

# FORUM 8

Volume 67, No. 7

Eighth Judicial Circuit Bar Association, Inc.

March 2008

## President's Letter



by John Whitaker

Here are my top 10 legal themed movies of all time. These are based on movies I have seen, so it may be an incomplete list.

**1. Twelve Angry Men.** The Classic 1957 portrayal of a dissenting juror, played by Henry Fonda. I first saw this in high school in an English class and I thought it was mesmerizing.

Our class assignment was to write the closing argument for the Defendant. I believe it was at that point I knew I wanted to be an attorney. I often wonder how many jurors like Henry Fonda's character there are out there.

2. **To Kill a Mockingbird.** The 1962 portrayal of a racially charged trial in the depression era south. If this book or movie doesn't stir passion within nothing will. I am honored to have been compared to Atticus Finch, even if only because I occasionally wear a seersucker suit during the summer. Another film that as a child made me want to be an attorney.
3. **The Verdict.** Paul Newman in an Oscar worthy performance on what not to do as a lawyer in a medical malpractice case, but still ending up with justice. I can't say this inspired me but it sure was entertaining.
4. **Presumed Innocent.** Harrison Ford as the prosecutor who is framed for murder and Raul Julia as his defense attorney. Raul Julia plays the smoothest, most intelligent, methodical, yet apparently egoless defense attorney I have ever seen.
5. **My Cousin Vinny.** The hilarious comedy about culture clash and murder in the deep south. Come on, Fred Gwynne (aka Herman Munster) playing the judge, "two yoots, what's a yoot?" Joe Pesci in either a leather jacket or the ring master outfit, "what exactly

is a grit?" Yes, it plays on some stereotypes of the south and the northeast but come on, that's a good movie with very entertaining courtroom scenes.

6. **A Civil Action/ Erin Brockovich.** Both good movies based on true events that show just how difficult it is to take on powerful corporations with deep pockets. Erin Brockovich is more entertaining and a feel good movie and A Civil Action is more the nuts and bolts of a large law suit.
7. **The Accused.** Another great movie based on a true story, and played by Jodi Foster as the victim and Kelly McGillis as the prosecutor. Very powerful. Both a comment on the need for rape shield laws and individual responsibility (the bystanders who either witnessed the crime or encouraged it).
8. **The Paper Chase.** This is what I thought law school was going to be like. Fortunately, and unfortunately it wasn't. I did have a college friend who attended Harvard Law in the last 10 years and the Socratic method is very much alive there. He told me about an entire class in which he was grilled by Alan Dershowitz defending his interpretation of a criminal law issue.
9. **A Few Good Men.** Alright, I know you're likely never to break a witness on the stand and to try and do so will likely make you look like a fool, but it was good Hollywood with very good, and very quotable performances.
10. **Body Heat.** I know I am going to get in trouble for this one but I can't resist. Yes I know it is not a very good movie but the story of an incompetent Florida State Law School graduate- a classic. Go Gators.

P.S. My law partner Bart Zadel says my list is incomplete without **And Justice for All** with Al Pacino, but I have yet to see it.

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# Florida Bar Board of Governors Report

by Carl Schwait



At its February 1, 2008, meeting in Tallahassee, The Florida Bar Board of Governors:

- Heard from Melissa Jay Murphy of Gainesville, chairperson of the Real Property, Probate and Trust Law Section (our Bar's largest), who addressed the Board concerning her section's achievements and future plans.
- Approved as a Bar legislative position support of the Supreme Court's certification of 61 new trial court judges. The board also approved allowing the Legal Needs of Children Committee to push for the creation of a comprehensive state system for representing children in court, which includes the Guardian ad Litem Program, public defenders, and legal counsel for children. The approval came with the understanding that the committee may bring specific legislation to the Bar with a request that it be supported as a Bar as well as a committee position.
- Adopted the final report of the 2004 – and first – Diversity Symposium. Board member Eugene Pettis said while many recommendations fall outside the board's purview, many of the goals can be accomplished by the board and the formal approval in concept will give impetus to the proposals from that report, which set out a 10-year plan for improving diversity in the Bar, the profession, the judiciary, and in law schools.
- Heard Florida's Chief Financial Officer Alex Sink say Florida residents facing mortgage foreclosures will need increasing help from lawyers – especially pro bono services. She also urged the Bar to encourage talented young lawyers to enter government service and to recognize talented older attorneys who have dedicated their careers to public service, usually at a much smaller salary than they could have made in the private sector.
- Heard the prediction that the 2008-09 budget, which will come to the board for its approval at its March meeting, will be balanced without an increase in annual membership fees, despite a softening national and state economy.
- Heard Chief Justice Fred Lewis ask the Bar for support on court budget needs in the legislature and for the

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## Board of Governors

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Supreme Court Historical Society. He also talked about the successes of the Justice Teaching Initiative, and took questions from board members.

- Reappointed Miles McGrane III and Julio C. Jaramillo to three-year terms on The Florida Bar Foundation Board of Directors.
- Approved several rule changes on the recommendation of the Board of Legal Specialization and Education, including the final standards for certification in education law and adoption law.
- Heard a report on ongoing studies and efforts related to technology and the courts, including e-filing and online public access to court records. The newly-formed Florida Courts Technology Commission will have a major impact on those issues, and that the Bar and lawyers need to actively participate in those efforts.
- Approved for submission to the Supreme Court several advertising rule amendments, and discussed several other suggested changes, including the use of non-lawyer spokespersons in electronic ads.
- Denise Hutson of Gainesville was recently reelected to a two-year term to the Executive Council of the Real Property, Probate and Trust Law section.

### About This Newsletter

This newsletter is published monthly, except in July and August, by:

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Any and all opinions expressed by the Editor, the President, other officers and members of the Eighth Judicial Circuit Bar Association, and authors of articles are their own and do not necessarily represent the views of the Association.

News, articles, announcements, advertisements and Letters to the Editor should be submitted to the **Editor** or **Executive Director** by Email, or on a CD or CD-R labeled with your name. Also, please send or email a photograph with your name written on the back. Diskettes and photographs will be returned. Files should be saved in any version of MS Word, WordPerfect, or ASCII text.

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**Deadline is the 5th of the preceding month.**

## **RESERVE NOW FOR THE 2008 PROFESSIONALISM SEMINAR!**

**WHEN:** Friday, March 28<sup>th</sup>, 2008 – 9:00 a.m. – 12:00 NOON  
**WHERE:** UF College of Law - Chesterfield Smith Ceremonial Classroom  
**PROGRAM:** Our keynote speaker is Edward M. Waller, Jr., Esq., a partner in Fowler White Boggs Banker, P.A., practicing in their Tampa Litigation Department, speaking on the topic of “The Legacy of Atticus Finch: Higher Standards for New and Experienced Lawyers Alike.”  
**COST:** \$50.00 (Make checks payable to EJCBA) (3.5 Hours of CLE is expected)  
**REMIT TO:** EIGHTH JUDICIAL CIRCUIT BAR ASSOCIATION, INC.  
 c/o Raymond F. Brady, Esquire  
 1216 NW 8<sup>th</sup> Avenue  
 Gainesville, FL 32601-2947  
**RESERVE:** **By Tuesday, March 25, 2008** – Remit payment with reservation to Raymond F. Brady, Esquire

**Please identify first and second choices for your area of specialty for small group discussions.**

- \_\_\_\_\_ **P. I./Insurance Defense Law**
- \_\_\_\_\_ **Family/Domestic Relations Law**
- \_\_\_\_\_ **Criminal Law**
- \_\_\_\_\_ **Estates & Trusts Law**
- \_\_\_\_\_ **Transactional/Commercial Law**

**NAME(s):** \_\_\_\_\_  
 \_\_\_\_\_

**NOTE:** Please send a separate card with specialty areas for each attorney attending.

Thank you

**Parking:**  
 Decal requirements  
 For **Commuter** parking  
 will be waived.  
 Spaces are limited, so  
**arrive early.**

# Alternative Dispute Resolution

## Effective Mediation Quiz



by Chester B. Chance and Charles B. Carter

The American Arbitration Association publishes a “Handbook on Mediation.” A particularly interesting chapter in the book is entitled “Effective Mediation” by Bruce A. Blitman who is past president of The Florida Academy of Professional Mediators. Mr.

Blitman’s chapter is followed by an equally valuable chapter entitled “Successful Mediation” by Joel E. Davidson who has written widely on mediation and arbitration.

This article is a multiple-choice quiz testing your ability to recognize the do’s and don’ts for effective mediation. You will be asked to identify a successful mediation “ingredient” from a list of possible answers. Each selection is followed by the correct answer with a discussion.

### 1. Identify the correct mediation attitude:

- Do not insult your opposing party or the opposing advocate.
- Try and make armpit noises when opposing counsel is speaking.
- Name-calling and insulting adversaries is part of the mediation venting process and is very impressive to your client.

**Answer:** (a) According to Mr. Davidson, adopting a style that will rile your opponent, even if the insults are true and deserved, will not promote a resolution. References to the greed of an opposing party, the lack of ethics of the other side, etc. according to Davidson creates a deep resentment which precludes the other party from doing anything to benefit you or your client. Your goal is to influence rather than inflame.

### 2. Select the acceptable mediation behavior:

- Do not make a non-negotiable demand in the joint session and threaten to walk out if your demands are not met.
- In any mediation always demand that the other side pay your client’s car payments and all mediation expenses.
- A demand set to rhyme such as “I want my way or I hit the highway” worked for Johnny Cochran and it will also work for you.

**Answer:** (a) Making non-negotiable demands at the joint session, according to Mr. Davidson, is totally inconsistent with the reason for mediating. The “take-it

or leave-it” approach may be a good negotiating tactic in some situations; however, especially at the beginning of mediation, it will very rarely facilitate a dialog leading to a resolution.” Mr. Davidson notes one may draw a line at some point during the mediation but drawing it at the outset more often than not ensures the failure of the process.



### 3. Which of the following is a correct statement of the use of demonstrative exhibits at mediation:

- At many successful mediations, counsel used demonstrative exhibits to great effect.
- Shadow hand-puppets tell a story effectively.
- A Power Point presentation without background music is a waste of time.

**Answer:** (a) Mr. Blitman notes “Sometimes the facts become clearer when they are seen rather than heard.” Graphs, charts, timelines, photographs, “whatever will demonstrate the facts in a compelling way can be used.” Mr. Davidson suggests bringing crucial documents to the mediation provides the mediator with the ammunition needed to persuade the other side of its weaknesses.

### 4. When presenting your position at mediation:

- Provide legal support rather than advance arguments supported only by your logic.
- Always rely on California case law.
- Making up case authority from the Sixth DCA is not only creative but effective and fun.

**Answer:** (a) Mr. Davidson notes mediation is a form of mini-trial and legal issues should be presented. Can attorney’s fees be awarded? Which law is controlling? What is the statute of limitations? Give the mediator case authority that will enable him or her to resolve a divisive issue. “If you continue to argue in the abstract you enhance your chances for an impasse and, therefore, a failed mediation.”

### 5. Which of the following is the proper mediation technique?

- Everyone at the mediation should dress for success.
- At mediations, clothing is optional, but you can’t go wrong with a Hulk Hogan T-shirt.

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## Alternative Dispute

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- c. Narrow ties and wide lapels project you as an authority figure.

**Answer:** (a) As silly as it may sound, Mr. Blitman states how the parties and counsel dress may affect the outcome of mediation. A well-groomed party and a professional appearance by counsel will mean the party and the attorney may be taken more seriously. “Effective advocates know their clients and present them in the most favorable light possible at mediation.”

**6. An effective mediation ingredient is:**

- All counsel are prepared.
- Trial by combat.
- During the joint session intentionally refer to opposing counsel and parties by the wrong name or as “Bozo” and opposing counsel as a “Hoot”.

**Answer:** (a) According to Mr. Blitman, the mediation has no chance of success in any sense of that term if counsel for either side is not prepared. Mr. Davidson notes lack of preparation makes settlement unlikely in that counsel may reject a reasonable offer if unprepared or may be persuaded to accept a resolution where you pay too much or receive too little.

**7. Which of the following contributes to a successful mediation environment:**

- A neutral, comfortable site with facilities to meet the professional needs of the participants.
- Coffee selections including Mocha Settlementcino and Vente Compromiso Latte.
- Make sure there is no food available and no restrooms: The other side will always cave if you can tough it out.

**Answer:** (a) Many mediation participants do not recognize the benefits of a neutral site. Insisting on holding a mediation at the office of one of the parties or the office of one of the attorneys often is perceived as maneuvering for leverage. A site that is too small for the parties, does not have breakout rooms and does not meet the physical comforts and needs of a party (work tables, bathroom facilities, snacks, drinks, etc.) often leads to one or both sides losing patience and a premature end to the mediation.

**SCORE:** Give yourself 10 points for each correct answer. If you missed any of the questions, you may want to give serious thought to reading the above-referenced “Handbook on Mediation” and checking yourself into a clinic with Britney Spears (minimum of one week). In the alternative, consider attending an upcoming CLE seminar “Astrology and Mediation: How to Avoid the Capricorn-Pisces Impasse”.

## UF Law Alum Helps Lawyer’s Ease Stress and Find Balance with Mindfulness

Scott Rogers, M.S., J.D. (UF 1981, 1985, 1991) knows the stress and challenges that lawyers face as they practice law in an increasingly hostile environment. He also knows that an individual’s experience in dealing with stress and disease is primarily rooted in how they perceive events and their capacity to remain grounded in the present moment, as opposed to having a mind dominated by worries and fears associated with thoughts of past and future.

For this reason, Scott formed the Institute for Mindfulness Studies and developed the “Jurisight” program, where he helps lawyers learn to cultivate a state of mind called “mindful awareness.” Research in neuroscience (along with 2,500 years of human experience) is confirming how the application of mindful awareness can help promote states of balance, compassion, clarity, and “neural integration.”

Through workshops, in-firm presentations, and one-on-one sessions, Scott uses legal terms and imagery to teach the three steps to the Jurisight program – stress reduction, acceptance of what arises in life, and the cultivation of mindful awareness. All of the exercises use the hands, thereby offering lawyers an accessible and easy to remember means to develop these skills and apply them seamlessly into their day.

On March 3<sup>rd</sup>, Scott Rogers will be speaking to students at the University of Florida College of Law; on the following day, March 4, 2008, he will be offering the lawyer’s workshop: “Mindfulness, Balance & The Lawyer’s Brain.” It is a full day workshop and has been approved for 8.5 CLE credits, including one ethics credit. To learn more about the workshop, visit the Institute’s website at [www.imslaw.com](http://www.imslaw.com) or call 786-239-9318.

# The Gainesville Area Federal Bar Association Presents

## A View From The Bench

March 6, 2008, 1:00 p.m. – 5:00 p.m.

Mark's, 201 SE 2nd Avenue

Gainesville, Florida

Would you like to know when it is appropriate to contact a federal judge's chambers staff or law clerk? Do you wonder when it is appropriate to file a proposed order in federal court? Do you want to know how a panel of circuit judges is selected to consider your appeal? Do you want clarification on how to correctly electronically file motions and exhibits through CM/ECF?

Find out the answer to these questions and more on March 6, 2008, when the Gainesville Area Federal Bar Association (FBA) will host A View from the Bench from 1:00 p.m. to 5:00 p.m. This seminar is an invaluable resource for any local attorney practicing in federal court,

either regularly or on occasion. The seminar will include information on federal practice, including appellate practice, and the dos and don'ts in federal district court from the perspective of the clerk. In addition, United States District and Magistrate Judges from the Ocala and Gainesville Divisions will serve on a panel to discuss such topics as chambers procedures and protocol, scheduling, pretrial and trial practice and procedure, and professionalism. It is anticipated that this seminar will earn attendees four hours of CLE credit, including credit in professionalism and ethics. The FBA will host a reception immediately following the seminar.

### Course Agenda

12:45 p.m. – 1:00 p.m. Late Registration

*Continued on page 7*

<b>A View from the Bench Registration Form</b> <i>March 6, 2008, 1:00 – 5:00 p.m.</i>		
<i>Name:</i>	<i>Employer:</i>	
<i>Mailing Address:</i>		
<i>Phone Number:</i>	<i>Email Address:</i>	
<i>Are you a member of the FBA? ___ Yes ___ No</i>	<i>Are you a judge? ___ Yes ___ No</i>	
<i>Are you a law student? ___ Yes ___ No</i>	<i>Are you judicial staff? ___ Yes ___ No</i>	
<i>Date Admitted to Practice:</i>		
<p><i>Please send a completed registration form and remit payment according to the fee schedule below to:</i>  <b>GAINESVILLE AREA FEDERAL BAR ASSOCIATION</b>                      c/o Stephanie Marchman, City Attorney's Office                      P.O. Box 1110                      Gainesville, Florida 32602</p>		
<i>A View from the Bench Fee Schedule:</i>	<b>Public Sector</b>	<b>Private Sector</b>
Federal Bar Association Members admitted to practice 5 or more years	\$45	\$75
Non-Members admitted to practice 5 or more years	\$70	\$100
Federal Bar Association Members admitted to practice less than 5 years	\$30	\$50
Non-Members admitted to practice less than 5 years	\$55	\$75
Law Students	\$20	\$20
Judges and Judicial Staff	No Fee	No Fee

## A View from the Bench *Continued from page 6*

1:00 p.m. – 2:00 p.m. Inside the 11th Circuit  
The Honorable Thomas K. Kahn, Clerk, United States  
Court of Appeals, Eleventh Circuit

2:00 p.m. – 3:00 p.m. Do's and Don'ts in Federal District  
Court from the Clerk's Perspective

- The Honorable William M. McCool, Clerk of Court,  
United States District Court, Northern District of  
Florida
- The Honorable Sheryl L. Loesch, Clerk of Court,  
United States District Court, Middle District of  
Florida
- Traci Abrams, Resident Deputy in Charge, United  
States District Court, Northern District of Florida,  
Gainesville Division
- Desiree Reyes, CM/ECF Training Coordinator,  
United States District Court, Middle District of  
Florida

3:00 p.m. – 3:15 p.m. Recess followed by General  
Announcements

3:15 p.m. – 5:00 p.m. A View from the Bench

- The Honorable Maurice M. Paul, Senior United  
States District Judge, United States District Court,  
Northern District of Florida, Gainesville Division
- The Honorable Wm. Terrell Hodges, Senior  
United States District Judge, United States  
District Court, Middle District of Florida, Ocala  
Division
- The Honorable Stephan P. Mickle, United States  
District Judge, United States District Court,  
Northern District of Florida, Gainesville Division
- The Honorable Gary R. Jones, United States  
Magistrate Judge, United States District Court,  
Middle District of Florida, Ocala Division
- Gary Edinger, Esquire
- John Fuller, Esquire

5:00 p.m. – 6:00 p.m. Reception

- Wine and hors d'oeuvres immediately following  
the close of the seminar.

Each presentation will allow questions from the  
audience as time permits.

To register for A View from the Bench, please  
submit your contact information and remit the appropriate  
payment.

For additional information regarding A View  
from the Bench, please contact Elizabeth Waratuke  
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334-5011.

## Clerk's Corner



by Buddy Irby, Clerk of the  
Court

I am writing this month to  
alert you to a recent decision  
from the Second District  
Court of Appeal. The decision  
approved Highlands County's  
method of calculating the  
"special service charge" public

entities may collect when a public records request  
requires extensive use of computer resources or staff  
time. The special charge is authorized by Section  
119.07(4)(d), Florida Statutes (2007). It requires  
the special service charge to be reasonable, and  
based on the labor costs actually incurred by or  
attributable to the agency.

In the Second DCA case, The Board of County  
Commissioners of Highlands County, Florida, v.  
Preston H. Colby, 33 Fla. L. Weekly D342a (Jan.  
25, 2008), Highlands County sought payment of  
a special service charge totaling \$65.12 from Mr.  
Colby, who had requested inspection of certain  
public records. The county estimated that it would  
take a designated employee four hours to locate  
the records requested. The estimated amount was  
calculated by multiplying the employee's salary and  
benefits (\$16.28 per hour) by four. The county also  
asked Mr. Colby to pay the estimated charge in  
advance. Interestingly, the county ended up offering  
Mr. Colby a partial refund, since the research  
actually took only 2 hours and 40 minutes.

The circuit judge who heard the case ruled that  
the county could require payment of the estimated  
charge in advance, but could not include the cost of  
employee benefits when calculating labor costs. The  
Second Circuit reversed the trial court with regard  
to labor costs, holding that the Florida legislature  
"did not intend that the labor cost component of  
the special service charge authorized in section  
119.07(4)(d) was to be limited to actual wages." The  
court affirmed the trial court's holding that the county  
was authorized to collect the estimated charge in  
advance. The court also held that the special service  
charge applies to requests for both inspection and  
copying of public records.

I hope this information will assist anyone  
making an extensive public records request that  
qualifies for the special service charge.

# Criminal Law



by William Cervone

March is among my favorite months because it includes March Madness. No, I'm not talking about the NCAA basketball tournament but instead about the annual convening of the legislature in Tallahassee. In anticipation of the many wonderful things that will flow downhill to us this year from Oz, I am giving you a heads up so you can keep yours down.

To begin with, there is every likelihood that the legislature is going to do something to basic sentencing structures to deal with what they see as a problem with "year and a day" sentences. As I write this, nothing has been introduced yet but this has been a topic at Committee hearings, starting as early as January. The problem, at least as Tallahassee sees it, is a dramatic increase in the number of felons sentenced to a prison term of a year and a day, which is, of course, the lowest possible state prison sentence someone is going to get. In Fiscal Year 2001-02, such sentences accounted for 8.8% of all DOC admissions. In FY 05-06 that number was up to 15.1% and in FY 06-07 it rose to 17.7%. That, to the legislature, is unacceptable, because as I heard one of them say, the State is as a result shouldering the burden (read: expense) of housing all of those inmates when they really should be a county problem. The Department of Corrections has projected a need for 19 new prisons housing about 1300 inmates each over the next five years. You can see why the legislature is suddenly paying attention. The real issue, of course, is that the State has passed so many unfunded mandates on to the counties, has created so many new crimes, and has re-classified so many things to felonies that no one should be remotely surprised by these numbers. I mentioned that perhaps they could think about whether we really need felony DWLSR offenses and the like, but got no response. Regardless, look for something involving this to happen.

Speaking of increasing penalties, the state's lifeguards will be pleased to know that if a bill under consideration passes they, too, will be in the protected class that gets enhanced sentences if they are assaulted or battered. Best I can tell, soon there will be no misdemeanor assaults or

batteries because everyone will be protected by enhancements.

More certainly, legislation is already speeding through both chambers that would require a mandatory life sentence for a second or subsequent conviction of Lewd And Lascivious Molestation On A Child Under 12. It's hard to imagine that anyone would oppose this for a child molester who has been convicted a second time and therefore demonstrated not just the propensity to re-offend but also an inability to be rehabilitated. I'd bet that this one is passed and signed into law before the legislative seats are really warm.

Legislation has also been introduced that would increase penalties from second to first degree felony level for Aggravated Abuse Of Elderly Or Disabled Persons. Among my favorites of the pending bills is one that would make it a felony to take control of someone known to have been injured as a result of criminal activity and then deprive that person of medical care with intent to avoid, delay, hinder, or obstruct an investigation into the criminal activity causing the injury. If you think that's confusing imagine the proof problems and imagine the application of such a concept to co-felons, one of whom might, for example, be hurt in a robbery attempt and thus become both a victim and a defendant if his accomplice, seeking to escape, hustles him away from the scene. The possibilities make my head swim. This particular bill seems destined to go nowhere, although one never knows.

Finally, there is the plight of Meg the Goat. Meg, a pet, was sexually assaulted and then killed in Walton County. Apparently DNA testing has been inconclusive but based on other evidence an arrest has been made. The problem is that Florida has no bestiality statute, so the defendant is being charged only with third degree animal cruelty. To solve this ill upon which the fate of the state perhaps rests, legislation has been introduced that would make bestiality a 1<sup>st</sup> degree felony carrying a 30 year maximum. I am not making any of this up. According to *The Miami Herald* a man from Crestview, near where this happened, is selling t-shirts bearing the likeness of a goat saying "Baaa Means No."

Rest assured, I will keep you posted.



# Profiling: When Things are Tough, Why Should We Care?

by Stephen Bernstein



*The F.B.I. interviewer gave Abdallah Higazy a choice: he could either admit to having a special pilots radio in a hotel room near the World Trade Center on September 11, 2001 (and get a life sentence) or the security service in his native Egypt would give his family “hell for the rest of their lives.” Higazy responded by confessing to a crime he didn’t commit. He felt that he couldn’t prove his innocence and if he said that the radio was his, he was still screwed but his family would not be in danger and the Agent (Michael Templeton) made it quite clear that “cooperate had to mean something other than saying that the radio was not his.”*

These details about the F.B.I.’s aggressive tactics in the Higazy case were included in a ruling by the Second Circuit Court of Appeals which reinstated a civil lawsuit brought by Higazy against the F.B.I. and Agent Templeton. The fact remains that Higazy was jailed for a month as a suspected accomplice to the World Trade Center attack, until a pilot showed up at the same hotel and asked for his radio back. These details about this interrogation from December 2001 illustrate how an innocent man can be persuaded to confess to a crime that he did not commit, and the lengths that the FBI were willing to go to in this terrorism-related investigation. Since 9/11 experts and officials have argued about the appropriateness of intimidating interrogation techniques and the reliability of what detainees say when they are questioned aggressively. Higazy’s experience provides the answer to the question, “what would it take for an entirely innocent person to confess to participation in one of the most egregious crimes in U.S. history?”

Higazy is the son of a former Egyptian diplomat who lived for a time in Virginia with his family. He arrived in New York from Cairo, Egypt in August 2001 to study engineering at the Polytechnic University in Brooklyn. He was sponsored by the U.S. Agency for International Development and the Institute for International Education, which arranged for him to stay at the Millennium Hilton Hotel across from the World Trade Center in lower Manhattan. He was evacuated along with other residents on September 11, after the second plane hit the twin towers. He left all of his belongings in the hotel. When he returned on

December 17 to retrieve his things, three F.B.I. agents were waiting. They told him that hotel employees had found a transceiver capable of air-to-air and air-to-ground communication in his room, along with a Koran and his passport. Over the next ten days he insisted that the radio was not his and a federal judge warned the F.B.I. and federal prosecutors that if they did not produce better evidence, he would let Higazy go on December 28, 2007. The F.B.I. suspected that he had used the radio as a beacon to help guide the hijackers.

According to court records, the F.B.I., on December 27, 2007, set out to increase the pressure on Higazy. They put him in a room with Templeton, who was a polygraph examiner. Templeton concluded that Higazy was being evasive in his answers about the attack. As a series of questions neared an end, Higazy requested a halt because he was feeling intense pain in his arm and could not breathe. The court’s decision, quoting Higazy’s account, said Templeton called him “a baby and told him that a nine year old could tolerate his pain.” Templeton allegedly told Higazy that if he did not cooperate, the FBI would make his brother “live in scrutiny” and “would make sure that Egyptian security gives his family hell.” Higazy then confessed to owning the radio, although he provided three versions of how he obtained it. He was denied bail the next day and was charged on January 11, 2002 with making false statements connected to the September 11 attack.

Three days later, an airplane pilot from Ohio, who has stayed one floor below Higazy on September 11, walked into the Millennium Hilton Hotel and asked for his radio.

Now, the question is, what if that pilot had not walked into the Millennium Hotel? I would suggest that this is the reason for having a Constitution like ours which protects our individual liberties, including the one requiring that any statement made by a suspect be voluntary and free from undue influence. This is supposed to be what separates our legal system from the rest of the world. This is part of the reason that people like George Washington, Ben Franklin, and Thomas Jefferson met from July 4, 1776 until 1781. It matters most when life is in crisis. Everyone needs to follow the rules, including people like F.B.I. Agent Templeton, in the pursuit of justice for all.

## March 2008 Calendar

- 1 Collaborative Divorce Training Seminar, UF Law School, 8:30-5 (day 2 of 2)
- 3 EJCBA Board of Directors Meeting, Ayers Medical Plaza, 720 SW 2d Ave., North Building, Third Floor conference room, 5:30 p.m.
- 4 Deadline for submissions to April newsletter
- 4 "Mindfulness, Balance & The Lawyer's Brain" workshop
- 6 CLE – A View From the Bench (FBA), 1-5 p.m., 201 SE 2d Avenue (Mark's)
- 6 Clara Gehan Association for Women Lawyers, 5:30 p.m., Amelia's in the Sun Center
- 12 Probate Section Meeting, 4:30 p.m., 4<sup>th</sup> Floor, Family & Civil Courthouse
- 14 EJCBA luncheon – Steve's Courtyard Café, 11:45 a.m. – speaker TBA
- 26 Family Law Section meeting, 4:00 p.m in the Chief Judge's Conference Room (former Grand Jury Room) of the Family and Civil Courthouse
- 28 EJCBA Professionalism Seminar at UF Levin College of Law, 8:30 – 12 noon, Edward M. Waller, Jr., Esq., speaker, "The Legacy of Atticus Finch: Higher Standards for New & Experienced Lawyers Alike"

## April 2008 Calendar

- 3 Deadline for submissions to May newsletter
- 3 Clara Gehan Association for Women Lawyers, 5:30 p.m., Amelia's in the Sun Center
- 7 EJCBA Board of Directors Meeting, Ayers Medical Plaza, 720 SW 2d Ave., North Building, Third Floor conference room, 5:30 p.m.
- 7-11 Spring Holidays for Alachua County Public Schools
- 9 Probate Section Meeting, 4:30 p.m., 4<sup>th</sup> Floor, Family & Civil Courthouse
- 18 EJCBA luncheon – Steve's Courtyard Café, 11:45 a.m. – speaker TBA
- 30 Family Law Section meeting, 4:00 p.m in the Chief Judge's Conference Room (former Grand Jury Room) of the Family and Civil Courthouse



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