

# Florida Criminal Law *Newsletter*

## **FACDL-OW Elections**

*Marty Lester elected President*

Attorney **Marty Lester** was the unanimous choice for President of FACDL-OW at the February 20, 2006 meeting held at Nicki's Italian Restaurant in Fort Walton Beach. Attorney **Glenn Swiatek** was likewise the unanimous choice for Vice-President, and former Assistant State Attorney **Ashley Herndon** was elected as the organization's Treasurer by acclamation. Attorney **Stephen G. Cobb**, past president, was unanimously elected as Secretary.

FACDL-OW's next meeting will be held on March 16, 2006, at the Shalimar Cheers Pub. Attorney **Coy Browning**, widely respected for his expertise in DUI litigation, will make a short presentation regarding DUI Administrative Formal Review Hearings.

Attorney **Ashley Herndon** will also make a short presentation regarding Civil Forfeiture.

The meeting will begin at 5:30 p.m., a departure from the normal lunch hour meetings, and will be followed by a pool tournament. The winner of the pool tournament will be declared the Champion Cue Master of the local Bar for the month of March. The State Attorney's Office is specifically challenged to defend the slate although it is widely believed that the office is terrified of losing.

## **FACDL-OW CLE Seminar slated for Spring 2006**

A CLE seminar hosted by FACDL-OW is scheduled for Spring 2006, in Fort Walton Beach. CLE credit will be applied for through the Florida Bar. Mental Health Issues in Florida Criminal Law Litigation 2006 will highlight the mental health aspects of Florida Criminal Law. The seminar will deal with traditional defenses as well as creative strategies for mitigation. Specific topics will include Incompetency & Insanity: Procedural and Substantive Law, presented by

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**FACDL-OW Elections**

**FACDL-OW Sponsors CLE  
Seminar**

**Hidden Mental Illness in  
Criminal Defense Clients**

**FACDL-OW Seminar** *Continued*  
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Attorney **Bruce Koran**, Spotting Mental Illness When It Isn't Obvious, presented by Attorney **Stephen G. Cobb**, Diagnostic Testing and Forensic Evaluation, presented by **Dr. James Larson, Ph.D.**, and a panel discussion: Practice Tips & Techniques. More details will be published here in the Florida Criminal Law Newsletter.

## **Hidden Mental Illness in Criminal Defense Clients**

### *A Preview of Mr. Cobb's Spring FACDL-OW CLE Presentation*

If your client is threatening to jump off of a building because he believes he can fly to heaven, you might have an insanity defense. At the very least, mental competency is an issue. However, most of your criminal defense clients have mental illnesses. You just don't know it.

For example, your 9 a.m. DUI & Driving With License Suspended Consultation involves a 32 year old white male with two prior DUI's and two prior DWLS/R's. The State filed his case as a felony when he refused an offer of 11 months and 29 days in jail at Arraignment. Your intake process may not tell you:

- He did not finish high school.
- He has had three Motor Vehicle Accidents since he obtained his license at 16.
- He has had four speeding tickets, one 'boom cars' infraction and his license has been suspended twice for financial responsibility.
- He was prescribed Ritalin as a child, but stopped taking it as a teenager.

This tells you that your client needs a Diagnostic Forensic Evaluation as part of his legal defense. Here's why: Numerous studies have shown that brain illnesses such as ADHD<sup>1</sup> have a *definite* link to:

- MV accidents (4 times more likely)
- Repeat accidents (7 times more likely)
- Increased number of DUI's
- Traffic citations (3 times more likely)
- Driving without a License (3 times more likely and 9 times as often)

Another common mental  
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<sup>1</sup>For example, RA Barkley, et al, *Driving-related risks and outcomes of attention deficit hyperactivity disorder in adolescents and young adults: a 3- to 5-year follow-up survey*; Pediatrics, Vol 92, Issue 2, pp. 212-218.

## Directly Speaking

By Stephen G. Cobb  
Editor, FCL Newsletter

Change was to be expected when **Bill Eddins** was elected State Attorney for the First Judicial Circuit after decades of leadership from former State Attorney **Curtis Golden**. Yet no one expected the turnover, morale problems and utter chaos which has engulfed the office.

This may seem rather harsh, but facts are facts. Assistant State Attorneys are leaving in droves. One ASA left the office after only three weeks. In the misdemeanor divisions, there are many cases where *four or more* Assistant State Attorneys have worked on a case file. To say that this degree of dysfunction in the State Attorney's Office is unprecedented would be like calling Hurricane Katrina a thunderstorm.

Although some have been quick to blame the elected State Attorney, I believe that the problem is more systemic than most of us realize: The State Attorney's Offices are terribly under funded statewide. This lack of funding magnifies any change in an otherwise stable and reasonable functional state agency. In fact, this problem of 'overloaded and under funded' is so severe that I would hazard a prediction: Longtime First Judicial Circuit Public Defender **Jack Behr** is

going to retire. When he does, look for turnover, morale problems and utter chaos to engulf the Public Defender's Office as well.

We can debate the policy merits of the elected State Attorney or Public Defender until the cows come home. But the truth is that both of these critical arms of the state government have been suffering from too many cases and too few people for over a decade. The end result is that the greatest CEO in history would be hard pressed to maintain a functional office during a major leadership transition.

Directly speaking, the governor and the legislature don't get it. The money necessary for the judiciary, prosecutors and public defenders never seems to be available. This dangerous in a democracy: When the people lose faith in the ability to seek fair and honest redress in the courts, they begin to ask dangerous questions.

They ask questions like Timothy McVeigh did before he became America's most infamous domestic terrorist.



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**Hidden,** *Continued from Page 3.*  
illness, Bipolar Disorder, has an even stronger link to criminal behavior. In other words, *virtually all criminal behavior is caused by some form of mental illness.*

This is a shocking revelation, yet so obvious that it would seem impossible to miss. Yet each and every day, people are arrested, their mental illnesses go undetected by prosecutors, defense lawyers, judges and cops.

Next month, we will examine how to use this information to help you clients with their cases, and their lives.

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