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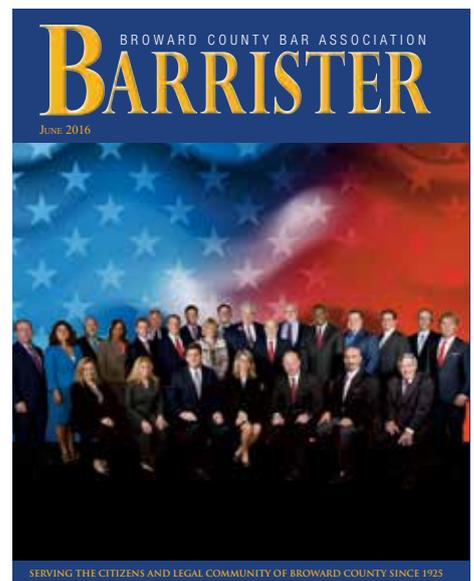
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Robin S. Moselle

Well, here we are, my final President's Message. I am faced with the daunting task of summarizing a whirlwind year in my allotted space. It is very difficult for me to capture what has easily been one of the most rewarding years of my life. I have been a part of an organization that has seen unprecedented growth and success. When I was appointed Membership Chair in 2011, BCBA membership over the last four years had hovered at around 2,120. I was elated that number increased to 2,344 during that year, and even more excited when that number continued to grow. As we closed out membership for the 2014-2015 year at 2,941 members, I realized that 3,000 members was an attainable goal during my term. Imagine my elation when our membership closed out at 3,155, a 7% increase over the prior year, and a 34% jump for the past five years! Likewise, for our revenue, which has enjoyed a 13% growth in the last year as well. Even more, by offering quality educational seminars, networking events, mentorship programs and boot camps for young lawyers, the BCBA has become the mainstay for the legal community in Broward County. The BCBA is also expanding into the community at large by partnering with other associations such as the Broward County Women Lawyers Association with the very successful Annual Women Leaders in the Law series, and with the Office of the County Attorney to present a seminar on Public-Private Partnerships in Florida Local Government. We are also at the forefront of studying and preparing for developing legal issues with our recently formed Emerging Legal Issues Committee that is addressing the threat of rising waters in South Florida. There is so much more, but in short, the Broward County Bar Association has become a relevant pillar in our community.

I do not by any means believe this was done by one person in the short span of 365 days. Rather, I revel in the fact that I was permitted to be a part of such a superb organization. So how do I adequately express my gratitude to Braulio Rosa, Executive Director; Bonnie Ross, Assistant Executive Director; Lauren Riegler, CLE and Event Coordinator; Patricia Hernandez, Membership Coordinator; Rebecca Joseph, Event and Marketing Coordinator; Debbie Rivero, Bookkeeper and the LRS department of Lyssette Bedon and Malaine Moran? They are, by far, one of the most hard working and conscientious teams I have had the privilege of working with. How do I show my appreciation to our board of directors who attend our events and meetings and give such careful thought and consideration to all of our decisions? How do I show my indebtedness to immediate Past President John Jordan for laying the foundation for a successful term, and to Charles Morehead for being ready, and more than capable, of assuming the role of president for the next term? Further, how do I thank Tom Oates, Edwina Kessler, and Michael Fischler for being part of a collaborative and very effective executive committee? How do I sufficiently acknowledge all of the practice section and committee chairs who took time out of their busy schedules to arrange seminars, attend meetings and who were always responsive to my calls and requests? What do I do to demonstrate my gratefulness to my family and my firm for being so understanding about my time away from my other obligations? And how do I thank the most vital group, the members of the Broward County Bar Association, for being such involved, enthusiastic members? As I am at a loss for the right words, all I can say, from the bottom of my heart, is THANK YOU. **B**

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letter from the young lawyers' president



Jeffrey M. Wank

In Good Hands

"There is no limit to the amount of good you can do if you don't care who gets the credit." — *Ronald Reagan*

At first glance, getting involved in the Young Lawyers Section ("YLS") and Broward County Bar Association ("BCBA") seems to only provide networking opportunities and the ability to strengthen ones profession. The organization allows attorneys to expand their legal knowledge, polish their practice, and mingle with others in the field. Events are filled with the who's who of Broward County, including distinguished judges and respected lawyers. Numerous projects and networking events provide for various opportunities. Participating in YLS and BCBA most certainly can become springboard for greater professional advancement.

Digging deeper, it has become clear to me and so many others that this organization goes way beyond any longing for professional greatness. The leaders, directors and members who are the YLS and BCBA have a passion to help others and lift up our community. The dedication and time commitment from many have become an afterthought. The ability to become a part of something greater and provide for those less fortunate drive so many of my colleagues on a daily basis. Of course, the thirst to succeed is at the forefront, but it is not the quintessential element.

As the YLS fiscal year winds down, we look back on our accomplishments and successes. Naturally, at the top of the list is being recognized by the leaders of our state as the 2015 Young Lawyer Affiliate of the Year, raising \$35,000 for Habitat for Humanity, helping our legal community, hosting numerous successful events, etc. We literally could fill up this entire newsletter with our achievements this past year.

Instead I want to focus on the individuals who serve on the Board of Directors and those members who continue to make a difference for YLS. It is incredible how special and devoted a select group of young attorneys can elevate an organization to unprecedented heights. Everyone continues to amaze me, and I thank you for your efforts, which for the most part are done without any thought of receiving credit. The above-quote could not ring any more true to those YLS members who strive to give back to our community.

YLS is in good hands for years to come. In short time, the group will be led by President Todd Baker, President-Elect Sara Sandler, Treasurer Brent Reitman, and Secretary Lindsay Massillon. These polished leaders, along with the rest of the Board of Directors, in my opinion, are the BCBA's greatest assets! It has been my privilege to serve as the 2015-2016 YLS President. **B**

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Janus

for the induction of the 2016-2017
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and Young Lawyers Section

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Thursday, June 30, 2016



*Incoming BCBA President,
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*Incoming YLS President,
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Appellate Practice Section Update: Fourth District Court of Appeal in Broward



Pictured left to right: Braulio N. Rosa, BCBA Executive Director; Fourth District Court of Appeal Judges Robert M. Gross and Melanie G. May; Judge Jonathan D. Gerber, Fourth District Court of Appeal; Louis Reinstein and Michele K. Feinzig, BCBA Appellate Practice Section Chairs and Judge Spencer D. Levine, Fourth District Court of Appeal.

by Joshua R. Levine

On April 15, 2016, the Appellate Practice Section of the Broward County Bar Association hosted a CLE seminar with four esteemed Fourth District Court of Appeal judges. The presenters were Judges Melanie G. May, Robert M. Gross, Jonathan D. Gerber, and Spencer D. Levine.

Judge May led the seminar with a presentation about preservation of error in the trial court. She explained the importance of preserving error from the perspective of the appellate court. Judge May's presentation highlighted potential preservation pitfalls that can occur in jury selection, evidentiary rulings, closing argument, jury instructions, and post-judgment motions, and provided examples of common situations trial lawyers face.

Next, Judges Gross and Gerber spoke about effective brief writing. They focused not only on good brief writing in general, but also writing in the modern age, as most judges now read briefs on electronic devices. The Judges explained the best way to keep a judge's attention, as well as how to write effectively and persuasively without resorting to histrionics or exaggeration. Judge Gross left the attendees with his best tip for improving one's writing: "Read good writing!" He also provided attendees with

copies of some favorite excerpts of good concise writing.

After learning effective brief writing tips, attendees heard from Judge Levine about effective Oral Argument. He explained that as with brief writing, it is important to restrain emotions, and maintain credibility by never overstating your case or defending the indefensible. Unlike with brief writing where an attorney has weeks to research and write a brief, the challenge presented by oral argument is that the attorney has ten to twenty pressure-packed minutes in front of three inquisitive judges. Therefore, the number one takeaway from Judge Levine's presentation is to know your case inside and out, including not only being familiar with the record on appeal and your arguments, but also your opponent's case as well as the panel of judges.

This event was a wonderful opportunity to hear directly from one third of the sitting appellate judges in our District Court of Appeal about what works and what doesn't in an appeal before that court, and how to preserve errors for appeal. Hearing the judges' perspectives on issues vital to trial and appellate practice was extremely valuable.

On June 28, 2016, the Fourth District Court of Appeal will hear oral arguments

at the Broward County Courthouse. This is a unique opportunity to observe oral argument in person, without driving to West Palm Beach. That evening, the Broward County Bar Association will host a Judicial Reception from 5:30–7:30 at the Historic Maxwell Room, 10 South New River Drive East, Fort Lauderdale. Further information can be found on the BCBA website calendar at <http://bit.ly/1WZ1d8z>.

This article was submitted on behalf of the BCBA Appellate Practice Section, Michele K. Feinzig, Esq. of the Law Offices of Robin Bresky, Chair and Louis Reinstein, Esq. of Billing, Cochran, Lyles, Mauro & Ramsey, P.A., Vice Chair. For more information about the Appellate Practice Section, please check the BCBA calendar, or email mfeinzig@breskyappellate.com or ljr@bclmr.com. 



Joshua Levine is an appellate and trial support attorney in the Fort Lauderdale office of Baker, Donelson, Bearman, Caldwell, & Berkowitz, PC. He can be reached at jrlevine@bakerdonelson.com or by calling 954.768.1622

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Google is NOT an Investigation

by Jean Mignolet

The investigative industry has evolved since I started 30 years ago. I often wonder if the private investigative field is a dying profession. Now that law firms have assistants with Internet access, too many attorneys think that an hour or two in front of a computer screen constitutes a complete background investigation. Younger attorneys believe they only need the in-house paralegal or legal assistant to do some court and newspaper searches on legal databases, check social media which only includes Facebook and make a general “Google search”.

Often law associates conduct research to save money and -- because he or she went to law school -- they must know more about what they are doing than an investigator would. Attorneys have no idea what they are missing!

A legal malpractice attorney, who specializes in attorney malpractice, tells me that an incomplete in-house investigation can have “catastrophic consequences” for law firms. He said that just one mistake that overlooks a glaring piece of relevant information for a client’s case can easily come back to the lawyer as a malpractice action and an ethics

complaint. When lawyers are not conducting due diligence for their cases, they are opening themselves up to malpractice. In my seminars, “Discovering Hidden Assets” or “Google is not an Investigation” to law firms, I emphasize the points that matter most to them: how to make more money and how to keep from losing their licenses.

Today’s investigator needs to educate their attorney clients, by demonstrating the value a professional investigator can add to their team.

For example, a background investigation of a Russian individual was at a dead end until I took on the case and recognized that, although Facebook is international, in certain countries like China and Russia there are other, local social media of more significance. I contacted a colleague who I had trained for an international smuggling contract a couple years before. With his Russian language skills and knowledge of “VKontakte”, the Russian equivalent to Facebook, we were able to find valuable information about our subject.

Another example, I was contacted by an out-of-state attorney who was

suing a Florida family for a motor vehicle accident with horrendous injuries. The car was driven by the daughter. The vehicle was owned by the parents. This attorney planned to settle the case for the insurance limits, but decided to consult with me just to make sure there were no significant assets. I immediately recognized the family name. Following my investigative instincts, I was able to identify the father as the vice president of a major national retail chain that was founded years ago in the Fort Lauderdale area. Since the injuries were severe and the defendant was wealthy, the attorney was able to get a settlement three times larger than what he had expected.

Some of my clients that are well established firms based in New York, D.C, and California want detailed backgrounds on all parties during a litigation to include witnesses, experts, and sometimes even the judges. They want to know what the judges’ prior rulings have been and if they have any affiliations with opposing counsel. Inexperienced researchers may check the usual state and federal courts, but do not have the experience or knowledge to inquire with administrative and

regulatory agencies, or look into licenses and permit paperwork or check federal and local campaign contributions.

Early in my career, I was a state law enforcement investigator that worked both criminal and regulatory enforcement actions. I know an alcoholic beverage license file is a treasure trove of information. An applicant has to list his fellow investors, bank references, all other business interests. The file will also contain inspections, complaints and violations on the premises.

In a perfect world, attorneys would hire a professional investigator early in a case because it actually would save them money so they do not spend their higher billed hours on a substandard investigation.

The investigator:

- would recognize when information need to be updated and facts double-checked;
- would have effective strategies for cross-checking and verification of sources;
- would know that just because the information comes up in a Google search, it is not necessarily true;
- would know that information should always be confirmed at the source;
- and, would know if an official document could still be intact at another agency--and would figure out where to look.

On numerous occasions, an attorney's case theory has changed after my in-depth investigation uncovered unexpected issues. Whether it's a new witness, an exceptional

expert, some third-party liability, or some high-value assets to help pay a larger settlement or judgment, a liability case could be worth ten times what they thought when the case was signed.

None of us can specialize in every aspect of this profession. Experienced investigators maintain a network of subject matter experts to contact when a case is outside their knowledge base. The sharpest people in this field network with other investigators around the country and around the world. They join associations such as National Association of Legal Investigators (NALI) and their state associations. They spend the time and money to attend ongoing training.

Being a true professional investigator today means spending each part of your day keeping up with all the advances in technology, search techniques and resources.

Whether it's the daily changes to Facebook or knowing to verify the date of the many images on Google Earth or other image websites, these are the nuances that can win a case.

All good investigators know that desktop and courthouse research needs to be augmented with "boots on the ground". I always recommend that we conduct a drive by the subject residence or business. Let's just say during an asset investigation it may be fruitful to drive by that house on the waterway and see the beautiful boat docked nearby!

Because professional investigators add great value to any due diligence or litigation, but investigators need to remember to educate their attor-

ney clients about the ways in which their skills are different from a lawyer, paralegal and legal assistant. The investigator's perspective, skill set and tenacity are important selling points.

You can make an impact if you take the opportunity to lead a seminar, or be a presenter at a Bar association meeting. You can always provide examples of successful investigations in your newsletter or on your blog.

Law firms need to know that there's more to an investigation than their classic big three of a legal database, Facebook and Google---and that it is the professional investigation who find the important information **B**



Jean Mignolet owner of Mignolet Business Research Consultants, is a pioneer in electronic information gathering and a subject matter expert in open source investigative techniques. Following the loss of a family member in the Twin Towers on September 11, she was recruited by a Department of Homeland Security contractor to help train law enforcement investigators around the country within a terrorism prevention workshop. Her most recent government contract was to train and consult with international open source analysts at Interpol. Her core investigative business involves in-depth background investigations and due diligence on people and businesses. She can be reached at 954.523.8737 or by email at Mignolet@bell-south.net. Visit her website at www.mignolet.com.



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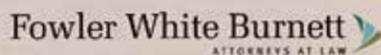
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Criminal Law Section presents CLE at the Broward County Courthouse on June 24, 2016

Fascinating Dilemmas in Accused 911 Terrorists Cases

What is it like to represent an alleged 911 terrorist?

You can find out by attending this exciting presentation by the Criminal Law Section of the Broward County Bar Association who welcomes keynote speaker Walter Ruiz, U.S. Navy Commander reservist, lead capital attorney for Mustafa al-Hawsawi. Mustafa al-Hawsawi has been in custody at Guantanamo since 2006 and is charged with being the organizer and financier of the 911 attacks in the United States. Commander Ruiz will discuss the features of abuse of power; torture; surreptitious monitoring of defense teams; ethics and conflicts of interest.

This thought-provoking presentation taking place on Friday, June 24, 2016, in the Broward County Courthouse Jury Room from 1:30 p.m. to 3:00 p.m. and includes a Q&A period. CLE credit has been applied for. Admission is free to all assistant state attorneys, assistant public defenders, regional conflict counsel, judges, and members of the criminal law section of the Broward County Bar. For all other attendees there is a nominal charge of \$10.00. Pre-register at www.browardbar.org/calendar. **B**



Former U.S. Navy Cmdr. Walter Ruiz, a military attorney, was once the lone lawyer assigned to the case of Saudi Mustafa al Hawsawi, one of the 911 accused terrorists.

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BCBA member **Lawrence Livoti** in front of the DMZ (Demilitarized Zone) which is on the border of North and South Korea.

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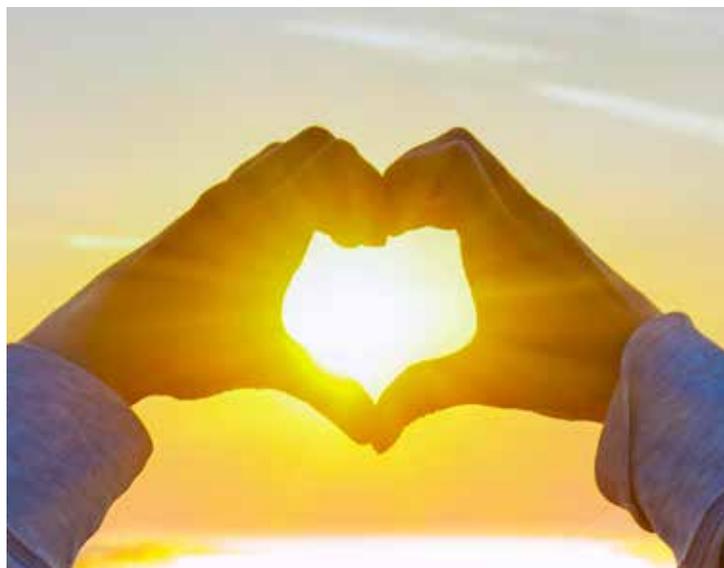
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Using Mandala Art to Exercise Mindfulness

by Michelle Karinne Suarez



Debbie Grossman

With mindfulness becoming a prevalent theme in the legal community, it's not surprising that people are exploring new ways to ease stress and explore their creative sides. One of these forms that you may have noticed at your local bookstore is 'adult coloring books', which is based on what is known as 'Mandala Art.' Debbie Grossman is an award winning local artist who teaches adults how to create their own 'Mandala.' Mandala Art are circular drawings that promote positive energy, concentration, and mindfulness. By focusing on the middle of the Mandala and moving from the center to the outer edges, you become more mindful and relaxed.

Grossman began painting at five years old, but when her grandmother died in 1995, she turned to art as a therapeutic tool to grieve and manage stress. She painted fifty pieces in over two months. Her husband, an attorney, encouraged her to enter an art contest, where she placed 2nd out of 1,300 artists in the U.S. and Canada. This was the first of many contests, which ultimately gave Grossman the confidence to continue her art professionally.

Grossman is also an art teacher for elementary and middle school. One of the teachers participating in Grossman's art classes suggested that she use her unique method of combining art with meditation to teach this technique to adults. This

lead to Grossman's Mandala workshop, where she guides participants through a meditation, explains the Mandala and its symbolism, and guides participants through the process of creating their own Mandala, and coloring it in. She had seen Mandala coloring books and researched their meditative qualities. However, Grossman wanted to create her own Mandala, because she found that it was much more relaxing and therapeutic to create her own source of art and then color it in.

Through the Mandala Art workshops, Grossman helps participants reach a meditative state by creating a soothing ambiance, and guiding participants through all of the chakras from the crown of the head to the bottom of the spine. The entire process takes three hours. When the meditation is finished, she teaches participants to create their own Mandala and then color it in. Grossman says that it is the unique mediation she guides participants through, as well as the creation of the art, that helps the participants learn how to develop and experience mindfulness. She has observed that participants immediately connect with other(s) in the class in a peaceful and positive way

through the creation of their own Mandalas. Grossman says, "The participants bond...they become open like children, less critical of themselves, and become open to the process and the art."

The nature of our profession is founded in a constant fight-or-flight mode. By learning to silence our thoughts and live in the present, we can achieve our highest potential as professionals and individuals. So, whether it is a Mandala art class like Grossman's, or a Reiki class, I challenge you to try developing mindfulness, and take a child-like leap of faith in exploring your artistic side. **B**



Michelle Karinne Suarez, Esq. is a business attorney practicing transactional and litigation work at Kelley Kronenberg, P.A.'s Fort Lauderdale office. She is also a fitness competitor. She can be reached at (954) 370-9970 or via email at msuarez@kelleykronenberg.com.

Recent Developments in the Law



by Nancy Little Hoffman

SUPREME COURT: WHERE DEFENDANT DOES NOT TESTIFY AT TRIAL, STATE MAY NOT INTRODUCE PRE-ARREST, PRE-MIRANDA SILENCE AS SUBSTANTIVE EVIDENCE OF CONSCIOUSNESS OF GUILT.

The Fourth District reversed a murder conviction because the State repeatedly elicited testimony that the defendant remained silent after the murder but prior to her formal arrest, and the prosecutor argued in closing that the jury could consider that as evidence of her consciousness of guilt. Answering the DCA's certified question, the Florida Supreme Court held that such use of the defendant's silence violated her constitutional right against self-incrimination. It also violated Florida evidentiary law because such silence is deemed ambiguous, and any probative value is substantially outweighed by the danger of unfair prejudice under section 90.403, Fla. Stats. *State v. Horwitz*, 41 Fla. L. Weekly S211 (Fla. May 5, 2016).

SUPREME COURT STRIKES DOWN MANDATORY ATTORNEY'S FEE SCHEDULE IN WORK-

ERS' COMPENSATION CASES.

The 2009 amendment to section 440.34, Fla. Stats., created a mandatory fee schedule based on the amount of benefits obtained. It also created an irrebuttable presumption that such fees were reasonable and precluded any consideration of whether the fee award was reasonable to compensate the worker's attorney. The Florida Supreme Court has now held that the statute is unconstitutional under both the Florida and United States Constitutions as a violation of due process. Since the effect of this opinion is to revive the statute's immediate predecessor, the judge of compensation claims will now be required to allow a claimant to present evidence that application of the fee schedule will result in an unreasonable fee (in this complex case, the attorney was awarded \$1.53 per hour). *Castellanos v. Next Door Company*, 41 Fla. L. Weekly S197 (Fla. April 28, 2016).

REFUSING TO LEAVE ONE'S HOME IS NOT "RESISTING ARREST" WHERE POLICE OFFICER HAS NO ARREST WARRANT, AND NO EXIGENT CIRCUMSTANCES EXIST.

An apartment resident, suspected of battery on his neighbor, refused to comply with a police officer's demand to leave his apartment and submit to police custody. Eventually the officer was able to enter the apartment. He arrested the defendant, although he had no arrest warrant. Charged with resisting arrest without violence as well as battery on the neighbor, the defendant was found guilty on both counts. On appeal, the Fourth District affirmed the battery but vacated his conviction for resisting arrest, because he "had a right to stay within his home, secure in the knowledge that the constitution protects his right...to be secure from encroachment." *Jackson v. State*, 41 Fla. L. Weekly D1134 (Fla. 4th DCA May 11, 2016). **B**



Nancy Little Hoffmann is a Board-Certified Appellate Lawyer practicing in the Fort Lauderdale area since 1974. She may be contacted at 954-771-0606 or by e-mail at NLHappeals@aol.com

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