

BROWARD COUNTY BAR ASSOCIATION BARRISTER

APRIL 2020



AN EVENING OF

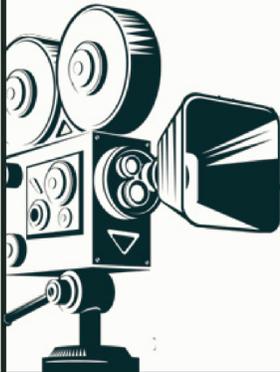
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Induction Of The 2020 - 2021 Officers & Directors Of
The Broward County Bar Association & Young Lawyers Section

SATURDAY
JUNE 27

Time: 6:00 p.m. - 11:30 p.m.
Venue: The Ritz Carlton,
Fort Lauderdale

In The Spotlight



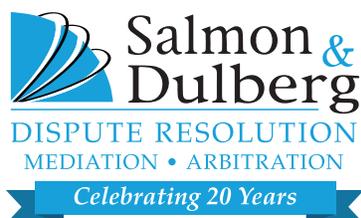
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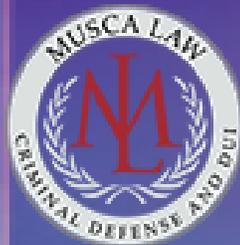
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5 Letter from the President
Michael Fischler

**7 Young Lawyer's Section
Letter from the President**
Lindsay M. Massillon

9 SECURE Act
James B. Davis

**11 Judge's Corner:
Judge Holden**
Tonja Haddad-Coleman

13 Raising The Bar
Nazarena Rosales Hauser

15 Mass Tort
Barbara Capasso and John Ray

17 Legal Health Center
Jeni Meunier

19 Calendar of Events

Inside this issue



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BROWARD COUNTY BAR ASSOCIATION
BARRISTER
April, 2020

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Michael A. Fischler, Esq.

“Coronavirus precautions”. It advised that everyone had to enter through the main entrance and visitors would have to sign a log and take a brief questionnaire. When I walked in the main entrance, I was met by a staff employee who informed me that I could not enter. I inquired as to why and was told that the Governor signed an Order at 4:00 PM prohibiting visitors from entering senior living facilities. I called my Mother, who was waiting for me in the lounge area and was unaware of the Governor’s Order. I was able to meet and talk with her outside the entrance for a few minutes. That same day, my children learned that my grandson’s pre-school was closing for several weeks due to the virus. My children decided, since no sitter was available for the next week, to send my Grandson home with Anita and they would pick him up over the weekend.

In a matter of days, now weeks, our lives have changed. “Coronavirus” (COVID-19) now dominates the news and a pandemic crisis affecting our community, state, country and the world has arrived. Our routines and activities have been altered, changed and reshaped. Every day as I started drafting this message, new rules were imposed: airline travel and public gatherings became more restricted; schools, courthouses, restaurants and beaches were closed; and other drastic steps were being taken to stop the spread of the virus.

The Broward County Bar Association, through our Executive Director, Braulio Rosa, along with the Executive Committee, immediately took precautionary steps, postponing all BCBA events, CLEs and activities and coordinated with Chief Judge Jack Tuter to provide accurate and updated information to the legal community. Foremost in the BCBA’s mind is the health, safety and welfare of our members, the legal community and all of our stakeholders. If you need any assistance or advice, please contact Braulio or any BCBA executive committee or board member.

With the Governor’s Order, I can no longer visit my Mother in the senior living facility and many of you have experienced personal situations and hardships that are greater than mine and I wish you the best in dealing with them. Our clients, many individuals and businesses are feeling economic stress and look to us, in the legal profession, for advice and guidance. Although there is no need to panic, we need to stay informed, be prepared and reach out and help those needing assistance. One article I read suggested that we support our restaurants by buying gift certificates and that we set up scheduled telephone/facetime time to have “happy hours” with family and friends, so that we stay connected.

Last month I wrote about giving hugs and handshakes when we see each other and this month we are relegated to giving elbow and foot bumps. ***So, each month, when in my President’s Message I ask you to “be safe, be happy and take care of yourself and those around you”, this month it is more applicable than ever!***



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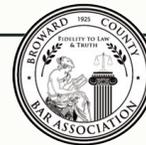


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Lindsay M. Massillon, Esq.

At the end of February, the Young Lawyers Section held our annual Holiday in February event. While it may appear that we are giving back to the community, this event brings us far more joy. In case you're not familiar: YLS partners with the Heart Gallery of Broward to create a "best day ever" vibe for children who are in foster care. The morning starts with bagels, crafts, board games, and music. I don't want to call anyone out, but a few of our esteemed board members lost to the

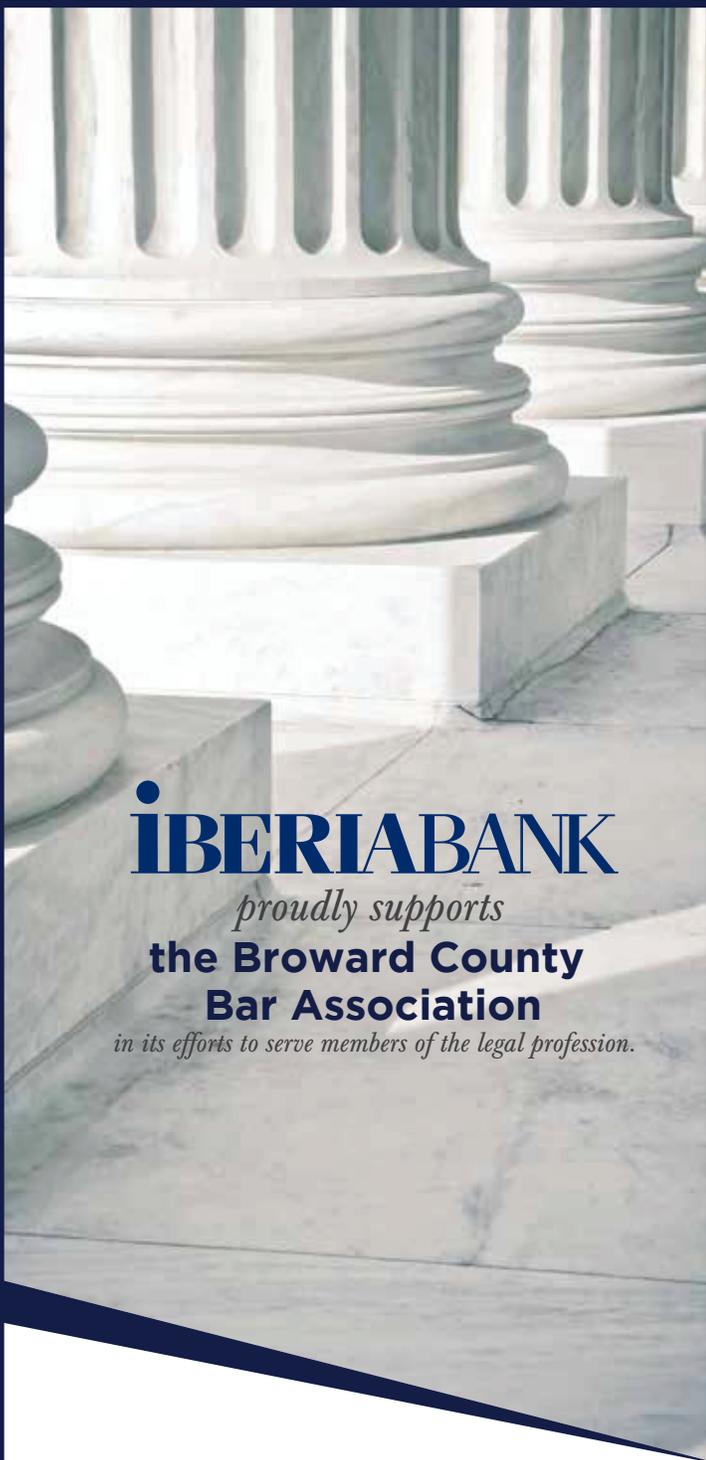
superior talents of these kids on both Connect Four and Mouse Trap. A balloon twister makes her appearance, making literally anything you can think of—offhand there was at least one Spiderman, a ladybug, and a unicorn. A game of freeze dance broke out, followed by musical chairs. Then, pizza and the man of the hour: Santa. After Santa doles out gifts for each of the 50 children in attendance the kids, along with their families, enjoyed the museum for the rest of the day on us.

This day is special for these kids, but many of them don't know exactly how special this event can be. The true magic of this event was revealed when we learned that a dad met his future son at our Holiday in February event last year and finalized his adoption of this young boy in February 2020. I was beside myself with happiness knowing that YLS was able to play a small role in the adoption of a child. The realization that there is the potential for a child to find his or her forever home at our event leaves me speechless.

In other news, our Lawyers for Literacy initiative is well underway, with monthly opportunities for lawyers to visit a local elementary school and read a selected book to a classroom full of eager young minds. I challenge you to find a better way to start your Friday!

Providing our members with the opportunity to engage in events like Holiday in February, National Adoption Day, and Lawyers for Literacy is one of the primary objectives of YLS. Think of all the powerful endorphins just waiting to be unleashed!

If you are a member of YLS and have a passion for volunteering and organizing events like Holiday in February, I would encourage you to run for election to our amazing Board of Directors. Our Annual Election Luncheon is on April 23. Check out our calendar on the Broward Bar Association website. If you have any questions about what it means to serve on our Board, please feel free to email me at LMassillon@fowler-white.com.



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IRA SECURED ACT

by James B. Davis

SECURE Act Brings Big Changes for IRAs and Estate Plans

The SECURE Act, passed in December 2019 and effective Jan. 1, 2020, will affect every IRA owner and 401K plan participant who dies after Dec. 31, 2019. Every affected person should review their estate plans and IRA/401K beneficiary designations as soon as possible. The changes are significant.

The most significant SECURE Act changes are the commencement and timing of required minimum distributions (RMD). The required beginning date (RBD) is now the April 1st after turning age 72, instead of 70 ½. For persons dying after Dec. 31, 2019, if the beneficiary is an individual or a “see-through trust” (STT), the entire IRA balance must be 100% distributed by the last day of the 10th calendar year following the year of death, with five exceptions.

One or more distributions may be made at any time prior to the end of the 10th year. “Stretch IRA” distributions over a beneficiary’s life expectancy have been eliminated, except as noted below. The 10-year rule applies to individual beneficiaries and STTs of decedents who die at any age. However, if death occurs after the RBD, it appears IRA distributions may be made annually over the decedent’s remaining life expectancy. If the beneficiary is not an individual or STT, e.g., an estate or charity, the IRA must be distributed by the last day of the 5th year.

10-Year Rule Exceptions

Surviving spouses are an exception to the 10-year rule. The prior distribution rules and options still apply. A spouse may rollover to their IRA, commence RMDs annually over their life expectancy, or wait until the decedent would have attained RBD and then commence RMDs.

There are four additional exceptions to the 10-year RMD rule for beneficiaries who are minor children of the decedent, disabled, chronically ill, or not more than 10-years younger than the decedent. In these cases, annual RMDs may be made over the beneficiary’s life expectancy but only until majority age is attained, upon recovery, or upon death. Then the 10-year RMD rule applies to the balance.

There is an inherent conflict between achieving the lowest tax rate on IRA distributions and control over the beneficiary’s access to distributions. If benefits are paid directly or through a “conduit trust,”

distribution(s) will be taxed at the beneficiary’s income tax rates and included with the beneficiary’s other income but the beneficiary will have full access to the distribution(s). As an alternative, IRA distributions may be made to an “accumulation trust” that can limit the beneficiary’s access. IRA distributions are taxable income to the trust if not distributed to the beneficiary. The accumulation trust is taxed at 37% on income over \$12,950, i.e., at a flat 37% rate. If the trust investments produce net investment income, e.g., capital gains, dividends or interest, etc., an additional 3.8% tax is imposed on that income.

Giving Power and Tax Benefits

If the IRA owner is interested in philanthropy, an income tax-friendly alternative may be to name a nonprofit as a beneficiary or to designate a charitable remainder annuity trust (CRAT) as the IRA beneficiary. A CRAT is not subject to income tax so the entire IRA could immediately be distributed to a CRAT without income taxation. The individual beneficiary of the CRAT could receive annual (taxable) distributions from the CRAT. Upon the beneficiary’s death, the charity receives the remaining balance, which must be at least 5% of the initial CRAT value. The income tax deferral combined with annual lifetime distributions to the beneficiary from a CRAT might achieve an IRA owner’s objectives to lower income taxes and limit access to distributions.

Every situation is different, so you will need to consult with a tax expert when revisiting estate plans.

James B. Davis: Shareholder at Gunster who leads the firm’s tax practice, an adjunct professor at the University of Miami Law School and a Community Foundation of Broward Board Member.



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Judges Corner: The Honorable Peter Holden

Integrity, intelligence, dedication, and discipline; these attributes, combined with common sense, a passion for the law, and an infectious sense of humor define the core of Judge Peter Holden. Judge Holden's upbringing reads like the lyrics of a Bruce Springsteen song: he grew up in a rural, blue collar town just outside of Boston; the youngest of four children. Both a remarkable athlete and "wicked smaagt," Judge Holden went on to play football at Nichols College, where he was later inducted into its Hall of Fame. Judge Holden moved to Florida to attend Nova Law School, and upon graduation therefrom, commenced his legal career at the Office of the State Attorney for the Seventeenth Judicial Circuit, where he honed his trial, administrative, and supervisory skills for twenty-nine years before being appointed to the bench. While his Massachusetts accent is barely traceable, Judge Holden's core principles and appreciation of hard work are still preeminent (as is his love of the Red Sox; perhaps his only lapse in judgment).



Judge Holden dedicated his professional career to public service, both as a prosecutor and as a mentor, which provides him with the unique ability to understand the complexities faced by attorneys on either side of a case, as well as the inimitable capacity to comprehend the humbling responsibility one has when sitting as an adjudicator. Likewise, his immense experience as a trial lawyer bestows upon him a matchless insight as to how witnesses, victims, the parties, and the families of the afore-referenced people are each affected by the justice system. That, as well as his perseverance, intelligence, professionalism, and respect for his work, made him a compelling choice for the bench and an outstanding advisor from whom to learn.

Judge Holden is well-versed in not only how vital his role is, but also how his demeanor and decisions reflect upon the judiciary. Judge Holden recognizes that it is imperative for all parties involved in the

legal process to feel as if they have been heard; and that the judge presiding over the matter not only listens, but also follows the law. Judge Holden further expounded that after nearly thirty years of appearing before and trying cases in front of countless judges, he was "ready for the bench" and wanted to continue to dedicate his career to public service; but in a different way. Judge Holden's knowledge of and ability to apply the law is only surpassed by his sense of ethics, which is beyond reproach; it is evident by watching Judge Holden that he has a high degree of expectation and respect for himself, his position, and his work product. As a member of the judiciary, Judge Holden looks forward to having a positive impact on the litigants and attorneys who appear before him while maintaining the highest level of respect and professionalism.

Having known Judge Holden for nearly twenty-five years, it has been a pleasure to watch him grow from being an exceptional trial attorney to an equally admirable husband, father, coach, sports dad, and judge. There is no doubt that as a member of the judiciary, Judge Peter Holden will continue to serve the people of Broward County with the same honor, dignity, passion, and humility with which he has served them for the past thirty years.

Tonja Haddad Coleman is a litigation attorney and arbitrator in Fort Lauderdale. She is also an adjunct professor of law at NSU Law School.



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RAISING THE BAR

by Nazarena Rosales Hauser

Raising Your Level of Practice With Raising The Bar

The Broward County Bar Association's Raising the Bar is held annually, and is invaluable for all family law practitioners, new practitioners and seasoned litigators alike. From parenting issues to equitable distribution, this event covers many aspects dealt with throughout our family law practices. Additionally, you will hear from seasoned attorneys and our distinguished jurists on how to leave a remarkable impression in the courtroom, with guidance on practicing professionally as well as advanced direct and cross examination techniques. This year we will again be featuring our popular break-out sessions, which allow registrants to attend the topic that better suits them.

In addition to the important topics discussed, you will have the opportunity to meet and network with hundreds of family law attorneys in the community, in addition to our judges, general magistrates, and hearing officers. The opportunity to collaborate with other attorneys and receive guidance and feedback from our judges is a significant advantage in our practices.

This year's Raising the Bar has been rescheduled for Friday, June 12, 2020 at the Bahia Mar Fort Lauderdale Beach Hotel from 8:30 a.m. to 5:00 p.m. Registrants will receive 7.5 General CLE Credits and 1 Ethics CLE Credit, in addition to self-parking, breakfast, and lunch. Seating is limited, so make sure to register soon!

Nazarena Rosales Hauser, Esq., is Co-Chair for the Family Law Section of the BCBA. She is a Partner at Family Matters Law Group, PA, as well as a Guardian ad Litem and Florida Supreme Court Certified Mediator.



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What is a Mass Tort?

When a large number of people are injured by the same product in a similar way, Mass Tort litigation allows plaintiffs to sue the defendant as a large group, while still maintaining a stand-alone failure to warn or product liability case. These actions are most commonly made against Big Pharma and Medical Device companies, as well as other large corporations in the instance of toxic or environmental torts. Mass Torts can also encompass antitrust claims against businesses and man-made disasters on a large scale, such as plane crashes, plant explosions or apartment fires. These cases are brought in both state and federal courts and many begin as a result of regulatory action, or in some instances as a critical article in scientific literature.

Why Firms Are Signing Mass Tort Cases.

Mass Tort litigation yields some of the highest case values in the legal profession, yet the practice area is not taught in Law School. On average, cases are valued at \$150,000 and it would be difficult to find anyone in the country unfamiliar with the Round Up, Asbestos or Opioid litigations, due to all the media attention and huge trial verdicts.

Three Keys to Succeeding in the Mass Tort Space

#1 Ignore the Cheerleaders or At Least Take the Cheers with A Grain of Salt

It is common for leadership firms, the firms that generally file the first claims and assume leadership positions in Multidistrict Litigations, to hold conferences in which they encourage other law firms to get involved in the “their” litigations. Generally, firms conducting these “Mass Tort” conferences hope to receive referrals from other firms they convince to follow them into a litigation. This comment is no way meant to be disparaging, simply factual.

#2 Conduct Independent Reasoned Analysis

Undertaking an independent, systematic, reasoned analysis of the legal and business metrics relevant to a given mass litigation is the key to success in mass torts. This process does not differ

in principle from the “due diligence” that should be employed prior to making any type of business investment.

Apply basic business principles to Mass Torts by identifying metrics and factors specific to the business and financial aspects of Mass Torts.

There are certain immutable laws of business, and if you think they do not apply to your specific business, you are wrong. You simply have yet to realize how these laws apply.

#3 Educate Yourself in the Business of Mass Torts

Mass Torts is the only practice area of law that has true economies of scale, so much so that private equity firms partner with law firms to fund this type of litigation. Private capital companies view the return on investment on Mass Tort cases a more favorable investment than any in the marketplace.

Barbara Capasso founded Mass Tort Nexus, headquartered in Fort Lauderdale, FL, in 2013, and holds Mass Tort 4-Day Immersion Courses in Fort Lauderdale bi-annually, taught by John Ray. Over 500 attorneys from across the nation have attended this course to learn the business of Mass Torts, in order to implement and integrate Mass Torts as a practice area within their firms, and/or brush up on their Mass Tort acumen (for those who have previous experience in the space). Mass Tort Nexus specializes in pharmaceutical and medical device litigation, which accounts for the majority of cases filed.

John Ray has been a leading consultant to the Mass Tort industry for more than a decade. With his extensive experience in the pharmaceutical and medical device industry, John is uniquely suited to teach and consult in the Mass Tort arena. John graduated Magna Cum Laude from Brenau University in Atlanta at the age of 21. Upon graduation, he started a pharmaceutical and medical device company. At 35, John sold that business in an 8-figure deal. During his tenure in the industry, John has gained an in-depth knowledge and understanding of FDA regulatory matters including the science and epidemiology required to earn FDA approval to bring pharmaceuticals and medical devices to market.



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LEGAL HEALTH CORNER

by Jeni Meunier

KISS - Keep it simple, Sweetheart – is an acronym we have all probably heard at some time in our life but have ignored it. I first started using the acronym when I got frustrated, hurried, unorganized and needed a reminder to stop, focus and become aware of what I was doing and why. Now I use it several times a day to remind myself to focus, focus, focus.

Living is the exercise of certain learned skills, attitudes and abilities. Shouldn't the primary goal of living be to incorporate our time into quality moments? When we work, focus on work. When we play, focus on play. When we think, focus on thoughts. When we rest, focus on rest by turning off thoughts and actions.

The easiest place to start an organized focus is with our living area and grow from there. And it doesn't just mean cleaning out a closet, a drawer or a cupboard but it's a good place to start. By getting rid of the unneeded items in your life at home helps training in all areas of life. As you tidy the closet, observe what is needed, what is sentimental and what is unnecessary. Categorize these three areas ruthlessly. KISS; don't add caveats. "I may need these in the future" is not acceptable even if you gained weight and you are keeping smaller sizes for "when I've lost 10 pounds". Be strict, you either need it now or you don't. If you don't need it now, is it sentimental? I am using the term sentimental loosely and only you can determine what that means but you must be honest with yourself. Is it really sentimental or are you keeping it just to keep it? Do you really want it beyond all reason? If it doesn't fit into these two categories of necessary or sentimental, it has to go.

Take this discipline of closet cleaning for example and apply it in all aspects of your life. As you learn to KISS in your "things" you become aware of your actions. Is it really necessary to do this or am I just doing it because I have always done it? Becoming aware of

keeping it simple in focus, purpose and goals eliminates the complexity of confusion. If you are confused, frustrated and unsure of what to do, how to think, bring it down to the simplest denominator. We often make our lives so complicated just for the simple fact that we don't really want to take action. Complication is just a wonderful way to escape into not taking action, not making a decision, giving up.

It is amazing how when we focus on KISS, we can accomplish goals, have quality time with our family and friends, organize our shopping, meal preparation and even healthier diets.

Pay attention, focus on what you are not only doing but also on what you are thinking. When I took my daily action off automatic, I learned to organize all areas of my life. In this day and age of priding ourselves on doing many things at once, we lose focus and often jump from one thing to another, one thought to another and accomplish very little. Instead, train yourself to focus on one thing at a time.

Check in daily to what you are focused on in action, thoughts and emotions. Increase the daily discipline to hour to hour, then to moment to moment. Once you can make this a daily or hourly or moment discipline, you can flow into making it a habit, and suddenly you are surprised it becomes a way of life.

It's simple.

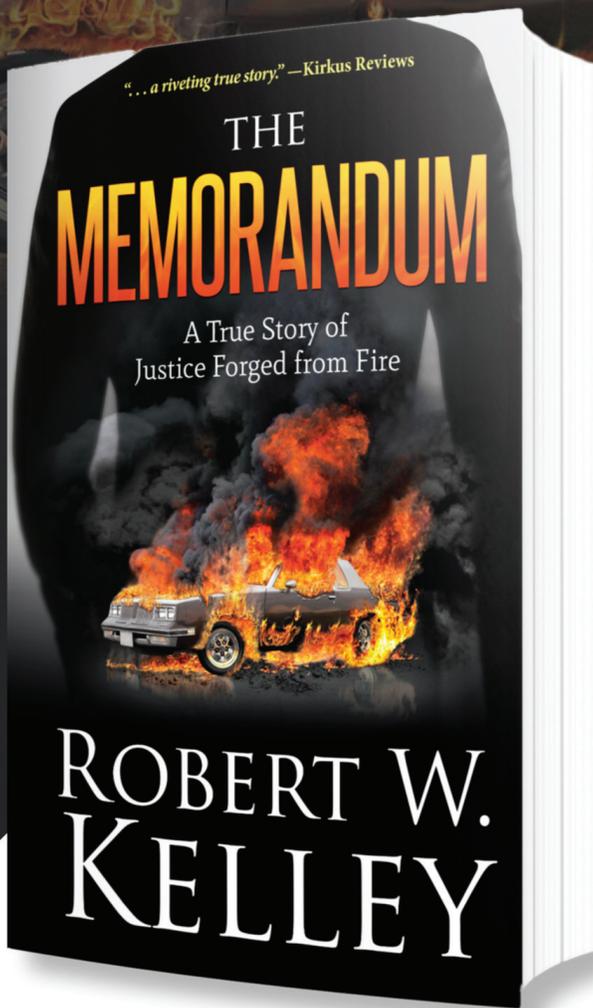
Jeni Meunier is a Director at Trustpoint.One. Trustpoint.One provides end-to-end eDiscovery capabilities, in forensic consulting, processing, hosting, review/staffing, production and court reporting and translation services.

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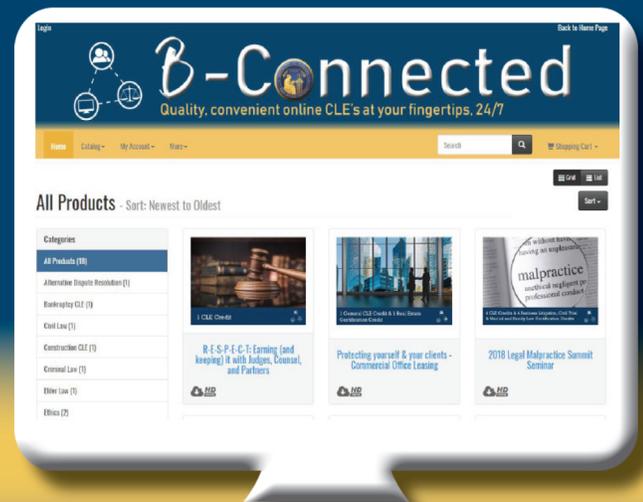
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