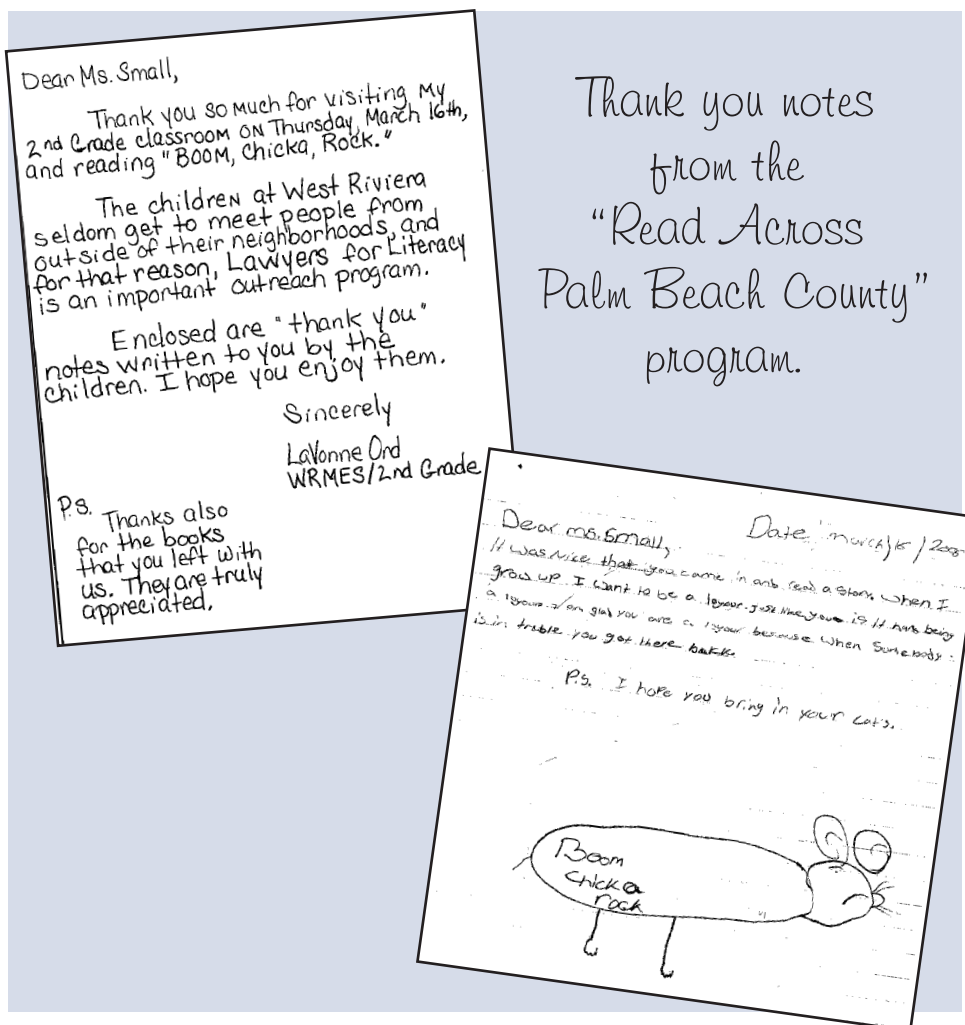


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Thank you notes
from the
"Read Across
Palm Beach County"
program.

Your Teeth

from page 11

which allowed it to connect wirelessly to my cell phone and a mouse. The cell phone was interesting. Because I dictate to my computer, I frequently have a headset on anyway, and by connecting the cell phone to the computer I am able to talk on the phone through the wired headset connected to my computer. When a call comes in on my cell phone, a message is displayed on the computer screen notifying of the call and who is calling. I can then stop dictation and answer the phone (which is still in my briefcase) without changing headsets. By the way, I tried using the geeky earpiece for my dictation but discovered that the sound quality isn't good enough for dictation. It has to do with the noise cancellation technology available and the sampling rates of the microphone. New versions of NaturallySpeaking can use a Bluetooth microphone, but not the cell phone earpiece. Callers have said that my voice sounds a bit techno, or computerish, and I have detected an additional delay in the transmission. I'm sure that is because the signal is now being washed through the computer, and I can probably solve it by purchasing a new computer with a faster processor, built in Bluetooth and more RAM. Every new toy leads to another new toy, and so on.

The Bluetooth mouse finally does away with the wire, too. The same Bluetooth connector on the computer can make connections with several devices, so it can handle both the cell phone and the mouse.

Bluetooth has a short range of twenty to thirty feet, but the quality of the connection is excellent. It is definitely something that everyone should look into. As always, email me. bdr@flappellatlaw.com

John Pankauski, JD, LLM West Palm Beach

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Photo Answers:

From Page 4

1. Martin "Guy" Haines
2. Judge Emery Newell
3. Jerri Blaney
4. Allan Hoffman
5. Leon St. John

New Online Membership Directory

We are very pleased to unveil our new online membership directory! We sincerely thank **Regent Bank** and **Visual Evidence** for their sponsorship of this new member benefit. This directory not only contains address and photo information on your fellow members, but it will soon have archived copies of the Bar Bulletin. Please keep in mind that this directory and the ListServ is available only to members of the Palm Beach County Bar Association.

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B	09/06	07/06	04/06	1334
D	12/06	08/06	04/06	1415
E	07/06	05/06	06/06	1446
F	05/06	05/06	05/06	1230
G	03/07	03/07	04/06	1040
H	11/06	11/06	04/06	1336
I	06/06	06/06	04/06	1257
J	07/06	07/06	04/06	1381
N	09/06	07/06	06/06	1353
O	10/06	07/06	04/06	1476

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Discovery and Work Product

from page 9

investigations, labor, or legal analysis unless the product of such investigation itself is reasonably expected or intended to be presented to the court or before a jury at trial. Only at such time as the attorney should reasonably ascertain in good faith that the material may be used or disclosed at trial is he or she expected to reveal it to the opposing party. Because the Fourth District's Gardner decision conflicts with this principle, **we must disapprove that portion of the opinion requiring counsel to evaluate the comparative relevance of documents for purposes of an opponent's discovery.**" (Emphasis by Grinnell Court).

Subsequent to the Northup opinion, the Fourth District decided the case of Gabriel v. Northern Trust of Florida, N.A., 890 So. 2d 517 (Fla. 4th DCA 2005). Gabriel was a suit over an investment account in which the defendant sought production of documents that "relate to or otherwise support" the "essential" allegations of the complaint. The Fourth District, relying upon Northup, held that such information could not be obtained until such time as the attorney for the plaintiff reasonably intended to utilize the information at trial. In Grinnell, the Court stated:

"A fair reading of *Gabriel* is that it precludes production of any documents or fact unless a party reasonably expects or intends to present it at trial. Such a broad construction of the work product privilege interferes with the essential function of the discovery process of narrowing issues for trial." Grinnell at Page D728.

In receding from its opinion in Gabriel, the Fourth District in Grinnell reviewed the landmark cases on the broadness of discovery such as Allstate Ins. Co. v. Boecher, 733 So. 2d 993 (Fla. 1999) and Surf Drugs, Inc. v. Vermette, 236 So. 2d 108 (Fla. 1970). Those cases sought to put an end to "surprise" trial tactics, reasoning that both sides were entitled to information to fully prepare for trial and evaluate cases for potential

settlement. The Grinnell Court concluded that couching discovery in terms of "relevance" is perfectly appropriate because Fla. R. Civ. P. 1.280(b)(1) itself utilizes the term "relevance" when it permits discovery of "any matter, not privileged, that is relevant to the subject matter of the pending action." At Page D728, the Court holds:

"Because the rule contemplates that a party may ask about matters 'relevant to the subject matter of a pending action,' it is clear that the concept of 'relevance' is appropriate in framing discovery requests."

The Court then reviewed Dupree v. Better Way, Inc., 86 So. 2d 425 (Fla. 1956) which involved an interrogatory requiring a party to provide "names and addresses of any other persons believed by you or known by you or your attorney to have knowledge concerning facts pertaining to the [] accident" and concluded that:

"We see no difference between a fact 'pertaining' to an incident under *Dupree*, and a document or fact 'supporting' an affirmative defense, which was the phrasing used in the interrogatories and request for production in the case at bar." Grinnell at Page D728.

The Grinnell Court explained that there is a distinction between the divulging of an attorney's strategy or legal impression and the **facts** obtained by an attorney as a result of the attorney's diligence in preparation of the case. While the strategy and impressions of an attorney may be protected by work product, the facts are not. The Court thus concludes at Page 7:

"Without violating the work product privilege, a litigant may be required in an interrogatory to specify the facts supporting a claim or defense."

The conclusion of the Fourth District in Grinnell is consistent with the form interrogatories approved by the Supreme Court in 1985. Those form interrogatories were the product of a special committee appointed by the Supreme Court entitled "The Abuse of Discovery Committee" and were designed to avoid unnecessary

duplication in response to interrogatories propounded by multiple parties. Those interrogatories, which are required to be utilized initially before the propounding of any further interrogatories, contain the following questions:

"17. List the names and addresses of all persons who are believed or known by you, your agents, or your attorneys to have any knowledge **concerning any of the issues in this lawsuit**, . . ."

"19. State the name and address of every person known to your, your agents, or your attorneys, who has knowledge about, or possession, custody, or control of, any model, plat, map, drawing, motion picture, videotape, or photograph **pertaining to any fact or issue involved in this controversy**. . . ."

The Grinnell Court, after approving the trial court's order requiring answers to the subject interrogatories, quashed the Court's order requiring the defendant to label certain documents that had been produced and identify deposition testimony, which supported certain defenses explaining that Fla. R. Civ. P. 1.350(b) establishes the procedure for the production of documents which includes the choice of either producing them as they are kept in the usual course of business or identifying the documents as they correspond with the request for production. The Court explained that requiring counsel to go through documents already produced and depositions already taken to classify them with respect to the issues in the case was precisely the type of order prohibited by the Supreme Court in Northup, supra.

This case clarifies for the bench and bar required discovery production and the limitations of the work product protection of such discovery.

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The following announce their availability for referral, assistance and consultation.

SCOTT SUSKAUER: Board Certified Criminal Trial Lawyer. All criminal matters in State and Federal Court including felonies, misdemeanors, DUI and traffic matters, 1601 Forum Place, Ste. 1200, WPB, FL 33401; 561-687-7866.

GREGORY TENDRICH: Former Vice President & Asst. General Counsel (with Series 7 license) to regional & national NYSE/NASD brokerage firms, current NASD Arbitrator and Florida Supreme Court Certified County Court Mediator, is available to mediate all securities related matters, as well as business and commercial disputes. Mr. Tendrich is also accepting referrals and is available to co-counsel and/or provide trial consultation & assistance in all securities related matters, including state, federal and SRO regulatory enforcement. Please call 561-417-8777 or visit our website www.yourstocklawyer.com or email the firm at 10drich@bellsouth.net.

MARK R. HANSON: All admiralty and maritime matters, including personal injury actions, boating accidents, cruise line injuries and insurance claims. 240 Tenth Street, West Palm Beach, FL 33401, (561) 833-7828
Mhanson@PalmBeachInjuryLawyer.com

W. GREY TESH: Criminal Defense Attorney. Over 50 jury trials. Former assistant public defender experience in felony, misdemeanors, juvenile, and appeals. Federal and State cases. Private investigator services included. Director, Palm Beach Association Criminal Defense Lawyers. Young Lawyers Section, PBCBA. 1610 Southern Blvd. WPB, FL 33406. www.wgtlaw.com (561-686-6886).

MICHAEL J. MCHALE: Board Certified Admiralty and Maritime Lawyer. All maritime and admiralty matters in State and Federal Court including personal injury, seizures of vessels, limitation of liability, purchase and sale of boats, cruise ships injuries, longshore claims, and BUIs. (561) 835-3660, admar1@earthlink.net and www.admiraltyatty.com.

KEVAN BOYLES: Contributing Fellow – National Network of Estate Planning Attorneys. Probate; Guardianship (Minors); Special Needs and Protective Trusts; Estate Planning (Financial Retirement, Business Succession, Charitable, Medical, Disability, Legacy and Gift); Estate and Gift Tax Returns. 350 Royal Palm Way, Ste. 405, Palm Beach, FL 33480; (561) 833-2472.

CHRISTOPHER HOPKINS: Appellate counsel for appeals in state and federal courts. Mr. Hopkins focuses on state appeals, particularly personal injury and malpractice. Cole, Scott & Kissane, P.A., 1645 Palm Beach Lakes Blvd., 2nd Floor, WPB, FL 33401; Email: Hopkins@csklegal.com.

RICHARD D. NADEL: Bankruptcy. Twenty years experience in the Southern and Middle District. Florida Bar designated 1996. Address: 3300 PGA Blvd., Ste. 970, Palm Beach Gardens, FL 33410, Telephone: (561) 622-9353 Email: nadelgrp@bellsouth.net.

JOHN PANKAUSKI: Probate Litigation & Investments- Helping investors and beneficiaries with wills, trusts, estates, investment losses, prudent investor act cases, discretionary accounts, bank/trust companies/brokers, beneficiary rights, inheritances, fees, breach of fiduciary duty. Gratefully accepting referrals, co-counseling cases and serving as an expert witness. Referral fees per bar rules. John Pankauski, JD, LLM, 655-1556, john@panklaw.com, WPB, former Associate Fiduciary Counsel-Bessemer Trust; NASD arbitrator; CFP Instructor; Adjunct professor, graduate studies, College of Business, Dept. of Finance, FAU.



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JAY STEVEN LEVINE: Jay Steven Levine concentrates in the area of representing condominium and homeowners associations on all matters, with a special concentration relating to hurricane and other casualty insurance and reconstruction disputes and issues, including the preparation of construction contracts. Mr. Levine also concentrates in representing developers in connection with condominium conversions and new developments. 2500 North Military Trail, Suite 490, Boca Raton, FL; 561-999-9925; jayslevinepa@aol.com.

JULIA LUYSTER: Appellate counsel available for all state and federal civil appeals, select trial support, complex dispositive motion practice. Bernstein Chackman & Liss, 515 Flagler Drive, Suite 200-P, West Palm Beach, Florida 33401, (561) 296-3742; 1909 Tyler Street, 7th Floor, Hollywood, Florida 33022, (954) 986-9600; 44 West Flagler Street, 14th Floor, Miami, Florida 33130 (305) 940-1900. jluyster@bernstein-chackman.com.

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HEARSAY

Jeffrey L. Klein, J.D.,RFC, of Boca Raton earned his sixth membership in the prestigious Million Dollar Round Table (MDRT). MDRT is an international, independent association of nearly 33,000 of the world's best life insurance and financial services professionals.

Lise L. Hudson has joined Sachs Sax Klein as an attorney in the Family and Matrimonial Law Practice Group in the firm's Port St. Lucie office. During her sixteen years in the field, Hudson has been active in state and local family law practice committees. Hudson received her J.D. from Mercer University.

Jones, Foster, Johnston & Stubbs, P.A. is proud to announce that the firm has elected new Board of Directors that consists of: **Larry B. Alexander**, Chair and President; **Scott G. Hawkins**, Vice-Chair and Vice-President; **David E. Bowers**, Treasurer; **John B. McCracken**, Secretary; **Peter A. Sachs**, Vice President.



Lytal, Reiter, Clark, Fountain & Williams is pleased to announce the following new partners: **Nancy L. Lavista**; **Lake H. Lytal III**; **David C. Prather** and **Kevin C. Smith** all of whom of Florida Bar Board Certified in Civil Trial Law and **Julie Littky-Rubin** who is Florida Bar Board Certified in Appellate Law.



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CALENDAR

May 2006

May 1 - 5
LAW WEEK

Friday, May 5, 11:45 a.m.
Annual Law Day Luncheon
Cohen Pavilion
at the Kravis Center
Speaker: CNN Legal Analyst
Jeffrey Toobin

Tuesday, May 9, 8:00 - 4:45
Estate & Probate Law Seminar
Marriott at City Place

Tuesday, May 9, 12 noon
YLS Executive Committee Meeting
Bar Association Office

Tuesday, May 9, 12 noon
NCS Board Meeting
Offices of Michael Slavin

Tuesday, May 9, 12 noon
South Palm Beach County Bar Meeting
Muvico Theatre in Boca Raton
Call (561) 482-3838 for more info

Wednesday, May 10, 12 noon
Solo Practitioners Luncheon
Bar Association Office

Thursday, May 11, 12 noon
Judicial Luncheon Series
Judicial Dining Room,
PB County Courthouse
Speakers: Judges Amy Smith,
Thomas Barkdull and Karen Miller

Thursday, May 11, 6:30 - 8:30 p.m.
Health Law Committee Happy Hour
Paradise Harbour
Contact Stephanie Russo
(561) 655-1100 for info

Friday, May 12, 8:30 a.m.
ADR Committee Meeting
Bar Association Office

Friday, May 12, 12 noon
Federal Bar Assoc. Luncheon
Colony Hotel
Speaker: The Hon. Daniel
T.K. Hurley

Friday, May 12, 12 - 5 p.m.
Construction Law Seminar
Bar Association Office

Friday, May 12, 5:30 p.m.
YLS Past President Happy Hour Honoring Bryan Poulton
McCarthy's in Palm Beach

Saturday, May 13, 6:00 p.m.
Legal Aid Society's Pro Bono Recognition Evening
Cohen Pavilion
at the Kravis Center

Tuesday, May 16, 12 noon
Family Law Practice Committee Meeting
Law Library, PB Cty Courthouse

Thursday, May 18, 12 noon
Health Law CLE Committee Meeting
Bar Association Office

Thursday, May 18, 5:30 p.m.
NCS Annual Dinner at Ruth's Chris

Friday, May 19, 12 noon
Quality of Life Committee Mtg.
Salito's in City Place

Friday, May 19, 12 noon
Cunningham Bar Association Meeting
Law Library, PB Cty Courthouse
Contact Edrick Barnes
(561) 616-3333

Saturday, May 20, 8:00 a.m.
Palm Bch County Trial Lawyers Fishing Tournament
Contact Susan Maynor
(561) 999-9490 for info

Wednesday, May 24, 12 noon
FAWL Membership Meeting
Presidential Country Club
Contact Elisha Roy
(561) 832-5500 for info

Wednesday, May 24, 5:00 p.m.
Legal Aid Board of Directors Meeting
Bar Association Office

Thursday, May 25, 5:00 p.m.
Board of Directors Meeting
Bar Association Office

Thursday, May 25, 6:00 p.m.
PBC Trial Lawyers Assn. Cocktail Reception
Marriott at City Place
Contact Susan Maynor
(561) 999-9490

Monday, May 29
Court Holiday - Memorial Day



PALM BEACH COUNTY BAR ASSOCIATION

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