THE DADE COUNTY BAR ASSOCIATION

IN THIS ISSUE:

SEPTEMBER 2016

"A Century of Service to Miami-Dade County"

Programs and Services That Help You GROW Your Practice, GAIN Experience & GIVE Back

BULLETIN

PRESIDENT'S MESSAGE

Jeffrey Rynor

"Probably the greatest benefit of joining the young lawyers section is a lifetime of friendships"

- Stephen Zack

John F. Kennedy said that the "unity of freedom has never relied on uniformity of opinion." Diversity of ideas and people provide a foundation for success. The Young Lawyers Section of the Dade County Bar Association welcomes all young lawyers to help our profession and our community develop new and creative programs, social events and educational opportunities. In addition to immediately getting involved with helping your profession, you have the unique platform to explore our profession and implement new concepts.

Stephen Zack, Past-President of the Young lawyers section of the Dade County Bar and Past-President of the American Bar Association, added, "Probably the greatest benefit of joining the Young Lawyers Section is a 'lifetime of friendships.'" He went on to say, "The Young lawyers section gave me an opportunity to work off a new slate. Young lawyers try to look at things with a new perspective and it gave me the opportunity to develop skills in the future practice of the law."

Stuart Weissman, the current President of the Young Lawyers Section says, "The DCBA YLS provides an invaluable opportunity for young lawyers with programming aimed at not only enhancing a young lawyer's business relationships and law practice, but also provides the opportunity to give back to the Miami-Dade community. The YLS provides the foundation for the leaders of tomorrow in our legal community."

Today the Dade County Bar Associations' Board of Directors has the good fortune of having on its Board three past-presidents of the YLS including Stephanie Carmen (current Vice President of the DCBA), Geri Satin and Suzette Russomanno. All three former YLS Presidents play a leading role in the advancement of the legal profession by working on some of the key initiatives of the Bar Association.

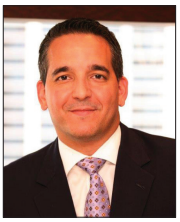
Geri Satin, Past-President of the YLS, speaks glowingly about the YLS, "The Young Lawyers Section is the lifeblood of the Dade County Bar Association; it puts on approximately 50 programs each year for bar members of all ages, consisting of educational, membership, and community service-based events that have received acknowledgement and accolades at both a state and national level. From the Bids for Kids charity event and auction, to the annual Judicial Reception, to the community-wide Service Juris Day, the YLS is a staple of the Miami-Dade legal community cultivating our next generation of legal leaders, justice champions, and community advocates. I could not be more proud to have spent the better part of a decade working with such a vibrant and productive group."

Please consider this President's message an open invitation to all lawyers to consider becoming a member of the Dade County Bar Association. The Association does a tremendous amount of good for our community and our profession.

Jeffrey Rynor

The Florida Surpreme Court Adopts a New "Bright Line" Rule that Reshapes Sentencing in Norvil V. State (Fla. 2016)

BY ARMANDO ROSQUETE



On April 28, 2016, the Florida Supreme Court, in Norvil v. State, No. SC14-746, 2016 WL 1700529 (Fla. Apr. 28, 2016), adopted a "bright line rule" holding that "a trial court may not consider a subsequent arrest without conviction during sentencing for the primary offense." The Court concluded that this new "rule" was "consistent with the Criminal Punishment Code, and [preserved] a defendant's due process rights during sentencing."

I. The Facts in Norvil

In Norvil, the defendant entered a plea to armed burglary of a dwelling. While on bond on the armed burglary charge, the defendant was charged with burglary of a retired deputy's vehicle. At sentencing for the armed-burglary charge, the state filed a sentencing memorandum recommending that the court consider the new charge in its sentencing determination. In support of that request, the state was armed with a fingerprint technician's report revealing that the defendant's fingerprints were found on CD cases stacked on the center console of the retired deputy's vehicle. Defense counsel responded with a sentencing memorandum objecting to the state's recommendation. The sentencing transcript revealed that the judge did consider the subsequent arrest as part of his sentencing determination.

> *"...a trial court may not consider a subsequent arrest without conviction during sentencing for the primary offense."*

II. The Fourth DCA Affirmed the Trial Court's Use of the Pending Charge at Sentencing

The Fourth District Court of Appeal ruled en banc that the sentencing judge could consider the subsequent arrest and charges because: "(1) the new charge was relevant; (2) the allegations of criminal conduct were supported by evidence in the record; (3) the defendant had not been acquitted of the charge that arose from the subsequent arrest; (4) the record [did] not show that the trial court placed undue emphasis on the subsequent arrest and charge in imposing [the] sentence; and (5) the defendant had an opportunity to explain or present evidence on the issue of his prior and subsequent arrests." Norvil v. State, 162 So.3d 3 (Fla. 4th DCA 2014). The Fourth DCA's decision conflicted with Yisrael v. State, 65 So.3d 1177 (Fla. 1st DCA 2011), Gray v. State, 964 So.2d 884 (Fla. 2d DCA 2007), and Mirutil v. State, 30 So.3d 588 (Fla. 3d DCA 2010). The Florida Supreme Court granted review.

III. The Florida Supreme Court's Opinion

The Florida Supreme Court disagreed with the Fourth District and premised its holding on two grounds: (1) statutory construction of the Criminal Punishment Code's ("CPC") language and (2) due process. The Court placed substantial weight on the CPC's statutory provisions governing presentence investigation reports ("PSI"). The CPC provides that PSIs "include … the offender's prior record of arrests and convictions," and defines those arrests and convictions as those that "occur 'prior to the time of the primary offense,' and not subsequent to the primary offense." Id. at *2. Based on the statute's language, the Court concluded that "if the Legislature had intended to include subsequent arrests and their related charges as permissible sentencing factors, it would have done so." Id. at *3.

But the dissenting opinion pointed out that a judge is not required to order a PSI, leading the dissenters to reason that "[i]t is nonsensical to conclude that the Legislature intended to limit the scope of matters considered by the sentencing court to facts presented in a PSI when the Legislature has not required the use of a PSI, [and] has granted full discretion to the sentencing court to forgo using a PSI at all." Id. at *4. It is perhaps for this reason that the majority cast the question presented in due-process grounds and concluded that its holding "preserves a defendant's due process rights during sentencing." Id. at *3; see also id. at *2 ("The issue before this Court is whether the trial court violated the defendant's due process rights by considering a subsequent arrest without conviction during sentencing for the primary offense…) (emphasis added). Based on the dissent's citation to federal cases holding that a defendant's due process rights under the United States Constitution are not violated when the sentencing court considers acquitted conduct under a preponderance-of-the-evidence standard, it would appear that the majority's due-process holding is grounded in the Florida Constitution's due-process provisions and the general principle that states are free to afford greater protection under their state constitutional regimes. See, e.g., State v. Kelly, 999 So. 2d 1029, 1042 (Fla. 2008) ("Unless the Florida Constitution specifies otherwise, this Court . . ., may interpret [the Florida Constitution] as providing greater protections than those in the United States Constitution."). However, the majority itself did not expressly state that its due-process holding was based on state constitutional grounds. The due-process component of the opinion blunts any legislative efforts to amend the CPC in order to abrogate the Court's holding.

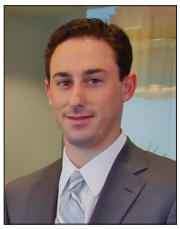
IV. Conclusion

Norvil vindicates those practitioners who had bemoaned the use of pending criminal charges at sentencings on the grounds that a defendant should not run the risk of incurring punishment twice for the same offense conduct. Others would argue that the Court's holding hamstrings a sentencing judge's ability to assess recidivism as well as the type of punishment necessary to deter the defendant from future misconduct and does not optimally incentivize a defendant's compliance with bond conditions. The Court's decision affords defendants significant protections against pending charges being used against them in other criminal proceedings absent a plea or trial pertaining to that pending charge.

Armando Rosquete *is an attorney at Boies, Schiller & Flexner in Miami, a former Assistant United States Attorney (2006-2012), a former law clerk for Justice Raoul G. Cantero, III on the Florida Supreme Court, and a graduate of Harvard Law School (2003). His practice focuses on complex commerical litigation and white-collar criminal defense.* ■

The Civil Justice System, Tort System, and the Jury Trial – Serving our Community

BY STUART J. WEISSMAN



The civil justice system in this country is critical. What better way is there to hold those accountable for their actions and the harms and losses they have caused others? Thomas Jefferson stated, "I consider trial by jury as the only anchor ever yet imagined by man, by which government can be held to the principles of its Constitution." James Madison said, "…trial by jury in civil cases is as essential to secure the liberty of the people as any one of the pre-existent rights of nature."

For the past eight years of my legal career, which is in fact my entire career, I have devoted my life to representing those who have suffered catastrophic harms and losses at the hands of others. Each time I pursue a case, I think back to the founding principles of the civil justice system, the tort system, and the right to trial by jury that I learned about in school.

What many of us forget is that the tort system has more than one purpose. While it works to compensate those who have suffered civil harms and losses, the tort system also exists for perhaps a far more important reason – to deter wrongful conduct. I am not talking about punitive damages. I am talking about deterrence – behavior modification.

A look to the Restatement of Torts, and relevant case law, reminds everyone that the tort system is about more than just compensation:

> "…the "primary purpose of tort law is 'that wronged persons should be compensated for their injuries and that those responsible for the wrong should bear the cost of their tortious conduct.' " Clay Elec. Coop. v. Johnson, 873 So.2d 1182, 1190 (Fla.2003) (quoting Weinberg v. Dinger, 106 N.J. 469, 524 A.2d 366, 375–79 (1987)). As cogently explained by the Colorado Supreme Court,
>
> Tort law represents the way in which we draw lines around acceptable and unacceptable non-criminal behavior in our society. Torts are designed to encourage socially beneficial conduct and deter wrongful conduct. See, e.g., Restatement (Second) of Torts, § 901(c) (1979). Correspondingly, liability arises out of culpable behavior wherein the defendant breaches a duty to the plaintiff: crosses the line into unacceptable behavior. Liability not only recompenses the wronged plaintiff, but also deters the socially wrongful conduct in the first place. Hence, clarity and certainty of tort law serves a very important function in regulating how we deal with one another. (citing Denver Publ'g Co. v. Bueno, 54 P.3d 893, 897–98 (Colo.2002).)"

Jews for Jesus, Inc. v. Rapp, 997 So.2d 1098, 1104-1105 (Fla. 2008) (emphasis added).

The Florida Supreme Court has further explained that along with compensation, "an equally basic aim of imposing liability for compensatory damages resulting from negligent conduct is to deter such conduct…" Travelers Indem. Co. v. PCR, Inc., 889 So.2d 779, 795 (Fla. 2008) (emphasis added). The civil justice system affects our communities by holding those accountable for their civil wrongs. Through accountability, the civil justice system, and the right to a trial by jury, will continue to promote safe behavior through deterrence. For a great commentary on the importance of jury service, please take a moment to review two separate videos from the Florida Courts website (http://www.flcourts.org/resources-and-services/education-outreach/court-system-videos/index.stml). As Florida Supreme Court Justice Barbara Pariente comments, "everyday people like you, not the government, decide disputes affecting your community. When you serve as a juror, you're not only protecting the rights of you and your family, you're making our democracy stronger."

"[The] primary purpose of tort law is 'that wronged persons should be compensated for their injuries and that those responsible for the wrong should bear the cost of their tortious conduct.' "

REMINDER – As the DCBA YLS begins its year working diligently to give back to our young lawyers and our community, we invite each of you to the annual DCBA YLS Open House to learn more about what we do as an organization. It will be held on September 8, 2016, at 6:30 p.m. at Fado in Mary Brickell Village. See you threre!

Stuart J. Weissman *focuses his practice on medical malpractice, products liability, and commercial litigation matters by representing those individuals who have been catastrophically harmed and injured as well as the families of those who have lost a loved one. Mr. Weissman can be reached at stuartw@ratzanlawgroup.com.* ■

Florida's Daubert Jurisprudence in Peril as Florida Courts Continue to Apply Daubert but the Florida Supreme Court has yet to Approve it

BY ARMANDO G. HERNANDEZ

Three years after Governor Rick Scott signed into law amendments to Florida Statute Sections 90.702 and 90.704, modernizing Florida to a Daubert jurisdiction and abandoning the archaic Frye standard, there remains a looming state of unsteadiness. Since July 1, 2013 (the enactment date of the Daubert amendment), there have been countless Daubert challenges, hearings, trial court orders, appeals, appellate opinions, articles, continuing legal education seminars, meetings and votes of the Florida Board of Governors, and debates all having to do with Daubert as a matter of Florida law. Will Daubert remain or will Florida revert back to Frye?

It is undisputed that Florida lawyers and judges have been – and will continue until further notice – applying Daubert. A noteworthy body of Daubert jurisprudence as a matter of Florida law has been etched out. It began with Conley v. State, in which the First District reversed and remanded for a new trial, instructing the lower court to determine the admissibility of certain evidence under Daubert. 129 So. 3d 1120, 1121 (Fla. 1st DCA Dec. 20, 2013). Then in 2014 the Third District expounded upon a thorough comparative analysis of the Frye and Daubert standards in Perez v. Bellsouth Telecomm., 138 So. 3d 492, 497-99 (Fla. 3d DCA Apr. 23, 2014). The First District continued to pave the way in developing Florida's Daubert jurisprudence. See Baan v. Columbia County, 180 So. 3d 1127, 1132-34 (Fla. 1st DCA Dec. 8, 2015) (concluding expert testimony constituted ipse dixit or an unproven statement); Perry v. City of St. Petersburg, 171 So. 3d 224, 225 (Fla. 1st DCA Aug. 7, 2015) (applying Daubert to worker's compensation proceedings); Booker v. Sumter County Sherriff's Office/N. Am. Risk Serv., 166 So. 3d 189, 193-94 (Fla. 1st DCA May 29, 2015) (highlighting the timeliness requirements for Daubert challenges); Giaimo v. Fla. Autosport, Inc., 154 So. 3d 385, 387-89 (Fla. 1st DCA Nov. 26, 2014) (emphasizing the abolition of pure opinion testimony under the Daubert amendment). The Fifth District also joined the fray and determined mental health opinion testimony should be examined under Daubert. See Andrews v. State, 181 So. 3d 526, 527-29 (Fla. 5th DCA Oct. 30, 2015) (finding the proposed opinion testimony at issue satisfactory). Most recently, the Fourth District held the Daubert amendment applied retrospectively and was procedural in nature. See Bunin v. Matrixx Initiatives, Inc., 4D14-3579, 2016 WL 3090777, at *1-2 (Fla. 4th DCA June 1, 2016).

There have also been significant and noteworthy trial court orders addressing Daubert. For example, a circuit court judge in Duval County entirely excluded a boating expert in a product liability case for failing to do any testing and advancing entirely unreliable opinions. See Sullivan v. BRP U.S. Inc., Case No. 16-2013-CA-569-XXXX (Fla. Cir. Ct. July 1, 2015) (Duval County). Similarly, a Miami-Dade County circuit court judge entirely excluded an addiction expert in a tobacco litigation matter. See Wendel v. R.J. Reynolds Tobacco Co, Case No. 10-54813 CA (15) (Fla. Cir. Ct. Apr. 1, 2014) (finding the expert was unqualified to opine on nicotine addiction and the expert utilized an entirely unreliable methodology). A Hillsborough County circuit court judge was one of the first judges in Florida to address the retroactivity of the Daubert amendment, the constitutionality of the amendment under a separation of powers challenge, and whether the amendment was procedural or substantive. See Gross v. Plantation Key Assoc. et al., Case No. 06-CA-005879 (Fla. Cir. Ct. Sept. 13, 2013).

"Will Daubert remain or will Florida revert back to Frye?"

The aforementioned efforts may all end up being in vain. There are serious efforts to have Daubert rejected. By way of background, the Florida Supreme Court has the ultimate authority in adopting a given evidentiary standard as a matter of Florida law. The Supreme Court has not yet spoken on or addressed this issue. Hence, the present state of affairs and uncertainty about which expert standard will govern in Florida. The Florida Bar's Code of Rules and Evidence Committee submitted a Three Year Cycle Report proposing that Sections 90.702 and 90.704 not be adopted as Rules of Evidence to the extent they are deemed procedural. The Florida Board of Governors approved the Report by a wide margin of a vote. On February 1, 2016, the Florida Board of Governors submitted the Report to the Florida Supreme Court, recommending that the Daubert amendments be rejected. The Florida Supreme Court will hear oral arguments for and against Daubert on September 1, 2016.

It would seem impractical, inefficient and non-sensible for the Supreme Court to declare the last three years of Daubert litigation and jurisprudence "as a matter of Florida law" nothing more than an exercise in futility. One would hope that the system of checks, balances, and communications between the legislature and the judiciary are more carefully circumscribed and calibrated than to allow for such a preposterous result. In any event, a determinative outcome will soon bring the tension and uncertainty to a definitive end for better or for worse.

For additional reading or resources regarding the Daubert standard as a matter of Florida law, see:

http://www.rumberger.com/?t=11&la=2517&format=xml&p=4945

http://www.rumberger.com/?t=40&an=30284&format=xml&p=5085#.VXBjts9Viko

http://www.rumberger.com/?t=40&an=19966&format=xml&p=4946

Armando G. Hernandez *is an Associate in the Miami office of Rumberger, Kirk & Caldwell, P.A. He practices in the areas of products liability, admiralty, commercial litigation, premises liability, and other general litigation matters. Mr. Hernandez is a member of the Local Professionalism Panel.* ■

Do I Need an Employment Contract?

BY ILONA DEMENINA ANDERSON

It's an open question as to whether or not anyone actually "needs" a written employment contract. The fact of the matter is, whether or not it is in writing, every employee and every employer actually has an employment contract, because implied terms and conditions can be said to exist based on the working history of both, as customs and practices may develop that can be considered contractual entitlements by either party. The problem with this type of arrangement is that there may be disagreements in how the employer and the employee visualize the individual terms and that clash can result in conflicts that can endanger the employment relationship.

Because people see things differently quite often, in cases when the employer wants to clearly set out employment terms and conditions, doing so in writing is advisable to avoid ambiguity or confusion. However, written employment contracts don't just benefit the employer; employees also benefit by understanding all of the parameters of their employment. A written employment contract can take a lot of the mystery out of the employment relationship and clarify for both parties exactly what can be done, when and under what circumstances.

Besides laying out exactly what an employee's duties are and what he or she gets in return, like salary, overtime and benefits, a written employment contract can also spell out some other details, to make them less confusing later on. For example, the employer can spell out very specific performance objectives and possible grounds for termination, and then detail the exact process for termination. They can also lay out the details regarding the ownership of an employee's work product, or his or her responsibility to protect the company's trade secrets and client lists, as well as to protect client privacy. It's also possible to spell out a method for resolving disputes that arise from the agreement. Employment contracts can be a very useful tool in many circumstances, especially if an employer wants to exercise a little more control over the employee and put themselves in a better position. Some of the terms of a written contract can lock an employee into a specific term of employment, or even give him or her enough notice to replace and properly train a replacement should the employee want to move on. For example, if the traditional two weeks' notice isn't sufficient, the contract could specify a notice of at least 60 days, and specify a penalty for not doing so.

All of the above can be great for employers and employees, because it takes a lot of the guesswork out of the employment relationship. Many of these things can't necessarily be accomplished via a verbal agreement, and verbal agreements are largely unenforceable anyway, which means they're really not great for anyone. They can be especially hard on employees, who often need the most protection. There are many reasons why a verbal agreement is almost never sufficient. What if there is a dispute between an employee and a manager about what was said in the past? It will be hard to prove what was or was not said. Also, what if the manager who made all of those verbal promises is transferred or leaves the company, and no one available can confirm the agreement? For that matter, what if you make a verbal agreement with one manager and another denies that occurred, or that what the other manager told you did not comport with company policy or something? Everyone on both sides of the employment contract should understand that no employment contract works one way; it binds both parties to certain terms and conditions and it can only be changed if both sides agree. A business can't unilaterally change the agreement without the acquiescence of the employee, even if the business changes and the contract terms no longer fit. For example, if the employer guarantees the employee certain benefits, they can't just cut off those benefits because revenues are down. Also, the existence of a written employment contract brings with it an obligation on the part of the employer to deal with the employee in good faith and fair dealing, which means that any judge or jury who thinks one party is being unfair to the other may make things difficult for them in a legal conflict.

Both employers and employees in need of an employment contract should consult with an attorney to make sure it's done right and reduce the chance of problems arising down the road.

Ilona Demenina Anderson *is a partner at Saenz & Anderson, PLLC – a reputable employment law firm located in Aventura, Florida. A 2006 cum laude graduate of St. Thomas University School of Law, Ms. Anderson is admitted to The Florida Bar and has litigated cases in various other states. She focuses her practice on wage & hour claims, wrongful termination, retaliation, discrimination and harassment.* ■

The Constitutional Corner

BY HONORABLE MILTON HIRSCH

The "Cold War" was already under way when, in the September, 1947, issue of Harper's Magazine, preeminent American historian Henry Steele Commager published an essay entitled, "Who is Loyal to America?". That essay – which resulted in Commager being vilipended as a "commie" in hate mail and even in some newspapers – included this memorable passage:

It is easier to say what loyalty is not than what it is. It is not conformity. It is not passive acquiescence to the status quo. It is not preference for everything American over everything foreign. It is not an ostrich-like ignorance of the other countries and other institutions. It is not the indulgence in ceremony – a flag salute, an oath of allegiance, a fervid verbal declaration. It is not a particular creed, a particular vision of history, a particular body of economic practices, a particular philosophy.

It is a tradition, an ideal, and a principle. It is a willingness to subordinate every private advantage for the larger good. It is an appreciation of the rich and diverse contributions that can come from the most varied sources. It is allegiance to the traditions that have guided our greatest statesmen and inspired our most eloquent poets – the traditions of freedom, equality, democracy, tolerance, and the tradition of Higher Law, of experimentation, cooperation, and pluralism. It is the realization that America was born of revolt, flourished on dissent, became great through experimentation.

The Honorable Milton Hirsch *has been a judge of the 11th Judicial Circuit of Florida since January of 2011. He is also an adjunct professor of law at the University of Miami School of Law and at St. Thomas Law School. In 2016, he became the recipient of the Dade County Bar Association's "Criminal Justice Award" for his outstanding contribution to Miami-Dade County's criminal justice system. The above passage is an excerpt from Judge Hirsch's Constitutional Calendar. If you would like to be added to the Calendar's distribution list, please contact Judge Hirsch at milton.hirsch@gmail.com with your name and e-mail address.* ■

Dade Legal Aid
Put Something Back

Chief Judge Soto with Summer Associates at the Hogan Lovells Getting a Jump start on pro bono

Getting a Head Start on Pro Bono

Miami, FL –For the sixth consecutive year, Dade Legal Aid presented its "Getting a Head Start on Pro Bono" program, targeted at the future generation of attorneys. The event, which took place on July 13, was hosted by Hogan Lovells at their Brickell offices, in their continued support of Dade Legal Aid's Put Something Back program. Al Lindsay, Carmen Manrara Cartaya, and the Hogan Lovells Marketing team recruited more than 30 summer associates from various law firms to attend. Mrs. Cartaya opened the luncheon speaking of her experience and time spent doing pro bono work.

Chief Judge Bertila Soto served as guest speaker, emphasizing the importance of pro bono work in our community. Judge Soto is the first woman, and first Cuban-American, to serve as chief judge of the 11th Circuit. She received her J.D. from the University of Miami School of Law. Following graduation, she served as a state prosecutor before going into private practice. Her career as a judge began in the domestic violence division and she was appointed to the circuit bench by former Governor Jeb Bush in 2002. Judge Soto recalled her first exposure to pro bono at the office of her father, Osvaldo N. Soto, at the age of 14.

Among the attendees were student clerks and interns from Akerman, Carlton Fields, Dade Legal Aid, DLA Piper, Hogan Lovells, and Shutts and Bowen. The event was dedicated to inform and inspire clerks about the importance of pro bono work at the onset of their careers.

Dade Legal Aid ("DLA") provides a critical safety net of legal services for the indigent of Miami-Dade County in the areas of Family Law, Domestic Violence, Guardianship, Children & Foster Youth Advocacy, Bankruptcy, LL/T, Foreclosure Defense, Probate, Non Profits, Legal Clinics for the Self Represented, Venture Law, Taxation, CLE Educational Trainings and Community Workshops. ■

Legal Aid summer interns enjoy the Hogan Lovells Summer Law Clerk event to get a jump start on pro bono

Summer Associates mingle at Hogan Lovells LLP

Summer Associates mingle at Hogan Lovells LLP

Summer Associates mingle at Hogan Lovells LLP

Pro Se Clinics

Thank you to BERGER SINGERGMAN LLP and the firm's dedicated attorneys for going above and beyond to provide ongoing support of the Pro Se Debtor Clinics for the Southern District for over five years! Berger Singerman has over 80 attorneys in offices in Miami, Fort Lauderdale, Boca Raton and Tallahassee. Giving back to the community is one of the main tenants of the firm, which is committed to making a positive impact through leadership roles in various organizations like Put Something Back, devoting countless hours and resources to the community and pro bono work. Many members of the firm are actively involved in firm sponsored and self-directed giving of their time and effort to provide assistance to those in dire need with nowhere else to turn for assistance. When they undertake a pro bono project, the attorneys at Berger Singerman become fully engaged and committed to the same team approach and timely delivery of passionate client service that they offer paying clients.

The free bankruptcy clinics are co-sponsored by the Bankruptcy Bar Association for the Southern District of Florida and American College of Bankruptcy Foundation and are held monthly throughout the District. Clinics are open to anyone contemplating filing bankruptcy or who may have filed bankruptcy and has general questions. During the first 45 minutes, a video offers a general overview of the bankruptcy process followed by volunteer attorneys who go into more depth about the bankruptcy process and answer general questions. The firm's volunteer attorneys are coordinated by the firm pro bono chair, Debi Galler. "The clinic attendees and pro se filers have been very appreciative of the information provided at the clinics," said Karen Ladis. "We commend the firm and all of the volunteers for their efforts and participation and also appreciate the support of the Clerk of Courts."

For more information or to participate please email psb@dadelegalaid.org ■

Litigating Cases with Cultural Competency: Language is Only Half the Story.

BY MAIA ARON

In Miami, it goes without saying that an important part of our legal business is tied to Latin America. Here is a hypothetical: you have a complex commercial case, and your client is from a Latin American country. Yes, it is important to have an attorney in your team who speaks Spanish. Most likely, in Miami, there is already someone in your team who can read documents and communicate in Spanish. Is that enough? Many times yes, but not always. Sometimes the key to really cracking the case and achieving a positive result is cultural, not linguistic.

Obviously, there is a lot of translation that goes back and forth when reviewing documents and communicating with a foreign client. Here is where another piece of the puzzle comes in. Besides being a good lawyer and speaking the same language as your client, you should be culturally competent. You can translate documents all you want and talk to the client in Spanish, but if you don't get the culture, you won't get to the heart of the matter.

In depositions or discovery, you need to understand what happened and what went wrong in order to build a successful offense or defense for your client. Without the necessary cultural background, it is very easy to miss this guidepost. The whole case needs to be structured around the culture in which your client lives and does business. You need to take culture into account when you develop the facts and create the winning narrative.

"The word confianza doesn't just mean confidence. It is a Latin American notion of trust and family."

1. ***In Latin America, business is often done on a handshake.*** The transaction that forms the basis for your litigation may not have been papered like in the United States. This has several ramifications that require understanding the culture in order to get to the heart of the matter. The document trail may not exist, and you may need to talk to, or depose several witnesses to get to the bottom of the facts.

2. ***There may be a person with no official role, who is close to the CEO or owner of the company, who is making the important decisions.*** When you look at the company's organizational chart or documents, you may not see this person listed. Find out if such a person exists by your client's side and get to know her or him. Also, find out if such a person exists on the opposing party side. Why you ask? Because you want to make sure you take this person's deposition. If you don't, you fail to uncover key evidence in your case.

3. ***Family is not just around the dinner table, but also in the boardroom.*** Many decisions can be made informally, but have profound influence on the case. Don't be afraid to reach out and meet with your client's family members who are involved in the business. It is not enough to just have a relationship with your client and her general counsel. In Latin America, children and other family members often work with their parents and have important positions in the family business.

4. ***Develop trust between you and your client outside of the office.*** Make sure you spend time with your client to find out not only what his business is about and the facts that led to litigation, but also to find out about him personally. Other cultures may see this as unnecessary. Consider, for example, dealing with a CEO in New York, for whom "time is money," who might wonder why a lawyer is talking to him about his daughter's soccer match, or actually coming to it! With a Latin American client, that very act could be key to establishing a real relationship that brings the case to a successful conclusion. It is not uncommon to have dinner with your client and her family, and the next day, your client really opens up to you and you can get to the bottom of the facts needed for litigation. Your client already thought you were a good lawyer, but she just did not have that level of confianza in you before meeting with the family. The word confianza doesn't just mean confidence. It is a Latin American notion of trust and family.

Putting all this together takes you from mere translation to cultural understanding. That is how you put together a successful case, get your client's trust, and get your client to come back to you with another case.

Maia Aron *was born and raised in South America. She has a JD and an MBA (Finance) from the University of Miami. She practices complex commercial litigation at Kozyak Tropin & Throckmorton. Maia is a native Spanish speaker, conversational in Hebrew and Portuguese, and has a working knowledge of Italian. She can be reached at MA@kttlaw.com.*

Legal Business Development: What Is Your Big Goal?

BY PAULA BLACK

What do you want? Yes, that's a pretty big question for lawyers since most would start by explaining… ***"That depends…"*** I think Forbes contributor, Bruce Kasanoff who ghostwrites articles for entrepreneurs, and speaks about bringing out talent in others has a great bit of advice. Kasanoff explains…

"To paraphrase a bit, a professional recently wrote me to say that he was capable of being a VP, but that he was happy in his job, but he didn't do such a good job of representing himself, but he was proud of his accomplishments, but he thought he should probably improve his skills, and what did I think?

I think he should have written: can you help me become a VP this year? To get what you want, you have to be coherent, both inside and out. This means you have to be clear, simple and focused in how you communicate with others. It also means you have to be clear, simple and focused in how you think. If one day you want to be VP, and the next you aren't sure that you want to work harder or travel more, then you will never be a VP.

Perhaps you don't want to be a VP. That's ok— but to get what you want, you need to know what you want.

Once you decide, stick with it.

You need to make it easy for other people to help you. 60% of the people I meet do not do this. Instead, they share a sort of "stream of consciousness" slice of their feelings, emotions, experiences and ideas.

Just the other day, a young man wrote to say he actually wanted to be a doctor, but that he had been sidelined by financial and personal issues. He seemed more focused on those problems than on his goal of being a doctor. That's understandable, but if your goal is to be a doctor, focus all your energies on that goal, so that any problems or obstacles pale in comparison."

Lawyers… take note that focusing on why you can't do something, and focusing on the obstacles, doesn't really get you where you want to go. Be clear and focus on your goal with blinders on and don't let the naysayers rain on your parade. It's your career and your life, stay in the driver's seat!

Paula Black *is a legal business development and branding expert, author, consultant and coach. She has advised individual lawyers and law firms around the globe on everything from powerful and innovative design to marketing and business development strategy and implementation. She is the award-winning author of "The Little Black Book" series and the Amazon-bestselling "The Little Black Book: A Lawyer's Guide To Creating A Marketing Habit in 21 Days." For more information visit: www.inblackandwhiteblog.com or www.paulablack.com.*

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Dade County Bar Association
123 N.W. First Avenue
Miami, Florida 33128

MARK YOUR CALENDAR

SEPTEMBER 7
FAMILY COURT MEETING
LOCATION: DADE COUNTY BAR ASSOCIATION
TIME: 12:00 NOON

SEPTEMBER 8
PROBATE & GUARDIANSHIP MEETING
LOCATION: LAWSON THOMAS COURTHOUSE
TIME: 12:00 NOON
MEMBER ADMISSION: $10
NON-MEMBER ADMISSION: $20

SEPTEMBER 8
YLS OPEN HOUSE
LOCATION: FADO IRISH PUB
TIME: 6:30 PM

SEPTEMBER 9
PROFESSIONALISM SEMINAR AND LUNCHEON
LOCATION: HYATT REGENCY DOWNTOWN
TIME: 8:30 AM
SEMINAR MEMBER ADMISSION: $80
SEMINAR NON-MEMBER ADMISSION: $105
LUNCHEON MEMBER ADMISSION: $45
LUNCHEON NON-MEMBER ADMISSION: $60

SEPTEMBER 14
FEDERAL COURTS MEETING
LOCATION: GENOVESE JOBLOVE & BATTISTA
TIME: 12:00 NOON

SEPTEMBER 23
CORPORATE COUNSEL CLE
LOCATION: CORAL GABLES COUNTRY CLUB
TIME: 8:00 AM
MEMBER ADMISSION: $44
NON-MEMBER ADMISSION: $72

SEPTEMBER 23
THIRD DCA SEMINAR & RECEPTION
LOCATION: THIRD DISTRICT COURT OF APPEAL
TIME: 3:00 PM

SEPTEMBER 29
CRIMINAL COURTS SEMINAR
LOCATION: HAMPTON INN
TIME: 12:00 NOON

SEPTEMBER 30
GENERAL MEMBERSHIP LUNCHEON WITH SENATOR BILL NELSON
LOCATION: HYATT REGENCY DOWNTOWN
TIME: 11:30 AM
ADMISSION: $99
JUDICIARY ADMISSION: $39
DCBA MEMBER ADMISSION (FOR MEMBERS WHO HAVE RENEWED FOR 2016-2017 YEAR) $52

OCTOBER 5
FAMILY COURT SEMINAR
LOCATION: DADE COUNTY BAR ASSOCIATION
TIME: 12:00 NOON

OCTOBER 7
OVER THE RAINBOW EVENT
LOCATION: CORAL GABLES COUNTRY CLUB
TIME: 6:00 PM
ADMISSION: $89
JUDICIARY ADMISSION: $69

OCTOBER 13
PROBATE & GUARDIANSHIP MEETING
LOCATION: LAWSON THOMAS COURTHOUSE
TIME: 12:00 NOON
MEMBER ADMISSION: $10
NON-MEMBER ADMISSION: $20

OCTOBER 14
LAW AND TECHNOLOGY DATA PRIVACY & DATA SECURITY SUMMIT
LOCATION: UM LAW ALUMNI CENTER
TIME: 8:00 AM

OCTOBER 14
PROBATE LAW WITH THE JUDICIAL ICONS
LOCATION: HYATT REGENCY DOWNTOWN
TIME: 11:30 AM
MEMBER ADMISSION: $45
NON-MEMBER ADMISSION: $65

OCTOBER 27
CRIMINAL COURT SOCIAL
LOCATION: PRIDE & JOY
TIME: 5:30 PM

OCTOBER 28
APPELLATE LEGENDS LUNCH
LOCATION: HYATT REGENCY DOWNTOWN
TIME: 11:30 AM
MEMBER ADMISSION: $47
NON-MEMBER ADMISSION: $67
JUDICIARY ADMISSION: $32

NOVEMBER 2
FAMILY COURT MEETING
LOCATION: DADE COUNTY BAR ASSOCIATION
TIME: 12:00 NOON

NOVEMBER 3
PATENTLY IMPOSSIBLE PROJECT
LOCATION: TBA
TIME: 5:30 PM

For more information visit www.dadecountybar.org