A Tribute to Those We Recently Lost

Hugh Maloney
Judge Amy Karan
A. Matthew Miller
Susan Greenberg
Section calendar

Look for information on the Family Law Section’s website: www.familylawfla.org.

2014

March 7
Evidence Issues (#1681)
Orlando, FL

March 26-29
Out-of-State Retreat
Bellagio, Las Vegas, NV

Details and registration at www.floridabar.org/CLE.

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MS Word format is preferred for documents, and jpg images for photos.
It is difficult to believe I am half way through my year as Chair and writing for the second Commentator during my term. Time certainly does fly! First, I have to thank Amy Hamlin, the Publications Chair, and Julia Wyda, her Co-Chair, for implementing my vision of a “Throwback” series in the Commentator during my year as Chair – they outdid themselves with the Fall Commentator. I can only imagine how amazing this edition will be when complete.

For me, one of the most important events for my year is the Marital and Family Law Certification Review Course. Again, because of the 40th anniversary of the Family Law Section, it was important to me to bring back many of our “staple” speakers. Jeff Weissman really stepped up to the plate and spoke on not just his assigned topic of Agreements, but also spoke for Ky Koch on the single most difficult topic, Practice and Procedure, with about 24 hours notice. Ky Koch was looking forward to speaking but was recovering from recent triple bypass surgery. His partner, Kim Kaszuba, worked on his materials and was even willing to speak on his behalf. I personally thank both Kim and Ky – and cannot wait to see you strong, healthy, and up on that stage again!

The Certification Review Course was also my opportunity to give the Chair’s Visionary Award. Picking the recipient was easy. The award winner is one of the single most dedicated individuals I know. He has chaired virtually every committee in the Family Law Section. He has assisted and been integral in the drafting and creation of virtually all of family law related statutes in Florida. He had a vision of growing the certification review course from 250 people who originally attended this event at the Tampa Airport Marriott to the almost 1400 attendees at the Royal Pacific from January 31 – February 1, 2014. He’s a second generation Chair of the Family Law Section, second generation President of the American Academy of Matrimonial Lawyers, he’s been my mentor, my boss, and most importantly, my friend, Tom Sasser.

Next on the horizon is Las Vegas and Luis Insignares and Diana Polston have planned an AMAZING retreat – DO NOT MISS IT!!! Your registration includes a cocktail reception with gambling lessons and show girls, helicopter tour of the Grand Canyon, tickets to O!, numerous cocktail receptions – a seminar with experts like Mark O’Mara, Deborah O. Day, Psy.D, and Shannon and Christopher Carlyle. We will end the weekend with a fabulous cocktail reception at Chandelier in the Cosmopolitan and dinner at D.O.C.G.

In keeping with my “taking care of you, so you can take care of yourself” theme this year, I checked a personal goal off my bucket list and ran a full marathon but, after running a half marathon the day before, and a 10K race the day before that, and a 5K race the day before that – yep, 48.6 miles in four days at the Inaugural Dopey Challenge at Walt Disney World. An amazing accomplishment for me! I encourage you to find things you think you cannot do and do them! Surprise yourself! It will make you smile, oh, and feel like a badass!

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When I think of our “retro” theme for this year’s Commentator, I can’t help but be transported back to the ’80s—big hair (oops, haven’t quite left that one behind), Betamax into VHS (met with resistance until the end), and one of my favorite movies of all time, Rocky III (remember, that’s the one where he finally learned to move his head out of the way). I love that movie because that’s what inspires me—the personal drama of confronting the great and powerful Fear of Losing head on, accepting that loss is a possibility, but knowing that we can live with it as long as we’ve done everything in our power to prepare for battle, wherever that battle may occur.

For the Winter edition of the Family Law Commentator we have pieces by contributors that are sure to inspire, and some of them also highlight that all-important credo—Preparation. Tova Verchow, a Nova law student, interned this past summer with the Honorable Renee Goldenberg. Tova’s article harkens us back to our law school days of the Model Rules of Professional Conduct and gives us a revitalized perspective on what we do every day from a fresh set of unjaded eyes—but from the power side of the table. General Magistrates Randi Glick Boven and Annette Szorozy have enriched us with “Trial Tips from the Bench”—but ‘tips’ is an understatement because what they’ve really given us is pearls. Reading these two articles (and following the advice) can only bring up our game.

Now, what good is “retro” if we don’t bring it forward? Christopher Rumbold has brought forward Martin Haines III’s 1991 Note, “Redefinition of Family” and given us “Redefinition of (the Modern) Family” in which he continues to challenge us to re-evaluate the concept of “family” given the dramatic changes in the make-up of the family unit and the laws affecting gay couples and their children over the last 20 years. More on that subject, Nancy Brodzki has contributed a substantive analysis of the recent case D.M.T. v. T.M.H. and her opinion of what that case suggests for gay marriage in Florida.

Chris has also brought us forward with a second piece in which he shares his experience thus far as a member of the inaugural class of the Florida Bar’s Leadership Academy. An already-skilled practitioner now learning how to lead our profession, Chris has provided us with a window into the meaningful projects the participants have worked on, the speakers, the presentation topics, the relationships built, and even the good eats. For those of us who are considering applying to the Leadership Academy in subsequent years, he leaves us with a resounding “go for it!” (I paraphrase, of course).

Sprinting from retro to current, however, requires stamina. And we still have to remember to take care of ourselves if we are to maintain our energy. Dr. Andrea Coverman’s piece has a fun inventory quiz to test whether you’re attending to or neglecting your physical, mental, and spiritual health, as well as suggestions of what to include in our stressful lives on a daily basis to be at our rejuvenated best. She reminds us about the importance of balance. Which brings me to my second favorite movie of all time, Searching for Bobby Fischer (1993). We can’t just be all about one thing, whether it’s chess, or work, or law, or clients, or worrying about clients. First, that makes us incredibly boring. Second, if we lose a challenge in that “one thing,” it’s almost impossible to recover if there’s not much else in our lives. And then we’ll spend years in Dr. Coverman’s office trying to pick up the pieces. Third, without balance, where are we to get inspiration? Like Chris, I challenge you to re-evaluate what inspires you. Maybe it’s going home, grabbing a loved one, and doing the Swiffer Dance. Honestly, it doesn’t have to be anything monumental if it makes you happy at that moment.
Comments from the Chair of Publications:

Happy New Year! This is our second edition with “retro” touches. The cover of this edition is a tribute to dedicated Section members who left us too soon. We appreciate their time, efforts, and dedication to Florida’s families; they will be dearly missed. On behalf of everyone on the Publications Committee, I hope you enjoy the Winter edition. The Spring edition is just about complete, but please feel free to email me at Amy@aikinlaw.com if you have any articles, pictures, or announcements you would like to submit.

Cover Photos Needed!!!

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By Juan C. Antúnez
ATTORNEY AT LAW

Juan C. Antúnez is a partner with Stokes McMillan Antúnez P.A., a boutique trusts and estates law firm located in Miami, Florida. Trusts and estates litigation, probate administration and estate planning is all he does as a lawyer. He is a 1996 graduate of the New York University School of Law (J.D.), and a 2003 graduate of the University of Miami School of Law (L.L.M. in Estate Planning). Prior to law school Mr. Antúnez volunteered for service with the United States Marine Corps Reserve from 1987 to 1993 (4th ANGLICO, West Palm Beach, Florida), including combat duty during the first Gulf War.

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Taking Care of Yourself to Better Take Care of Your Client

By Andrea L. Coverman, PsyD, CADAC

The practice of family law exposes attorneys to an emotional, volatile, and extremely stressful work environment. Family law can also be a thankless practice area. It is therefore important for family law attorneys to take care of themselves so that they can best take care of their clients. When people neglect self-care, enthusiasm, enjoyment, and satisfaction can fade over time. Self-care gives a sense of purpose and meaning. Self-care activities have the capacity to increase overall happiness, thus increasing the likelihood of efficacy and success. Examples that have proven effective are rest, leisure, forgiveness, exercise, supportive relationships, personally interesting hobbies, meditational exercises, spirituality, and self-reflection.

The following inventory is a means to assess whether you are adequately taking care of yourself:

**Inventory of Self-Care Activities**

Instructions: In the last 6 months, how often has the following been true for you? For each question, put a check mark that best fits your experience:

1. I make sure that I have (at least) one full day off of work weekly.
   ___ (0) Never  ___ (1) Seldom  ___ (2) Sometimes  ___ (3) Often  ___ (4) Always

2. I never work more than 10 hours every day.
   ___ (0) Never  ___ (1) Seldom  ___ (2) Sometimes  ___ (3) Often  ___ (4) Always

3. I feel I have the skills and training to do my job competently.
   ___ (0) Never  ___ (1) Seldom  ___ (2) Sometimes  ___ (3) Often  ___ (4) Always

4. When I leave work, I am able to disengage and separate my work life from my personal life.
   ___ (0) Never  ___ (1) Seldom  ___ (2) Sometimes  ___ (3) Often  ___ (4) Always

5. I take at least one vacation every year.
   ___ (0) Never  ___ (1) Seldom  ___ (2) Sometimes  ___ (3) Often  ___ (4) Always

6. I share how I am feeling with someone (Professional or Layperson) whom I know cares about me.
   ___ Never  ___ (1) Seldom  ___ (2) Sometimes  ___ (3) Often  ___ (4) Always

7. I do some type of aerobic exercise for at least 20 minutes at a time.
   ___ (0) Never  ___ (1) Seldom  ___ (2) Sometimes  ___ (3) Often  ___ (4) Always

8. I feel that I sleep well.
   ___ (0) Never  ___ (1) Seldom  ___ (2) Sometimes  ___ (3) Often  ___ (4) Always

9. I practice eating a nutritious and balanced diet.
   ___ (0) Never  ___ (1) Seldom  ___ (2) Sometimes  ___ (3) Often  ___ (4) Always

10. I drink enough water.
    ___ (0) Never  ___ (1) Seldom  ___ (2) Sometimes  ___ (3) Often  ___ (4) Daily

11. I know my body and am able to recognize when I am becoming fatigued, exhausted, and/or vulnerable to illness.
    ___ (0) Never  ___ (1) Seldom  ___ (2) Sometimes  ___ (3) Often  ___ (4) Always

12. I practice some form of muscle relaxation, meditational activity, or slow breathing techniques.
    ___ (0) Never  ___ (1) Seldom  ___ (2) Sometimes  ___ (3) Often  ___ (4) Always

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continued, next page
13. I make sure to laugh genuinely/authentically, and not sarcastically.
   (0) Never
   (1) Seldom
   (2) Sometimes
   (3) Often
   (4) At least Once a Day

14. I feel well-rested when I get up in the morning.
   (0) Never
   (1) Seldom
   (2) Sometimes
   (3) Often
   (4) Always

15. I do at least one thing with my time that I find inspirational, creative, valuable, or productive.
   (0) Never
   (1) Seldom
   (2) Sometimes
   (3) Often
   (4) Daily

16. I know that people care about me and feel that I can trust talking with them if/when I want.
   (0) Never
   (1) Seldom
   (2) Sometimes
   (3) Often
   (4) Always

17. I set and maintain healthy boundaries with others.
   (0) Never
   (1) Seldom
   (2) Sometimes
   (3) Often
   (4) Always

18. I am a participating member of a community of people who create meaning through having a common purpose/goal (e.g., a church group, a group of volunteers, work colleagues, professional membership, or group hobby/activity).
   (0) Once Every 6 Months or Less
   (1) Every Other Month
   (2) Once a Month
   (3) Up to 4 Times a Month
   (4) More Than Once a Week

19. I am able to take some quiet time for myself.
   (0) Never
   (1) Seldom
   (2) Sometimes
   (3) Often
   (4) Always

20. I feel that I am able to competently communicate with others.
   (0) Never
   (1) Seldom
   (2) Sometimes
   (3) Often
   (4) Always

21. I feel good about how I spend my time and energy.
   (0) Never
   (1) Seldom
   (2) Sometimes
   (3) Often
   (4) Always

22. I generally speak kindly of myself.
   (0) Never
   (1) Seldom
   (2) Sometimes
   (3) Often
   (4) Always

23. While at work, I make sure to take short breaks and/or switch tasks regularly
   (0) Never
   (1) Seldom
   (2) Sometimes
   (3) Often
   (4) Always

24. I am consistent with setting realistic short- and- long term goals.
   (0) Never
   (1) Seldom
   (2) Sometimes
   (3) Often
   (4) Always

25. I make time to do something that is JUST FOR ME that is enjoyable.
   (0) Never
   (1) Seldom

Tally the number to the left of each check mark placed above:

Now Interpret Your Score:

0-25: A score in this range suggests that your self-care skills are lacking. You may want to consider the benefit(s) in developing a plan toward self-care transformation. In doing so, you could improve upon the manner in which self-caring activities are learned and implemented.

26-50: A score in this range suggests that your self-care skills may be poor to average, and that you could possibly benefit from developing a plan to improve your self-care.

51-75: A score in this range suggests that you may have moderately good self-care skills and that you maintain balance within your professional and personal life.

76-100: A score in this range suggests that you may have beneficial self-care skills in place. The balance you may feel is continuously maintained through your adherence to practicing regular self-caring activities.

Most people have a limit on how much stress, suffering, and sadness they can tolerate. For those with a low tolerance, pleasant, soothing, and joyful energy is needed on a consistent basis in order to thwart negativity and produce feelings of renewal. Unfortunately, a one size fits all approach is unavailable. Successful education, integration, sustenance, and adoption of individualized self-caring practices come from knowing yourself, while restricting the common practice of comparing yourself to others.

If you are wondering if you are doing a decent job of taking care of yourself or how your self-care strategies could be improved, review the following list and reflect on your practices:

1. Self-caring is a number of diverse and variable identified activities that have to potential to help the individual feel their best.
2. Self-Caring is thoughtfully scheduled and planned out.

3. Self-Caring starts and ends at any time, and can happen anywhere.

4. Genuine self-care consists of acknowledging that your physical, emotional, psychological, and relational well-being are intertwined, interactive, and interdependent.

5. Self-care helps one preserve boundaries and removes the sources that drain one from their full potential.

6. Continuously and realistically indulge in a self-care inventory and consider making adjustments as needed.

7. Surround yourself with people that can teach you something.

8. Take into consideration that 'quality' always supersedes 'quantity' when it comes to self-care.

9. Remember that self-care is a necessity that is non-negotiable in achieving the balance and happiness of fulfilled living.

The costs of ignoring yourself while constantly meeting the needs of others can have serious ramifications. Those who don’t 1) take the time to exercise regularly, 2) have a balanced and nutritious diet, 3) get enough rest, 4) engage in enjoyable activities, and 4) practice forgiveness, can become anxious, depressed and less productive. Simply put, self-care is about feeding your core sense of who you are. It’s about valuing the needs and desires that emerge from your body’s wisdom. It’s about understanding that taking care of yourself is the essential ingredient in taking care of others. Self-care also means abandoning the idea that some type of authority exists that knows more about what your body needs better than you know yourself. Sometimes getting what you need means just taking a few minutes during your hectic day to be quiet.

One’s own growth cannot be ignored. To manage everyday stressors, it is necessary to put effort toward focusing on compassion and acceptance of others, as difficult as that may be. Rising above the struggles of daily life requires effort. Thoughts, feelings, and actions must be regularly examined. Wounds, whether old or new, must be healed. Self-care should be placed near the top, not the bottom, of the family law practitioner’s personal totem pole. It needs to be taken seriously to maintain health and to improve or restore wellness by ensuring a healthy mind, body, and spirit. Self-care enables the practitioner to be at his or her personal best, thus allowing for the best service to the client.

Dr. Andrea Coverman received her Psy.D in Clinical Psychology from the Arizona School of Professional Psychology with a specialty in substance abuse treatment. Dr. Coverman has published her research on Self-Care and Professional Impairment among Licensed Psychologists and has presented the findings at various local and national Psychology Conferences. She has lectured internationally on topics related to self-care, wellness, and health as it relates to maintaining a balanced lifestyle in order to thwart impairment (i.e., burnout). Dr. Coverman has provided consultative, preemptive, and preventative wellness services to behavioral healthcare specialists and other relevant persons in need of such services (e.g., first responders and caregivers) who often suffer from professional impairment, Vicarious Trauma, and Compassion Fatigue as the direct result of their unique (and often emotionally taxing) position in helping others. She is a member of the American Psychological Association (APA), Division 12 of the APA for the practice of Clinical Psychology, and the Florida Psychological Association (FPA).

In January, Governor Scott appointed Dawn D. Nichols to the Circuit Bench in the Seventh Circuit.

On November 29, 2013, Matt and Nava Lundy welcomed identical twin daughters Macey Ada and Briar Ruby at St. Joe’s Women’s Hospital in Tampa, Florida.

Gladstone & Weissman, PA, of Boca Raton proudly announces the Supreme Court Certification in Family Law Mediation of Christopher W. Rumbold. Christopher, who has been with the firm since 2009, is a member of Executive Council, a member of the inaugural class of the Florida Bar’s Leadership Academy, vice-chair of Legislation and was published in the November 2013 edition of the Florida Bar Journal.
Changing Tides in Same Sex Family Law in Florida

By Nancy Brodzki, Esq., Brodzki Jacobs & Associates, P.L., Coral Springs

“The intangible fibers that connect parent and child have infinite variety. They are woven throughout the fabric of our society, providing it with strength, beauty and flexibility. It is self-evident that they are sufficiently vital to merit constitutional protection in appropriate cases.”

On November 7, 2013, the Florida Supreme Court handed down a ground-breaking decision that is limited on its facts but broad in the scope of its language. The immediate effect of this decision will be to permit same-sex couples to be the legal parents of a child conceived through assisted reproductive technology (ART) just as opposite-sex couples can. But it is unmistakable that the Court’s constitutional analysis and sweeping language portends that discrimination based on sexual orientation may not survive constitutional challenge, including the state ban on same-sex marriage.

DMT and TMH were a lesbian couple who wanted to have a child. DMT was infertile. TMH donated her egg to be fertilized by donor sperm using in-vitro fertilization. The resulting embryo was then successfully implanted into DMT’s womb, who then carried the baby to term. The child was raised for more than 2 years by the two women. Upon separation, the women continued to share the child-rearing responsibilities, and TMH paid child support to DMT until they began an equal time sharing schedule. DMT then absconded with the child to Australia with the intention to deprive TMH of any parental rights to the child. TMH filed the underlying action to adjudicate her parental rights.

Building upon the Third District Court of Appeal’s decision in Fla. Dep’t of Children & Families v. Adoption of X.X.G., 45 So.3d 79 (Fla. 3d DCA 2010), the Court applied the most liberal standard of scrutiny and yet, concluded that §742.14 was an unconstitutional violation of the Due Process Clause of the U.S. and Florida Constitutions, as well as the privacy provisions of the Florida Constitution because the statute operated to automatically deprive TMH of her fundamental rights of parenthood. It further held that the definition of “commissioning couple” in §742.13 violated the equal protection clause of both Federal and State constitutions by denying same-sex couples the parental rights afforded to opposite-sex couples. The statute’s definition of commissioning couple is “the intended mother and father of a child who will be conceived by means of assisted reproductive technology using the eggs or sperm of at least one of the intended parents” (emphasis added). Clearly, by limiting the definition of commissioning couple to a “mother and father,” this lesbian couple was denied that protected status. The question before the Court was “whether these very protections against the statutory relinquishment of parental rights can be denied to an unmarried woman who was part of a same-sex couple seeking the assistance of reproductive technology to conceive a child to jointly raise and who provided biological material to her partner with the specific intent to become a parent.”

Citing Troxel v. Granville, 530 U.S. 57 (2000), the Court noted that “the interest of parents in the care, custody and control of their children...is perhaps the oldest of the fundamental liberty interests recognized in American jurisprudence.” It lifted language from Beagle v. Beagle, 678 So.2d 1271 (Fla. 1996) which recognized that parents in Florida have a fundamental right to raise their children which is protected by the Florida Constitution’s privacy provision. Art. 1, §23, Fla. Const. By excluding TMH as part of a commissioning couple, the statute deprived the mother of her parental rights without due process of law, even though she had donated her egg, enjoyed her full parental rights and fulfilled her full parental responsibilities until the “legal” mother absconded with their child. Justice Pariente had many poetic and profound moments. This was but one of them:

“It would indeed be anomalous if, under Florida law, an unwed biological father would have more constitutionally protected rights to parent a child after a one night stand than an unwed biological mother who, with a committed partner and as part of a loving relationship, planned for the birth of a child and remains committed to supporting and raising her own daughter.

The Supreme Court discussed the changes in the definitions of parents, marriage and family over the previous decades, as reflected in US Supreme Court decisions. They remarked on the overturning as unconstitutional the state ban on interracial marriage in Loving v. Virginia, 388 U.S. 1 (1967) and the landmark decision of United States v. Windsor, 133 S.Ct. 2675 (2013), requiring federal recognition of legally married same-sex couples.

The Court went on to address the
issue of classification based on sexual orientation. Did the State have a rational basis to discriminate against same-sex couples? Could the State protect only the parental rights of opposite-sex couples in this situation and not same-sex couples? The answer was a resounding NO. Citing the evidence adduced at trial and cited within the opinion of the Third District in Adoption of X.X.G., the Court affirmed that homosexuals and heterosexuals “make equally good parents.” The Court concluded “that the State would be hard pressed to find a reason why a child would not be better off having two loving parents in her life, regardless of whether those parents are of the same sex, than she would by having only one parent”.

T.M.H. can be likened to the Windsor case. Windsor was limited to the issue of whether the law known as the Defense of Marriage Act (DOMA), which prohibited the Federal government from recognizing as valid same-sex marriages that were legally entered into in a particular state or foreign country, was an unconstitutional deprivation of equal liberty protected by the Fifth Amendment. The Supreme Court held that it was unconstitutional, and within minutes the effects of this decision were felt. A deportation proceeding in New York was literally halted in process when a Clerk from the DOMA project, a non-profit organization dedicated to overturning DOMA printed a copy of the opinion off the internet and ran it over to the US Immigration Court in New York City. Married same-sex couples can file their taxes as a married couple this year, or file bankruptcy jointly as a married couple. There are more than a thousand federal benefits to being married. And these important federal marriage benefits are finally being enjoyed by same-sex military couples who are married. And who among us deserves those protections more than the men and women, gay or straight, who defend the very freedoms they were denied?

In Lawrence v. Texas, 539 U.S. 558 (2003), the U.S. Supreme Court overturned existing law and declared the Texas statute making sodomy between men a crime unconstitutional. They held that the right to liberty under the Due Process Clause protects all consenting adults’ private sexual conduct, homosexual or otherwise, from governmental intervention or intrusion. Windsor applied the rationale in Lawrence and extended the protections for same-sex couples against unequal treatment under the law. X.X.G. broke legal ground and overturned decades of shame in the Sunshine State dating back to the Anita Bryant era by declaring unconstitutional Florida’s ban against gays and lesbians adopting the very children they were allowed to foster. In T.M.H., the Florida Supreme Court has moved the ball forward as far as the facts of the case would allow. Windsor didn’t say that states must allow same-sex marriage; only that if a state allows it, the federal government must recognize it. Likewise, T.M.H. doesn’t say that Florida’s constitutional and/or statutory ban against same-sex marriage is unconstitutional. It just states unequivocally that the state has no rational basis for discriminating against same-sex couples, married or unmarried, for just about any reason at all. “It’s hard to see how T.M.H. will not be controlling precedent when a case testing the state ban on same-sex marriage comes before the Court”, said Shannon Carlyle, Esq., who along with her husband Christopher represented T.M.H. on appeal.

The tide has turned, and the ripple effect has been more like an avalanche. As of the writing of this article, 16 states and the District of Columbia recognize same-sex marriage. Florida, of course, has both a statutory (Fla. Stat. §741.212) and Constitutional (Art. I, §27 Fla. Const.) ban. But the Florida Supreme Court just decided that all couples, gay and straight, are entitled to equal rights under the law. Finally.

Nancy K. Brodzki is Board Certified in Marital and Family Law. She has handled numerous cases involving LGBT issues, including one of Broward’s first same sex second parent adoptions. She is a partner in the firm of Brodzki Jacobs & Associates PL in Coral Springs, FL.

Endnotes:
I can remember when I first learned of Caylee Anthony’s disappearance. As a mother, hearing the heartbreaking details about this sweet toddler gone missing, I could only hope that she would be found and reunited with her family. Once her body was discovered, I listened (along with most of America) to the evidence that was being discovered and reported by the press.

Having been an Assistant State Attorney, one of the most compelling pieces of evidence to me was Cindy Anthony’s 911 call describing the smell in her daughter’s car. In the recorded 911 call, a shrill and frightened Cindy Anthony exclaimed, “there’s been a dead body in the damn car!” From my perspective, I believed that evidence was going to be very important to the prosecution’s case, especially where there was minimal physical evidence to tie Casey Anthony to her daughter’s death.

Fast forward to Casey Anthony’s trial in 2011. When asked by the prosecutor about that 911 call and the statement about the smell of death, Cindy Anthony calmly told the jury that she did not literally think something dead had been in the car. Instead, Cindy Anthony testified that she used the phrase ‘smelled like something had died’ as a figure of speech. As often happens in criminal cases involving family members on trial, the witness begins backpedaling from a prior statement. And for most prosecutors listening to this testimony, as frustrating as a response like that may be, it is – unfortunately – all too frequent an occurrence in those cases where family members are involved in the litigation of a criminal case.

A prosecutor’s job is not an easy one. When families are involved, the emotions accompanying such relationships often complicate the already difficult job of trying to keep our community safe by proving a defendant’s criminal conduct beyond a reasonable doubt. Take, for example, a battery charge in a domestic violence setting. The typical scenario is one spouse hits the other, police are called, the aggressor is arrested, taken to jail, and then charged with battery. However, often a week or a month after a battery charge is filed by the State Attorney’s Office, the victim, having made up with the aggressor, comes to the prosecutor and indicates that he or she would no longer like to move forward with the charges. In those situations, the victim typically presents a new story of the incident in such a way so as to erase the culpability of the aggressor (e.g., “it was my fault, not hers because I hit her first;” or “he didn’t really hit me... I fell and got that welt on my face,” or “it was a misunderstanding.”). Sometimes the charges can still be readily prosecuted due to the existence of other evidence or a witness to establish the elements of the offense. However, cross-examining and impeaching your victim is far from an ideal way to present a case to a jury.

A similar situation occurs when parents and their children are on either sides of the law. Early in my career I was a prosecutor in the Juvenile Unit and we would often have cases where a child stole from his or her parents or committed some crime against the family. In many of those cases, the parents called police insisting that their child be arrested. Those same parents did not understand why the State Attorneys’ Office would later seek to prosecute the child for the alleged offenses after the parents changed their minds and indicated their preference that the charges be dropped. We would often hear “but he’s learned his lesson” or “I didn’t mean for it to go this far.”

Unfortunately, people don’t consider (especially in the heat of the moment) that if and when law enforcement is called to respond to a report of a crime, the case is now out of their hands and in the hands of the police and the State Attorney’s Office. It is not Husband vs. Wife in the charging document for the battery charge, nor is it Dad vs. Son for the theft pending in the juvenile court; it is the State of Florida vs. Wife and the State of Florida vs. Son. Therefore, it is the State Attorney’s decision whether to proceed and what the plea offer, if any, will be for such charges.

In some parts of the State Attorney’s Office, we reviewed the police reports to decide whether there was a reasonable likelihood of conviction. In the Sex Crimes and Child Abuse Unit in Broward, however, a live interview normally takes place with the victim to determine whether and what charges should be pursued. Unlike in family court where the guardian ad litem has the contact with the child, the A.S.A., sometimes with a guardian ad litem or victim advocate, interviews and has contact with the child.

These interviews serve a number of purposes. When I conducted them, not only did I evaluate the evidence to determine the appropriate charges, I also had to evaluate what evidence
would be available to prove the charges. For example, I had a case where a four-year-old boy gave statements regarding instances of sexual abuse and these statements had indicia of reliability (i.e., even at four years old, the child was able to describe ejaculation accurately). However, the child could not testify at trial because he was only four and could not tell the difference between the truth and a lie; he did not understand the importance of the oath to tell the truth, nor did he comprehend the implications of perjury. As much as we discussed the fact that Lightning McQueen was only “pretend,” this he could not be qualified as a witness and was not competent to testify in court. We had to rely on evidence other than his live testimony to support the charges. In that case, physical evidence of the abuse, a controlled call between the defendant and the victim’s mother where the defendant made some limited admissions, and the child’s statements to the interviewer at the Sexual Assault Treatment Center, which were deemed admissible under Fla. Stat. 90.803(23), allowed me to go forward with the charges. There were, of course, other situations where allegations simply could not or would not be prosecuted because of a lack of admissible evidence.

Many times, prosecutors encounter cases that appear valid on paper but we later learn that some underlying motive exists to report the crime. The relationship between the parties sometimes leaves doubt as to the truthfulness of the victim’s claims. Many family practitioners see this play out during divorce or child custody proceedings. One side thinks he or she will advance his cause and look better before the court if the other side “gets in trouble.” Assessing the validity of the child’s statements was another facet of the interview process with the child. Having a child admit to me that the only reason he was telling me that Daddy hit him was because Mommy told him to say that was, in some way, comparable to the physical abuse that many other child victims suffer. While I may have wished that I did not have to challenge a child’s veracity, my job as a prosecutor was to look for both evidence of guilt and exculpatory evidence.2

While the objective truth-seeking obligations of a prosecutor may be different than for those practicing in the private sector, it is still every lawyer’s responsibility to ensure that we exercise independent professional judgment and render candid advice to our clients.3 The courts—criminal courts in particular—should not be viewed as a tool to bolster other litigation. Hopefully, we can and will provide the right advice to our clients so that they understand and recognize that if they involve themselves and their family in the criminal justice system, there should be a legitimate basis for doing so, and that basis is to advance justice—not as a means to a self-serving end.

Stacey Schulman, a native Floridian, received her undergraduate degree from Cornell University in Ithaca, New York, and her law degree from the University of Miami School of Law. After graduating 1st in her law school class at UM, Stacey went to work as an Assistant State Attorney in the 17th Judicial Circuit. She gained extensive trial experience during her 9 years as a prosecutor in Broward, including 2 years as a Sex Crimes and Child Abuse Prosecutor. Stacey has spent almost 3 years doing civil work and she is currently a commercial litigator with Greenspoon Marder, P.A. in Fort Lauderdale.

Endnotes:
1. While a victim of a crime has a constitutional right “to be heard” as to the disposition of those charges under Article I, § 16(b) of the Florida Constitution, he or she only has the right to input, not the decision-making authority for the ultimate resolution. Therefore, many people need to be educated and/or cautioned about trying to use the police or the criminal courts as a tool for other pending matters between them.
2. See R. Regulating Fla. Bar 4-3.8 (“Special Responsibilities of a Prosecutor”).

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I'm a second year law student at Nova Southeastern University, Shepard Broad Law Center. This past summer I had the incredible opportunity to intern with one of the most respected family law judges in the 17th Judicial Circuit, Broward County: the Honorable Renee Goldenberg. As a law student, I spend a considerable amount of time reading casebooks, analyzing the law, solving hypothetical legal issues, conducting research, and experiencing law on a purely academic level. This judicial internship experience opened my eyes to what the practice of law and “lawyering” is truly about. The theoretical problems I analyzed and solved in the classroom now materialized into real people with real issues, and my classroom became the courtroom.

A Typical Day in the Courthouse

A typical day started with a morning of Motion Calendar, during which the judge would hear pretrial motions or other special legal requests made by lawyers. There were many motions to compel discovery. Observing Motion Calendar first-hand gave real meaning to my understanding of the procedural rules of discoverable information, as well as allowing me to gain insight into the factual development of a lawsuit. Motion Calendar, however, was frequently interrupted by emergency matters requiring immediate attention, such as Emergency Motions for Child Pick-up Orders. Some mornings also included a Domestic Violence Docket. When the judge paused an already busy morning of Motion Calendar to address the safety of a child or rule on a domestic violence issue, it emphasized to me the important role that a family law judge has in protecting children, adults, and in preserving the integrity of the family under the circumstances. As I observed the role of the lawyer unfold in this process, it further strengthened my desire to practice Family Law.

The judge’s afternoon often involved trial proceedings. During trial, I sat next to Judge Goldenberg, which enabled me to observe and analyze the proceedings from the same physical standpoint as the decision-maker. From the Judge’s side of the bench, I gained a better perspective on effective lawyering—thorough preparation, the importance of professionalism, confident presentations, as well as the significance of a lawyer’s role as counselor. These insights provided me with a deeper understanding of the justice system and all of the players involved.

Insight from the Judge’s Side of the Bench

Seeing what the judge sees, analyzing the lawyers’ legal arguments, observing witness testimony, and ultimately hearing the judge’s final decisions enriched my understanding of the court system and the importance of strong oral advocacy skills. Instead of passively reading opinions in a casebook, I now watched cases unfold before my eyes, assessed the strengths and weaknesses of each side’s legal arguments, and personally experienced the path of legal reasoning that led to the final judgment.

The traditional form of briefing a case in law school (I.R.A.C.) is certainly a valuable educational tool in learning black-letter law and the process of legal reasoning. However, there is no comparison to witnessing the components of a case come to life at trial. I observed many practice styles, seeing what is effective, what works in court, and what does not. A great deal of what I saw embodied professional legal standards outlined by the American Bar Association’s Model Rules of Professional Conduct. Particularly noteworthy were the rules pertaining to competence, diligence, and an attorney’s role as counselor and advocate.

I found that the most effective lawyers fulfilled all the elements outlined in the Model Rules of Professional Conduct’s Preamble & Scope:

As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client’s legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client’s legal affairs and reporting about them to the client or to others.
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Additionally, as an observer from the judge’s side of the bench, I learned that the following factors were key elements to effective lawyering:

**Preparation**

Obviously, preparation for trial is critical. Rule 1.1 of the *Model Rules of Professional Conduct* states that, “[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” But what constitutes reasonably necessary preparation for it to be competent representation? Undoubtedly, it includes researching the applicable law, analyzing the legal and factual elements of the case, drafting and filing appropriate court documents, and developing arguments to effectively represent the client’s position in court. What I noticed was that the attorney’s confidence during trial had a direct correlation to his or her level of preparedness.

Sadly, a lawyer’s lack of preparation was equally recognizable. It was apparent to me, and certainly to the judge, when a lawyer came into court without having done the proper research or was otherwise unprepared. I witnessed attorneys who stumbled through their presentations and rife through their exhibits, clearly demonstrating a lack of familiarity with their information and a lack of organization. Inadequate preparation harms the client’s case and may negatively impact future appearances before the bench. Similarly, a lawyer who takes on too many cases lacks the ability to give each client the adequate and thorough representation necessary and may give off the appearance of being unprepared at trial. It was my observation that the really good lawyers left the impression in the judge’s mind that he or she was totally and competently prepared and ready to represent the client in the best possible way on that day.

**Professionalism & Body Language**

An observable manifestation of a lawyer’s professionalism, or lack thereof, that I recognized as being powerful during trial was body language. No attorney is successful all the time, but an attorney should never allow disagreement, disappointment, or anger to work its way into body language, facial expressions, or tone. For instance, eye-rolling, shaking one’s head in disagreement, or waving a hand dismissively at opposing counsel exudes hostility and disrespect, and reflects poorly on professionalism.

Similarly, a lawyer’s attitude and tone in presenting arguments to the judge or addressing opposing counsel affects his credibility and professionalism. Attorneys come to court to argue to the judge—not to argue with the judge. I observed lawyers who kept arguing with the judge even after she rendered her ruling. After the judge rejects an argument on a particular issue multiple times, better to agree to disagree and move on to the next argument.

Body language and attitude were also good reflectors of the attorney’s confidence level. Attorneys who were less hostile to opposing counsel appeared more confident in their own arguments. By contrast, negative facial expressions gave the impression that the attorney had little else in his arsenal.

Finally, a good attorney recognizes that it is critical to prepare the client to maintain an appropriate demeanor in the courtroom. I readily observed parties’ emotions during trial. Trial is stressful and emotional. Their facial expressions and body language sometimes showed anger, disinterest, or frustration. Extraneous activities, however, like nail-picking, scribbling on paper, or dozing off clearly indicated whether that person was in court on a genuine pursuit of justice or not.

**Remember Your Role as Counselor**

A lawyer’s role as counselor is critical, especially in the area of family law. Rule 2.1 of the *Model Rules of Professional Conduct* provides:

[i]n representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors, that may be relevant to the client’s situation.

Through my observations and corresponding interactions with Judge Goldenberg, I’ve learned that a lawyer’s role as counselor in resolving sensitive family issues means avoiding trial, if at all possible. I observed the emotional turmoil of parties during family law trials, which substantiated Judge Goldenberg’s judicial philosophy that trial is a last resort. Attorneys should properly counsel their clients and assist them in working out disputes themselves or through alternate dispute resolution methods, where they ultimately will have greater input in the outcome, and avoid having a judge tell them what to do. An effective family lawyer should exhaust all possibilities in resolving the client’s issues before going to court. This point is well illustrated in Judge Goldenberg’s Florida Family Law and Practice book:

In addition to honing strong advocacy skills, this requires the family lawyer to focus on the ultimate goal of “making a deal” using all processes to empower the parties and the families through skills development, to assist them to resolve their own disputes rather than resort to the courts to make decisions for them, to provide access to appropriate services and offer a variety of dispute resolution forums where the parties and the family can resolve problems without additional emotional trauma in the process...

It was evident when the lawyer sought unrealistic goals not supported by any law, or his or her client was not given realistic expectations. Through this experience, I’ve learned that as a counselor advocating for the client’s best interest, it is important to provide the client with an informed understanding that litigation may not provide the results he or she will be happy with.
Do not repeat mistakes or errors

The practice of law is an ongoing learning experience requiring the continued refinement of skills. I observed lawyers repeating the same mistake in filing certain documents or motions, which the judge (outside the presence of the clients) previously pointed out to them. I was surprised to find that some lawyers still failed to learn or improve what had detrimentally impacted a client and/or case. It seems only intellectually reasonable that after the judge took her own time to help, that one would stop repeating the same errors. There is a reason it is called the ‘practice of law.’ What this experience has taught me is that professional growth requires a willingness to identify mistakes and a willingness to learn from them in order to develop into a better lawyer.

Honesty & Accuracy

Honesty and accuracy are also key characteristics of an effective lawyer. Lawyers should never assert a proposition as fact or law if they are not absolutely certain of its accuracy. Inaccuracy in presenting case law or facts appears dishonest and will detrimentally affect the lawyer’s credibility. Therefore, it is critical to strive for truthfulness and complete accuracy in court. It is also okay to say, “I don’t know” on occasion. Developing a reputation as an honest lawyer is fundamental in providing a client with the best representation possible. When a lawyer appears credible in the eyes of the judge, the legal arguments he or she presents become more impactful and worthy of acceptance by the judge.

I’ve learned so much from my Judicial Internship with Judge Renee Goldenberg. This article merely highlighted the insights I obtained from my personal observations during my summer with her. Judge Goldenberg does not limit this opportunity to just law students. She welcomes any lawyers—young or well-seasoned—into her courtroom to observe and gain insight into effective lawyering in order to enhance their professional development. I think Ben Franklin said it best, “Tell me and I forget, teach me and I may remember, involve me and I learn.”

Tova N. Verchow is currently a second-year law student at Nova Southeastern University Shepard Broad Law Center, and will be graduating in 2015. She is a Junior Associate of Nova Law Review, a Research Assistant for Professor Smith - Director of the Inter-American Center for Human Rights, and a Teaching Assistant for Professor Donoho’s Torts class. Tova is also a member of the Family Law Society and the Jewish Law Students Association at Nova Law School. Prior to law school, she graduated Summa Cum Laude from Ramapo College of New Jersey with a Bachelors Degree in Psychology and Teaching Certification.

Endnotes:
1 Model Rules of Prof Conduct Rules 1.1; 1.3; 2.1; 3.3 (ABA 2013).
2 Model Rules of Prof’l Conduct Preamble & Scope (ABA 2013).
3 Model Rules of Prof’l Conduct Rule 1.1 (ABA 2013).
4 Model Rules of Prof’l Conduct Rule 2.1 (ABA 2013).

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“Learning Today, Leading Tomorrow - Concept, Creed and Creation of the Inaugural Class of the Florida Bar’s Leadership Academy (Part 1 of 2)”

By Christopher W. Rumbold, Gladstone & Weissman, P.A., Boca Raton

For some people, Section affiliation, involvement and leadership is second nature. For others, it is learned. I squarely and unapologetically fall into the latter category. While I have practiced exclusively in the area of marital and family since 2005, my foray into Section Leadership is of relatively recent origin. Over the past two to three years, hard work, sycophantic tendencies (when it comes to requests to work on my time) and dedication catapulted me to various leadership positions. Notwithstanding terra firma in the Family Law Section, I was curious and excited about what opportunities existed outside of the Family Law arena and within the Florida Bar.

In early Spring of 2013, following Board of Governor approval, Florida Bar President Elect, Eugene Pettis’ announced the creation of the “Leadership Academy.” As per a myriad of articles and publications concerning the goals and mission of what would become the Wm. Reece Smith, Jr. Leadership Academy, President Pettis’ intention in its creation was to embrace diversity (ethnic, gender, age, sexual orientation, public/private, practice area, firm size and geographic location among other considerations) and instill or amplify in its members a strong ethic of professional and civic responsibility. Realizing the amazing opportunity and potential benefits of membership in the inaugural class of the Leadership Academy, I immediately applied – so too did more than a handful of others. Initially conceived, the Leadership Academy was anticipated to select forty Fellows, however after receiving 263 applications from across the State of Florida, it expanded to 59 inaugural Fellows. With most, if not all, of the two Divisions, 21 Sections and 67 Committees of the Florida Bar represented, the Family Law Section was proud to have several Fellows (yours truly, Aimee Gross and Brandon Arkin, Jennifer Ficarotta, Fritznie Jarbath, Barbara Leach and Antoinette Peck) among the selectees. The Leadership Academy’s inaugural class was divided into two regions: North and South. The Full Leadership Academy has four scheduled meetings during the year. The Southern and Northern Regions meet on their own, in addition to the full Academy meetings. The basic structure of the meetings combines small group interactive exercises, “meet and greets” and lectures – with both luminaries within the Florida Bar and the American Bar Association.

June 28-29, 2013 (Florida Bar Convention – Boca Raton):

It is an understatement to say that Renee Thompson, Leadership Academy Chair, and Arnell Bryant-Willis, Leadership Academy Manager, understand the importance of primacy and first impressions. While our schedule of events comprised only two very full one-half days, we observed the inner workings of the Florida Bar, met with past Florida Bar and American Bar Association Presidents, attended the President’s Reception, and interacted with other Fellows. First, Ms. Thompson provided an overview of the program followed by “class photos” taken by the Florida Bar official photographer. Next, Lucas D. Boyce, who was born into abject poverty but through hard work, education and a loving family became a member of President George Bush’s inner circle, provided the day’s motivation/inspiration – his book Living Proof is a must-read. Other lectures included the following topics and speakers: Lawyers as Leaders, presented by Stephen Zack (ABA President 2012, Florida Bar President 1989); Florida Bar History and Structure, presented by Maysanne Downs (Florida Bar President 2010); and Creating Opportunities as a Leader, presented by Ari Kaplan. The Grand Ballroom of the pink palace with its Mylanta-hued tower that is the Boca Raton Resort and Club provided the perfect backdrop for President Pettis’ fabulous Reception with drinks, hors devours, ice cream sundaes (gummi bears optional – I opted ) and conversing, cavorting and cajoling with fellows, Leadership Academy Committee members and Convention attendees. The following morning, we had breakfast with the Leaders of the Council of Sections and observed the meeting of Council of Sections. Finally, the opening event of the inaugural class closed with fellow introductions, individual DISC analyses, and an introduction to ourselves through the lens of DISC by Nora Riva Bergman, J.D. Succinctly
stated, my DISC style did not surprise my partner, co-workers, or me.

**July 19-20, 2013 (Fort Lauderdale):**

Leaders are more than placeholders, they improve and expand the organizations with which they are affiliated. With that in mind, so began our second meeting. We were introduced to the various Sections of the Bar in “Fla. Bar 101.” Next, Edith Osman (Florida Bar President 1999) spoke about achieving work/life balance. Jay Cohen and Laura Brown Burton (both on the Board of Governors) discussed motivation and delegation, and ADR Chair, Karen Evans and Sidney Calloway attempted to teach us how to deal with difficult people (present company excluded). The standout symposium of the series was a roundtable discussion moderated by Adele Stone (Past Board of Governors) that included His Honor, Elijah Williams (17th Judicial Circuit), Terrence Russell (Florida Bar President 2001), Senator William G. “Skip” Campbell (Board of Governors) and Miles McGrane (Florida Bar President 2003). This was a frank, fascinating discussion providing insight into and the wisdom of notable members of the Bench and Bar. Dinner that evening was a truly special event. On the sparkling waters of the intercoastal waterway, at a private “old Florida” home (replete with phosphorescent pink and white, floor to ceiling embossed Flamingo wallpaper in the bathroom), we drank, dined outside on white-clothed tables adjacent to the waterway, mingling with other Fellows and Leadership Academy Committee members. Gifts and transportation were generously provided by Juliet Roulhac (YLD President 2002) on behalf of Florida Power and Light.

After breakfast the following morning, we were treated to a workshop with Robyn Perlam (Core Strategies for Non-Profits, Inc.) a charismatic speaker who brought us out of our shells and managed to collectivize and synergize the entire group. Faced with the problems of the imagined town of "Strickland" we resolved the conflict between the town’s leaders and inhabitants and its homeless population by envisioning, creating, designing, outfitting, troubleshooting and marketing a homeless shelter, in-town, that would transition the lives of the homeless from “fractured to full.” This exercise would provide the springboard for our assignment at the September meeting.

**September 26-27, 2013 (Florida Bar Fall Meeting – Tampa Airport)**

The mission of this meeting was to brainstorm, conceptualize, and agree upon a public service program for this year’s Leadership Academy. Speakers included Gerry Riskin, presenting on leading in uncertain times, and Jacina Haston, presenting on mentoring, sponsoring and networking. Following the lectures, we broke into think-tank groups to select our public service/legal service program and agenda. (This will be addressed in a subsequent, follow up article.) Following our meeting, Fellows were treated to an evening at “Splitsville” for bowling (humiliating) and mixing (while ingesting fried gastronomic delights at an all-you-can-eat buffet.) While there had been other opportunities for networking at prior meetings, Splitsville presented a unique opportunity to connect Fellows from both Regions. With respect to President Pettis’ diversity initiative, I forged enduring as opposed to artificial, cellophane-like relationships with attorneys outside my practice area including, corporate attorneys, criminal defense attorneys (public and private), estate attorneys and in-house counsel. Thus far, in my practice, I have not encountered such a miscellany group of practitioners — these are contacts that will be mutually beneficial with respect to professional opportunities. Additionally, it should be noted, that these Fellows are not neophytes but strong, established leaders in their respective Sections. The following morning, we had the pleasure of an engaging, memorable and boisterous speaker – Wilhelmina Tribble. Ms. Tribble presented on cultural competence, which, as a transient, peripatetic state, we could all brush up on. Nora Riva Bergman, J.D., presented the continuation of her July presentation and Alexa Sherr Hartley rounded out the speakers with her 360 degree evaluation process. Ms. Hartley’s assignment was to have us ensure the completion of surveys by our employers, office managers, assistants, paralegals, etc., so that we could better visualize and realize ourselves (as leaders) by understanding how others perceive us.

As I pen this article, thus far the inaugural class of the Leadership Academy has surpassed my expectations. With a mix of anxiety and excitement, I look forward to the remaining three meetings before graduation. This has been, and promises to be, an unparalleled experience and opportunity. With the deepest of appreciation to its founder, chair, manager and support staff and the most sincere of endorsements to anyone considering applying for the 2014-2015 class, I say apply, apply, apply!!!

Christopher W. Rumbold practices exclusively marital and family law with the firm of Gladstone & Weissman, P.A. in Boca Raton. He presently serves the Family Law Section as a member of Executive Council and as vice-chair of the Legislative Committee. He is a Supreme Court Certified family law mediator and has been named in Super Lawyers 2011-2013.

**Endnote:**

1 DISC (which is an acronym standing for D – Dominance, I – Influence, S – Steadiness and C – Conscientiousness) is a personality inventory created by William Marston that is designed to assess the interplay between personality characteristics and an individual’s idiosyncratic leadership style.
Trial Tips from the Bench

By Randi Glick Boven, General Magistrate and, Annette J. Szorosy, General Magistrate, 17th Judicial Circuit Court, Broward County

It’s one simple premise, “Be Prepared.” Too often family lawyers believe they are prepared, but they are not. While the issues in family cases often overlap and are somewhat repetitive, you must also know the specific facts of your client’s case. And always be precise about pertinent statutes and case law.

So what does it mean to be prepared? It means that you prepare yourself and your client. Remember, your client (and perhaps witnesses) do not appear in court for a living. Accordingly, you must explain the process to them. While you know who goes first and why, does your client? Likewise, you know whether you will be in chambers or a courtroom, but did you explain that to your client?

Go over all the testimony with your client. If your client is only prepared to answer your questions, how will they be ready to answer questions from opposing counsel? On cross-examination, you cannot allow your client to fall into the “I don’t know/recall” syndrome or appear to have generalized amnesia on cross-examination, as it quickly becomes a credibility issue. So PREPARE them for all of their testimony and be sure they have all the documents they need with them at the hearing. Documentation that should be in presented to the Court that is left at home, in the car, or at the office will not assist the Court in making a ruling.

Don’t forget to advise your client that the Court is always watching them and their credibility is constantly at issue during the proceeding. For example, your client should not slump in the chair, chew gum, wear shorts or other inappropriate clothing, leave their phone on the table (especially if they feel a need to check it frequently), nor should they make faces, noises or gestures.

An equally important component of your preparation is to have a THEORY OF YOUR CLIENT’S CASE. Share your theory of the case with your client. Your client should agree with the theory so they can testify honestly and confidently at the hearing. As part of the theory, you and your client MUST know:

1. what is your burden of proof AND who has it (and does is switch if met)
2. what do you need to prove
3. why do you need to prove it
4. what evidence do you need to prove it
5. who do you need to prove it to
6. who do you need to prove it to (yes, that means the Court not the other party)

Remember, you need to prove your client’s case to the Court with competent substantial evidence. Merely mentioning an issue is not proof. Keep in mind that the elements of proof are not the same as the burden of proof. You must establish both.

Anytime you are hired for a case, particularly in an on-going matter, REVIEW THE COURT FILE(S)! Ask yourself whether you need to file an additional pleading or motion or amend your petition/motion, financial affidavit or any other document. You should know this before the hearing, not learn about it during the hearing. If you and your client are prepared, you will present your strongest case during which your client will be able to testify competently.

Use summaries (and file a Notice of Intent to Use Summaries). An attorney who uses properly noticed summaries is always prepared. Use summaries for everything. It makes your presentation more efficient and coherent. Preparing the summaries prepares you for your client’s case. Even if you don’t admit or otherwise use the summary during the hearing, you will be better prepared because you created it. Florida Rule of Evidence 90.956.

Here are a few other items for consideration:

1. Lawyers tend to forget to prove jurisdiction during trials. It should be the first issue presented.
2. If you are requesting attorney’s fees, you must be prepared to try the issue during your case in chief. Don’t expect an automatic reservation of the issue. Therefore, file and serve the fee affidavit prior to the hearing. If you are defending a request for fees, always question the other attorney’s affidavit, time or hourly rate. It is not disrespectful. You are an advocate for your client, so be prepared to address any request for attorney’s fees and costs.
3. Remember to establish the issues you want the Court to consider. Often, lawyers will successfully enter into evidence a financial affidavit or a year’s worth of bank statements, but will fail to question any witness about the critical issues contained in the evidence. Entering evidence, without questioning the witness about the evidence, will have little impact on the ruling in your case. Again, if you have voluminous bank statements to admit, prepare a summary and have your client or a witness testify about the summary to advise the Court as to the specific evidence you are bringing forth.
4. If you are stipulating or agreeing to a specific issue with another party, put it in writing before the hearing. Too many times oral stipulations are incomplete or not completely understood (and thus, not agreed upon) by both sides. Avoid this problem. Before the hearing draft a letter to opposing counsel setting forth the stipulation. Finding out
during the hearing that there is no stipulation can be fatal to your client’s case.

5. Request enough time (consider both sides of the case) to complete your hearing. It is unfair to your client and the Court to come back months later to finish their case. Prepare your case for the time you have reserved.

6. You should consider agreeing to enter into evidence certain exhibits at the beginning of the Trial if there is no legal objection. This does not mean the document should not be examined and cross examined, but that there is no need spend the time to have witness identify and examine each document prior to offering it for evidence. This procedure is especially time saving and useful if you have multiple versions of Financial Affidavits or several years of tax returns or bank statements.

7. EVERY CASE IS IMPORTANT TO SOMEONE. IF YOU ACCEPTED THE REPRESENTATION, MAKE IT IMPORTANT TO YOU.

Randi Glick Boven has been a General Magistrate in the Seventeenth Judicial Circuit since 2009 presiding over cases in the family and dependency divisions. Ms. Boven has been a member of The Florida Bar since 1987, and focused her private practice in the area of marital and family law. Ms. Boven has been certified by the Florida Supreme Court in the area of family and marital law since 1998 and has been a certified family mediator since 1992. Ms. Boven has lectured on dependency and trial advocacy for the Florida Bar Family Law Section and has been a frequent speaker at other events in Broward County.

Annette J. Szorosy has been a General Magistrate in the Seventeenth Judicial Circuit Court since October 2011, handling cases in the family and dependency divisions. Ms. Szorosy has been a member of The Florida Bar since 1993. Ms. Szorosy has had a diverse legal background including working as a Legal Aid attorney, Department of Revenue attorney and as a Staff Attorney for the Tenth Judicial Circuit Court, and a Senior Staff Attorney and Career Staff Attorney at the Second and Fourth District Court’s of Appeal and as a Staff Attorney in the circuit civil and appellate divisions in Broward County.
Redefinition of (the Modern) Family

By Christopher W. Rumbold, Gladstone & Weissman, P.A., Boca Raton

In Martin L. Haines, III’s 1990 Commentator Note titled “Redefinition of Family” he observed that children are raised by a host of potential caregivers (not just their biological parents or relatives) and that while courts are beginning to expand the definition and concept of family, legislation “is sorely in need of revision” as it fails to stay current and abreast of developments. As an example, he considered the clarification of grandparental visitation rights post-divorce in Florida. (Of course, following Von Eiff v. Azicri, 720 So.2d 510 (Fla. 1998) grandparents were legally relegated to a pre-1990 role, post-divorce, in the lives of Florida’s children notwithstanding the critical functions they often play.) He then queried whether our laws should be further extended, for instance, to provide parental rights to non-biological, non-adaptive persons. Finally, he challenged readers to consider their personal predilections on weighing “traditional concepts of family” against “stay[ing] on the cutting edge of societal movement and prepar[ing] to redefine family for the future.” Regardless of any one person’s position on these issues (whether morally, religiously or otherwise based), as a result of a vibrant society with dynamic transmutations of mores and values, the face and notion of “family” has evolved and continues to evolve with an ever quickening pace.

My sister and her wife are about to become parents twice over. First, my sister was artificially inseminated with sperm from a half-Black and half-Latino donor – she gave birth to a beautiful baby girl on January 5, 2014. (Given Oregon’s broad domestic partnership laws, the baby is presumptively deemed to be a child of my sister and her partner notwithstanding that they are of the same-sex or that my sister holds the genetic link to the baby.) Second, the couple is jointly adopting a half-Black and half-Native American child in the Oregon foster system. (Again, given Oregon’s broad domestic partnership laws, same-sex partners may jointly adopt and they are entitled to an expedited adoption procedure in respect to the adoption of their partner’s children.) Is my sister’s family structure an anomaly or is it an example of the redefinition of family?

There have been a myriad of changes over the past twenty years, largely within the arena of same-sex relationships, to the concept and possible composition of “family.” The Florida Supreme Court, in D.M.T. v. T. M. H., 2013 Fla. LEXIS 2422; 38 FLW S 812 (Nov.7, 2013), citing Lehr v. Robertson, 463 U.S. 248, 256 (1983), recently echoed an expansive definition of family and noted that, “The intangible fibers that connect parent and child have infinite variety. They are woven throughout the fabric of our society, providing it with strength, beauty, and flexibility. It is self-evident that they are sufficiently vital to merit constitutional protection in appropriate cases.” Certainly family is not simply just a biological or legal construct but, instead, it reflects the complex intersection of law, society, biology and technology, variants that do not often evolve concordantly.

Advances in reproductive and fer-
tility technologies have challenged traditional concepts of family and raised a host of legal issues. Until *Florida Department of Children and Families v. In re: Matter of Adoption of X.X.G. and N.R.G.*, 45 So.2d 3d 79 (Fla. 3rd DCA 2010) same-sex couples were statutorily prohibited from adopting in Florida. (*Fla. Stat.* §63.042 (3) has yet to be repealed – should we focus on repealing this antiquated statute?) As such, artificial insemination and surrogacy provided many same-sex couples (and individuals) the only opportunity to have children but, for the non-carrying, non-commissioning or non-genetic-material-providing party, no legal rights to the child. For instance, in *Wakeman v. Dixon*, 921 So.2d 669 (Fla. 1st DCA 2006), the court determined that it had no authority to enforce an agreement concerning the non-biological mother’s timesharing with the minor child in question. In *D.M.T.*, the Court provided both mothers with timesharing but each had a genetic or biological link to the child. Reiterating Mr. Haines query, should our laws be further extended with respect to parental rights in circumstances such as these? Must there be a biological or genetic nexus to create and guarantee parental rights or should the facts and circumstances of the case dictate the result?

Societal changes in the approval of same-sex relationships have also challenged traditional concepts of family. Traditional notions of family include a husband, wife, two children and a white picket fence – essentially the typecast Cleavers from “Leave it to Beaver.” Whether to extend marriage and the concomitant rights/responsibilities of marriage to same-sex couples may challenge our traditional notions of the institution of marriage itself. Presently sixteen states and the District of Columbia have recognized same-sex marriage and the federal government (*Rev. Rul. 2013-17*) has extended to legally married same-sex couples all marital federal benefits. Florida, contrarily, has a constitutional amendment (Art. 1, Sec. 27), a statute (*Fla. Stat.* 741.212 (2012)) and decisional law (*Wilson v. Ake*, 354 F. Supp.3d 1298 (M.D. Florida 2005) banning recognition of same-sex marriage. In denying legal legitimacy to the relationships of an entire class of citizenry, did Floridians simply opt for a traditional definition of marriage? Or, is this an example of what Mr. Haines observed as the failure of legislation to remain current? Either way, should we focus on seeking equality for all same-sex couples?

While approximately twenty years have passed since Mr. Haines penned his Note, the questions he raised remain relevant. The family, in its many forms, is the basic building block of society. The metamorphosis of one form of family to many forms is testament to the strength of the institution, its malleability and its longevity. Accordingly, some twenty years later, like Mr. Haines, I challenge Commentator readers to decide for themselves whether the notion of family should be static or dynamic and evolving.

Christopher W. Rumbold practices exclusively marital and family law with the firm of Gladstone & Weissman, P.A. in Boca Raton. He presently serves the Family Law Section as a member of Executive Council and as vice-chair of the Legislative Committee. He is a Supreme Court Certified family law mediator and has been named in Super Lawyers 2011-2013.
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