

SPEAKING OF JUSTICE

News From The Florida Bar Foundation

volume 2

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MEDAL OF HONOR VIDEOS ONLINE

Videos of the tribute to 2010 Medal of Honor winner Joseph P. Milton and of his acceptance remarks are online at www.floridabarfoundation.org/milton



James Bain, 54, meets the press on Dec. 17, 2009, after being exonerated with the help of the Innocence Project of Florida. Bain served 35 years in prison for a rape and kidnapping that DNA evidence proved he did not commit.

COURTESY OF THE INNOCENCE PROJECT OF FLORIDA

Foundation helps fund newly formed Florida Innocence Commission

by Nancy Kinnally

When James Bain of Lake Wales, Fla., was released at the age of 54 after serving 35 years in prison for a rape and kidnapping he did not commit, his smile said it all.

Bain, who has the unfortunate distinction of having been imprisoned longer than any other DNA exoneree in the country, now has a new reason to rejoice.

On July 2, Chief Justice Charles T. Canady of the Florida Supreme Court issued an administrative order establishing the Florida Innocence Commission, which has been funded by both the Florida Legislature and The Florida Bar Foundation in hopes of making cases like Bain's a thing of the past.

The Commission, which will study the causes of wrongful convictions and how to prevent them, is charged with making a final report and recommendations by June 30, 2012.

see **INNOCENCE**, p. 4



Leadership and Funding for Justice in Florida

Message from the President

The Florida Bar Foundation is a leader in the funding of programs that improve the administration of justice in the state of Florida. The Foundation has an impressive story to tell. It is a story that Florida lawyers should be proud of, and it is clearly a story that must be told more often.

Regrettably, few lawyers know the story of the Foundation and its work. According to The Florida Bar's 2009 Membership Opinion Survey, 34 percent of the members of The Florida Bar say they are not aware of the Foundation, while only 12 percent report being well aware of it and 54 percent say they are somewhat aware of it.

Many lawyers who are aware of the Foundation associate it with its support of local legal aid. The Foundation provides about 30 percent of the funding for the 31 legal aid organizations that together serve all 67 counties in Florida. Other lawyers may associate the Foundation with interest on trust accounts. IOTA provides the primary source of funding for the programs supported by the Foundation.

However, few realize the impact the Foundation has on the improvement of the administration of justice. In this issue of *Speaking of Justice*, there are two

excellent articles on programs receiving grants made recently by the Foundation through its Improvements in the Administration of Justice Grant Program.

The Foundation provided funding for the new Florida Innocence Commission. Through this funding, which supplements funding from the Florida Legislature, the Foundation is helping ensure the Commission will have the resources it needs to thoroughly investigate the causes of wrongful convictions and recommend ways to prevent those convictions.

Similarly, the Foundation is funding a program that seeks to find ways to curtail the "school-to-jail pipeline." With its funding of a restorative justice program in Escambia County schools, the Foundation is supporting the development of a model for complying with the new state law requiring schools to revise their zero-tolerance policies. The goal of the program is to keep students in school if they pose no threat, instead of placing them in the criminal justice system.

These grants are helping keep Florida's justice system looking forward to greater efficiency and effectiveness. These programs are examples of how Foundation-funded efforts are making substantial improvements in the



John A. Noland

administration of justice. The Florida Bar Foundation does, indeed, have a good story to tell. I intend during the coming year to continue the good work of Immediate Past President Adele Stone, who made an extraordinary effort to tell the story of the Foundation and its impact on the less fortunate of the state and on the improvement of the administration of justice.

Finally, I'd like to take this opportunity to remind readers that The Florida Bar Foundation is a 501(c)3 public charity. It is for Florida lawyers the one we should know about and support, not just because of all it does to help low-income Floridians who need civil legal assistance, but for what it does for Florida justice.

John A. Noland

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John A. Yanchunis accepts the 2010 President's Award for Excellence from 2009-10 Foundation President Adele I. Stone.

Yanchunis receives President's Award

Tampa attorney John A. Yanchunis of James, Hoyer, Newcomer, Smiljanich & Yanchunis received the 2010 President's Award for Excellence from 2009-10 Foundation President Adele I. Stone at the Foundation's 34th Annual Reception & Dinner June 24 in Boca Raton.

Yanchunis was recognized for his work directing cy pres awards to the Foundation and encouraging others to do the same.

The term cy pres comes from the French, "cy pres comme possible," meaning "as near as possible," and the doctrine is often applied in class action cases in which full restitution to all injured parties is either impossible or infeasible, such as when the amount of damage per person is insignificant even though the aggregate damages are large. It can also be employed in probate matters when gifts fail, or in the area of charitable trusts.

Thanks to Yanchunis, a 2008 settlement that could have meant a few pennies to nearly 8 million people instead provided \$295,000 to support the Foundation's mission of providing greater access to justice for Floridians.

"Since the injury arose from a consumer class action, and The Florida Bar Foundation has as its charge the funding of legal services for people who can't afford it, I thought it would be the closest connection to the way in which the injury to the class arose," Yanchunis said at the time of the settlement.

Report examines Florida's criminal justice fees

by Gabrielle Davis

A recently released Florida Bar Foundation-funded study examines Florida's practice of levying fees from indigent ex-offenders despite their inability to pay, at times putting them behind the bars of what the study calls a "debtors' prison."

Through its Improvements in the Administration of Justice Grant Program, the Foundation provided \$175,000 to fund the report by the Brennan Center for Justice, a New York-based non-partisan public policy and law institute at the New York University School of Law.

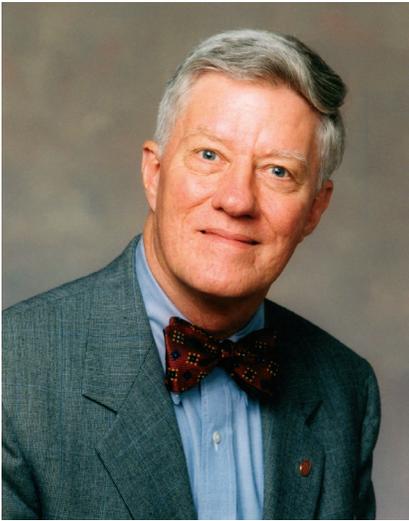
"Better understanding of how higher fees in the criminal justice system affect the indigent allows stakeholders to consider the ultimate costs to society of their continued incarceration," said Maria Henderson, Foundation first vice president and former chair of the administration of justice committee.

"It fits well with the mission of the Foundation that the justice system works best when it works for all of us, not just those with the ability to pay."

The report, "The Hidden Costs of Florida's Criminal Justice Fees," released in March, found that since 1996 the state has added 20 new legal financial obligations and user fees for criminal defendants to pay.

Meanwhile, exemptions for unemployed, low-income and disabled ex-offenders are virtually non-existent. As punishment for failing to pay, defendants incur new fees and their driver's licenses are revoked, further complicating their prospects for employment, the study shows. Upon re-arrest for nonpayment, ex-offenders incur additional fees, throwing them into a cycle of debt.

see FEES, p. 5



“The Florida Bar Foundation has been the essential organization throughout the effort to deal with wrongful convictions. It supports the Innocence Project of Florida and, when the Florida Innocence Commission was proposed, came forward at a critical time to volunteer support that will supplement the legislative appropriations and allow the Commission the resources it will need to do its job.”

– Talbot “Sandy” D’Alemberte

To date, 255 people in the United States have been exonerated through the use of DNA evidence. Of those, the 12 convicted in Florida served 241 years in prison combined.

Knowing that the system has convicted innocent people in these cases provides an opportunity, said Talbot “Sandy” D’Alemberte, a former president of the American Bar Association, the founding chairman of the Innocence Project of Florida, and one of the leading advocates for the creation of the Florida Innocence Commission.

“Given this knowledge, we have the ideal method for looking at the factors that have introduced errors into cases where we know that the citizen was actually innocent,” D’Alemberte said. “Drawing on that knowledge, we can make an effort to improve our procedures.”

He points to work done by the U.S. Department of Justice and by a number of state commissions indicating that the leading cause of wrongful convictions is faulty eyewitness testimony, including victim testimony. Other causes include the use of jailhouse informants and “junk science,” such as the application of faulty forensic methods or an exaggerated presentation of the conclusions that can be drawn from forensic evidence. Studies have shown that even fingerprint experts can be wrong, D’Alemberte said. Some wrongful convictions have even been based on false or coerced confessions.

He said possible remedies include videotaping of interviews with suspects, double-blind procedures for eyewitness identifications, systems to screen jailhouse informants and procedures to eliminate the use of junk science.

“Also, I hope that the Commission will look at jury charges and arraignment procedures,” he said. “Better education for law enforcement has already made a big difference.”

The Foundation responded to the Florida Supreme Court’s funding request with a \$114,862 grant made through its Improvements in the Administration of Justice (AOJ) Grant Program. Among the grant program’s stated objectives is the improvement and reform of the criminal, civil, and juvenile justice systems. The grant will supplement a \$200,000 appropriation made by the Florida Legislature to fund the commission for 2010-11.

Maria Henderson, then chair of the Foundation’s AOJ committee, said preventing wrongful convictions is in everyone’s interest.

“Finding and eliminating as many causes of wrongful convictions as possible will not only prevent innocent people from having their freedom taken away, but it will also save the state money in the long run and keep the focus on finding the true perpetrators,” Henderson said.

Sen. Mike Haridopolos was a co-sponsor of the Victims of Wrongful Incarceration Compensation Act, which grants inmates found innocent \$50,000 for each year they spent in prison, and was the leading advocate in the Florida Legislature for the Florida Innocence Commission appropriation.

The son of an FBI agent, Haridopolos said he sought the appropriation for the Florida Innocence Commission because he believes in equal justice for all.

“Sadly, in my home county of Brevard, two gentlemen, Wilton Dedge and Bill Dillon, were wrongfully incarcerated for over 20 years in the Florida prison system,” Haridopolos said.

Making sure the right person is behind bars is the best way to ensure that people have confidence in the justice system, he said.

In its grant application, the Court stated that the Commission will study issues including “false eyewitness identifications, interrogation techniques, false confessions, the use of informants,

handling of forensic evidence, attorney competence and conduct, processing of cases and the administration of the death penalty.”

Canady’s order indicates that the Commission, which is directed by former Monroe County Judge Lester A. Garringer Jr., may obtain input through public meetings, a review of existing research, contracting for new research, and comment from scholars, judges, state attorneys, law enforcement, private defense attorneys, public defenders, elected officials, victims’ organizations and the public.

“Measuring the success of the Commission will not necessarily be a simple matter,” Canady said. “But I would count the work of the Commission a success if it leads to the implementation of concrete measures that prevent wrongful convictions that might have otherwise occurred.”

D’Alemberte said he is impressed by the people Canady has selected to serve on the Commission and is hopeful about the results.

“If the Commission remains open to evidence about how the system has gone

wrong when it has convicted innocent people and works with law enforcement officials and judges to improve our system, it will have done its job,” he said. “There is no settled agenda for the Commission but rather a well-based hope that they will operate in a collegial and constructive way to improve the ability of our criminal justice system to reach the truth.”

D’Alemberte called the Foundation the “essential organization throughout the effort to deal with wrongful convictions.”

Through the AOJ grant program, the Foundation has provided more than \$1.5 million in funding for the Innocence Project of Florida since 2004-05, the most recent grant being for \$319,600 in 2009-10. The Innocence Project of Florida, which represented James Bain, is the organization primarily responsible for exonerations achieved through the use of DNA evidence in Florida. The Foundation’s funding of the Florida Innocence Commission is an effort to address the problem of wrongful convictions in a systemic way.

“I am very grateful for the vital support given by The Florida Bar Foundation for this effort to improve

the administration of justice in Florida,” Canady said.

He expects some of the recommended reforms to require legislative action, while others could potentially be adopted by court rule or by the administrative implementation of certain practices in the criminal justice system.

“Whatever the means of implementation, broad support from interested members of the public, the Bar and the criminal justice community will be important to the success of any reform efforts,” Canady said.

Haridopolos said he will be keeping a watchful eye, and he expects the Legislature to play a role in reform once the Commission’s work is done.

“I will be personally following the Florida Innocence Commission and its work,” he said. “I will review the recommendations made and ask for immediate hearings to go over those recommendations so that legislators from across the state can make an informed decision. I anticipate the Legislature looking favorably on the recommendations if they are backed up by facts.”

FEES, from p. 3

Monthly payments on user fees and court costs can be stifling for ex-offenders, said Second Judicial Circuit Court Public Defender Nancy Daniels.

Daniels told the story of an unemployed client who just completed a court-run drug program and has to pay \$75 a month for court costs and a \$50 monthly fee for probation costs.

“It almost ensures they’re going to cycle in and out of jail,” Daniels said. “There has to be a process of determining who has the ability to pay and what amount is reasonable. It’s not a sensible thing to create a penalty against someone who is not going to be able to fulfill it.”

Rebekah Diller, deputy director of the Brennan Center’s Justice Program

and author of the report, said restitution is supposed to compensate the victim or society for crimes, unlike the user fees.

“These are a way to raise revenue for the state. They’re not a part of the criminal code intended to punish you,” Diller said.

Diller said it will be important to examine the cost-effectiveness of the fees and to determine the impact on the local governments charged with collecting them. Collections operations and re-arrests do result in significant costs for counties.

“We need to look at both sides of the ledger, at what goes in and what goes out as far as collection costs.”

Among its recommendations, the 42-page study proposes that:

- Payment plans be tailored to the defendant’s ability to pay.
- Debt-related arrests for non-payment of fees or failing to appear in court be eliminated.
- Courts offer community service programs, as an alternative to payment, that build job skills for those unable to pay.
- Court clerks only suspend the driver’s licenses of those who have the ability to pay but refuse to do so.

“Certainly it’s time to look at longer-term solutions and realize that when you add \$50 and \$75, you might not think it has a big impact, but there’s a cumulative impact on funding the criminal justice system this way,” Diller said.

Escambia schools explore alternatives to zero-tolerance

by Nancy Kinnally

If he'd gotten into a fight at school just a couple of years ago, Escambia County eighth-grader K.P. could have easily been looking at out-of-school suspension or even criminal sanctions.

Today, the district is instead giving students like K.P. the chance to make amends and work through the issues that led to their misbehavior while remaining in school. The ultimate goal is to achieve restorative justice and stem the flow of youth into jail for minor infractions that need not have been criminalized.

The Escambia County Alternative Discipline Restorative Justice Initiative is funded in part by an annually renewable Foundation grant of up to \$945,000 total, spread over three years ending in 2012. Administration and oversight are provided by the Collins Center for Public Policy.

In 2007-08, the Escambia County School District issued out-of-school suspensions to nearly 22 percent of its 8,829 middle school students, and in 2008-09 it expelled 59 middle school and 75 high school students. That same year, 24 percent of Escambia County referrals to the Florida Department of Juvenile Justice were school-related. The hope is that by the end of the grant period, those numbers will have been significantly reduced while schools have remained safe.

For K.P., who had never been in trouble before getting into a scuffle with a classmate last year, the program has meant not only a second chance, but an opportunity to improve himself.

"I'm here because I want to put back into the school what the kids have lost, part of their education time," K.P. said. "I learned from this mistake, and I gained experience, and now I know that I have to control myself more and handle the situation better and think about what I'm going to do."

It's hard to imagine K.P. would have gained that same kind of insight from a

few days of out-of-school suspension.

Escambia County Schools Superintendent Malcolm Thomas believes that out-of-school suspensions disrupt a student's education and cause problems for working parents. He has so far put the alternative program in place at four of the district's nine middle schools and one high school. He hopes eventually to incorporate the purely voluntary program into every secondary school in the district and make it an integral part of disciplinary policies even after the grant runs out.

Through a trained School Accountability Board, the program brings together the offending student and those adversely impacted by the student's actions. The parents and guardians of the students and victims, along with school officials and community members, work with the students to determine how to repair any harm that has been done and help the parties move forward.

Sixth-grade teacher Jim Cannon, who has been a mediator and an attorney, said he sees the program as having much in common with mediation.

"What I see this program doing is giving everybody an opportunity to speak and to listen and to be heard, perhaps in some cases for the very first time. And I found that as a mediator, that was probably the solution to many of the problems that we encountered. For the first time the person was heard, and not only was heard but had the opportunity to take ownership in the solution to the problem."

The Collins Center is working with Escambia school district officials to document and evaluate the program's success.

Collins Center President Rod Petrey sees Escambia County's approach as an important step toward developing new models for compliance with legislation passed in 2009 requiring Florida school



Sixth-grade teacher Jim Cannon takes notes during training in restorative justice practices and the proper ways to implement the Escambia County Alternative Discipline Restorative Justice Initiative.

ARMANDO SOLARES

boards to revise their zero-tolerance policies to ensure that students not posing a serious threat to school safety are not expelled or arrested for petty misconduct.

"Escambia County is the testing ground to show how recent changes in Florida law can actually be implemented in a real working school system," Petrey said.

Florida Bar Foundation board member Donna Krusbe of West Palm Beach participated in a meeting in Pensacola with representatives of the school district, the Collins Center and the Foundation to review the program's progress during the first year of the grant.

"I really see a lot of promise in what they have achieved so far," Krusbe said. "It is our hope that the cooperative effort of the school district and the community will reach well beyond Escambia County. In the end, we hope to see the development and implementation of a successful program that can be emulated throughout the state. I am proud that the Foundation is able to fill the gap in government funding and underwrite this program that is so vital to the well-being of our children and schools."

Foundation welcomes new board members



West Palm Beach attorney **Patrick J. Casey** of Casey, Ciklin, Lubitz, Martens & O'Connell earned his bachelor's and law degrees at the University of Notre Dame. He served on the Foundation board from 1998 to 2004 and has been president, director and trustee of the Legal Aid Society of Palm Beach County. He also was a member of The Florida Bar Board of Governors.



Miami attorney **Douglas M. Halsey** of White & Case, LLP, is a graduate of Columbia University and the University of Miami School of Law and is a former chairman of The Florida Bar's environment and land use law section. A longtime advocate for children in foster care, he is a past recipient of The Florida Bar President's Pro Bono Service Award.



As Florida Bar president-elect, West Palm Beach attorney **Scott G. Hawkins** of Jones, Foster, Johnston & Stubbs, PA, is a designated director on the Foundation board. He earned his bachelor's and law degrees at the University of Florida and his M.B.A. at the University of Edinburgh, Scotland. He has served on The Florida Bar Board of Governors and is a past president of the Palm Beach County Bar Association.



Fort Lauderdale attorney **Juliette E. Lippman** of Kirschbaum, Birnbaum, Lippman & Gregoire, PLLC, is a graduate of George Washington University and Nova Southeastern University School of Law. She has worked as an attorney for Legal Services of Greater Miami and for The Advocacy Center for Persons with Disabilities Inc. and was the 2010 recipient of The Florida Bar President's Pro Bono Award for the 17th Judicial Circuit.



As president of Florida Legal Services, Deland attorney **Theodore W. Small Jr.** is a designated director on the Foundation board. A solo practitioner, Small earned his bachelor's degree at Harvard University and his juris doctor from the University of Virginia School of Law. He also serves on the American Bar Association's Standing Committee on Pro Bono and Public Service.



Winter Park resident **Sam Stark** is president and chief executive officer of the Central Florida Sports Commission. He earned his bachelor's degree from Rollins College and previously served as president and chief executive officer of the Winter Park Chamber of Commerce. Stark was a member of The Florida Bar's Citizens Forum from 2006 to 2009.



Kathryn D. Weston of Cobb Cole received her bachelor's degree at Stetson University and her juris doctor at the University of Notre Dame Law School. A native of Ormond Beach, she is currently president of the Volusia County Bar Association and practices in Daytona Beach and Deland.

At-large directors serve a maximum of two, three-year terms, with one-third selected by the Board of Governors of The Florida Bar, one-third by the Foundation board, and one-third by the Florida Supreme Court.



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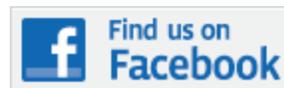
The Florida Bar Foundation is the only statewide organization that provides funding for Legal Aid and promotes improvements in addressing the civil legal needs of the poor.



FOUNDATION FACT

The Florida Bar Foundation distributed \$50,000 to 15 voluntary bar associations in 2009-10 to support their community service projects. Through its Voluntary Bar Association Community Service Grant Program, the Foundation provides one-time grants of up to \$5,000 to Florida voluntary bar associations to promote new projects – or significant improvements in existing projects – that provide education, outreach or service delivery to enhance the administration of justice in Florida.

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CONTACT THE FOUNDATION

(407) 843-0045

(800) 541-2195 (Toll free in Florida)

EXECUTIVE

Jane Elizabeth Curran, Executive Director & Director, Improvements in the Administration of Justice Grant Program
jcurran@flabarfdn.org

COMMUNICATIONS

Nancy Kinnally, Director of Communications
nkinnally@flabarfdn.org

Gabrielle Davis, Communications Coordinator
gdavis@flabarfdn.org

DEVELOPMENT

Tim Bachmeyer, Director of Development
tbachmeyer@flabarfdn.org

Michael Cooper, Annual Giving Manager
mcooper@flabarfdn.org

FINANCE & IOTA OPERATIONS

Lou Ann Powell, Director of Finance & IOTA Operations
LAPowell@flabarfdn.org

Lushawn Phillips, IOTA Operations Manager
lphillips@flabarfdn.org

GRANTS

Paul Doyle, Director, Legal Assistance for the Poor & Law Student Assistance Grant Programs
pdoyle@flabarfdn.org

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



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