

# SPEAKING OF JUSTICE

News From The Florida Bar Foundation

volume 3

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## INSIDE

**2** Noland encourages his Fellow attorneys to share the Foundation's story

Kids need lawyers, too.

**3** Blackwell, Self to receive Medal of Honor

Online gift planning guide now available

Foundation cuts grants, will seek resources to fill temporary funding gap

**6** Project helps parents of disabled children with guardianship

**7** Foundation thanks its new Fellows



PETE CROSS

Greg Schell, right, managing attorney for Florida Legal Services' Migrant Farmworker Justice Project, discusses legal strategy with his clients, left to right, Pierre Fleurio, Jean Felix Philius and Prinston Anilus, outside their rooming house in Miami's Little Haiti.

## Schell defends workers who say their pay didn't add up to beans

by Nancy Kinnally

**A**t 68, an age when most Americans are drawing Social Security and enjoying their retirement, Jean Felix Philius would like nothing more than to be back at work picking beans all day in the scorching South Florida sun.

Instead, Philius is unemployed and hoping to recover wages he says are owed him by his former employer, a Homestead bean farm that is the largest in the state.

Philius says the farm's records from the 2010 harvest season show he was idle for long stretches of time when he was actually working. He alleges the farm paid him a flat rate per bushel during the 2009-10 harvest, and that much of his time was unaccounted for in the records to cover up the difference between what he actually earned and what he would have earned had he been paid minimum wage for every hour he spent in the field.

In short, he says his pay didn't add up to beans — at least not as many as he picked.

see **FARMWORKERS**, p. 4



Leadership and Funding for Justice in Florida

## Message from the President

In recent years, The Florida Bar Foundation has worked harder to share its story with lawyers, members of the judiciary, legislators and others around the state.

This newsletter and its electronic companion, "The Foundation Docket," are examples of some of the new ways in which the Foundation is sharing information about the impact of its grant programs.

A recent e-mail survey of Foundation donors shows that our efforts have been well-received. As an example, "Speaking of Justice" generated favorable ratings of greater than 95 percent. I would like to thank all of those who took a few minutes to share their opinions about our communications and how they might achieve maximum effect.

The Foundation and its grantees are facing major challenges, including the

persistent, high demand for foreclosure assistance; more requests for legal help by victims of domestic violence, which has seen a 37 percent increase; and the many legal hurdles faced by 1.1 million unemployed Floridians.

So, it's vitally important that our message is heard loud and clear: access to justice for the poor is more than a professional obligation. It is a way to stabilize families teetering on the brink.

Thanks to the input of our survey respondents, we will be sharing that message in new ways. For the 73 percent of respondents who indicated they would like to be able to read Speaking of Justice online, we have expanded our electronic mailing lists and will now be informing our readers via e-mail when a new issue is available.

You can help us by forwarding our news to those colleagues who might have



John A. Noland

an interest in the work of the Foundation and its grantees, by encouraging your peers to become Florida Bar Foundation Fellows, and by responding to our requests for financial support. And you can help us simply by staying informed and being a voice for the Foundation in your community.

As always, thank you for your ongoing support.

*John A. Noland*

## Sometimes, kids need lawyers, too.

That's why The Florida Bar Foundation, since the early 1990s, has funded special annual grants to both statewide and local organizations for legal assistance to children.

The Foundation's priorities for its Children's Legal Services grants include representation of foster-care children and access to special education, medical, developmental and mental health services that are required under law.

One hundred percent of all donations to the Lawyers Challenge for Children go directly to these grants.

Please give generously to the Lawyers Challenge for Children on your 2011-12 Florida Bar Fee Statement, or give online anytime at:

[www.floridabarfoundation.org/children](http://www.floridabarfoundation.org/children)



**About 3,000 children receive legal help annually through our Children's Legal Services grants.**

## Blackwell, Self to receive Medal of Honor

The Florida Bar Foundation has selected Bruce B. Blackwell as the lawyer recipient and Kathleen M. Self as the non-lawyer recipient of its 2011 Medal of Honor Awards, the Foundation's highest honor.

Blackwell, a partner in the Orlando law firm of King, Blackwell, Downs & Zehnder, is a past Foundation president and currently serves as a trustee of The Florida Bar Foundation Endowment Trust. He also is a past president of the Orange County Bar Association, past member of The Florida Bar Board of Governors, and current president of The Florida Supreme Court Historical Society.

A pioneer in the development of Florida's Teen Courts, Self established the Teen Court of Sarasota in 1989 and serves as its executive director, having essentially volunteered her services in the start-up years. This highly successful intervention and diversion program has been widely emulated.

The awards will be presented June 23 at the Foundation's annual dinner, held in conjunction with The Florida Bar Annual Convention at the Gaylord Palms Resort in Orlando. Save the date if you would like to attend, and look for in-depth profiles of the award recipients in the next issue of *Speaking of Justice*.



**Bruce B. Blackwell will receive the 2011 Medal of Honor Award for a lawyer.**



**Kathleen M. Self will receive the 2011 Medal of Honor Award for a non-lawyer.**

## Online gift planning guide now available

Charitable gift planning is an extremely effective way for you to support The Florida Bar Foundation and its mission while accommodating your own personal, financial, estate-planning, and philanthropic goals.

To take some of the mystery out of gift planning, the Foundation has created a planned giving section of its website.

The site provides reliable and systematic information on various planned giving vehicles. For more detailed information, you can download complimentary e-brochures on topics

such as philanthropy and federal taxes, charitable gift annuities, making gifts of real estate, charitable tax planning with retirement funds, and other ways to give.

The site also provides a gift calculator through which you can explore the philanthropic and tax benefits associated with particular gift vehicles. And featured articles provide updates on

relevant topics such as tax law changes.

You can also read about some of the Foundation's donors, why they chose to support the Foundation and what charitable giving options they chose. The site does not offer legal advice, but it provides information that users can share with their legal and financial advisors when discussing gift planning options.

To learn more about how gift planning may actually increase the size of your estate and/or reduce the tax burden on your heirs, visit:

**[www.floridabarfoundation.org/giftplanning](http://www.floridabarfoundation.org/giftplanning)**

## Foundation cuts grants, will seek resources to fill temporary funding gap

With annual revenue from Florida's Interest on Trust Accounts (IOTA) program down 88 percent since the 2007-08 fiscal year, the Foundation is exploring ways to supplement IOTA funds while cutting grants in order to stretch its grant reserve fund.

"While our grant reserve fund has enabled us to keep funding levels steady throughout the last two years of significantly decreased IOTA revenue, we did not anticipate that IOTA account interest rates would remain so low well into 2012, which is the most recent forecast," said Foundation President John Noland, adding that the statewide average

IOTA account interest rate after deducting bank service charges is 0.19 percent.

Bank interest rates on deposits are the largest factor in IOTA revenue, accounting for more than 90 percent of the recent decline. In the fiscal year ending June 30, 2008, IOTA revenue was \$44 million. In the 2009-10 fiscal year it was \$5.4 million.

The Foundation is exploring strategies to generate resources to supplement IOTA funding while carefully trimming grants in order to stretch the \$20 million remaining in its grant reserve.

At its March 18 meeting, the board approved funding for Children's Legal Services and Affordable Housing grants at 20 percent below the previous year's funding. The Foundation anticipates further cuts in grant program funding in the 2011-12 and 2012-13 grant years.

"These funding challenges, while daunting, are temporary," said Foundation Executive Director Jane Curran. "Once interest rates return to pre-recession levels, the Foundation will restore funding to its legal aid grantees. In the interim, we will do all we can to address the funding gap."





*"It's a good thing for me to have a lawyer, because it helps me find justice."*

— Soimene Victime



*"I want the truth to be told. The records show I was there and slept. That's not true. I worked hard."*

— Jean Felix Philius

#### FARMWORKERS, from p. 1

"I want the truth to be told," said Philius, a U.S. citizen who immigrated to the United States from Haiti in 1981. "The records show I was there and slept. That's not true. I worked hard."

Representing Philius and more than 80 of his former coworkers is Greg Schell of Florida Legal Services' Migrant Farmworker Justice Project, which filed a class action against the farm that resulted in a 2009 settlement agreement requiring the grower to employ workers like Philius directly, rather than through a labor contractor, and to use a timeclock to keep accurate records of their time worked. The Migrant Farmworker Justice Project is funded in large part by The Florida Bar Foundation, which provided the project a general support grant of \$861,052 for 2010-11.

The bean industry employs many older workers, Schell says, because it's hard to find younger workers who would accept such low wages. But only the most nimble workers could pick at a rate fast enough to amount to minimum wage at the piece rate crew leaders offer, he says. Legally, the employer is obligated to make up the difference between the piece rate and the minimum wage, but Schell alleges the crew leaders falsify payroll records to skirt the law.

Schell has opened a new case because he believes the farm has not complied fully with the terms of the 2009 settlement agreement. His latest suit alleges that the grower only put a fraction of the workforce on the payroll during the 2009-10 harvest season.

"And they didn't have a timeclock," he said. "No ifs, ands or buts, they didn't have a timeclock."

Since graduating from Harvard Law School in 1979, Schell has dedicated the vast majority of his waking hours to protecting the rights of Florida's migrant farmworkers. He began his career in Immokalee, Fla., a farming town east of Ft. Myers, where he leveraged his rusty high school French to learn Haitian Creole while

working for \$10,000 a year as a staff attorney for Florida Rural Legal Services. In Immokalee, Schell studied from a small pamphlet of Creole phrases and arranged to have in his office a communal mailbox for the local Haitian migrant workers, which proved a highly successful outreach method.

Back then, much of his work was funded by the Legal Services Corporation, which grants federal funds to legal aid organizations nationwide. When the federal government placed restrictions on LSC funding that included a prohibition against class action lawsuits and against serving undocumented immigrants, The Florida Bar Foundation provided the funding to bring the Migrant Farmworker Justice Project into existence under Florida Legal Services as a successor to the farmworker representation done previously through Florida Rural Legal Services. This enabled Schell and the project's other attorneys to continue their work, which they now do out of an office in Lake Worth, just south of West Palm Beach.

"It wouldn't have happened without the Bar Foundation," Schell said. "The Florida Bar Foundation is an extraordinary entity. They had more foresight than anybody else in the country when the restrictions came in. They thought ahead and from day one, there was never a lapse in coverage."

Besides Schell, the Migrant Farmworker Justice Project's staff includes three other attorneys and several paralegals and outreach workers, all of whom speak at least two languages. They are all masters at working with hard-to-serve populations across barriers that include language, culture, illiteracy, poverty, immigration status and the transience of workers who follow the harvests. Schell estimates that there is at least a 75-percent turnover rate in workers at any given farm from one harvest season to the next.

"So as a result, it's a never ending task to make people aware of our

services," Schell said. "Almost every corner of the state has substantial pockets of farmworkers."

The project, which is statewide in scope, has secured a number of landmark decisions from the U.S. Eleventh Circuit Court of Appeals, including one that established that growers shared the responsibility for upholding labor laws with the labor contractors providing the crews. In that suit, and many others, Schell has uncovered violations of minimum-wage laws, as well as failure to pay Social Security and unemployment taxes and to maintain accurate payroll records.

When honoring Schell with its Reginald Heber Smith Award in 2004, the National Legal Aid & Defender Association issued a press release in which it said of the case that established the growers' responsibility for labor-law compliance:

"After the successful appeal, the plaintiffs received one of the largest back-wage payments ever made to farmworkers within the United States. In addition, millions of dollars of the farmworkers' earnings were reported to the government, qualifying and/or increasing the workers' eligibility for Social Security, SSI, food stamps and Medicaid benefits."

Paul Doyle, director of the Foundation's Legal Assistance for the Poor Grant Program, said of all the outstanding career legal aid lawyers in Florida, none outshines Schell.

"His commitment, more aptly described as devotion, to justice for farmworkers is singularly remarkable," Doyle said. "His legal acumen is astounding. He has made a difference in the lives of thousands of farmworkers and their families."

In spite of the many accolades Schell's work has received, including a 2010 Steven M. Goldstein Award for Excellence from The Florida Bar Foundation, Schell is well aware that his work makes him unpopular with some. He says he's been accused of trying to shut down agricultural industries such as sugarcane, but he is unfazed by the criticism.



PETE CROSS

*"I think the minimum wage isn't such a bad idea, but it doesn't matter what I think. It is the law."*

— Greg Schell

"There are a lot of free market people who think you ought to be able to pay people whatever they're willing to work for," Schell said. "I think the minimum wage isn't such a bad idea, but it doesn't matter what I think. It is the law."

And so, Schell goes to bat for clients like Soimene Victime, 67, who says she picked beans six days a week, from 8 a.m. to at least 5 p.m., from late February until the end of April 2010, never earning more than \$27 a day at a piece rate of \$3 a bushel. On days when the beans were too damp to pick in the morning or were of poor quality, she says she earned less than half that amount.

"They paid me in cash, \$3 a bucket, and they paid the others more," she said, adding that her employer now claims he's never heard of her.

"It's a good thing for me to have a lawyer, because it helps me find justice," said Victime, who smiles easily and broadly in spite of a life spent in circumstances befitting her emblematic name.

Her coworker and fellow plaintiff, Pierre Fleurio, 74, says he has also been paid mostly in cash by various crew leaders in 10 years of farm labor up and down the East Coast, making it unlikely he

will qualify for Social Security even though he is a legal permanent resident.

"I knew that was a problem, but what was I to do?" Fleurio said. "They had work — lots of work — so I worked with them."

It's clients like these that keep Schell going full-bore after more than 31 years of doing work he compares to that of the little Dutch boy with his finger in the dike.

But when he's having a bad day, Schell says all he has to do is hop in the car and go talk to some farmworkers, many of whom have gone out on a limb with him and risked their livelihoods, and in some cases their employer-provided housing, to stand up for their legal rights. His clients, he says, take risks he'd be afraid to take himself.

"You couldn't get a better group of clients," Schell said. "Our clients really appreciate that — for the first time in their lives for many of them — somebody cares about what happens to them. And that's pretty exciting to them. Even if they lose the case, they had a moment when they were on equal footing with the powerful person who controls their life most of the time. They care about justice, and how can you not fight your heart out for people like that?"



# Project helps parents of disabled children with guardianship

by Gabrielle Davis

**E**ven with an attorney by her side, Maria Perkins was gripped by fear as she stood before the judge.

Although she had made every decision for her son Mark Morrison since he was born with Down syndrome, suddenly she had to petition a Seminole County judge for guardianship of her developmentally disabled son.

That's because the day he turned 18, he was considered an adult, according to Florida law.

Legally, all rights Perkins had to make choices for her son's welfare – like making medical decisions on his behalf – were null and void unless she became his court-approved guardian.

"I was terrified," Perkins said.

When Perkins applied to be Mark's guardian six years ago, those seeking guardianship of the developmentally disabled had to have an attorney. Luckily, she qualified for legal aid.

But now that parents requesting guardianship can represent themselves, Perkins worries that they will be unable to navigate the court system on their own.

Recognizing the potential problem, the Seminole County Bar Association Legal Aid Society (SCBALAS), with support from The Florida Bar Foundation, took action.

Using a portion of its 2010-11 Florida Bar Foundation general support grant of \$93,197, SCBALAS established the Disabled Children Advocacy Project, which offers a comprehensive guide with the necessary pro se forms to assist local families seeking guardianship of children suffering from problems such as mental retardation, cerebral palsy, autism, spina bifida, and Prader-Willi Syndrome.

The project is putting the Foundation's mission – to provide greater access to justice – into action, said Silvia McLain, the legal aid society's executive director.



HILDA PEREZ

**Maria Perkins shares a quiet moment with her son Mark Morrison. Legal aid attorney Silvia McLain helped Perkins petition for guardianship of her son after his 18th birthday.**

Many families with disabled children are already struggling financially, and hiring a private attorney, which could cost thousands of dollars, is not an option, said Robert McIntosh, a Seminole County attorney who specializes in probate and guardianship.

McIntosh said some confused parents simply don't complete the guardianship process, which could pose many problems, especially in medical emergencies.

"A natural parent [of an adult] doesn't have the legal rights to make medical decisions," McIntosh said.

The new guide includes guardianship application forms and the required letters and form for the Initial Plan of the Guardian Advocate, which outlines the medical and social needs of the developmentally disabled person. A committee – made up of McLain, McIntosh, University of Miami law student

Erika Kane and 18th Judicial Circuit Court judges John Galluzzo and Kenneth Lester Jr. – developed the guide and forms, which are now available on the 18th Judicial Circuit Court website.

Seminole County Public Schools has agreed to provide the new guide to families of disabled children.

Still, Perkins fears many parents will remain in the dark until the last minute.

"Parents with special needs children need to be educated," Perkins said. "I think parents need to know that there will come a time when they have to apply."

SCBALAS is now using a separate grant to reach out to programs that assist Seminole County's developmentally disabled.

"What I like about this project is that it was a collaborative effort," McLain said. "We joined forces to help someone who really is vulnerable, which is the disabled adult."

# Please join us in thanking our new Foundation Fellows

Fellows are life members of The Florida Bar Foundation; core supporters who believe in the value of justice and the importance of the Foundation's leadership and charitable programs. Between Jan. 1 and Dec. 31, 2010, the following individuals generously made their \$1,000 Fellows pledge (payable over multiple years) in support of the Foundation's mission to provide greater access to justice:

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## Fellows Campaign Update

A recent Palm Beach County Fellows campaign led by Jay White, immediate past president of The Florida Bar, brought in 38 new Fellows. Special thanks go to Jane Kreusler-Walsh, who recruited the most new Fellows in the Palm Beach campaign. Fellows campaigns are now underway in Lee and Collier counties.

If you are interested in helping recruit new Fellows, or have questions about the Fellows Program, contact Alicia Hodge, annual giving manager, at (800) 541-2195 or [ahodge@flabarfdn.org](mailto:ahodge@flabarfdn.org). Every gift helps provide greater access to justice.

**Become a Fellow or continue your support after completing your pledge by giving online at:**

**[www.floridabarfoundation.org](http://www.floridabarfoundation.org)**

*Fellows pledges are gifts of \$1,000 payable over five years (or 10 years for young, nonprofit and government lawyers)*



Leadership and Funding for Justice in Florida

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The Florida Bar Foundation is the only statewide organization that provides funding for legal aid and promotes improvements in addressing the civil legal needs of the poor.

## FOUNDATION FACTS

The Florida Bar Foundation is a 501(c)(3) public charity whose mission is to provide greater access to justice. Gifts to the Foundation are tax-deductible to the extent permissible by law.

The Foundation accomplishes its mission primarily through funding of programs that:

- Expand and improve representation and advocacy on behalf of low-income persons in civil legal matters
- Improve the fair and effective administration of justice
- Promote public service among future lawyers by making it an integral component of the law school experience

## SPEAKING OF JUSTICE

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*we help legal aid help those least able to afford a lawyer.*

**We are The Florida Bar Foundation,**

*and we believe the justice system works best when it works for everyone.*



Leadership and Funding for Justice in Florida

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