

August 29, 2008

## NEUTRAL TO TAKE 'MEDIATION GONE WILD' ON TOUR

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LOS ANGELES - If you find yourself watching E!'s "True Hollywood Story" about "Girls Gone Wild" creator Joe Francis, look out for the talking head of mediator Michael D. Young.

Young is a Los Angeles-based neutral affiliated with Judicate West, an attorney at Weston, Benshoof, Rochefort, Rubalcava & McCuish and an adjunct professor at USC's Gould School of Law.

But a paper detailing how Francis went to prison for his conduct in a mediation, "Mediation Gone Wild: How Three Minutes Put an ADR Party Behind Bars," arguably has brought Young his 15 minutes of fame, including the E! spot.

"Clearly it's found an audience - not one that I ever intended, but you have a story about a guy who makes money showing women's breasts, people are interested," Young said with a laugh. "You combine that with an unusual jailing and a Southern judge ... you've got a story that crosses the interest barriers."

But for Young, the case is more than a celebrity's legal debacle - it's an indicator of a changing relationship between mediation and courts.

"It's not unprecedented that courts are able to pierce confidentiality, but it is unprecedented for them to do so and then imprison one of the participants," he said.

With his newfound reputation as an expert on Francis' legal travails, Young has converted the article to a tongue-in-cheek lecture, sprinkled with Francis' colorful language and photos of Dionysian spring-breakers.

Now, he's taking the show on the road.

Young already has given the lecture to a Florida gathering of the International Academy of Mediators and to a conference of neutrals at Judicate West. In coming weeks, Young has gigs lined up showing it to mediator groups in Seattle and Salt Lake City, and he said he hopes to book more.

"He has put together not only a program that has a lot of substance to it but also one which is extremely entertaining," said John Leo Wagner, a mediator and retired federal judge based in Orange County who has seen Young's lecture twice.

The original essay appeared in the June 2007 edition of Alternatives, the newsletter of the International Institute for Conflict Prevention & Resolution.

It earned Alternatives an award from the Specialized Information Publishers Foundation. Francis' attorneys cited it in a motion. A federal judge responded to it in an opinion.

And it prompted Francis to call Young from a Nevada federal prison last year.

"When Joe called me from jail, he said he had read the article, he liked it, that it was generally accurate," Young said.

Young said that Francis asked him to go on ABC's "Nightline" to discuss the case, but the ABC story didn't pan out because the network couldn't get its cameras into the prison to film Francis.

"It was probably six months later that I got a call from a producer who was putting a show together for E! 'True Hollywood Stories' and wanted to interview me as the legal expert dealing with the various legal problems Joe Francis was having," Young said.

Francis was sued by the parents of girls who had been in a "Girls Gone Wild" episode filmed in Panama City, Fla., who alleged child abuse because the girls were underage when they were filmed. The suit ended up in the Panama City courtroom of U.S. District Judge Richard Smoak, who ordered it to mediation. *Doe v. Francis*, 5:03CV260 (N.D. Fla., filed Oct. 8, 2003).

Francis showed up to the March 2007 mediation with his baseball cap backward, and it took him only three minutes to announce he would not pay the plaintiffs "one fucking dime."

"We will bury you and your clients," Francis screamed, according to court documents.

Thus began 13 hours of mediation. Francis and the plaintiffs did not settle.

In a motion for sanctions, the plaintiffs' attorneys argued that Francis' "bury you" comment was a threat of violence. Though the mediation was supposed to be confidential, under Florida law, such threats trump confidentiality.

Smoak agreed that Francis' comment was a threat.

Both sides asked for details of the mediation to be kept under seal, but Smoak denied that request. That opened the way for testimony about Francis' behavior early in the mediation, where he put his bare feet on a table, played with an "electronic device" and told the plaintiffs' attorneys to "suck my dick." One of the plaintiffs' attorneys said he thought Francis was going to "slug" him.

After hearing testimony about the mediation, Smoak found Francis in contempt of his order to mediate. But he offered the parties another chance to mediate the case, telling Francis, "I think that you need to put a dollar figure in your mind on what it's worth to you to avoid what may be a sanction that you weren't counting on."

They didn't settle, and Smoak ordered Francis to jail. He wrote that he would let Francis out "upon his proper participation in mediation."

The case settled the day after Francis was incarcerated, but he remained in jail due to related criminal contempt charges - he was accused of making false statements in court about the mediation and not surrendering for his imprisonment.

"Francis was neither a model citizen nor a welcome guest of Panama City, Fla.," Young wrote. "But the Florida court's intrusion into what is generally considered to be a private and voluntary alternative dispute resolution process sends a message that confidentiality may not be quite all it seems."

That is part of a broader trend of courts trying to control mediations, Young said.

"What's fascinating about this is that the judge was able to break through that confidentiality barrier," he said.

Smoak does not give interviews, but in an opinion, the judge cited Young's essay and offered a response.

"To permit a recalcitrant litigant to shield his vile and threatening behavior at a court-sanctioned proceeding from judicial review under the guise of confidentiality is tantamount to giving him full license to convert a benign, court-sanctioned event into an unrecognizable and dangerous fracas," Smoak wrote.

Wagner said Young's observations raise "disturbing" points.

"Having been on the bench for 12 years, I can understand why the judge was more than a little peeved with the reports he got back as to the mediation," Wagner said. "Of course, my main concern is that he got reports at all in a process that is supposed to be confidential and essentially private."

Now, the case has another twist: Francis recently sued in Los Angeles to get out of the settlement he made while imprisoned in Florida, claiming that he settled "involuntarily and not as an exercise of free choice or will." *Francis v. Doe*, BC396476 (L.A. Super. Ct., filed Aug. 19, 2008).

"It seems to be more that it was a lawsuit filed for the publicity value than it was trying to pursue the merits," Young said. "But as an outside observer, I'm going to enjoy watching what happens - and commenting on it, if it raises additional interesting issues."

Malibu-based attorney Robert E. Barnes of the Bernhoft Law Firm, who is representing Francis in that litigation, was unavailable for comment.

Young's essay is available at [wbcounsel.com/mediation](http://wbcounsel.com/mediation).