Friendly Passages

Supporting Equal Access to Law in Florida

March/April
2014

A Publication of The Friends of the Rupert J. Smith Law Library of St. Lucie County Florida

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Save The Date

Annual Law Day Reception
April 30, 2014

Sponsored by The Friends of the Rupert J. Smith Law Library

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March/April 2014
A Publication of The Friends of the Rupert J. Smith Law Library of St. Lucie County Florida

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Cryptoquote

QLC TMB WLLN MNN RGH DHLDNH ILJH LW RGH RUJH, MBS ILJH LW RGH DHLDNH MNN RGH RUJH, ECR QLC TMBBLR WLLN MNN RGH DHLDNH MNN RGH RUJH.

~MEVMGMJ NUBTLNB

For the impatient, e-mail your answer to: nora@rjslawlibrary.org for confirmation. For the patient, the decoded quote will appear in the next issue.

On The Cover

"*Cortez Village*" Oil on canvas *By Helen Mullins*
Gulfport Florida Artist Helen Mullins works in oil and acrylics. Her work is currently being exhibited at the Birds Eye View Gallery.

Officers of the Friends of the Rupert J. Smith Law Library of St. Lucie County

James T. Walker, President
Nora Everlove, Secretary
Kim Cunzo, Chair, Art Contest
Jeff Rollins, Chair, Essay Contest

On Behalf of the Publisher

By James T. Walker
President, Friends of the
Rupert J. Smith Law Library

Teach me, Lord, the way of your decrees,
that I may follow it to the end.
Give me understanding so that I may
keep your law and obey it with all my heart.
■ *Psalm 119, vv. 33-34*

Justice Oliver Wendell Holmes, Jr. once said, "It is perfectly proper to regard and study the law simply as a great anthropological document." Perhaps he might have had in mind a field of social science known as Legal Anthropology, defined as the study of, "…the relationship between legal processes and other aspects of social, cultural, economic and political life as well as the meanings and implications of legal practices on their terms." Tobias Kelly, "Legal Anthropology", Oxford Bibliography. A student of such discipline will recognize that not all laws governing life are those found in dry tomes of state and federal statutes. One of those laws is known as the Law of Attraction. Thomas Dreier explained it this way: "The world is a great mirror. It reflects back to you what you are. If you are loving, if you are friendly, if you are helpful, the world will prove to be loving and friendly and helpful in return. The world is what you are."

Application of the Law of Attraction causes us to conclude that if we want an effective system of justice, one that works efficiently, people should be treated in a way that reflects back on what is sought. We should want people to have access to it. We would want them to know what the rules are, and to understand those rules. We would want these things for everyone, the rich, the poor, and the in-between. That greater public awareness thus engendered permits realization of the great ideal honored in the Federal and Florida Constitutions, of which Justice Lewis Powell said, "Equal justice under law is not merely a caption on the façade of the Supreme Court Building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists… it is fundamental that justice should be the same, in substance and availability, without regard to economic status."

Education is the means toward that ends, and libraries are how it can be accomplished.

Let there be no question about the power of libraries. In 2001, severe famine swept through the small Malawian village of Wimbe where fourteen year old William Kamkwamba lived. When his family could no longer afford to pay the fees required for attendance at high school, he was forced to drop out. Young Mr. Kamkwamba resolved to continue forward with his education by borrowing books from a local community library located nearby. One of those books was a discarded 5th grade American text, *Using Energy***.** Inside the book he found the picture of a windmill, something Kamkwamba had never seen before. Under the picture, in broken English, was this caption: "windmills generate electricity and pump water." He decided then and there to build a windmill to power the family's house. Without supervision or help, under the deeply suspicious eyes of the villagers, he assembled scrap parts including a broken bicycle, tractor fan, melted plastic pipes and scavenged wiring, and proceeded to build a working windmill that provided power for the family. Indeed, he built a whole series of windmills. His efforts came to the attention of authorities and the ensuing recognition eventually led to his admission to Dartmouth College, located in Hanover, New Hampshire, in 2010 ,where he will be graduating this spring. All that, from one used textbook found in the local library.

Inspiring. But I submit that the equivalent happens every day, in our own county law libraries. Maybe not so dramatically. The most numerous users are lay members of the public, people who can't afford to pay an expensive lawyer to learn what they need to know for their own personal and business lives. Unfortunately, there are a lot of these people. In 2011, the US Bureau of the Census ("Income, Poverty, and Health Insurance Coverage in the United States")reported that 17% of the population here in Florida lives below the poverty line, 3,173,456 individuals, up from 16.5% in 2010. In the law library they'll find a sample motion to craft something for court. They'll read a pro se manual that simplifies procedure and law so they can understand. With the law librarian's help, they'll find a statute, rule, form or judicial opinion. Instead of building windmills, they build cases, they build their lives with knowledge found in the law library.

The legal profession recognizes the importance of assisting in processes of this kind. A Comment to Rule 4-6.1 (Pro Bono Public Services), of The Florida Bar's Rules of Professional Conduct states: "As our society has become one in which rights and responsibilities are increasingly defined in legal terms, access to legal service has become of critical importance. This is true for all people, be they rich, poor or of moderate means. However, because the legal problems of the poor often involves areas of basic need, their inability to obtain legal services can have dire consequences. …Pro bono legal service to the poor need not be provided only through legal services to individuals; it can also be provided through legal services to charitable, religious, or educational

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On Behalf of the Publisher

organizations whose overall mission and activities are designed predominantly to help the poor." The Rule itself calls upon lawyers, to (1) "render pro bono legal services to the poor and (2) participate, to the extent possible, in other pro bono service activities that directly relate to the legal needs of the poor."

By providing tools such as law libraries to increase the public's legal awareness, we build on our system of justice. The American Bar Association's Division of Public Understanding states, "Public understanding of the law promotes access to the legal system for all people to pursue justice through the legal process." An Indian judge, P.N. Bhagwati, said, "Without legal literacy people can get intimidated and alienated from law. This may evolve into a situation which results in people coming into conflict with law, or being unable to obtain help from law. Courts have acknowledged the barrier raised by lack of literacy, to asserting guaranteed rights effectively. Low literacy may block people's access to justice."

At the end of the day, Alexander Solzhenitsyn reminds us, "Justice is conscience, not a personal conscience but the conscience of the whole of humanity." The quality of that conscience reflects back on who we are and what we're willing to put into it. Law libraries are an important element of that. Thank you for your support. /JimW

CELEBRATION OF LAW DAY

The Trustees and Friends of the Rupert J. Smith Law Library, in association with the St. Lucie County School Board, and the St. Lucie Bar Association are celebrating this year's Law Day on Wednesday, April 30, at 5 o'clock p.m., in the Jury Assembly Room of the Courthouse in downtown Fort Pierce, on Second Street. This year's ABA theme for the event is "American Democracy and the Rule of Law: Why Every Vote Matters". It is open to the public and all are warmly invited to attend.

Judge Burton Conner, District Court Judge for the Fourth District, will formally open proceedings with the Pledge of Allegiance, commenting suitably on the significance of the ceremony. He will be followed by Circuit Court Judge Charles Schwab, incoming Trustee and Chair of the library's Board of Trustees, who will deliver the Key Note Address.

There will be two notable honorees, each recognized for their contributions within the Treasure Coast area to the Rule of Law, Theresa Garbarino and Diamond Litty, Esq. Theresa Garbarino is presently the Executive Director for CASTLE, an agency dedicated to preventing child abuse on the Treasure Coast and Okeechobee County since 1981. see www.castletc.org. Diamond Litty, also Public Defender for the 19th Judicial Circuit, is the founder and President of Life Builders of the Treasure Coast. See www.lifebuilderstc.com. That's a non-profit organization dedicated to helping individuals progressing through the criminal justice system or dependency court to transition to normal lives, away from the criminal justice system.

An Art Contest, Chaired by Kim Cunzo, Esq. and an Essay Contest, Chaired by Jeff Rollins, Esq., and open to students at all public and private schools within St. Lucie County, will be concluded with presentation of awards by Genelle Yost, Superintendent for the St. Lucie County School Board. She will be introduced by Michael Lannon, former Superintendant. Genelle Yost will additionally be offering remarks on the importance of law to young Americans. The winning essay will be read in closing by its author.

Come To The Next Friend's Meeting

Please come join your Friends at the next meeting at the Rupert J. Smith Law Library. Please check the website for the date and time or call the library 772-462-2370

WHY ARE COURTS SO SLOW?

By The Hon. F. Shields McManus, Circuit Judge

Recently, a trial lawyer asked me why it takes so long to get a trial date. It is a common complaint of lawyers. Just imagine what their clients think. The answer is not simple. Of course, it would help to have more judges and more courtrooms.[1] That would also require more judicial assistants, deputy court clerks, bailiffs, assistant prosecutors, assistant public defenders, social workers, investigators, and on and on. Legislators and County Commissioners, who have to raise taxes to pay for all of that, complain that the courtrooms are too empty. The Judges would respond that they set aside time for trials, but cases settle at the last minute or are continued.

Everybody involved could contribute to a solution and many do make the effort. Lawyers, clients, and unrepresented litigants can contribute to a more efficient use of court time by being prepared. This means cooperating with each other to exchange information promptly and completely, scheduling depositions and hearings sooner rather than later, and making the effort to avoid cancelling them. There are impediments to such a simple solution. For example, the client needs to pay the lawyer. A lawyer will work on the case most likely to contribute income to the current month's bills. Lawyers, who worry about their own bills, need to resist taking on more work than they can handle.. Some lawyers and litigants will deliberately delay for tactical reasons. Sometimes, human emotions prevent cooperative behavior. Of course, some lawyers and litigants are just procrastinators. People tend to put off working on difficult matters.

A solution for the lawyer, is to avoid unnecessary hearings on motions by negotiating on those motions and objections Busy people tend to put this off until the morning of the hearing. I am compelled to mention once again, that money is a powerful motivator. I have observed that lawyers working on a contingent fee are less likely to seek hearings than lawyers working on an hourly fee. I wonder how lawyers would behave if the fee arrangement contained an incentive to finish the case by a deadline, like public construction contracts.

Judges, being all too human, can be procrastinators too. Putting that aside, the Court can be made more efficient. Cases tend to be drawn out by waiting for hearings on procedural motions that must be resolved before the case is able to progress. A solution is that Judges could schedule hearings on motions more quickly. For two decades, the 19th Judicial Circuit has had a civil rule for a "Uniform Motion Calendar." Brief, non-evidentiary hearings can be set within a few days. This has worked well and all civil and family law judges schedule such hearing time weekly. Consult the judge's web page for details: http://www.circuit19.org/judicial.html.

Longer evidentiary hearings also need to be scheduled sooner rather than later. Judges try to set aside some time every month for these, but these time slots fill up quickly. Moreover, when Court time is available, the lawyers' calendars are sometimes full, so a hearing will be set a month or two later. Just as with trials, these preliminary matters often settle shortly before the scheduled hearing time. So while people are clamoring for hearing time, the courtroom sits empty.

One solution to these last-minute settlements is to do what airlines do – overbook. As we all understand, this causes inconvenience. It is a daily preoccupation of judges and judicial assistants to guess how many matters can be set to balance the docket. If there are too many cases scheduled on the same day, lawyers, litigants, witnesses, and courtroom personnel are inconvenienced, yet setting too few on the docket, results in losing the opportunity to progress the matters..

The largest challenge to efficient use of Court time is the trial or final hearing. These frequently require several hours to several weeks of courtroom time. Because they are a substantial undertaking, they require a major investment of time and money by clients and lawyers. If a jury is to be empaneled, the Clerk of Court also must plan ahead. Many witnesses and jurors are asked to put their lives on hold to come to Court.

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WHY ARE COURTS SO SLOW?

Faced with the prospect of disrupting m any persons' lives, judges struggle to manage the trial docket. It would be possible to set several matters for trial and whichever did not cancel would go to trial. But this creates great uncertainty for litigants, witnesses, and lawyers, and increases their expenses and lost time from work. For example, expert witnesses - especially physicians - will require payment for cancelling work time, even if the trial is postponed. Some judges attempt to set a limited number of cases for a week of trial thus providing some backup, but not needlessly keeping too many people on standby.

Traditionally, judges have used the "docket call," also known as the "calendar call," as a means of managing cases and scheduling trials. At the docket call, lawyers are asked the status of their cases, and may be scheduled for trial either on a certain date or within a certain period of time. If the case is too far down the list, it may be rolled over to the next docket call. If it is not ready for trial, it may be struck from the docket. By law, some categories of persons or cases are favored and are entitled to go to the head of the line. The docket call enables the court flexibility of only reserving time for a case shortly before the trial date. However, it creates more uncertainty for litigants and attorneys because they do not know when trial will be set until docket call.

In an effort to reduce last-minute cancellations, a backed-up docket, and an idle courtroom, judges may employ extensive pre-trial case management. This includes mandatory mediation, case management conferences, and pretrial orders. The goal is to thoroughly complete disclosure, conclude expert depositions, and explore settlement negotiations before reserving a time for trial. A case which is diligently prepared is more likely to settle before trial. Using the hearing date as the first time to realistically evaluate the case engenders motions to continue or rushed last-minute settlements.

I have been able to eliminate docket call time by using case management orders. After a brief meeting with the lawyers and parties, where the issues to be tried and the preparation necessary is discussed, I prepare a pretrial order setting forth the issues, with deadlines for the discovery yet to be done, and a date by which a joint pre-trial statement must be filed by the parties. Cases are set for a specific trial date when the parties have completed the requirements of this pretrial order.

Using the case management conference and following up on deadlines set forth in the case management order can help move cases to conclusion. A judge can improve case disposition time by being proactive in case management. This requires attention to case management at every opportunity: at motion hearings, docket call or case management hearings, upon requests for scheduling and by monitoring the case file.

Increased staff for the judge could also improve case management and help resolve cases sooner. Currently in our circuit, case managers are only available for pro-se domestic relation cases, foreclosure cases, and some other matters. The case manager reviews case files, prepares orders directing the parties to file necessary pleadings and schedules hearings. This helps facilitate cases towards conclusion.

The Florida Supreme Court has established trial court time standards in the Florida Rules of Judicial Administration, Rule 2.250(a) (1). For example, most criminal felony cases are to be completed in 180 days; most civil jury cases in 18 months, and non-jury cases (bench trials) in 12 months; most contested domestic relations cases in 180 days and uncontested cases in 90 days. It is apparent that many cases are not completed within these time frames. Therefore, the cooperation of all persons involved in the judicial system is necessary for a case to be completed within these time standards.

(Endnotes)
1 One source has reported that there are 10.81 judges/100,000 people in the U.S. Ramseyer and Rasmusen, *Comparative Litigation Rates*, (John M. Olin Center for Law, Economics, and Business, Harvard Law School, 2010). Florida has 922 circuit and county judges for 18,718,000 people as of 2010. That is 4.9 trial court judges per 100,000 people. The 19th Judicial Circuit of Florida (Indian River, Martin, Okeechobee, and St. Lucie Counties) has 19 circuit judges and 10 county judges. The 19th Judicial Circuit case filings for fiscal year 2012-2013 totaled 92,106. That is 3,176 cases per judge. Circuit court civil filings were 9,423 for 5 judges, i.e., 1,885 per judge. Family and juvenile court filings were 9,764 for 7 judges, i.e., 1,395 per judge. Criminal felony filings were 5,656 for 6 judges, i.e., 942 per judge. *2012-2013 Annual Report,* Florida Supreme Court. (The total of case filings may not count the many old cases which are reopened for new motions and further hearings after the final judgment.)

Judge F. Shields McManus is a Nineteenth Judicial Circuit Court Judge appointed in 2007 and elected in 2010. Since then he has been assigned to many divisions and has a broad judicial experience. Judge McManus is a graduate of FSU and FSU College of Law. He is active in the legal community and has sat on several boards and served as president. Additionally, Judge McManus is active in educational, charitable and civic organizations in Stuart and Martin Counties.

AN OVERVIEW OF DIVERSION COURTS

Part One of Three

By Diamond Litty, Public Defender, 19th Judicial Circuit

As Public Defender of the 19th Judicial Circuit for over 21 years, I have had the privilege and honor to perform my constitutionally mandated duties of representing those accused of crimes who cannot afford to hire a private attorney. However, as important and gratifying as this has been, I also have been fortunate to be involved in extraordinarily successful courts and programs that truly change lives and increase public safety. With that being said, I would like to talk in the first of a 3-part series about Drug and Mental Health Courts. I hope readers will be as proud and excited about these courts as I am as they really "make this world a better place." Before reading on, however, I would like to give praise to all those involved in the 19th Judicial Circuit's special programs and courts, particularly in St. Lucie County. Without the unique coordination and collaboration we have in this Circuit none of this could have materialized. **By working together and making a difference…**

Diversion Courts are distinguishing their missions of reducing recidivism by delivering treatment and rehabilitation programs as an alternative to incarceration. Mental Health Court and Drug Court are two of the diversion courts within the 19th Judicial Circuit that integrate judicial supervision, treatment and client accountability, coupled with sanctions that increase treatment effectiveness.

Drug Courts had their initial beginnings in Florida in 1989. After gaining support from both the Governor and the Legislature, a mandate to establish a treatment based Drug Court program in each circuit of Florida was enacted by the Florida Legislature in 2001.
Drug Courts provide clients with a program that is designed to treat individuals with a substance abuse habit. All four counties in the 19th Judicial Circuit - St. Lucie, Indian River, Martin, and Okeechobee - have a Drug Court schedule for both adults and juveniles. A Drug Court Team administers the 52 week program and monitors clients' progression. The Team is made up of a Drug Court Judge, a representative from the Public Defenders and State Attorneys offices, the Department of Children and Families (for juvenile court), a community provider, and an independent Substance Abuse Specialist to evaluate clients for recommended treatment and placement. Adults in need of further treatment enter into a transitional housing setting. In this environment, individuals have the freedom to seek employment, and work, while receiving additional counseling treatment and support.

In 2013, there were 199 graduates from Adult Drug Court and 124 from Juvenile Drug Court from the 19th Circuit with an overall success rate of 73%. This rate is comparable to national data collected two years following participation in a Drug Court program.

By having an out-of-jail program to treat those whose substance abuse may have led to criminal behavior, jail costs are reduced between two to four million dollars, depending upon the number of months individuals are incarcerated.

Beginning in 2013, individuals with no means to pay for Drug Court may apply for a Drug Court Scholarship. The applicant's Drug Court history and financial situation are screened to ensure the potential for client success. Currently, funding for these scholarships is made available from LifeBuilders of the Treasure Coast, Inc. LifeBuilders is a non-profit corporation, which provides financial assistance to individuals involved in the criminal justice system when no community or family resources are available. Two scholarships are given in each of the four counties within the 19th Judicial Circuit.

The Public Defender's Office became increasingly aware that individuals diagnosed with a mental illness needed more than just courtroom representation. Repetitive criminal behavior among offenders diagnosed with a mental illness pose problems for the offender, their attorney, the court system, and the community. Recurring arrests among this population contributed to over-crowding in both the jail and the court system. At the same time, the continuing criminal behavior among these individuals had no chance of changing without professional intervention. To address this situation, the Public Defender's office spear-headed the formation of a Mental Health Committee, with representatives from the Judiciary, Department of Children and Families, Mental Health and Substance Abuse community providers, and law enforcement. In 2008, a "Criminal Justice Mental Health and Substance Abuse Re-investment Grant" was awarded to establish a Mental Health Court in St. Lucie County. The three-year grant of $688,756 was matched by St. Lucie County. A Mental Health Court Team constructed Mental Health Court to serve as a treatment program and a conduit to community treatment programs, with the following Mission Statement:

"By delivering a mental health system, dedicated to providing out-of-jail treatment, improving the overall quality of life, and promoting independent living to individuals in the criminal justice system, the Mental Health Committee seeks to make a positive impact on the safety and well-being for all citizens in the St. Lucie County community."

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AN OVERVIEW OF DIVERSION COURTS

Since the St. Lucie County Mental Health Court was successful in reducing recidivism and rehabilitating clients, and the need existed, Mental Health Court has been established in Martin County.

Mental Health Court serves non-violent misdemeanor and felony clients. Early identification at arrest, or early booking, allows for release from jail into Mental Health Court and community treatment programs. The Mental Health Court Team delivers a continuous therapeutic setting, focusing on improving the overall quality of life, and promoting independent living for individuals whose criminal conduct is rooted in mental health conditions. By doing so, between 86% and 91% of the Mental Health Court clients are leading a crime-free life and are working toward re-establishing a satisfying way of life.

These positive results carry over to a cost-benefit for St. Lucie County, by reducing jail overcrowding and the cost of housing, along with treating a mentally ill individual. Five hundred thirty-one clients graduated from Mental Health Court in 2013. Had they been incarcerated, the total cost for a 90 day stay, at $125.00 per person per day would have been over five million dollars.

In 2009, the Public Defender's office Mental Health Advocacy Team received the Prudential-Davis Productivity Award for "improving offenders overall quality of life for those whose criminal conduct is rooted in mental health conditions." These awards have been developed and managed by the Florida Tax Watch and the Florida Council of 100 since 1989.

In ending, I urge anyone interested in seeing the true "magic" of these courts, to attend a Mental Health or Drug Court graduation. It will make you a believer as well.

Diamond Litty has been the Public Defender since 1992. Prior to her election she had a criminal defense practice and was with the State Attorney's office also in the 19th circuit. A native Floridian, raised in Fort Pierce, she is married to the Honorable Thomas Walsh and has one son, Blaze. She formed with others LifeBuilders of the Treasure Coast, a 501(c)(3) which is designed to help those who been touched by the criminal or dependency courts in the area.

Poet's Corner

Hats *By Paul Nucci*

Hats are different when you're born
Keep out the cold, keep in the warm
Of colors there are only two
One is pink, the other blue

Hats are different when you're older
As you learn you grow much bolder
Cowboys, knights, and soldiers too
There isn't much that you can't do

My father's hats were big for me
And everybody laughed to see
As years went by all realized
That we would never share a size

Hats are different when you're grown
Before you've reaped the seeds you've sown
Some were tall and made of paper
Some were tasseled but that came later

Most of my hats didn't cost much money
Many were plain and some were funny
I never wore a dunce cap or a crown
But at least I've worn a cap and gown

I almost wore a hat of steel
It passed me by with the draft's repeal
I guess it wasn't in the cards
Some other hats were just as hard

Some hats proclaimed me a fan with passion
Wearing them backwards is now the fashion
I don't talk through my hat
I think we have too much of that

My favorite hats were not really seen
Those of the husband and father I have been
They fit me well but I must say
They thinned my hair and turned it gray

Sometimes I've gone with hat in hand
While others sat, I had to stand
I've thrown my hat into the ring
And met the challenges that can bring

I bought hats that looked good on others
It sometimes took me years to recover
My hat today is more a cap
I can pull it low when I want a nap

Hats are different when you're old
Keep out the heat, keep out the cold
No longer needed to tell your story
That's mostly now just faded glory

My old man hat fits me the best
But I still remember all the rest
I do not know what lies in store
But I know I won't wear many more

New Year, New Revised Limited Liability Company Act

By David Steinfeld

Midnight December 31, 2013, the ball dropped, fireworks went off, and people rejoiced. Why were they so happy? Because that moment in time marked the end of Florida's Limited Liability Company Act and sounded the opening bell for the Revised LLC Act for companies formed after January 1, 2014.

If you own or manage an LLC that existed before January 1, 2014, you can breathe a sigh of relief because you aren't affected, but you will be. January 1, 2015 is when the new law applies to you, whether you like it or not.

So, you just formed an LLC in Florida and have a great business idea that is going to make a lot of profit in 2014. What are some of the big changes that will impact your new LLC and what are you supposed to do? Probably the biggest one that affects you is the management; the Revised Act serves as a default or fallback in the event you don't have an operating agreement. So let's assume you haven't gotten with me yet to prepare that document and you have a partner or a few investors. Under the new Act, they will now be deemed more than just silent investors, they are members with many, many rights that you might not have intended they have. These members can also sell and transfer their interest under the new Act, meaning you may have new "partners" that you didn't intend and don't want as partners. What can you do about it if you don't have a proper operating agreement prepared by a skilled and qualified business lawyer . . . nothing. The new default is member managed. If you want to have the business run by a manager or managers, that has to be in your operating agreement. No operating agreement, no controlling manager.

Also, the business has to keep certain records and the members have rights to see them. Thus, by saving money not getting an operating agreement, you cost the company more in responding to requests for records or even lawsuits for records that you didn't think the "silent investors" should get, not realizing they are full-fledged members.

Arguably, not having proper documents like an operating agreement or contracts, may even be a breach of a manager's fiduciary responsibilities to the company.

The cost of having the Law Office of David Steinfeld prepare these documents, for example, is negligible as compared to the cost of lawsuits for mismanagement by members for not having them. The new law also highlights a "safe harbor" that allows business owners to protect and insulate themselves from liability in most cases, by obtaining opinion letters from professionals such as lawyers and CPAs. What's the cost of these letters?- Much less than not getting them, that is for certain.

Business owners put a lot of time, energy, and money into their business to build and grow it. It only makes sense to protect it with proper internal documents, like operating agreements, and documents for external use, such as contracts, non-disclosure agreements, and non-compete agreements. Failing to invest in protecting your business can literally bring down the whole house of cards.

If you are a single-member LLC, if someone gets a judgment against you, the owner, they can literally take away your ownership and they own the company and all its assets. Does that make you a more attractive target? How can your business afford to defend an expensive lawsuit, even if you did nothing wrong? All good questions to ask yourself when looking forward to 2014 and realizing now is the time to have the Law Office of David Steinfeld or any other Board Certified expert in business litigation law sit down with you, review your documents, and advise

David Steinfeld, Esq. is Board Certified in Business Litigation Law by the Florida Bar. He practices in Palm Beach Gardens and is rated AV-Preeminent by Martindale-Hubbell. His videos and articles on business litigation, e-discovery, and commercial law can be accessed at and he can be easily reached through www.davidsteinfeld.com.

Last Issue's Cryptoquote Answer

OMKW, QKCFR RDCR E BCS COYCSH WPHEKP BMKP RDCF E CUUMBTOEHD. - BEUDPOCFQPOM

LORD, GRANT THAT I MAY ALWAYS DESIRE MORE THAN I ACCOMPLISH. - MICHELANGELO

The Arts and the Law

LOST ART

By Paul Nucci

"Heard melodies are sweet, but those unheard
Are sweeter; therefore, ye soft pipes, play on."
John Keats – "Ode on a Grecian Urn" 1819

This month, a new movie will be released called "*The Monuments Men*". It tells the story of a group of soldiers who were assigned the task of entering war-torn Europe at the close of World War II to find, protect, and return looted artwork to its rightful owners. This plot seems particularly relevant in light of a story that has recently received tremendous attention in the world press.

The recent discovery of over 1400 pieces of artwork in a Munich apartment has set off a wave of articles ranging from accusations of incompetency to a cover up by German government officials. Almost all of the articles prominently mention works by Picasso and Matisse as among the works found. Most sources quote a dollar figure of over 1.4 Billion dollars as the value of the trove. This bizarre case began when a routine customs check found an elderly individual travelling with 9000 Euros which, while under the legal limit, triggered a tax fraud investigation that led two years later to the discovery of the artwork. (Note to self, travel with less cash).

Details of this case abound elsewhere and are not really the point of this article. The legal issues and historical injustices are interesting and deserve to be the subject of a future article. Rather, I want to explore some of the ways artwork gets lost and why lost art is so fascinating to us. Let's be clear. We're talking about collectable art: art with an established market value. That painting in your attic by your great uncle may be important to you, but it is not what we're talking about here (unless your great Uncle was Winslow Homer.)

Why does lost art fascinate us so? Is it the mystery or the glamour surrounding such famous and valuable objects? The popularity of television programs like "*Antiques Roadshow*" attest to our love of finding treasure in our attic. Many films and television programs have been based on lost art. That we love the idea of lost treasure found is no surprise. We are naturally inclined to idealize missing works of art as somehow greater than those we have. Lost art combines our love of mystery, love of lost treasure, and the celebrity of the artist into a fascinating subject with universal appeal.

Let's begin with a look at some of the more common ways that art gets lost.

MAJOR CAUSES OF LOST ART

ART THEFT

In 1911, The Mona Lisa was stolen from the Louvre by a handyman. Though popular, The Mona Lisa did not then enjoy the enormous appeal it has today. Its theft changed all that. For months after the theft, crowds stood in line to see WHERE THE PAINTING HAD HUNG! The thief, Vincenzo Peruggia, was caught two years later when he tried to sell it to the curator of the Uffizzi in Florence. He claimed he took the painting to return it to its rightful home, Italy. He received a sentence of seven months for the crime which seems light by any measure.

A bold daytime art heist in Boston's Isabel Gardener Museum in 1998 remains unsolved. Thieves dressed as security guards made off with several paintings including a Rembrandt and a Vermeer. In the place where the paintings hung are small reproductions and a narrative about the theft. It is one of the most popular exhibits in the museum.

The Scream, by Norwegian artist Edvard Munch has been the target of so many repeated thefts and attempted thefts that the satire newspaper *The Onion* characterized the periods when the painting was missing as a vacation and showed the distressed iconic figure as rested and smiling. (see photo)

"The Scream" before and after its "vacation"

NATURAL DISASTERS

Theft is the most sensational way in which art is lost, but it is nowhere near as common as fires, floods, and other natural disasters. An earthquake in Assisi, Italy in 1997 resulted in the destruction of frescoes by the thirteenth century artist Cimabue. A fire in Norman Rockwell's studio in 1942 destroyed thirty paintings. Fortunately he had delivered "The Freedom of Religion" just days earlier and one of his finest works escaped destruction. Look at any natural disaster and you'll find a back story of art destroyed.

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LOST ART

TERRORISM AND CIVIL UNREST

Terrorism has become a major reason for art being lost. The attack on the twin towers of the World Trade Center resulted in the loss of million dollars' worth of art from corporate and private collections. The Oklahoma City bombing that destroyed the Murrah Federal Building destroyed both public and private art collections. The civil unrest that is so common in the world often destroys the antiquities and artwork of a culture. Those objects that are prized by the current authorities are often attacked as symbolic of the hated present regime and its ideals.

CHANGING VALUES AND CENSORSHIP

Changing values in society often prompt the destruction of art that is contrary to current thinking. Nazi ideology condemned artwork Hitler (a frustrated artist) believed to be degenerate. The only approved artwork was that which affirmed Nazi ideals. This condemnation may actually have been the source of the Munich find mentioned at the beginning of this article. Most of the pieces are believed to have been works pulled from museums as degenerate and sold on the world market to bring hard currency to Germany. Similarly the Soviet Union, the Chinese, and other totalitarian regimes have tried to control the artist for political aims. In a less severe instance, Michelangelo's "*The Last Judgment*" was altered by the church. The many human figures in the painting were given strategic loincloths and other additions to eliminate the offending nudity.

A religious revolt in Florence in 1460 resulted in the reign of the fanatical clergyman Savonarola. Bonfires of anything deemed to be a vanity (the Bonfire of the Vanities) were common with art being a particular favorite. Florence, at the beginning of the Renaissance quickly tired of the message of Savonarola and he himself was burned at the stake soon after.

Savonarola and the Bonfire of the Vanities

NEGLECT AND POOR RESTORATION METHODS

Neglect probably accounts for a large part of art that gets lost. Inferior materials used in the past or ignorance of methods of care may find an artwork in such poor condition that it is simply thrown away. That dark and dirty canvas that was found in your grandparent's home….it just may be an original by an old master.

Virtually every restoration project begins with a condemnation of previous attempts at conservation.

DESTRUCTION BY THE ARTIST

Destruction of artwork by the artist is more common than you would think. An artist often finds his or her early work to be inferior and destroys it in frustration or to preserve their reputation. Sometimes the mental or financial state of artists results in destruction of their work. Monet cut up his canvases rather than have them seized by creditors. Cezanne burnt his canvases in a fit of despair over his choice of career. Religious fervor caused Botticelli to destroy his works in the aforementioned Bonfire of the Vanities in Florence.

WAR

These various ways in which art is lost all pale before War. Losses from actual military action are only part of the story. The mass exodus of refugees and displaced people result in art hastily hidden or left behind, art sold for pennies by desperate people, and art looted by invading armies.

Even in areas not directly attacked there is an effect, as I can personally attest. My father was an artist. In the ten years before World War II he painted over 1000 original oils. He did so without thought of fame or fortune. When the war broke out he was called for the draft. Because he failed the physical he fulfilled his obligation by working in the defense industry. He cleared out his Boston garret and put all of his paintings and materials into storage. Upon reporting for work, he was asked if he had any special talents. He said he was a painter. They promptly gave him a spray gun and 10,000 gallons of gray paint and told him to paint the battleship *USS Massachusetts*. I have often wondered how things would have been different if he answered "artist", instead of painter. At war's end he went to retrieve his art only to find the storage facility had gone out of business. All of his paintings were gone. Despite many attempts to locate them, only a few have ever surfaced. He never painted again.

YET ONE MORE WAY

Sadly, there is another way art is lost. It is never found in the first place. Some of the most beautiful artwork

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LOST ART

will never be seen, the most beautiful music never heard, because it was not deemed commercially viable to publish. Commercial pressures make it impossible to produce more than a small percentage of works. Only those "bankable" artists, composers, and writers will ever see their work distributed to a wide audience. Van Gogh never sold a painting during his lifetime. If his brother Theo had not been an art dealer it is doubtful his work would have survived at all. Hundreds if not thousands of Schubert's compositions were used as wrapping paper for fish sold at a market. His last major work, the *Quintet in C Major*, completed just two months before his death, lay unperformed and unpublished for over twenty five years.

It is a charming notion that talent will find its way through the clutter and be discovered. It is just not so. Every song we hear, every book we read, every movie we see, is made because it is judged to be the best investment: that it will find the widest audience. That judgment is being made by ever younger people; people who have the pulse of a young audience. Artistic merit may be a factor but it is not the most important. This of course is nothing new, but as our attention span shrinks fewer complex artworks find wide distribution. On the bright side the digital revolution has made it possible to be exposed to art that is self-published or distributed in nontraditional ways that could hardly be imagined thirty years ago. For the first time in history, it is possible for large numbers of people to see art that isn't filtered by what someone thinks is safe for us to see or is presented only for maximum profit.

How and where we look at art is changing. Museums with galleries containing paintings by the old masters are popular but not always for the reasons you'd think. A recent CNN special on the Louvre illustrates my point. There was video of visitors racing past four paintings by Leonardo Da Vinci in one gallery without ever looking up, to get to another gallery where the *Mona Lisa* is exhibited. A huge crowd formed a semi-circle around the painting. I have been to the Louvre.. I have seen the *Mona Lisa*. And I don't get it. Similarly at Michelangelo's *David* in Florence, tourists do some appalling things. It's almost as if art was a scavenger hunt. Our twittering consciousness is pushing us to get a picture with or in front of a subject rather than actually looking at it.

Joshua Bell is a virtuoso violinist. Not long ago, in an experiment to show how we react to art out of context, he dressed in casual clothes and set up with his (Stradivarius) violin at a Washington D.C. subway stop and began to play masterpieces by Bach and Mozart among others. In the three-quarters of an hour that he played, seven people stopped what they were doing to hang around and take in the performance, at least for a minute. Twenty-seven gave money, most of them on the run -- for a total of $32 and change. That leaves the 1,070 people who hurried by, oblivious, many only three feet away, few even turning to look. If it had been obvious who was playing, I can imagine the situation would have been very different.

Joshua Bell in the Subway

I am certainly sympathetic to victims of forced sales and outright theft of their artwork: perhaps more than most. But in the story now being told in the news and on film about lost artwork, we should not lose sight of the art which we let escape us through distraction and inattention.

A strong argument could be made that we never see our greatest works of art, never hear our most beautiful music, never read our greatest literature. Those treasures never overcome commercial barriers or they don't survive the wars, poverty, theft or neglect. Those who can create derive their reward from the act of creation itself and few ever have any idea of the impact their work will have. Thankfully for us all, they labor on. Let's keep our eyes and ears open.

For an interesting list go to Wikipedia and search for "Lost Artworks."

Paul Nucci is a musician and an artist and occasional contributor of articles about the arts and the Law.

Save The Date

Annual Law Day Reception
April 30, 2014

Sponsored by The Friends of the Rupert J. Smith Law Library

Update From Your Local Legal Aid Office - Florida Rural Legal Services, Inc.

By Carolyn Fabrizio

"I am only one; but still I am one. I cannot do everything, but still I can do something; I will not refuse to do the something I can do." Helen Keller

Florida Rural Legal Services, Inc. (FRLS) is a non-profit law firm. FRLS provides free civil legal assistance to indigent, elderly, and disabled people in thirteen counties throughout South Central Florida. FRLS also provides assistance to eligible migrant workers under strict federal guidelines. FRLS' Fort Pierce office is the only civil legal aid office servicing the four counties which make up the 19th Judicial Circuit.

The Fort Pierce FRLS office currently has 4 full time staff attorneys and one managing attorney. To assist our most vulnerable residents, FRLS establishes levels of priorities for the types of cases we handle. For cases that fall outside of our set priorities, or are over and above our current resources, we look to local private attorney volunteers to take cases *pro bono*. Without the generosity of private attorneys willing to take *pro bono* cases through FRLS, we would not be able to meet the demand.

We are still seeing a high volume of foreclosure matters and anticipate this continuing for the foreseeable future. Another high volume area is tenant rights. Tenants seeking assistance with eviction defense, sub-standard housing, lockouts, utility shut-offs and housing discrimination, account for a high percentage of our emergency calls. The number of requests for family law assistance exceeds our current resources. Private family law attorneys generously partner with us to take pro bono cases. However, the need is still greater than our resources. Consumer Debt and Bankruptcy assistance are also high volume areas. However, we have been able to meet the need for consumer collection and bankruptcy assistance through FRLS' staff and our private attorney volunteers. We receive calls from many of the most vulnerable residents in our circuit, including the elderly and disabled. We provide services in many other civil legal areas as well such as labor and employment, education, civil rights, public benefits and elder law. FRLS is prohibited from assisting with criminal matters.

In 2009, the Florida Supreme Court Standing Committee on Pro Bono launched the "ONE" campaign. One Client. One Attorney. One Promise. Through the ONE campaign, attorneys are encouraged to renew the promise made while taking the oath of admission to the Florida Bar, *"I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed"*. Attorneys are encouraged to take one pro bono case through an organized legal aid program such as FRLS. As of January 1, 2014 there are 98,217 attorneys licensed to practice law in Florida. "*Imagine the impact we could make if every attorney in the state of Florida helped one pro bono client." www.onepromiseflorida.org*

FRLS staff attorneys and volunteer attorneys also provide outreach services at many locations throughout the Circuit. If you are aware of a location or community that may benefit from a FRLS staff attorney or private attorney volunteer, please contact Carolyn Fabrizio, PAI Coordinator at carolyn.fabrizio@frls.org. If you are aware of a local resident who may qualify for free legal services, please have the client call our Fort Pierce office at (772) 466-4766 or (888) 582-3410. Our client screenings are completed via telephone. Once a client is screened for services and found to be eligible, the client will be scheduled to meet with a staff attorney or placed in the 19th Circuit Pro Bono Project for placement with a *pro bono* attorney.

For more information about FRLS or to volunteer to partner with us as a *pro bono* attorney, please contact Carolyn at carolyn.fabrizio@frls.org or go to www.frls.org

Carolyn Fabrizio received a Juris Doctorate from Suffolk University Law School and a Bachelor of Science in Business Administration from Stonehill College. Carolyn Fabrizio has been the Private Attorney Involvement Coordinator for the 19th Judicial Circuit through FRLS since 2009

2014 CLE CALENDAR AT THE RUPERT J. SMITH LAW LIBRARY

Medicaid Reform: current status of rollout and important issues by Mike Fowler on Friday, April 4

Re-thinking Basic Estate Planning in Light of Recent Tax Law Changes by Bruce Abernathy on Friday, May 16

Preparing Both Yourself and the Client for Mediation by Ed Sikorski on Friday June 6

Handling and Management of Discovery Disputes by Harold Melville on Friday, October 31

Motion Practice in the Fourth District: Before and After the Opinion is Released by Mark Miller on Friday, November 14

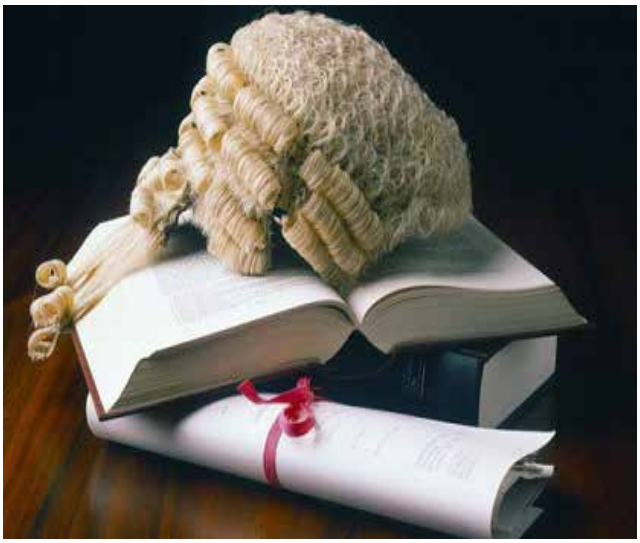
Each program offers 1 hour of CLE credit.
All meetings are at noon in the large conference room of the law library at 221 South Indian River Drive in downtown Fort Pierce. More details will follow. Reservations can be made by calling the library at 772-462-2370.

We hope to see you there!

England's Legal System Part I: Lawyers

By Richard Wires

Anyone who reads fiction or sees films and television programs from England, is aware of the differences between its legal system and ours. Some of the differences, for example, is the wearing of robes and wigs, which convey a special atmosphere. Less apparent and understood, are substantive differences in attorneys' roles and in the administration of justice. This overview will look at some basic features of the country's legal system in two parts - starting with the lawyers, their options and training, and some current issues. The second part focuses on the structure and functions of various courts since recent changes. The patterns and structures discussed here are not British because they apply only to England and Wales, and not to Scotland or Northern Ireland, where history has produced very different legal systems.



Recent decades have seen Parliament pass a series of acts, labeled as reforms, dealing with the English legal professions and courts. Among them are laws such as the Courts and Legal Services Act of 1990 and the Access to Justice Act of 1999, designed to meet modern social concerns. From the number (not sure what he meant by "number") and titles of such legislation it would be reasonable to believe that a major transformation has taken place in the system. Yet, the weight of tradition has meant that the new laws represent adjustments rather than a broad or fundamental change. In particular, it has proven difficult to change the roles of the legal professionals.

To understand the country's legal system, we must begin with the fact that there are two essentially distinct legal professions - the solicitors and the barristers, whose separate roles evolved during the nineteenth century and who now resist any official attempts to alter traditions. Barristers are solely courtroom advocates, appearing in major civil and criminal cases, while solicitors perform many tasks, including advocacy in the lower courts. While a similar division often occurs by choice in America, the demarcation in England is considerably more rigid because it has been institutionalized. The professions have different training patterns, professional organizations and vested interests in their positions. Looking at how professionals are trained and what each group does is a good introduction to the system.

Historically, a prospective lawyer learned through an apprenticeship with an experienced attorney. The apprenticeship would include the study of famous cases and writings, and "reading law," which is still the common term to describe legal education. While law studies at universities developed early, the approach stressed academic aspects of law, leaving mundane matters to training with practitioners. Legal education now combines formal studies and working experience. A person with a university degree takes a one-year course to prepare for the Common Professional examination (or so-called Graduate Diploma in Law) which covers both basic knowledge in the main fields of law and essentials skills, such as writing. This course, and others to be mentioned, is offered by private firms and all have high costs. However, those whose undergraduate studies lead to a recognized Qualifying Law Degree (a "major" so to speak) are permitted to bypass the course and examination. From this juncture, the training of solicitors and barristers follows very different tracks. Each group has a professional organization that sets the standards.

The training path for solicitors is governed by the Law Society and starts with a yearlong Legal Practice Course designed to extend subject knowledge and develop drafting skills. Advocacy also now receives a greater emphasis. Next, is a two year training contract with a firm that students are wise to arrange well in advance. A minimum salary set by the Law Society is paid to the trainee solicitors. Upon completing this requirement, the person applies for admission to the Roll of Solicitors and obtains a Practicing Certificate which is maintained by showing further professional development each year. Around 150,000 people are now qualified to practice; only about 115,000 hold a current practicing certificate. Nearly half of those are women. The great majority of solicitors work in small partnerships, only four or fewer, and generally they maintain a single place of business. Much of their business involves land conveyancing, estate planning and appearances in the lower courts. Of course, many solicitors prefer to work for government offices or large businesses rather than practice.

More familiar to the public are barristers because of their depiction in courtroom dramas. There are almost 14,000 currently in practice, with more women than men now qualifying, and with most barristers based in London. From there they often travel to appear in other courts. The barristers' professional organization is the General Council of the Bar, called the Bar Council by most, and prospective candidates' training is overseen by its Bar Standards Board.

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England's Legal System Part I: Lawyers

Preparation for the file is complicated. Trainees must first take and complete the Bar Professional Training Course but only two-thirds of applicants are accepted. They also have to join one of the four Inns of Court in London: Inner Temple, Middle Temple, Gray's Inn, or Lincoln's Inn. Then they must dine with their chosen group twelve times. The original idea was for the trainees to learn by mixing with senior barristers, but the occasions now center more on lectures and seminars. After finishing the course, they are "called to the Bar" but must still do practical training. There are two six-month periods of "pupilage" ("doing the sixes") where they work closely with a barrister. During the second period they may do limited paid work. Reformers are proposing that pupilage be completed before a person is called to the Bar. The entire education process would then be a pre-requisite for admission. A final challenge is finding a "tenancy" of a position with some group.

Barristers are usually self-employed but share the expenses of an office or "chambers" where one is chosen head of chambers, while a clerk manages actual business. Solicitors bring clients seeking a barrister for courtroom work to the clerk who determines an appropriate initial fee and assigns the case to a barrister. Barristers receive cases in rotation according to a roster, taking the case that comes upon his or her turn, known as the "cab rank" system, providing the levels of skills and competence are suitable. Important cases go to experienced seniors. The solicitor then "briefs" the chosen barrister. Obviously, the clerk's position and power are exceptional. Young barristers learn quickly about personal politics in the chambers and that maintaining good relations with the clerk is essential in building a career. A recurring criticism of the procedure to hire a courtroom advocate has been that the client must pay both a solicitor and a barrister. Under a recent reform, a person may now contact a chambers or barrister directly to arrange for courtroom help.

One special designation is often confusing to foreigners. Certain barristers, and now some solicitors as well, may be identified as Queen's Counsel (QC) or King's Counsel (KC) depending on the gender of the currently reigning monarch. The coveted designation carries great prestige and is awarded to senior barristers, usually with ten or more years of experience, based upon an annual invitation to apply and a rigorous assessment process. Those chosen are familiarly known as "silks" and their elevation is called "taking silk." Selections were once made by an official, the Lord Chancellor, but are now decided by a panel. There are currently about 1000 QCs of whom only 100 or so are women. A complex case is often handled by a QC to lend the legal team more impressive weight. The QC then serves as the "leader." Any other barrister present to assist the leader is called a "junior" regardless of age or perhaps even greater special experience. Becoming a QC is frequently a first step in appointment to the upper English judiciary.

A long familiar feature of English courtrooms is being set aside. While the wearing of gowns and wigs is no longer required, and has now largely disappeared from the civil courts, the practice remains more evident in the trial of criminal cases. One reason often cited is that the attire helps impress the proceedings' seriousness upon the defendants and their families and friends who may be present. Ultimately, each judge determines what is considered proper attire, however, and the prosecutors and barristers know the court's preference.

One of the continuous concerns is the increasingly high cost of entering the field. Obtaining a legal education is clearly both challenging and expensive. Not everyone seeking such a career is accepted for training. With limited capacity in the required courses, some applicants are rejected, and those enrolled do not always pass. There are further substantial difficulties in finding an experienced professional as a mentor. The financial burden is enormous. Fees for each of the law courses conducted by private providers runs $20,000 or more and students must also cover their living expenses during their studies. Financial assistance in the form of grants is available but limited. Nor are the prescribed salaries while trainees are obtaining their practical experience really enough to meet their routine expenses. Both the extended time and cost of a legal education has kept the fields dominated by those with a comfortable middle-class background.

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England's Legal System Part I: Lawyers

Despite the high cost of education, the number of people in the legal professions has grown quickly in recent years. Figures cited by the current practitioners do not convey such rapid growth. But rosters show that the total number of solicitors and barristers has tripled since 1970; the number of solicitors has doubled and of barristers more than doubled since just 1990. There is also more diversity in both groups' members. Women have been entering the legal fields in large numbers but their presence in the upper echelons remains limited. Statistics for ethnic and religious minorities are not readily available. But their numbers too have increased. Nevertheless there are frequent calls for the legal professions to become more reflective of the country's now diverse society.

Another development is the impact of European integration on Britain's legal systems and its current politics. By an act of Parliament, Britain belatedly joined the European Union on 1 January, 1973. The separate European Convention on Human Rights was incorporated into British law when Parliament passed the Human Rights Act of 1998 to take effect in 2000. As a treatise, such commitments have precedence over any law of Parliament that may be incompatible or in conflict with the treaties' provisions. With respect to the European Union, organization's regulations and directives as well as the interpretations of its Court of Justice are binding. Individuals are now also able to bring legal actions in British courts alleging violation of some guarantee under the human rights convention. Many people dislike such restrictions on the country's sovereignty. Major friction has arisen concerning fishing quotas, immigration, and a number of similar issues. But for practicing and prospective lawyers the situation means they must be prepared to deal with non-traditional concepts of law and with an expanding body of legislation.

The increased number of lawyers and their growing competition have also modified old notions of professionalism. One example is apparent. Advertising of legal services, until quite recently, was universally considered to be improper. Now cable television networks carry a few advertisements of the type long familiar to Americans, but in formats still relatively dignified in both approach and the style of delivery. The aim of the message is to find people who believe they have been victims of accidents caused by someone else. Many legal professionals and ordinary viewers find the advertisements distasteful, however, and worry about further development and frequency of the practice.

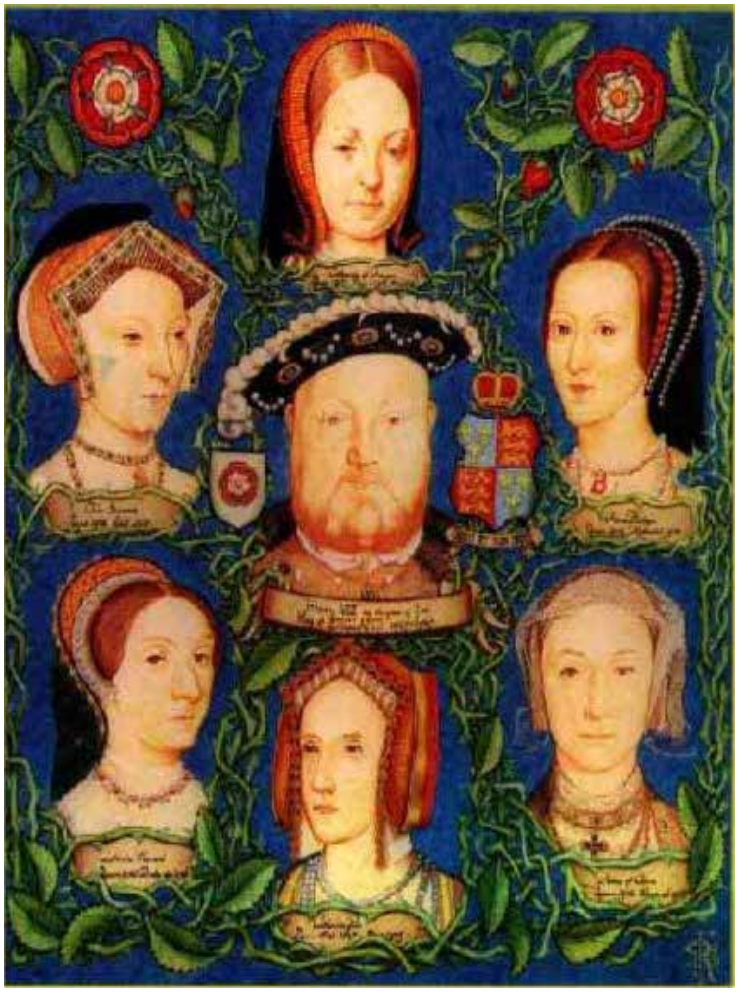
In the second part of this overview the courts will be the focus. Recent laws have altered the judicial structure and affected the names of certain courts. Innovative methods have also transformed the handling of civil disputes and greatly reduced actual litigation. And unlike our system, the lowest courts rely on lay justices who are not lawyers.

Richard Wires holds a doctorate in European History and a law degree. He served in the Counter Intelligence Corps in Germany and is Professor Emeritus of History at Ball State University, where he chaired the department and later became Executive Director of the University's London Centre. His research interests include both early spy fiction and actual intelligence operations. His books include "The Cicero Spy Affair: German Access to British Secrets in World War II. "

The Unlucky Wives of Henry VIII

By Katie Everlove-Stone

Most people know that Henry VIII, King of England from 1509-1547, was married six times. Most people also know that, marriage to Henry VIII was a risky business! Two of his wives were beheaded, and two were divorced. One died following child birth, and the last one was the "lone survivor." Some of his wives are more widely known than others, but each of his wives had something special worth knowing, so below is a brief biography of each of Henry VIII's wives in order of their marriage to the king. Many details have been left out to keep this article to a manageable length. If you are interested in learning more, numerous books exist on this subject.



Catherine of Aragon

Catherine of Aragon was Henry VIII's first wife. She was the youngest daughter of King Ferdinand II of Aragon and Queen Isabella I of Castille, and came to England to marry Henry's older brother Arthur. They were married for five months before Arthur died. Catherine maintained that the marriage was never consummated, and eight years after Arthur died, Catherine married Henry. Although she had six pregnancies during their marriage, Catherine bore just one surviving daughter, Mary Tudor, who later became known as Bloody Mary for her persecution and burning of "heretic" Protestants.

Catherine was a devout Catholic and a devoted wife. She turned a blind eye to Henry's escapades with young ladies in the court and is said to have carried herself with a great deal of dignity. As Queen, she was popular among the people.

In the mid-1520's, Henry became infatuated with Anne Boleyn, a lady in waiting to Catherine, and decided to seek an annulment of his marriage to Catherine. Catherine refused to go quietly and argued as best she could to maintain the marriage. After several years of making their cases to the Pope and his delegates, Henry sent Catherine to The More Castle in 1531 or 1532. She was not allowed to have any contact with her daughter Mary during this time. She died in 1536 in near isolation, still maintaining that she was Henry's true and rightful wife and Queen of England.

The importance of Henry's divorce from Catherine can't be understated. The Pope refused to grant Henry an annulment, and as a result Henry took religious control over his country away from the Pope and kept it for himself. This act opened the doors for the development of the Protestant religion in England. Many decades of turmoil followed, but the end result was that England became a predominantly Protestant country.

Anne Boleyn

Anne Boleyn was born in 1501 to Thomas Boleyn, 1st Earl of Wiltshire, and Lady Elizabeth Howard. Anne spent her teenage years at the French Court serving as a maid of honor to Claude of France. She returned to England in 1522. Her sister Mary was a mistress of Henry's, but their relationship fizzled pretty quickly. Seeing this, Anne showed remarkable intelligence and set herself apart from the other ladies at court by refusing to be seduced by Henry when he showed an interest in her. Henry began actively pursuing Anne in 1526 and for the next seven years, Henry worked on obtaining his annulment from Catherine.

During those years, Anne was made the Marquess of Pembroke which came with it much land and prestige. Anne's family was also lavished with titles, land and honors. Anne and Henry were finally married in 1533, and Anne gave birth to a daughter, Elizabeth, on September 7, 1533. Elizabeth would go on to reign over England for decades in what is generally regarded as a golden age for

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The Unlucky Wives of Henry VIII

the country. Elizabeth's birth was not so well regarded by her father Henry, who was hoping for a son.

Anne struggled to maintain a pregnancy following Elizabeth's birth, with a stillbirth or miscarriage in 1534 and another miscarriage in January, 1536. By this time, Henry was courting Jane Seymour, who was a polar opposite of Anne personality-wise. Anne was hot-tempered and opinionated. Jane was easy-going and demure. The 1536 miscarriage was really the beginning of the end of Henry's marriage to Anne. Henry was desperate to have a legitimate son (in 1519, his mistress Elizabeth Blount bore him a son named Henry FitzRoy, but he died in 1536).

In April and May, 1536, seven men were arrested and each charged with having sexual relationships with Queen Anne. Among the men were Mark Smeaton, a court musician, Sir Thomas Wyatt, a poet who had a friendship with Anne before she met Henry, and George Boleyn, Anne's own brother. Two of the seven men were later released and acquitted of all charges, but the remaining five were executed. Anne herself was arrested on May 2, 1536 for adultery, incest and high treason, and imprisoned in the Tower of London. Anne's trial took place on May 15, 1536, and her own uncle sat in judgment. Anne was beheaded on May 19, 1536, still maintaining her innocence. It is widely believed that the charges against Anne were trumped up by her enemies in the court. Only Mark Smeaton ever admitted to having a relationship with Anne, and it is generally believed that he only admitted after being tortured.

Jane Seymour

Jane Seymour served as a lady in waiting to both Catherine of Aragon and Anne Boleyn. Henry and Jane were engaged on May 20, 1536, the day after Anne's execution, and were married ten days later. Jane was sympathetic to the late Catherine of Aragon's cause, and worked to restore Henry's relationship with his daughter Mary Tudor. This made her popular among the people of England.

Jane became pregnant in early 1537, and her son Edward was born on October 12, 1537. Jane died twelve days after Edward's birth. Edward later became Edward IV and reigned as king from January 28, 1547 (age 9) until his death on July 6, 1553 (age 15).

Jane was the only wife to receive a Queen's funeral, and Henry's remains are buried next to hers at his request. Although they were only married for a year and a half, Henry's devotion to Jane following her death was clear. Many historians believe that his affections for Jane were amplified by the fact that she was the only wife who bore him a living son.

Anne of Cleves

Following Jane's death, Henry was persuaded to seek a foreign bride. Given the split from Rome, it was prudent to seek an alliance with a country that could reinforce England's position. Anne was the sister of the Duke of Cleves, and a portrait was made of her and sent to Henry. Several courtiers made reports to Henry about Anne's personality and physical features, and after seeing her portrait, he agreed to the union.

The couple met on New Year's Day, 1540 and apparently it did not go well. Henry left the meeting feeling like he had been deceived about her appearance. Despite his lack of enthusiasm, Henry and Anne married on January 6, 1540. By July, 1540, Henry was resolved to annul this marriage, and being much smarter than he initially gave her credit for, Anne immediately agreed to the annulment. In exchange, Anne received houses and a generous income. She was a welcome presence at court and later came to be regarded as the king's sister. She maintained friendships with all of the king's children. Despite her lack of education, Anne of Cleves showed a prudence, intelligence and kindness that King Henry surely did not deserve in a wife! She died in 1557 at the age of 41, probably of cancer, and is buried at Westminster Abbey.

Catherine Howard

Catherine Howard served as a lady in waiting to Anne of Cleves (do you see a pattern here?). She had a reputation of being vivacious and silly. She spent most of her childhood at the home of her aunt, the Dowager Duchess of Norfolk. She had at least two relationships with men also living at the Dowager Duchess' house and had entered into a secret precontract to marry Francis Dereham, a secretary to the Dowager Duchess.

Catherine's uncle, the Duke of Norfolk, secured her a position at court as a lady in waiting to Anne of Cleves and she quickly caught the king's attention. Henry lavished her with jewels and attention, and they married on July 28, 1540. Henry was 49 and Catherine was 17. Soon after marrying Henry, Catherine began an affair with a courtier named Thomas Culpeper and it was not long before other members of the court found out about her affair. She also employed Francis Dereham as her secretary and it quickly came to light that she had previously been in a relationship with him.

Culpeper and Dereham were both executed on December 10, 1541. Catherine was beheaded on February 13, 1542 after a Bill of Attainder passed Parliament making it treason for a queen to fail to disclose her sexual history within 20 days of being married to the king.

It's hard not to feel some sympathy for Catherine Howard. She was a teenage girl married to a very old

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Florida Bar CLE Programs At The Law Library

The Rupert J. Smith Law Library of St. Lucie County will lend CLE disks to all Florida Bar Members. Please call us or email us if you would like to borrow one of our programs. If you are at a distance, we will mail them to you. You are responsible for mailing them back after having them a week. If you keep them longer, the overdue fine is $1 per day. Only one program at a time, please. We want to fulfill as many requests as soon as possible. We hope you are able to take advantage of this opportunity.

Recorded CLE Programs - Sorted by Expiration Date

Course #	Title	Expiration Date	General Hours	Ethics Hours
1484C	Nuts and Bolts of Workers' Comp Appeals	4/15/2014	1.5	0
1431C	Annual Ethics Update: Ethics Technology & Trust Accounting	4/18/2014	5	5
1525C	Basic Bankruptcy, Collections and Foreclosures	4/19/2014	8	1
1475C	2012 Case Law Update: Stay Up to Date and Learn About Recent Developments and Notable Decisions in Family Law That Will Impact Your Practice	4/24/2014	2.5	0
1434C	Bankruptcy Law & Practice: View From the Bench 2012	5/8/2014	4.5	0
1560C	Deposing the Expert Witness	6/11/2014	2	0
1444C	Sunshine Law, Public Records & Ethics	8/8/2014	9	6
1510C	Probate Law 2013	8/21/2014	7.5	1
1494C	Masters of DUI 2013	8/22/2014	8	1.5
1557C	Till Divorce Do Us Part...The New Beneficiary Designation Legislation	8/26/2014	1	1
1495C	Topics in Evidence 2013	9/15/2014	7.5	2
1529C	Basic Criminal Practice	10/26/2014	7	2
1741C	Survey of Florida Law	10/30/2014	6	0
1459C	36th Annual Local Government in Florida	11/10/2014	12	2
1501C	Hot Topics In Appellate Practice 2013	11/17/2014	8	1
1482C	Beyond Ch. 61: Interrelated Laws Every Divorce Lawyer Should Know	12/5/2014	7	0
1094C	Building a Business in a Down Economy	12/26/2014	2.5	1
1503C	Florida Law Update 2013	12/27/2014	8	1
1535	Developing a Business Plan for the Start-up Law Firm	1/26/2015	1.5	1
1612	Keeping Up With Changing Times: Same-Sex Issues and Beyond in Your Family Law Practice	2/7/2015	3.5	0
1617	ELULS Annual Update	2/8/2015	19.5	8
1660C	The Tangled Web of Ethics-Advertising Websites & Social Media	3/11/2015	2.5	2.5
1632	Practice Before DOAH: Judge Cohen's Opus	4/4/2015	7	1

Recorded CLE Programs - Sorted by Expiration Date

Course #	Title	Expiration Date	General Hours	Ethics Hours
1625	How NOT to Get Beaten Up in Domestic Violence Court	4/9/2015	8	1
1640	Current Development in Estate Planning Techniques	4/18/2015	8	1
1728	2013 Case Law Update: Stay Up to Date and …	4/23/2015	2.5	0.5
1623	Annual Ethics Update 2013	4/23/2015	4	4
1749	Get Ready for the LL "Sea" Change - Navigating the New Florida Revised LLC Act	4/24/2015	7.5	0
1633	39th Public Employment Labor Relations Forum	4/24/2015	11.5	2.5
1637	Bankruptcy Law & Practice: View From the Bench 2013	5/7/2015	4.5	0
1639	Agricultural Law Update	5/22/2015	5	1
1672	Probate Law Essential Issues and Development	6/6/2015	8	1
1540	Electronic Discovery in Florida State Court Navigating New Rules for New Issues	7/25/2015	3	1

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The Unlucky Wives of Henry VIII

man by the standards of the day. By this time Henry was extremely overweight and had a festering wound on his leg that smelled terrible and caused the king a lot of pain. As a result of the constant pain, the king was cranky at best. On top of that, everyone who had dirt on her from before her marriage to the king came out of the woodwork threatening to blackmail her if they didn't receive payoffs or positions at court. It was doomed to fail from the start!

Catherine Parr

Catherine Parr was born in 1512 to a well-landed family in northern England. She was twice widowed and very wealthy in her own right when she married Henry in 1543. After her second husband died, Catherine joined Lady Mary Tudor's court and that is where she and Henry became acquainted. She was also beginning a romantic relationship with Sir Thomas Seymour (Jane Seymour's brother), but in the end Catherine accepted Henry's marriage proposal and Thomas Seymour accepted a diplomatic post in Brussels.

In an incident in 1546, Catherine was accused of treachery against the king, but she quickly became aware of the accusations against her and ran to the king. She and Henry were reconciled after she was able to convince him that she only argued with him about religion to distract him from his painful leg ulcers. Henry died at the age of 55 on January 28, 1547, making Catherine a three-time widow.
Henry left Catherine a generous pension in his will, and she married Sir Thomas Seymour, who returned from service in Brussels. Elizabeth I and Lady Jane Grey both stayed with Catherine Parr in their youth, receiving an excellent education by the standards of the day. It is believed that Thomas Seymour developed a romantic interest in Elizabeth during her stay at their home, so Elizabeth was sent to stay with other relatives in May, 1548. At the age of 35, Catherine Parr gave birth to a daughter named Mary Seymour, and died six days after the birth. Thomas Seymour was later executed for treason in 1549.

Conclusion

Clearly it was not a safe occupation to be the Queen of England under Henry VIII's reign. In fact, several noble ladies in Europe were approached about the possibility of marrying the king after Catherine Howard's death, and many of them refused outright. One eligible lady remarked that marriage to Henry would surely leave her a head shorter.

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Upcoming Bar Events

St. Lucie Bar Association

SLCBA/MCBA/IRCBA Softball Tournament And BBQ Lunch
Saturday, March 22, 2014 @ 10:30 to 1:30
Sandhill Crane Park, Port St. Lucie

19th Circuit Bench Bar Conference
Friday, April 11, 2014 @ 8 to 3
PSL Civic Center

Law Day Luncheon with Florida Supreme Court Justice Jorge Labarga
Pelican Yacht Club @ 11:45 a.m.

Regular Monthly Meeting
Friday, April 4 @ noon
Cobb's Landing

Port St. Lucie Bar Association

Law Day Luncheon with Florida Bar President Eugene Pettis
Wednesday, April 30 at 11:45
PSL Community Center

Regular Monthly Meeting
Are held the third Wednesday of the month
At Carrabba's

Indian River Bar

Regular Monthly Meeting, Guest Speaker: Gerry Lamothe
March 14 @ noon
Quail Valley River Club

Regular Monthly Meeting, Old Vero Ice Age Sites Committee.
This presentation will cover the Old Vero Man excavation project.
April 4 @ noon
Quail Valley River Club

Martin County Bar Association

Regular Monthly Meeting
March 21 @ 11:45
April 11 @ 11:45
May 16 @ 11:45
Kane Center
900 Salerno Rd. Stuart

Aristotle on Mediation of Insured Claims

By Edmund J. Sikorski Jr. J.D.

The more things change,
the more they stay the same.
- French Proverb

Despite the fact that FRCP 1.720(b)was amended on January 1, 2012 (requiring full authority certification, etc.), a recent discussion conducted in the LinkedIn group "Florida Supreme Court Certified Mediators" consistently reported that the new rule has had little, if any, effect on the mediation process.

Perhaps this is because at the same time insurance carriers have altered their internal claims practice. Authority and independent judgment once possessed by claims representatives has been substantially diminished, if not entirely removed, as insurance companies seek uniformity in claims handling and absolute control over settlement parameters established well in advance of a mediation date. Thus, the claims representatives do in fact appear at mediation with full authority to settle, but only within the parameters previously established by a process designed to bring uniformity to claims payouts by category. This is a process of quantifying payout of measured risk – which is also how insurance premiums are calculated. An insurance company that pays out more than it takes in meets an untimely demise.

Understanding the reality of the claims process is the first ingredient in creating a set of circumstances that will produce optimum case resolution.

Simply put, if the plaintiff does not furnish information to support the demand, it will be stuck with settlement parameters established by the carrier's internal claims evaluation procedure and washed through their proprietary software programs.

The central key reality is that insurance companies pay claims based on their perception of risk in relation to exposure.

In our adversarial system, a claimant has the burden of going forward. It therefore follows that the plaintiff has the obligation to convince the opposition of the legitimacy and value of the case. Convincing the opposition is applying the art of persuasion to see the matter your way. Setting aside issues of overconfidence and fundamental attribution error, the issue to be addressed is:

"What are the tools of persuasion available in settling insure claims?" The answer leads straight back 2400 years to Aristotle's three ways to persuade:

"Of the modes of persuasion furnished by the spoken word there are three kinds. The first depends on the personal character of the speaker; the second on putting the audience into a certain frame of mind; the third on the proof, or apparent proof, provided by the words of the speech itself."

These elements will be developed below in somewhat of an inverse order because of the usual practice of first building a claim on the elements of a cause of action and then crafting the presentation to accomplish the ends intended.

Lawyers who conduct successful mediation of insured claims do the following:

1. **Prepare the claims representative for the mediation.**

This step is persuasion on the proof – appeal to reason by demonstration and logic. Document in detail the adjuster's file. Provide accurate, tangible, verifiable objective criteria to support liability and such damages as are allowed by the Florida Standard Jury Instruction 501.2.

Claims reserves are set early by the insurance company. A plaintiff's job is to persuade the insurance company to change their initial evaluation. If a claim is not well documented, it will be perceived as nonexistent or fabricated. If the mediation is to be successful, all documents, videos, deposition summaries, reports, etc. must be in the hands of the claims representative no less than two weeks before the scheduled mediation - if not before. If this material is presented for the first time at the mediation, it will be ignored and the mediation will surely impasse.

This requires communication directly with the claims representative handling the case. It is that person who must be persuaded in the first instance. It is that person, who together with a risk management team, will make a collective monetary decision based on the risk assessed. Defense counsel may be only tangentially involved in this process.

2. **Maintain a professional demeanor in all communications with the insurance company and defense counsel.**

This step is persuasion through appeal to the presenter's credibility and authority. If the claimant's representative does not appear to be knowledgeable about the matter, or conducts himself in a manner that is disrespectful, demeaning, or insulting to the claims representative or defense counsel, all of the arguments made by plaintiff's counsel will be disregarded and impasse will surely follow.

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Aristotle on Mediation of Insured Claims

Simply put, boisterous bombastic denunciations will always backfire. Treating people with disrespect, even when their positions appear questionable or unreasonable, is normally counterproductive. See Allstate v. Marotta, 2013 WL 2420451 Fla.4thDCA (June 5, 2013).

3. **Appeal to the claims representative's inherent emotions.**

Claims representatives may be remote, trust their own cognitive process and display bias and blind spots, but they are not passive participants any more than jurors.

They are active participants – critical players in a joint creation of what happened, what is fair, and what is moral. This step is the appeal to the inherent human emotions of the claims representatives. It is no doubt the most subtle but needs the same attention that would be put into a plaintiff's Opening Statement. This step provides the motivation to open or close the carrier's checkbook. This step requires development of a mediation presentation that has a theme, employs metaphor, and tells a compelling story that persuades a listener to review his natural bias and/or expose his blind spots.

It has been documented (Haidt 2012 **The Righteous Mind)** that motivations tend to group along five general themes:

1. Care or Harm
2. Fairness or Cheating
3. Loyalty or Betrayal
4. Authority or Subversion
5. Sanctity or Degradation

Every legal case should contain one or more of these themes. If employed in the mediation presentation they will have the identical effect as an Opening Statement has to a jury – only this time, the claims representative is the "Jury".

Simply put, presentation of reason and evidence alone is not enough to persuade. Motivation to reach the desired result must be furnished: **NO MOTIVATION, NO PERSUASION.**

4. **Always employ the best visual (electronic) aids available.**

A picture is worth a thousand words (or more) because seeing is believing. Aristotle only had oratory and perhaps a few drawings to install mental images in the minds of his audience. 2400 years later we not only have pictures, photographs, and dramatizations, but also animations to carry the motivational themes imbedded in presentations. Use of imagery in any form is an absolute necessity in all successful mediation presentations. Lack of it will most certainly yield marginal results.

5. **Make it self-evident that you are ready for trial NOW.**

Part of the claims evaluation process involves assessment of the perceived capabilities and trial effectiveness of opposing counsel. Since even the busiest litigators in major firms try at most 30 cases in their lifetimes, the number of cases tried is less significant than if the mediation presentation demonstrates that plaintiff's counsel is prepared to go to trial on this case at this time. Risk assessment and therefore payout parameters are, after all, made on a case by case basis.

6. **Practice, Practice, Practice.**

No one would be a member of a team that did not practice before the competitive event. No one would act in a play without rehearsal. Engage a Mediator to participate in a practice mediation. This fresh look can open your eyes to some unexpected strengths or approaches your adversary could apply. And, of course, It may very well expose your natural biases and/or blind spots.

Edmund J. Sikorski, Jr., J.D. is a Florida Supreme Court Certified Circuit Civil and Appellate Mediator. www treasurecoastmediation.com contains a link to view other authored articles on selected mediation topics including a description of the proprietary Focus Mediation Program and contact information.