



**PARACLETE**

*April 2004*

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Law Day 2004

# TO WIN EQUALITY BY LAW

*Brown v. Board at 50*

**Law Day Luncheon**  
**April 30, 2004**

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**Join us for Law Day**  
**with ABA President**  
**Dennis W. Archer**





## President's Message



David J. Abbey

### BROWN: A HISTORICAL PERSPECTIVE

Mankind's record is full of violent conflicts over royal blood, religion, region and race. Fortunately, no true aristocracy was transplanted to this country. Also, perhaps because many of the original immigrants to the Thirteen Colonies left Europe because of religious persecution, the First Amendment has recognized and protected the exercise of religion since 1791. While this country has been blessed to avoid bloodshed over royalty and religion, the same can't be said concerning region and race.

We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal.

The first Africans arrived in the English mainland colonies twelve years after the establishment of Jamestown not as victims of religious persecution, but as slaves. In August, 1619 Jamestown planter, James Rolfe noted that a Dutch warship had "sold" twenty Africans to local planters. Prior to 1800 more Africans than white colonists crossed the Atlantic. By 1860 when the last U.S. census was performed prior to the War Between the States, almost four million slaves of African descent resided in the fifteen southern slave-holding states and comprised fully one-third of these states' populations.

The War Between the States was the bloodiest conflict in this nation's history resulting in 618,000 casualties, about two percent of the entire 1860 population and approximately two times the number of deaths suffered in World War II, our second most costly war. While the argument may be made the War Between the States began only as a regional conflict, slavery was an undeniable part of the what the North and South were fighting over no later than 1863 with Lincoln's publication of the Emancipation Proclamation.

The victorious northern states adopted the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution, the so-called "Civil War Amendments" between 1865 and 1870 with the intent of ensuring equal citizenship and suffrage to Americans of African descent. The withdrawal of federal troops from the South in 1877 signaled the national government was giving up its attempt to control southern politics and determine blacks' place in southern society. Between 1870 and 1877, the

Democratic Party had recovered power in all the state governments of the eleven states of secession. Legislation to restore white supremacy and separation of the races soon followed.

In 1883, the United States Supreme Court ruled the Fourteenth Amendment did not prohibit private individuals or organizations from discrimination based on color. In 1896, the Court determined a law which required separate seating arrangements for the races on railroads passed constitutional muster in *Plessy v. Ferguson*. In the *Cummings* case, published in 1899, the Court held that laws establishing separate schools for whites and blacks were valid if the facilities were equal for both. "Separate but equal" remained the law of the land for over fifty years until *Brown v. Board* in 1954, when Chief Justice Earl Warren wrote:

"Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other 'tangible' factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does...We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

Although the racial fabric of the country had begun to change with President Truman's integration of the armed services in 1948, the *Brown* decision six years later signaled the U.S. Supreme Court's willingness to overturn a constitutional doctrine which had been considered *stare decisis* for over half a century. In 1957, the first Civil Rights Act was passed since Reconstruction. From 1957 to 1965, Presidents and Congress provided important new civil rights legislation in an attempt to guarantee equality for Americans of African descent.

*Brown* was not well received in many southern states; in fact, some did not initially honor the decision at all. In 1960, six years after *Brown*, Alabama, Georgia, Louisiana, Mississippi and South Carolina had yet to admit a single black student to a public school attended by whites. Governor George Wallace literally stood in the schoolhouse door at the University of Alabama to block the admission of African-American students. The extent to which change has come over the last fifty years since and because of *Brown*, other decisions from the United States Supreme Court which followed *Brown*, and various civil rights legislation occurred to me this summer when I visited the Alabama campus for my son's freshman college orientation and listened to an African-American professor in the Communications College speak to an audience of various skin tones.

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**The mission of the St. Petersburg Bar Association is to serve the community of St. Petersburg lawyers and to strengthen and improve the administration of justice in the St. Petersburg area.**

The opinions and conclusions, including legal opinions and conclusions contained in articles appearing in the *Paraclete*, are those of the authors and do not reflect any official endorsement of these views by the St. Petersburg Bar Association or its officers and directors, unless specifically stated as such.

The *Paraclete* Board welcomes submissions for publication subject to said Board's discretion.

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APRIL 2004

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## APRIL 16 MEMBERSHIP LUNCHEON

**Guest Speaker:**

**The Honorable Elizabeth A. Kovachevich, United States District Judge**

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## LAW DAY – APRIL 30

**Keynote Speaker - Dennis W. Archer  
President of the American Bar Association**

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# Law Week Speakers Needed For High School Juniors: April 21, 2004



*Judge John C. Lenderman*

As high school students become adults they must make the transition to practicing adult responsibilities. Part of learning adult responsibilities includes learning about new legal responsibilities as well as financial responsibilities. To better prepare young people to make this transition into adulthood, the Pinellas County School System has mandated as part of the 11th grade curriculum a law component designed to address these needs.

As part of Law Week, the Pinellas County School System will again distribute to approximately seven thousand 11th grade American History students the Florida Bar pamphlet entitled "Legal Guide for New Adults." This publication contains information on contracts, credit, drinking laws, driving, employment, taxes, landlord tenant, marriage and voting. In conjunction with distribution of this pamphlet to every 11th grade public school student, we have made arrangements to bring a judge or lawyer into 11th grade American History classes on Wednesday, April 21, 2004. We need volunteer judges and lawyers to speak to student classes throughout Pinellas County and to answer questions related to the law.

There are 16 public high schools located throughout Pinellas County. There are approximately 225 daily American History classes. Not every teacher will want a judge or a lawyer to come speak; however, most will.

Rene Bauer, Esquire, (453-7053, fax 453-7236 or e-mail [rmb\\_sao@yahoo.com](mailto:rmb_sao@yahoo.com)) has agreed to be the contact person for South County teacher contacts to refer judges and lawyers to specific schools and teachers.

Elise Winters, Esquire, (442-3888, fax 443-6944 or e-mail [ewinters@elisekwinters.com](mailto:ewinters@elisekwinters.com)) has agreed to be the contact person for North County.

This is an ambitious educational project that will require a great number of volunteers. We need your help. If you live or work South County, please call, fax or e-mail Rene Bauer and volunteer to be available to go to one of the high schools April 21, 2004. If you live or work North County, please call, fax or e-mail Elise Winters. Please block your calendar right now as you read this article and contact Ms. Bauer or Ms. Winters to volunteer.

This is every judge's and every lawyer's opportunity to have an impact on emerging adults. Speaker's materials and a useable curriculum will be provided to all volunteers regardless of experience level. This is your opportunity to bring to the young people of Pinellas County a sense of knowledge about legal responsibilities to better educate emerging adults.

This educational program is basic enough for law students to teach. The materials give you everything you need to know. We have prepared sample curricula to use as a 5 or 10 minute "warm-up". The American History teachers will have learning exercises for use with the materials prior to speaker presentations. The objective is not only to bring basic legal information to high school juniors, but also give these students the opportunity to meet a role model in the legal profession.

Please call or fax Rene Bauer (453-7053, fax 453-7236, e-mail [rmb\\_sao@yahoo.com](mailto:rmb_sao@yahoo.com)) in St. Pete, or Elise Winters (442-3888, fax 443-6944, e-mail [elise1@gte.net](mailto:elise1@gte.net)) in Clearwater and volunteer.



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# Make the World a Better Place: Become a Fellow



*John A. Yanchunis, Sixth Circuit Fellows Campaign Chair*

The Florida Bar Foundation, through its endowment, is a sound and permanent expression of our sworn duty and of our desire to meet it.

As lawyers, we know that a helping hand—especially from a lawyer—can truly change someone's life. The Florida Bar Foundation funds programs all over Florida, including Gulfcoast Legal Services and the Community Law Program, that extend that hand to those who otherwise wouldn't have a chance at justice or perhaps even peace of mind. Consider these examples:

- An elderly widow sought assistance from legal aid after being threatened with eviction by her homeowners' association for using an "illegal" wheelchair ramp. Legal aid filed a fair housing complaint and negotiated a settlement which ensured her right to stay in her home.
- A mother of three suffering from multiple sclerosis was abandoned by her husband, who also refused to provide any financial support for her or their children. A social service agency from which she had sought financial help referred her to legal aid. Legal aid represented her in a dissolution of marriage proceeding in which the judge ordered that the father pay child support and alimony.
- Faced with foreclosure, an 84-year old woman living on a small, fixed income, came to legal aid for help. Several months earlier, she had been contacted by a contractor who advised her that a government program would pay for repairs to her home. After having her sign paperwork he did not explain, the contractor made costly and unnecessary repairs to her home which resulted in a \$32,000 mortgage she was unable to pay. Legal aid negotiated cancellation of the mortgage. The contractor was later prosecuted by the state of Florida.

For decades, YOUR Florida Bar Foundation has been providing the leadership and funding necessary to

help our legal system work for all Floridians. The Florida Bar Foundation, through its endowment, is a sound and permanent expression of our sworn duty and of our desire to meet it.

As a member of The Florida Bar and the St. Petersburg Bar Association, you know how important this work is; and so I hope that you will join me in sustaining the Foundation's endowment by becoming a life member of The Florida Bar Foundation through the Fellows program. There are currently only 27 Fellows in the Sixth Circuit, and our legal community clearly can and should be much better represented in this good work. You can become a Fellow this spring by simply pledging a tax-deductible gift totaling \$1,000 that is payable over FIVE years or less (with young lawyers eligible for a ten year payment plan). Most of us can do this; and if you can, please join us! Our Florida Bar Foundation must have our support in order to sustain and enhance funding for this vitally important work. For more information, please call Amanda Styles at 1-800-541-2195, or John Yanchunis at 286-4108, or log on to the Foundation's website at <http://www.flabarfdn.org/>.

*John Yanchunis began practicing law in St. Petersburg in 1982, and has maintained a trial practice since that time. Today the focus of his practice is consumer law. He has been active in the organized Bar and has served on numerous committees, including the Board of Governors of the Young Lawyers Division of The Florida Bar, the Board of Governors of The Florida Bar and The Florida Board of Bar Examiners. John presently serves on the Executive Committee of the St. Pete Bar Association, and is a member of the Board of Directors of The Florida Bar Foundation.*



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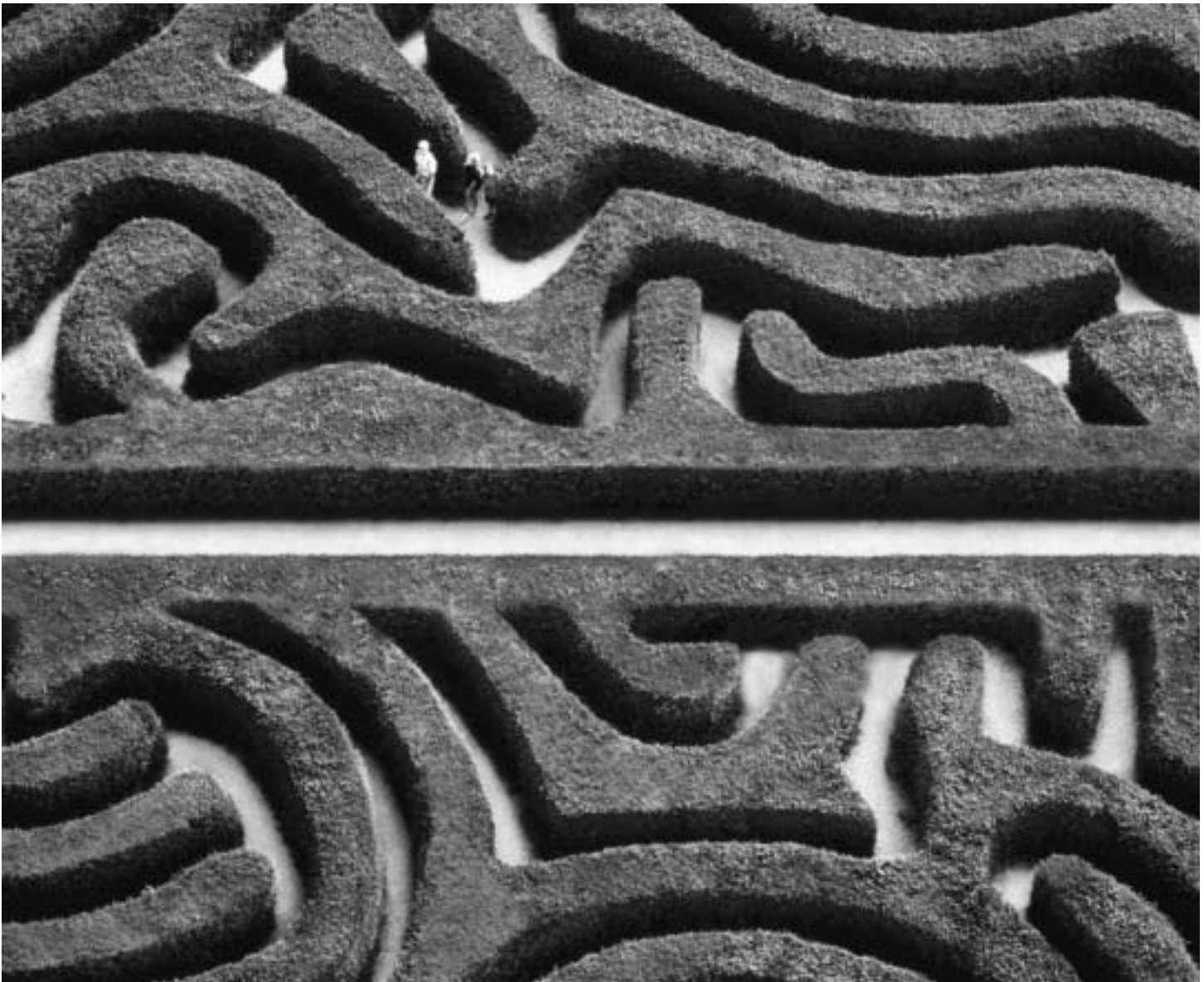
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## St. Pete Bar Welcomes ABA President Dennis Archer



*Jeannine S. Williams*

Those who miss the St. Pete Bar Association Law Day luncheon on April 30, 2004, are sure to hear about it later. Dennis Archer has that effect on people, especially fellow lawyers. Once you hear him speak, you find yourself repeating things he has said or challenging others to do the things he challenged you to do. What is most delightful about listening to him speak is there is a different spin each time. That surely cannot be easy since he speaks to audiences daily and usually focuses on one or more of his presidential initiatives.

Dennis Archer's presidential initiatives are (1) The Commission on the 50th Anniversary of *Brown v. Board of Education* (exploring the *Brown* decision and its legacy); (2) Diversity in the Legal Profession (creating a larger pipeline for persons of color to enter the profession); (3) The National Women's Summit of General Counsels and Managing Partners (removing obstacles for women on their way to breaking the glass ceiling of law firm and corporate leadership); (4) The Kennedy Commission (focusing on the American penal system); and (5) The Working Group on Protecting the Rights of Service Members (easing the burdens our service members face as they are deployed).

Each initiative could fill a seminar, but I'm certain Archer will speak about at least three of these initiatives just long enough to inspire the audience to assist with the efforts. This is what a great speaker does. This is what a great leader does. This is what Dennis Archer does.

Where did Dennis Archer hone these skills? Everywhere. He obtained his first job at the age of eight, working as a caddy for a golf course. This was the first of many jobs for Dennis Archer as he worked his way through school. For example, while Archer attended law school, he taught learning disabled children in the Detroit Public School system. After graduating from the Detroit College of Law in 1970, he was a trial lawyer for many years. While practicing law, Archer was no

stranger to bar activities. He served as president of the Wolverine Bar Association (1979-80), the National Bar Association (1983-84), and the State Bar of Michigan (1984-85). These experiences alone surely gave him the experience needed to lead the lawyers of our nation, but there's more.

In 1985, Governor James Blanchard appointed Archer as Associate Justice of the Michigan Supreme Court. The following year, he was elected to an eight-year term. In 1994, Mr. Archer was elected Mayor of Detroit and served two four-year terms, simultaneously serving as the President of the National League of Cities in 2001. After leading the City of Detroit, he became the chairman of Dickinson Wright, PLLC, a Detroit-based law firm with more than 200 lawyers and staff members.

Armed with this lengthy and diverse list of service to the public, Archer became President of the American Bar Association in 2003, becoming the first person of color elected to lead the Association. Throughout his career, Archer has received a host of honors and awards - enough to fill this whole edition of the Paraclete. However, Dennis Archer beams most when he talks about his wife, Judge Trudy DunCombe Archer of Michigan's 36th District Court, and two sons, Dennis W. Archer, Jr., and Vincent DunCombe Archer, both graduates of the University Michigan.

We all know how unreliable hearsay is, so , make sure you get your information about the Law Day luncheon first hand. RSVP today!

*Jeannine S. Williams is an Assistant City Attorney with the City of St. Petersburg. She practices employment, workers' compensation and contract law and litigation. She is a graduate of the University of Florida College of Law and Florida A&M University.*

Once you hear him speak, you find yourself repeating things he has said or challenging others to do the things he challenged you to do.

**Join us for Law Day 2004 • April 30, 2004**  
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# Interview with ABA President Dennis W. Archer



**Q: Why is commemoration of the decision in *Brown v. Board of Education* appropriate on Law Day?**

**A:** Commemorating *Brown* is appropriate because it is entirely consistent with educating our nation's young people about a historic decision by this nation's Supreme Court, which finally ended segregation in our school systems. Law Day also provides a good opportunity for adults to reflect on *Brown*. I find that sometimes many adults, including myself, forget important events in our respective lives or in our country's history, until we are reminded of them by recognizing or acknowledging them. For example, we have been celebrating for a number of years the life and legacy of Dr. Martin Luther King Jr. on the third Monday of January. If there was not a federal holiday, I'm sure that many people would have forgotten his impact.

**Q: When *Brown v. Board of Education* was handed down, do you think people saw the decision as a precursor of broader social change?**

**A:** People certainly appreciated that the decision meant the beginning of the end of legislated segregation in public schools. That in itself was a revolutionary social change for much of the country. Fewer people saw how the decision would spark demands for justice in other contexts, in areas like voting rights, gender equity, and protections for disabled Americans. The spirit of *Brown* deserves much of the credit for the country's achievements in social justice, and it continues to inspire the push for progress.

**Q: So do you think the promise of the decision has been fully realized?**

**A:** No. Not in my view. The decision in *Brown* set forth the law, but you still need the people to respect the rule of law and embrace it to assure equality of education, especially in public schools. However, I do believe that many things have occurred as a result of *Brown* and as a result of the work of those outstanding lawyers who followed the work of attorney Thurgood Marshall, who have used the *Brown* decision to open a lot of doors.

**Q: Is *Brown* still a relevant decision today?**

**A:** There is no question that *Brown* is a seminal and important decision. It was the centerpiece of the Bakke decision that came out in 1978 (*Regents of the University of California v. Bakke*), and clearly it was on the minds of everyone when the University of Michigan cases (*Grutter v. Bolinger* and *Gratz v. Bolinger*) were argued and decided this past spring by a divided U.S. Supreme Court.

**Q: On Law Day this year, what can Americans reflect on?**

**A:** On Law Day and on the 50th anniversary of *Brown* on May 17th, I think our nation can, as a whole, reflect on and consider how we might as a country and how we might as a people appreciate the contributions that ethnic minorities have made to world and American civilization. I hope the commemoration will cause us to reduce race as a negative factor and to look at race as something that is positive.

If you look at the world, the majority of people living in the world happen to be people of color. And if we are to be competitive and to work with one another and cause the world to be a better place in which to live, it is important that we have respect for one another and for the rule of law.

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## Executive Committee Candidates



### **SEYMOUR A. GORDON** **PRESIDENT-ELECT**

*Gay and Gordon Attorneys, P.A.*

**Law School:** Stetson University,  
College of Law

**Admitted to the Florida Bar:**  
1960

**Member of St. Pete Bar since:**  
1960

**Current St. Pete Bar Activities:**  
Executive Committee, 2 years

**Past St. Pete Bar Activities:**  
Law Week Chairman (1965)

#### **Florida Bar Activities:**

Member, Real Property,  
Probate and Trust Law Section  
Civil and Professional  
Involvement:

Current Vice President,  
St. Petersburg Museum of  
Fine Arts

Board Member of The Hospice of  
the Florida Suncoast for  
15 years

Chairman of The Hospice of the  
Florida Suncoast for 2 years

Past Director, Goodwill  
Industries-Suncoast

Kiwanis Club of  
St. Petersburg, Florida, Inc.  
(President, 1997-1998)

Kiwanis Club of  
St. Petersburg, Florida, Inc.  
(Board member for several years)

Past Adjunct Professor, Stetson  
University College of Law, Wills  
and Estates and Domestic  
Relations

#### **Goals for the St. Pete Bar:**

1. Enhance relationship between the public and the St. Pete Bar.
2. Enhance relationship between younger members and senior members of St. Pete Bar.
3. Increase active involvement of new members.



### **JEANNINE S. WILLIAMS** **SECRETARY**

*City of St. Petersburg Legal  
Department*

**Law School:** University of Florida  
College of Law

**Admitted to The Florida Bar:**  
1999

**Member of St. Pete Bar since:**  
2000

**Current St. Pete Bar Activities:**  
Diversity Committee, Co-Chair

Young Lawyers Section,  
Scholarship Chair

Employment Law Section

Past St. Pete Bar Activities:

Diversity Committee, Co-Chair

Young Lawyers Section

Employment Law Section

Florida Bar Activities:

Member, City, County and Local  
Government Section

Member, Equal Opportunities  
Section

Member, Young Lawyers Division

#### **Local Civic Involvement:**

Active Volunteer, Community  
Law Program

Active Volunteer, St. Pete Reads -  
Campbell Park Recreation Center  
President-Elect, Fred G. Minnis,  
Sr. Bar Association

Attorney Advisor, Gibbs High  
School Law Club

Secretary, Susan G. Komen Breast  
Cancer Foundation, Florida  
Suncoast Affiliate Board

Social Action Chair, Delta Sigma  
Theta Sorority, Incorporated

#### **Goals for the St. Pete Bar:**

1. Continue and increase diversity initiatives.
2. Increase St. Pete Bar visibility in the community.
3. Increase mentor relationships within the St. Pete Bar.



### **JOHN W. BIESINGER III**

*SunTrust Bank, Senior  
VP/Pinellas County Trust  
Administration Manager*

**Law School:** Stetson University  
College of Law

**Admitted to The Florida Bar:**  
1979

**Member of St. Pete Bar since:**  
1981

**Current St. Pete Bar Activities:**  
Member, Bench & Bar Committee  
(1996-2004)

Chair, Judicial Appreciation  
Subcommittee (1999-2004)

**Past St. Pete Bar Activities:**  
Chair, Speaker's Bureau

#### **Local Civic Involvement:**

Board Member, All Children's  
Hospital Foundation

Board Member, The Children's  
Home, Inc.

Suncoaster's of St. Petersburg

Kiwanis Club of St. Petersburg,  
Past President

Florida District of Kiwanis, Past  
Lt. Governor

Board Member and Treasurer,  
Suncoast Estate Planning  
Counsel

Tierra Verde Homeowner's  
Assn., Long Range Planning  
Committee

Board of Trustees, Allendale  
United Methodist Church

#### **Goals for the St. Pete Bar:**

1. Increase membership through active education of non-members to benefits and activities offered by the St. Pete Bar.
2. Highlight to press and public the community service activities of the St. Pete Bar and bar members to improve public perception of all attorneys.
3. Expand participation of existing membership throughout various committees and expand CLE opportunities for membership.



### **KELLY M. FEELEY**

*Stetson University College of Law:  
Legal Research and Writing  
Instructor; State Judicial  
Internship Co-Director; and  
Stetson's Client Skills Board  
Faculty Advisor and Coach.*

**Law School:** Stetson University  
College of Law

**Admitted to The Florida Bar:**  
1995

**Member of St. Pete Bar since:**  
1996

**Current St. Pete Bar Activities:**  
Strategic Planning Committee

**Past St. Pete Bar Activities:**  
Presented lecture on Notice of  
Production to Non-Parties at  
St. Pete Bar section luncheon  
Fall 2000.

#### **Civil and Professional Involvement:**

Member & Group Leader, Barney  
Masterson Inn of Court

Coordinated furniture and book  
donations to the Community Law  
Program

Lectured to Gulfcoast Legal  
Services Fall 2002

Lecture each semester to Poverty  
Law Clinic students on deposition  
ethics

Volunteered at Gulfcoast Legal  
Services for client intake, Fall 2003

#### **Goals for the St. Pete Bar**

1. To increase attorney involvement and attendance at meetings and events.
2. To increase students' awareness of the benefits of local bar membership for mentor and network opportunities.
3. To increase professionalism in the legal community through local bar involvement.



**CARL SCHUH**

*Carl A. Schuh, P.A.*

**Law School:** University of Florida

**Admitted to The Florida Bar:**  
1983

**Member of St. Pete Bar since:**  
1987

**Current St. Pete Bar Activities:**  
Member, Probate & Guardianship Section

**Past St. Pete Bar Activities:**  
Chair, Probate & Guardianship Section

Program Chair, Probate & Guardianship Section

Member, Pro-Bono Committee

**Florida Bar Activities:**

Member, Real Property, Probate and Trust Law Section

Past Member, Probate law revision sub-committee

**Civic and Professional Involvement:**

Suncoast Estate Planning Council

Volunteer, Community Law Program advice clinic

Public interest and youth advocacy

Cooperating attorney, Lambda Legal Defense, New York

Pro-bono representation for several local non-profits

Member, Communication and Law Commission National Communication Association

**Goals for St. Pete Bar:**

1. Provide public education on basics of consumer law and buying and renting homes.
2. Participate in designing and presenting the civics curriculum in Pinellas County schools.
3. Expand St. Pete Bar continuing education programs.



**JO CLAIRE SPEAR**

*Jo Claire Spear, P.A.*

**Law School:** Stetson University College of Law

**Admitted to the Florida Bar:**  
1990

**Member of St. Pete Bar since:**  
1997, Past Member, Hillsborough County Bar: 1990-1997

**Current St. Pete Bar Activities:**  
Member, Real Property Section  
Member, Solo and Small Firm Section

**Past St. Pete Bar Activities:**  
Chair, Real Property Section (2002-03)

Speaker: "Electronic Signature Acts," St. Pete Bar Seminar April 2002, Recent Developments in Real Property Law

**Current Florida Bar Activities:**  
Member, Real Property Probate & Trust Law Section (Actionline Committee Features)

Editor; Construction Law, Real Property Litigation, and Landlord-Tenant Committees

Business Law Section

**Civic and Professional Involvement:**

Board Member, Commercial Real Estate Women, Tampa Bay Chapter (2000-01)

Member, Gateway Area Chamber of Commerce (2003 — present)

**Goals for the St. Pete Bar:**

1. Increase networking and cross-referral opportunities among members in different practice areas.
2. Foster continued networking relationships among Clearwater and Hillsborough County Bar Associations within practice areas.
3. Promote professionalism and public awareness of Bar community services and activities.



**MARILYN M. POLSON**

*Fisher & Sauls, P.A.*

**Adjunct Professor:** Stetson University College of Law

**Law School:** Stetson University College of Law

**Admitted to The Florida Bar:**  
1988

**Member of St. Pete Bar since:**  
1988

**Current St. Pete Bar Activities:**  
Member, Probate and Guardianship Committee

**Past St. Pete Bar Activities:**  
Participant in Stetson/St. Pete Bar Mentor Program

**Florida Bar Activities:**  
Member, Executive Council of the Real Property, Probate & Trust Law Section; Probate Law Committee (Pinellas County Subcommittee); Sixth Circuit Representative

Member, Elder Law Section

**Local Civic Involvement:**

Volunteer Attorney, Community Law Program; Sanderlin Center Advice Clinic and acceptance of pro bono files from Community Law Program

Member of the Board of Directors and Past President of Suncoast Estate Planning Council; Member of the Board of Trustees of CASA (Community Action Stops Abuse, Inc.)

1996 United Way Community Hero Olympic Torchbearer

**Goals for the St. Pete Bar:**

1. Continue to further the promotion of professionalism demonstrated by the St. Pete Bar Association and its members.
2. Support civic and community activities in which the St. Pete Bar Association chooses to participate;
3. Encourage student membership and participation by student members of the St. Pete Bar Association.



**SHIRIN M. VESELY**

*Keane, Reese, Vesely & Gerdes, P.A.*

**Law School:** Stetson University College of Law

**Admitted to The Florida Bar:**  
1994

**Member of the St. Petersburg Bar Since:** 1995

**Current St. Pete Bar Activities:**  
Chair, Trial Practice Section

**Past St. Pete Bar Activities:**  
Member, Young Lawyers Section  
Member, Trial Practice Section  
Member, Stetson University College of Law Liaison Committee

**Florida Bar Activities:**  
Member, Trial Lawyers Section  
Civil and Professional Involvement:

Stetson University College of Law Advisory Committee

ATLA Trial Team Coach for Stetson University - 1996-1997

ABA Trial Team Coach for Stetson University - 1997-1998

**Goals for the St. Pete Bar:**

1. Further the goals of professionalism in the Bar and in the public perception of lawyers.
2. Increase continuing education through open communication between members of the Bar with respect to their specific practice area.
3. Increase membership and active involvement.

**Ballots will be mailed by April 15 and must be returned no later than 5:00 p.m. on May 1, 2004.**



Marcia S. Cohen

Mediation as a means of resolving disputes has crossed the Atlantic and is alive and thriving in Paris, the city of love. The process differs in some respects from mediation in the United States, but the result is the same: the parties design their own resolution with the assistance of a trained professional, and the conflict is at an end.

In 1995, the Paris Chamber of Commerce and Industry created the Paris Mediation and Arbitration Center to provide alternative dispute resolution to commercial enterprises in and around Paris. In doing so, the Chamber of Commerce had three goals: to make mediation and arbitration more available as a quick, effective and confidential means of resolving disputes; to account for the needs of all companies, especially those of small and medium size; and to offer its members the guarantee of a solid structure composed of known partner entities, such as the Paris Bar, the Paris Commercial Courts, the French Arbitration Association, the French National Committee of the International Chamber of Commerce, and the Council of the Order of Accountancy.

The Paris Mediation and Arbitration Center (or CMAP) is the first center in continental Europe dealing solely with commercial mediation. As of 2002, CMAP completes 100 mediations per year. Mediation is typically begun with the request of one party for a dispute to be mediated. It is the job of CMAP staff to convince the opposing party to agree to mediate. 70% of the time, CMAP is successful in doing so.

After a unilateral request, CMAP sends a letter to the opposing party describing the organization and giving the party 15 days to respond, or one month for a party in another country. Though at least one of the parties must be French, many CMAP cases are international disputes, many between U.S. and French companies. Often, there will be no reply to CMAP's first letter, so a CMAP staff member will telephone the firm, urging it to agree to mediate the conflict.

The mediator is chosen by an independent commission headed by a well-known judge, and not by the parties. The mediator may be a lawyer, a judge, an accountant, a business executive, or a member of another profession. All CMAP mediators must undergo 40 hours of training, but

there is no certification for mediators. Currently, there are approximately 130 names on CMAP's mediator roster. Continuing mediation training is desirable, but not necessary. Judicial mediation, or mediation of court cases, is regulated by the Bar, but commercial mediation, where the dispute has not been filed in the commercial court, is not. The Civil Procedure Code does not yet deal with commercial mediation, although CMAP officials see a need for a more formal definition, and perhaps regulation, of commercial mediation.

Once mediation has begun, either party has the right to end it at any time, and there is no obligation to reach agreement, but after this similarity, the French process diverges from the U.S. model. Usually, there are at least 2-3 mediation sessions totaling 10-20 hours in duration. Most are concluded within two months, but there is a maximum mediation period of six months. Judicial mediations can be longer because CMAP has found that the parties are more angry and stubborn after a lawsuit has been filed.

In a judicial mediation, the judge will issue an order designating CMAP as the mediation organization. CMAP will then forward the names of three mediators to the judge for selection. Once the judge has designated the CMAP mediator, the mediation process begins. The mediator then has three months within which to complete the mediation. On application to the court by one or more of the parties, this period can be extended an additional three months. Confidentiality rules are similar to those in most U.S. jurisdictions.

Most of the time, the parties are represented by counsel, but if only one party has a lawyer, CMAP will attempt to convince the represented party not to bring its attorney. If the represented party insists on mediating with counsel, CMAP will try to convince the unrepresented party to retain counsel to equalize the bargaining power between the parties. CMAP has an excellent success rate; 75% of its mediations settle the dispute. The eventual settlement agreement is prepared by CMAP.

CMAP also provides arbitration services, in which the resolution of the dispute by decision of an arbitrator is quicker and



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See *Vive La Médiation*

Continued on page 28

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# The Fair Labor Standards Act: Every Answer Raises Another Question



Patrice A. Pucci

The Fair Labor Standards Act (“FLSA”) was enacted in 1938. It can be found at 29 U.S.C. §201 et seq. The FLSA includes federal provisions for a 40 hour work week, the payment of a minimum hourly wage, child labor regulations, and provisions that men and women should be paid the same for the same work.

The FLSA applies to employers and employees engaged in “commerce.” “Commerce” means trade, commerce, transportation, transmission, or communication “among the several States or between any State and any place outside thereof.” 29 U. S. C. §203 (b). The employees who are protected are those doing work involved in, or related to, the movement of persons or things (whether tangibles or intangibles, and including information and intelligence) “among the several States or between any State and any place outside thereof.” 29 C. F. R. §776.9. The courts have indicated that the words “in commerce” should not be so limited by construction as to defeat the purpose of Congress, but should be interpreted in a manner consistent with their practical meaning and effect in the particular situation. *Id.*

## Are all your questions answered yet?

The most disputed aspects of the FLSA for applicable employers are issues surrounding the 40 hour work week and overtime pay. The FLSA provides that all covered employers shall not employ an employee “for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.” 29 U. S. C. §207 (a) (1).

This can have a significant impact on the administration of the law firm if that firm or its employee is engaged in “commerce.” For example, many litigation firm employees work over 40 hours a week when preparing for trial. Many corporate and real estate firm employees work over 40 hours per week at the end of a fiscal or calendar year.

A recurring issue within the FLSA relates to who is entitled to overtime pay. The law stated above clearly indicates a presumption that all covered employees are entitled to overtime pay. The FLSA falls under the jurisdiction of the Federal Department of Labor (“DOL”). The DOL starts with this

## The most disputed aspects of the FLSA for applicable employers are issues surrounding the 40 hour work week and overtime pay.

presumption. However, the FLSA recognizes certain circumstances as exemptions to that presumption.

FLSA overtime exemptions are narrowly construed against an employer. *Auer v. Robbins*, 519 U. S. 452 (1997). An employer seeking to establish an overtime exemption must prove that the exempt employee falls plainly and unmistakably within the FLSA’s terms and spirit. *Id. citing Arnold v. Ben Kanowsky, Inc.*, 361 U. S. 388, 392 (1960).

The factual aspects of who is entitled to overtime pay are about to change. The DOL has proposed substantive changes to the FLSA. DOL Secretary Elaine L. Chao has stated that the new regulations should take effect by March 31, 2004. The FLSA delegates to the Secretary of Labor the power to define and delimit the specific factual terms of overtime exemptions. Such regulations, when issued, have the binding effect of law. Federal Register/Vol. 68, No. 61, 3/31/03 Proposed Rules at 15560 *citing Batterton v. Francis*, 432 U. S. 416, 425 n. 9 (1977).

The DOL’s position is that the proposed changes are intended to make the FLSA easier to understand. Do the changes achieve that result? You decide.

The current FLSA regulations require that three elements be met for an exemption from overtime to apply. 1) The employee must be paid a predetermined and fixed salary, not an hourly wage that is subject to reductions because of variations in the quality or quantity of work. 2) The amount of salary must meet minimum specified amounts. 3) The employee’s job duties must primarily involve managerial, administrative or professional skills. Federal Register/Vol. 68, No. 61, 3/31/03 Proposed Rules at 15560.

The DOL has proposed significant changes to element 2). The DOL currently provides two “tests” for a factual determination of exemption from overtime pay. The tests are creatively called the “Long Test” and the “Short Test.” An employer must use the Long Test if an employee in the job

being assessed is paid at least \$155/week (\$8,060/year) but less than \$250/week. An employer can use the Short Test if an employee makes \$250 or more per week (at least \$13,000/year). These salary tests were set in 1975.

The minimum salary criteria is about to change. The DOL has proposed to raise the minimum salary criteria to \$425/week or \$22,000/ year. Any job paying at least \$22,000 per year may be exempt from overtime if that job fits within the job duties set out in element 3).

As stated above, an employee’s job duties must primarily involve managerial, administrative or professional skills. The FLSA recognizes five specific job classifications to satisfy element 3). 29 U. S. C. §213(a) (1) and (a) (17). If an employee’s job falls within the salary criteria set out in elements 1) and 2) AND that job falls within one of the five job classifications, then the job is considered to be exempt from overtime pay.

## All clear?

The five job classifications that are recognized as exempt from overtime are “executive,” “administrative,” “professional,” “outside salesperson” and “computer technician.” 29 U. S. C. §213(a) (1) and (a) (17). The DOL has generated substantive changes to the regulations establishing the factual assessment of whether a job fits within one of the five exempt classifications. For the purposes of this article, I will provide a “short hand” version of the five classifications. I am sure that there will be many discussions and opinions interpreting the new regulations just as there have been many interpretations of the old regulations.

Under the new regulations, an “executive” employee is one whose primary duty is management of the enterprise, department or subdivision, one who customarily directs two or more employees and one who has authority to hire and fire. [www.workplacefairness.org](http://www.workplacefairness.org). Another new

See **Fair Labor Standards Act**

Continued on page 17

## Glistening Glass Sculptures - A Stunning Backdrop for the 2004 Judicial Reception

This year's Judicial Reception was hosted by the Young Lawyers Section at the Arts Center on February 18. This annual event has grown to become one of the St. Pete Bar's most popular member events, this year drawing over 250 lawyers, judges and friends.

Glass sculptures lighted for the evening, created a beautiful setting. Everyone enjoyed a lavish buffet that included carved tenderloin of beef, shrimp, salmon, cheeses and chocolate covered strawberries. They also had the opportunity to see a "hot glass" demonstration by the artist-in-residence who created a glass sculpture in an open-air studio behind the gallery. But perhaps the best part of the evening was the fellowship, laughter, and the chance to relax with old friends and make new ones.

Thank you to our sponsors for making this event possible and to the Young Lawyers Section for hosting the event!



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# Community Law Program



*Janet D. Herron, Esq., Executive Director of the Community Law Program*

I was surprised recently to hear one of our younger members say that she did not think many members, especially the younger ones, were aware of the close connection between the St. Petersburg Bar Association and the Community Law Program. Although Community Law is a separate corporation a review of our history clearly shows that we are, in fact, an integral part of the St. Petersburg Bar.

In 1988 the pro bono committee of the St. Petersburg Bar began exploring the possibilities and taking the first steps to create the Community Law Program which was incorporated on October 13, 1989. At that time the St. Pete Bar Association handled the placement of all pro bono cases, as well as operating the Lawyer Referral Service. The pro bono committee felt that forming a separate 501(c) (3) entity would be a more efficient way to provide pro bono assistance to those financially unable to afford an attorney and to create more opportunities for attorneys to perform Pro Bono Work. Community Law has developed a variety of legal advice clinics (25 monthly and still growing) so that attorneys have the opportunity to fulfill the Florida Bar's aspirational pro bono goal by providing one or two hours at a time by volunteering for a clinic. Pro Bono cases are screened through our clinics so that if a case is placed for extended pro bono service the attorney accepting the case knows that the client has been screened for financial eligibility. The case has also been screened by a pro bono attorney and the Community Law Program so that a summary of the facts and legal issues of the case can be provided.

Community Law also supplements the Speakers Bureau of the St. Pete Bar by filling requests for an attorney to speak to non-profit community groups.

The by-laws of the Community Law Program include a provision that the Executive Director of the St. Pete Bar serve on our Board to ensure that the St. Pete Bar is always aware of the activities and programs of Community Law. Nora Bergman served as an active contributing member of our board throughout her tenure.

Nora served as treasurer until July of 2003 and is presently our Vice-President. Nora and her staff spend many hours supporting Community Law.

There are many other ways in which the St. Pete Bar supports the Community Law Program which are parts of our operations. The St. Pete Bar dues statements include a check off for Community Law Program's annual dues and contributions. The Bar office collects and tracks the amounts of dues and contributions and forwards a check to us. Our Annual Holiday Basket Challenge is held during the Bar's annual Holiday Party. The bar promotes the event, collects the baskets, collects the money and sends us the check. This financial support is essential to our continued existence. The St Pete Bar allows the Community Law Program to hold its Board Meetings in the St. Pete Bar Office. The St. Pete Bar has generously made storage space for our old records available to us.

Dave Abbey, the current Bar President, has been particularly generous in providing time during the bar luncheon program for Community Law awards, announcements, and promotions.

"The Esquire Flyer," a fun run, will be held on Saturday April 3, 2004. It will be the 13th Annual 5K Law Run sponsored by the St. Pete Bar & Stetson College of Law. The Law Week committee of the St. Pete Bar decided to earmark the proceeds from this event to benefit the Community Law Program. Please plan to walk or run.

Also, please mark your calendars to attend the Annual Community Law Awards Ceremony on April 15, 2004 at Mid Town Sundries at 5:30-7:00 p.m. Come and join the fun and help us honor those who have made outstanding contributions to our Pro Bono program. Everyone is invited. The Law Day committee and the St. Pete Bar are promoting this event.

A Family Law Seminar for CLE credit will be offered on May 27, 2004. The fee will be waived for any attorney who accepts one Family Law Pro Bono case during the year.

The Community Law Program would like to acknowledge the tremendous amount of support the St. Pete Bar Association provides to our program.

The generous support of the bar staff, Executive Director Nora Bergman, JoAnn Knight, and Kathy Parker, is an invaluable part of the operation of our program.

*You are cordially invited to the Community Law Program's  
**Annual Meeting and Awards Ceremony**  
to honor our Pro Bono Attorneys and supporters.*

**Thursday, April 15, 2004 • 5:30 p.m. - 7:30 p.m.**

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Phone: 727-582-7402 • Fax: 727-582-7267 • Email: [clp@lawprogram.org](mailto:clp@lawprogram.org)



# Fair Labor Standards Act

Continued from page 14

regulation makes any "white collar" worker making over \$65,000/year exempt from overtime.

The "administrative" employee is one whose primary duties involve non-manual work directly related to management. It is one who holds a position of responsibility, performing work of substantial importance or requiring a high level of skill or training. [www.dol.gov](http://www.dol.gov).

The "learned professional" is one whose primary duties are performing non-manual work requiring knowledge of an advanced type in a field of science or learning acquired by a prolonged course of study or acquired by instruction and work experience. [www.dol.gov](http://www.dol.gov).

The "creative professional" is one who performs work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor. [www.dol.gov](http://www.dol.gov).

The "outside sales" employee is one whose primary duty is engaging in sales away from the employer's place of business. [www.dol.gov](http://www.dol.gov).

The "computer technician" is one whose primary duties involve systems analysis, design development, design documentation and testing or a combination of these duties or is a similarly skilled worker. [www.dol.gov](http://www.dol.gov).

The proposed regulations have generated much controversy. The DOL's position is that the new rules would guarantee overtime to 1.3 million additional low-wage workers. Members of the House of Representatives and the Senate disagree with this analysis and have taken steps to override the new regulations by including overtime pay protection in recent legislation. President Bush threatened to veto any bill if it included such protection. [www.aflcio.org](http://www.aflcio.org). Senator Arlen Specter has criticized the new regulations and stated that they would endanger workers' overtime earnings and further complicate already complex employment laws.

A DOL representative has stated that the former rules created confusion over who was qualified for overtime and they generated lawsuits.

*Any more questions?*

Patrice A. Pucci is an attorney, professional trainer, employment law consultant and Florida certified mediator. Ms. Pucci attended Stetson University College of Law, receiving her J.D. Degree in 1985. In 1997, Ms. Pucci started her own law firm of Patrice A. Pucci, P. A. located in St. Petersburg. She practices in the areas of business law and litigation, employment law, employee relations consulting and mediation. She currently serves as a Co-Chairperson of the St. Petersburg Bar Association's Employment Law Section.



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# Preservation of Error after the 2003 Amendment to Section 90.104(1)



Henry G. Gyden

In 2003, section 90.104(1), Florida Statutes (2003), was amended to eliminate the need to renew objections or offers of proof after a trial court has issued a definitive ruling on the record admitting or excluding evidence. See ch. 03-259, § 1, Laws of Fla. This article discusses the amended statute's potential affect on the preservation of errors on appeal in Florida.

Section 90.104(1), Florida Statutes, provides that "[a] court may predicate error, set aside or reverse a judgment, or grant a new trial on the basis of admitted or excluded evidence when a substantial right of the party is adversely affected." However, the statute provides that the court may only grant this relief when: (1) the ruling is one admitting evidence and a timely objection or a motion to strike appears on the record, or (2) the ruling is one excluding evidence and the substance of the evidence was made known to the court through an offer of proof or was apparent from the context within which the questions were asked.

Prior to the 2003 amendment, section 90.104(1) did not address whether a party must renew an objection to a trial court's pre-trial ruling regarding the admissibility of evidence in order to preserve the claimed error on appeal. However, Florida courts have generally taken the position that parties are required to renew their objection to the admission of evidence at trial in order to preserve any claimed error on appeal.

When the trial court grants a motion in limine and excludes certain evidence, Florida courts generally have held that parties do not need to renew an offer of proof at trial, if an adequate proffer was made during the pre-trial hearing. However, if an adequate proffer was not made, parties must proffer the excluded evidence at trial in order to preserve the claimed error on appeal. Additionally, some Florida courts have required parties to renew their offer of proof if, in granting the motion in limine, the trial court indicated a willingness to reconsider its ruling at trial. All too often, trial counsel, whether inadvertently or purposefully as a tactical matter, fails to comply with these preservation requirements, which generally results in the waiver of the claimed error on appeal.

Prior to 2000, federal courts were faced with similar preservation issues regarding their interpretation of Federal Rule of

Evidence 103(a), which is nearly identical to section 90.104(1). Some federal courts required parties to renew objections and offers of proof at trial in order to preserve claimed errors on appeal. However, other courts did not require renewal if the trial court made a definitive ruling prior to trial. In order to resolve this conflict, Congress amended federal rule 103(a), effective December 1, 2000, to provide that once the court makes a definitive ruling on the record admitting or excluding evidence, the claim of error is preserved for appellate review without the need to renew an objection or offer of proof.

In 2003, the Florida Legislature changed section 90.104(1) to make it consistent with the federal rule. The statute was amended by adding the following language:

If the court has made a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

§ 90.104(1), Fla. Stat. (2003). This amendment took effect on July 1, 2003. Although the amendment was intended to eliminate the danger of inadvertent waivers of claimed errors for appeal, there still are several preservation issues facing Florida practitioners.

Initially, practitioners should recognize that the amended statute eliminates the need to contemporaneously object only when the trial court has issued a definitive ruling on the record admitting or excluding evidence. Federal courts have held that a pre-trial ruling is definitive if the trial court is fully informed and makes no suggestion on the record that it would reconsider the ruling at trial. If, however, the trial court gives any indication on the record that its ruling is tentative or otherwise subject to reconsideration, parties must renew their objection or offer of proof at trial in order to preserve any claimed error on appeal. Importantly, the burden will be on the objecting party to clarify whether a pre-trial ruling is definitive when there is doubt on that issue.

Florida practitioners should also be aware that an appellate court may review the trial court's ruling in light of the facts and circumstances known to the trial court at the time the ruling is made. If the facts and circumstances have materially changed since the trial court's initial ruling, parties

may be barred from raising the new facts and circumstances as a basis for reversal on appeal unless the change in facts or circumstances was brought to the trial court's attention through a renewed objection or offer of proof.

Moreover, Florida practitioners should recognize that the amendment to section 90.104(1) may not change current Florida law regarding whether an objection must be renewed when the trial court changes its initial ruling or the opposing party violates a pre-trial ruling. In *Coffee v. State*, 699 So. 2d 299, 301 (Fla. 2d DCA 1997), the Second District held that a party must make an objection at trial when evidence is introduced in violation of a successful pre-trial motion in limine. The senate staff analysis for senate bill 524 discussed the Second District's decision in *Coffee*, which suggests that the Legislature intended the amendment to section 90.104(1) to eliminate the need to make an objection at trial in such circumstances. However, federal courts, in interpreting the similar provisions of rule 103(a), have held that parties must renew their objection at trial if evidence is admitted in violation of the trial court's pre-trial ruling. Accordingly, practitioners should be aware that an objection may be necessary to preserve such errors for appellate review.

One final point should be discussed. On January 28, 2004, the Code and Rules of Evidence Committee and The Florida Bar filed a report recommending that the Supreme Court adopt the amendment to section 90.104(1) as an amendment to the Rules of Evidence. However, at the time of this writing, the Supreme Court of Florida had not yet adopted the amendment into the Rules of Evidence. While it seems likely that the Supreme Court will follow the recommendation of the Code and Rules of Evidence Committee and The Florida Bar, practitioners should be aware that the amendment to section 90.104(1) may be rejected by the Supreme Court. If that occurs and the amended statute is later held to violate the separation of powers doctrine, practitioners who have failed to renew objections at trial in reliance on the amended statute may find that they have waived appellate review of their claimed errors.

See **Preservation of Error**

Continued on page 28

# Still One of a Kind

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# Out to Lunch

By Bruce P. Taylor

## A Corner of England

130 Beach Dr. N.E.  
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There is a new and interesting little shop on Beach Drive. I call it a shop, because it is more than a restaurant, but more of that later.

As for the restaurant, which is after all, the purpose of this article, it is open for lunch, but at this writing, not for dinner. From the outside, the dining area appears impossibly small, but there is a second room not clearly visible from the entrance. The food, as the name implies, is very English. The offerings include a chicken curry "pasty" (I realize curry is an Indian dish, but it has been adopted by the Brits much like pizza has here), poacher's plate (salmon and salad), ploughman's (beef or ham and salad) and a chicken salad. The salads that come with these dishes are truly wonderful, with very fresh, crisp, and flavorful ingredients. The menu boasts that the house dressing is truly delicious, and it is. One of the more interesting options is "high tea," which includes finger sandwiches, sausage rolls, baby quiche, etc, served on a tiered platter, and with desert (éclairs and scones). The jams, creams, and butter are all as wonderful as if you were being served in England, although I wonder about the calories. Naturally, they also boast a wide assortment of teas. Prices range from \$5.95 for the sandwich of the day to \$13.99 for high tea (although on Mondays you can get two for one on that). Service is always pleasant.

As I said earlier, there is more to the "Corner" than a restaurant. It is also a gift shop with a decidedly English theme. So, if you are in the mood for some wonderful English food, or need a great gift for a special occasion or a whim, drop in at "A Corner of England." You won't be disappointed.

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## National Bar Association President Clyde Bailey Comes to St. Petersburg

Clyde Bailey, the president of the National Bar Association (NBA), was our luncheon speaker in February. The NBA is the largest bar association for attorneys of color in the United States. Its members include attorneys from the United States and from countries around the world. 2004 marks the fourth year that the St. Pete Bar has welcomed the president of the National Bar Association as a speaker at one of our membership luncheons. The luncheon was co-sponsored by the Fred G. Minnis, Sr. Bar Association.



*Pictured above from left to right: St. Pete Bar President David Abbey, Minnis Bar President Jacqueline Gayle-Kelly, Clyde Bailey, Jean Bailey, past NBA President Warren Dawson.*

**Join us on April 16 as we welcome United States District Court Judge Elizabeth A. Kovachevich! See registration flyer in this issue.**

*Judge Kovachevich is the former Chief Judge for the Middle District of Florida, and has served as a Judge in the Middle District of Florida since her appointment in 1982 by President Reagan. Prior to her appointment, Judge Kovachevich served for 10 years as the first woman elected Circuit Court Judge in the Sixth Judicial Circuit. Don't miss this opportunity to hear Judge Kovachevich address our membership.*

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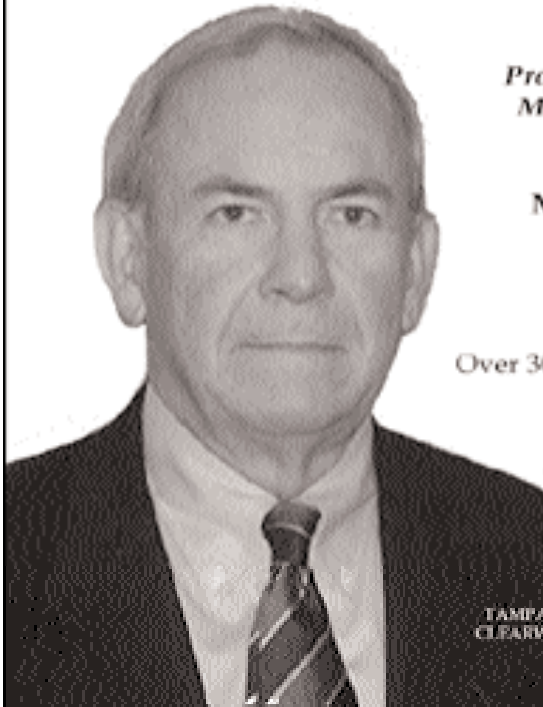
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**Ana-Marie Carnesoltas** has joined the law firm of **Englander & Fischer, P.A.**, with offices at 721 First Avenue North, St. Petersburg, FL 33701. Telephone number 727-898-7210. She practices in the areas of commercial and civil litigation and also handles family law cases. A 1978 graduate of Loyola Law School, in Los Angeles, California and a former Miami-Dade County judge, she is admitted to practice before all trial and appellate courts in the States of Florida and California. She is bilingual in English and Spanish and speaks French.

**Rebecca O'Dell Townsend**, an associate with **Haas, Dutton, Blackburn, Lewis and Longley, P.L.**, Tampa, recently spoke at the Florida Defense Lawyers Association Winter Seminar in Steamboat Springs, Colorado on "Using Legislative History in Legal Argument." Rebecca specializes in appellate, public interest, sports & entertainment, and intellectual property law.

**Brown Security & Law Group, P.A.**, owned by **Alvin K. Brown**, has been named as a finalist in the St. Petersburg Chamber of Commerce's Outstanding Business of the Year award. The firm was nominated in the Entrepreneurial Academy Graduate category for its innovative combination of security, intelligence and legal consulting services.

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**In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.**

Chief Justice Earl Warren,  
*Brown v. Board of Education* (1954)

# Feel-Good Movie of the Year



By Scot Samis



On a crisp Christmas morning, seven-year old Greg Samsa awoke from unsettling dreams to find a new skateboard under the tree. He asked his parents if he could take it outside and play. His mom said, "Okay, but put on a jacket."

An hour later, Greg returned. He told his parents how much he loved his new board. He looked like a Normal Rockwell painting; a smiling, sweaty kid with torn pants and a cut on his knee.

Greg hadn't noticed the cut, but his mom did. She took him to the emergency room, where he got a Tootsie Roll Pop and three stitches. The stitches made Greg the coolest kid in the neighborhood for a solid week.

Mom and Dad, on behalf of Greg, sued the skateboard manufacturer, the store where they bought it, the city, their landlord, and three neighbors for negligence, product liability, strict liability, premises liability, breach of lease, breach of right to quiet enjoyment, breach of several warranties, and outrage. They also made a claim on their homeowners' insurance policy for the damage to Skeeter's pants.

The skateboard manufacturer, store, city, and neighbors all sued each other, made claims against the parents for negligent supervision, and sought attorneys' fees and costs. The landlord sued for eviction and breach of the lease. The insurance companies for all of the defendants denied coverage, filed declaratory relief actions, and cancelled their policies. The litigants all reported their insurance companies and their agents to the appropriate administrative agencies, each of which began an investigation.

Greg was taken to a family doctor, dermatologist, orthopedist, neurologist, rheumatologist, psychologist, plastic surgeon, reflexologist, faith healer, repressed-memories-recovery therapist, and "Glamour Shots" studio - - twice, counting the defense experts. All of the experts were eventually sued for malpractice and reported to the appropriate administrative agencies, each of which began an investigation.

Every expert whom was sued for malpractice filed a claim for contribution and indemnification against the universities and accrediting institutions which credentialed them. The schools third-partied in their professors and instructors. All sought liability coverage for these claims, which was denied. Separate actions were commenced against the insurers.

Each of the parties filed objections to the discovery requests of the other parties. Opposing counsel requested emergency hearings when hearings on the objections were set without clearing time. The courts required the parties to bring their calendars to the emergency hearings so that dates could be coordinated for the discovery hearings and motions to compel. Each side sought sanctions related to the alleged discovery violations. The losing side at each hearing filed a motion to recuse the judge. Opposing counsel responded that the motions were filed in bad faith and in violation of the rules regulating the Florida Bar, and reported this to the appropriate administrative agency, which began an investigation. Those judges who refused to get off the cases were reported to the appropriate administrative agency, which began an investigation.

Defense counsel hired an investigator to take surveillance video of Greg. The investigator was sued for invasion of privacy by Greg's parents. When defense counsel would not pay for the video, the investigator sued for breach of contract. Defense counsel counterclaimed for breach.

While the original case was pending, Greg's parents sued each other for divorce, custody, and child support. Greg was appointed a guardian ad litem and sent to a child psychologist, both of whom were sued by the parents for malpractice. Greg's dad sued his mom for giving him permission to go outside with the skateboard. Greg's mom counterclaimed for the dad's negligent purchase of the skateboard. The divorce proceeding revealed that Greg's

mom and dad had not reported all of their income, which triggered an IRS audit. The divorce settlement fell apart when they had to hire a tax lawyer.

Several of the litigants died while the lawsuits were pending. Their estates were substituted as parties, which led to lawsuits between the heirs over the appointments of personal representatives. The courts appointed administrators ad litem.

Each of the lawyers, judges, experts, parties, and witnesses filed crossclaims, counterclaims, third party claims, interventions, interpleaders, and petitions for writs based on theories of defamation, invasion of privacy, abuse of process, malicious prosecution and bad faith, seeking damages, cost and attorneys' fees.

On the day that all the cases were to go to trial, the courthouse had to be closed because of cracks in the building. The county made a claim for a sinkhole. The insurance company said it wasn't a sinkhole, and denied coverage. The county sued and the insurance company filed a declaratory relief action. Experts were hired to inspect the courthouse. They later sued for illnesses they attributed to mold in the courthouse bathrooms. The county filed third party actions against the contractor, architect, engineer and all subcontractors involved. They all filed for bankruptcy. Each of the creditors filed a claim in the bankruptcy proceeding.

All of the cases were sent to mediation, then non-binding arbitration, then trial. Each of the losing parties sought new trials and remittiturs. All of the winners sought additurs, costs and fees.

Then, they all appealed.

\* \* \*

Bonus alternate ending (DVD version only):

All of the cases were remanded for further proceedings.

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# Florida Bar Starts Vanity Bar Number Program



By April Fuhls

Starting March 1, Florida Bar members can apply for and bid on "vanity bar numbers" to replace the traditional seven-digit Florida Bar numbers that have been in use for decades.

To apply for a unique Florida Bar number, members go to the Bar web site at [www.flabar.org](http://www.flabar.org) and click on the "Vanity Vanity All Is Vanity" button. They fill out the electronic application, including a proposed Bar number. The Bar number can be any combination of letters, numbers, and punctuation up to a total of seven. Applicants put the application charge of \$100.00 on their Visa or MasterCard.

After processing of the application, the proposed bar number is then placed on the web site's auction list for a period of five full working days, during which time other Bar members can post their bids for the proposed number in \$100.00 increments. The highest bid by 5:00 p.m. of the closing date wins the number, and upon payment the winning attorney can place his or her new bar number on pleadings, letterhead, and advertisements.

"We looked at what the motor vehicle department was doing with license tags and thought, 'Why not us?'" said Jess Kidden, member of the Florida Bar Board of Governors. "Then we realized, hey, let's not be stupid. We can up the price lawyers are willing to pay for vanity by opening it to a bidding process. Law is an adversarial system, after all."

"We decided it was a win-win arrangement for both the Florida Bar and its mem-

bers," added Bjorn Yestiddy, spokesperson for the Florida Bar member benefits committee. "It's a revenue enhancement device for the Bar and it helps older attorneys who have trouble remembering their bar numbers when filling out those CLE cards at seminars."

Indeed, the Florida Bar has enjoyed a substantial return on the vanity bar number program. At close of bidding, P.I.LAW, HERE4U, INJURD? and CALLME! each went for amounts in excess of \$20,000. LAWDUDE and GUDATTY were purchased for lesser sums. Many selected numbers reflect the specialty of the attorneys, such as the two local criminal lawyers now sporting AKWITEM and WALKNOW on their pleadings and the workplace sexual harassment specialist currently using HANSOFF.

Already, attorneys are beginning to speculate about a secondary market for used or retired numbers. The Bar Rules committee will be meeting on this issue soon.

The vanity bar numbers are, of course, subject to review and editing by the Florida Bar. Some numbers are refused because of offensive content. "We've caught some lawyers applying for bar numbers they're proposing for other lawyers," noted Yestiddy.

Not all Bar members are enamored of the new numbering system, as it has proved frustrating for some who have had their applications rejected.

"I'm a lawyer, not a mathematician," fumed one assistant state attorney. "How

was I supposed to know there are more than seven letters in DARTH VADER?"

*April Fuhls is a 2003 graduate of the Perry Mason School of Law and Small Engine Repair. She is currently an associate with the law firm of Hugh, Poulin, Melega & Howe, P.A.*

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# How Far Has Pinellas County Come Since *Brown v. Board of Education*?



**Kimberly G. Jackson**

It has been 50 years since the Supreme Court held that our school system should not be "separate but equal." However, after researching Pinellas County's history, it does not appear that we have come so far after all. Before we resolve the issues facing us in today's educational system in Pinellas County, it is important to revisit our past.



Prior to 1971, Pinellas County assigned children to school based on their skin color and where they lived. As a result, black schools were at a disadvantage because of the resources, materials and facilities they had access to. While schools were encouraged to desegregate, they were not motivated to integrate.

In 1971, a family successfully sued the Pinellas County School System. After *Leon Bradley Jr. vs. Pinellas County Schools*, the school system began to integrate schools, using Ulmerton Road as the dividing line. Students were forced to integrate in Northern and Southern Pinellas County, but they did not have to travel beyond Ulmerton Road. Deputy Mayor Goliath Davis, remembers these days well. "I attended segregated schools through junior high school. Unfortunately, while schools were desegregated decades ago, our system still has a long way to go." Even after high school, Mr. Davis witnessed segregation in the St. Petersburg Police Department until 1965. He is successful despite the racial obstacles he experienced here, but admits, that the majority of African Americans who grew up in this County have not been so fortunate.

The Deputy Mayor is absolutely passionate about the issue of school accountability, because he believes we are failing our children if we do not properly educate them. "True integration has never been tried. The bigger problem is not integrating schools but solving our economic disparity issues. Until we deal with our housing patterns, we will never have integrated neighborhood schools."

According to Mr. Davis, one of the ways to begin addressing our educational and economic problems is to educate our parents. "The same parents who are not participating are the same families we have already failed." He also believes it is a shame to blame the victim. Instead we need to be more responsive to these families' needs. Mr. Davis does not believe busing is the issue. "There are magnet and fundamental schools in the heart of St. Petersburg, but they do not reflect our diversity."

Having a young child, I have recently had to make the decision of where to send my child to school. As an African American I have had to decide should my child go to a school that reflects her ethnic background or should I send her to the best school my family can afford in Pinellas County. Ideally, I would like those schools to be one in the same. In a perfect world, I would like to send her to public school. Unfortunately, our school system has not broken racial barriers.

Have we made progress? It depends on your perspective. I believe we can all agree that it takes a village to raise a child but everyone has to be more open about what our village should look like.

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# Bar & Court News



## **SPALSS (Legal Support Specialists)**

The St. Petersburg Association of Legal Support Specialists monthly meetings are held the first Tuesday of each month. The next upcoming meeting is:

**April 6, 2004 - 6:00 p.m.**

**Speaker:** Dr. Janice Buchanan, of St. Petersburg College  
Election of officers.

**Location:** Holiday Inn Select  
3535 Ulmerton Rd., Clearwater, FL

**May 4, 2004 - 6:00 p.m.**

**Program:** Installation of new officers.  
**Location:** same as above

Reservations are required. Contact Loretta Aldridge for more information at 727-894-0676.

## **Pinellas County Paralegals**

The next meeting of the Pinellas County Chapter of the Paralegal Association of Florida, Inc., will be :

**April 12, 2004 - Dinner Meeting 6:15 p.m.**

**Speaker:** Ramon Carrion, Esq.

**Topic:** Immigration

**Location:** Holiday Inn Select  
3535 Ulmerton Rd., Clearwater, FL  
**Cost:** \$18 members, \$19 non-member,  
\$5 after-dinner guests

**May 10, 2004 - 6:15 p.m.**

**Speaker:** Frank Provenzano

**Topic:** Medicare Set - Aside Specialists  
(Medicare)

**Location:** same as above

Paralegals, student paralegals, non-members and attorneys are always welcome. For further information or to make reservations, please call Patricia Weaver at work: 727-586-4224, fax: 727-585-4452, home: 727-584-4390, or e-mail: patricia1208@yahoo.com no later than 5 days in advance of the meeting.

## **Proctors for the February 2004 Bar Examination**

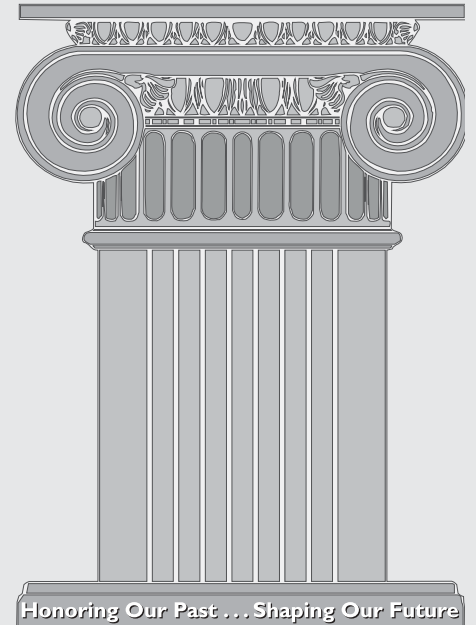
The Florida Board of Bar Examiners wishes to acknowledge with appreciation the following St. Pete Bar member volunteers for their assistance in proctoring the Bar Examination held February 24-25, 2004 at the Tampa Convention Center:

Rob Eschenfelder, Drew Felix, Judge Walt Fullerton, Charlie Gerdes, Jane Grossman, Patricia Hastings, Dawn Hulbert, James Johnson, Richard Macdonald, Keith Meyer, Starr Parker, Bill Penrose, Marva Taylor, Jim Thaler and Mark Wall.

The success of the examination was due in no small part to their able assistance. The Board would also like to extend a special word of thanks to the Chair of the Young Lawyers Section of the St. Petersburg Bar Association, Belinda Barndollar Lazzara, for her assistance in searching for volunteers to proctor the exam.

Never doubt that a small group of thoughtful concerned citizens, can change the world. Indeed, it is the only thing that ever has.

-Margaret Mead



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## Vive La Médiation

*Continued from page 12*

simpler than confining the issues to a commercial court. Even after a demand for arbitration by a party, however, mediation is offered first, and only after it is declined by the parties, is arbitration undertaken. There is a clear preference for a mediated settlement, rather than a resolution imposed by an arbitrator.

CMAP is still underwritten by the Chamber of Commerce, but it is now an independent entity. Those using its mediation or arbitration services pay an administrative fee to CMAP in addition to the fee to the mediator or arbitrator. The mediation can take place in the elegant offices of CMAP on the avenue Franklin D. Roosevelt, just off the Champs Elysées, or in the offices of the mediator or parties. The success of this commercial dispute resolution service is demonstrated by the repeated use of its services by many French companies. Perhaps its unique approach to early intervention in disputes between business enterprises can be a model for a U.S. version.

Further information about CMAP is available at its website [www.mediationetarbitrage.com](http://www.mediationetarbitrage.com).

## Preservation of Error

*Continued from page 18*

This discussion outlines only a few of the preservation issues that remain in spite of the amendment to section 90.104(1). Until these issues are resolved by Florida courts, practitioners would be wise to continue to renew objections and offers of proof at trial. In addition to ensuring that errors are not inadvertently waived, renewal of objections and offers of proof will give the trial court an opportunity to reconsider its pre-trial ruling in light of the changing dynamics at trial. Moreover, renewing objections at trial – whether required or not – is a valuable way to enhance your appellate record and demonstrate in a very real way why the error is prejudicial to your client.

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## Chris Altenbernd, Chief Judge of the Second District Court of Appeal, Addresses Membership at March 12 Luncheon



*Pictured above YLS Section Chair Belinda Lazzara, St. Pete Bar President David Abbey and Judge Altenbernd.*

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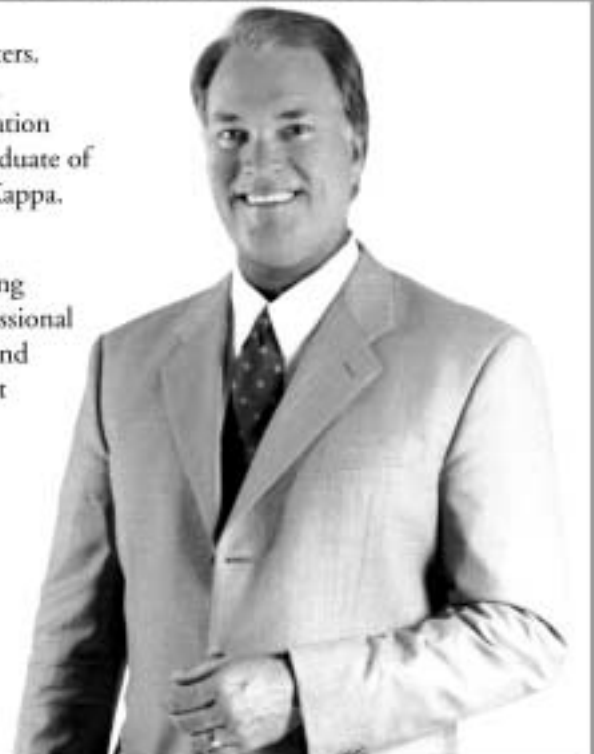
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## St. Petersburg December 2003/ January and February 2004

By Bruce P. Taylor

**BARBARA HILLER vs.  
EXCEL LAND MAINTENANCE**

Case no. 01-6875-CI-11

*Presiding Judge:* Honorable Susan Schaeffer

*For the Plaintiff(s):* Jeffrey L. Shibley, Esq.

*For the Defendant(s):* A. Wade James, Esq.

*Action:* For damages personal injuries (reflexive sympathetic dystrophy) due to alleged negligence in excavating a hole

*Verdict:* For the defendant

**MELISSA BORDONARO and  
MICHAEL RIVERA vs. ROBERT LeFAVE**

Case no. 02-635-CI-13

*Presiding Judge:*

Honorable Anthony Rondolino

*For the Plaintiff(s):* Angela Zervos, Esq.

*For the Defendant(s):* Jaimie Beth Eagan, Esq.

*Action:* For damages from personal injuries (soft tissue, neck, requiring surgery for Bordonaro and soft tissue, shoulder, requiring surgery for Rivera) due to alleged auto negligence

*Verdict:* For the Plaintiffs in the amount of \$110,400 for Bordonaro and \$68,400.00 for Rivera

**CARRI LANE vs. CRAIG KAEMMER**

Case no. 99-6821-CI-19

*Presiding Judge:*

Honorable John C. Lenderman

*For the Plaintiff(s):* T. Michael McKnight,

Esq. and James P. Ogden, Esq.

*For the Defendant(s):* Andrew J. Lewis, Esq.

and Raymond Haas, Esq.

*Action:* For personal injuries (grand mal seizures) due to alleged auto negligence.

The trial was confined to the issue of causation and extent of future damages

*Verdict:* For the defendant

**JACQUELINE RABIDEAU et al. vs.  
GERALD J. FITZGERALD, JR., D.O.**

Case no. 02-7893-CI-19

*Presiding Judge:*

Honorable John C. Lenderman

*For the Plaintiff(s):* Paul B. Catania, Esq.

*For the Defendant(s):* Kenneth Deacon, Esq.

and Kathleen Hessinger, Esq.

*Action:* For damages for wrongful death due to alleged medical malpractice (alleged negligent prescription of pain killer)

*Verdict:* For the Defendant

**ROBERT UPTON vs. AMICA MUTUAL  
INSURANCE CO. and TIMOTHY DESPAIN**

Case no. 00-8743-CI-11

*Presiding Judge:* Honorable Susan Schaeffer

*For the Plaintiff(s):* Justin Johnson, Esq.

*For the Defendant(s):* Douglas Fraley, Esq.

(Amica) (Despain was pro se)

*Action:* For u/m benefits and for personal injuries (TMJ, mild brain injury) due to alleged auto negligence

*Verdict:* For the Plaintiff in the amount of

approximately \$645,000.00 in compensatory damages against the defendants and approximately \$1 million in punitive damages against Despain. (This case was previously reported, but the verdict against the pro se individual was inadvertently omitted).

**ESTATE OF KAREN STACY vs. ESTATE OF  
PETER WAJANOWSKI**

Case no. 02-330-CI-13

*Presiding Judge:*

Honorable Anthony Rondolino

*For the Plaintiff(s):* Alan Gross, Esq.

*For the Defendant(s):* Jan Govan, Esq.

*Action:* For damages from intentional wrongful death, and for assault and battery

*Verdict:* For the Plaintiff in the amount of 3.5 million (there was a directed verdict as to liability as to the intentional and unlawful killing)

**ESTATE OF DARLENE KELLY vs. CHARLES  
and JERILYN VICKERS and DERIUS BOYD**

Case no. 02-155-CI-13

*Presiding Judge:*

Honorable John C. Lenderman

*For the Plaintiff(s):* Ronald Nelson, Esq. and

James Sheehan, Esq.

*For the Defendant(s):* Bryan Reynolds, Esq.

and Bruce Austin, Esq.

*Action:* For damages for wrongful death from auto negligence

*Verdict:* For the Plaintiff in the amount of approximately \$70,000.00 (there was an earlier trial that determined liability in favor of Plaintiff)

**NANCY NORRIS etc. et al. vs.  
BAYFRONT MEDICAL CENTER, INC.**

Case no. 02-7352-CI-13

*Presiding Judge:*

Honorable Anthony Rondolino

*For the Plaintiff(s):* Frank Currie, Esq.

*For the Defendant(s):* David S. Nelson, Esq.

*Action:* For damages for personal injuries (pressure ulcer requiring surgery) from alleged medical malpractice

*Verdict:* For the plaintiffs in the amount of \$254,890.27

**HARTLEY CHIROPRACTIC vs.  
STATE FARM INS.**

Case no. 01-8553SC

*Presiding Judge:* Honorable Karl B. Grube

*For the Plaintiff(s):* Paul Puzanghera, Esq.

*For the Defendant(s):* Robert Oxendine, Esq.

*Action:* For PIP/Med Pay benefits for chiropractic treatment

*Verdict:* For the Defendant

**CHRISTOPHER ROUND vs.  
MICHAEL DANDREA**

Case no. 01-1493-CI-11

*Presiding Judge:* Honorable Robert Beach

*For the Plaintiff(s):* Joseph Saunders, Esq.

and Mike Uzdavines, Esq.

*For the Defendant(s):* pro se

*Action:* For personal injuries (scarred face and torn knee ligaments) due to alleged battery

*Verdict:* For the Plaintiff in the amount of \$20,000 compensatory damages and \$20,000 in punitive damages

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## Second District Court of Appeal Comes to St. Petersburg

**O**n February 18, a panel of the Second District Court of Appeal heard oral arguments in Courtroom A of the St. Petersburg Judicial Building. This was the first time that the Court sat in St. Petersburg, and we certainly hope it will not be the last!

The Court heard arguments in the morning, after which number of the Judges from the Court participated in an Appellate Practice Seminar - *What's Appealing to the Second DCA: Do's & Don'ts of Appellate Practice in the Second District Court of Appeal*. Judges participating in the seminar included Judge Darryl C. Casanueva, Judge Virginia M. Hernandez Covington, Judge E.J. Salcines, Judge Morris Silberman, Judge Thomas E. Stringer, Sr., and Judge Douglas A. Wallace. The seminar, coordinated by our Appellate Practice Section, was held at the Heritage Holiday Inn and drew over 50 attendees.

*Thank you to all the judges who participated in the seminar and to Appellate Practice Section Chair Tim Weber for planning the seminar!*



*Chief Judge of the Sixth Judicial Circuit, David A. Demers (center, standing) with Second DCA Judges E.J. Salcines (left), Stevan T. Northcutt (seated), and Thomas E. Stringer, Jr. (right)*

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