FORUM 8

Volume 81, No. 10 Eighth Judicial Circuit Bar Association, Inc. June 2022

President's Message

By Evan M. Gardiner

One of the very first thoughts I had when I was nominated for President of the EJCBA was, "Oh no, what am I going to write about each month in the newsletter!?" I thought there was no way I could come up with anything interesting enough to warrant writing about in the President's Message. So I decided to write about two subjects most people can relate to, COVID and parenthood.

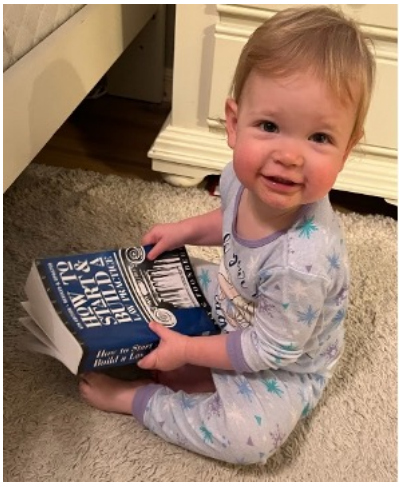
I wrote a lot about COVID. A lot more than I cared to write about the subject. Fortunately, we seem to be past the worst of it. The 2021-2022 year has been a mix of up and down, but overall I'm extremely happy with what we were able to accomplish given the lasting effects of COVID. Once beyond the luncheons in the fall and winter, we were able to have nearly all of our events in person. We were able to have the Cedar Key Dinner, Holiday Social, Holiday Project, Golf Tournament, Leadership Roundtable, Law Day, Spring Fling, the Annual Dinner, and several other events in person. To me, that's a huge win!

I also wrote a lot about my daughter, probably a bit too much. She is over a year and a half now, and it's been such an amazing journey watching her grow from a baby into the small person she is today. She has so many opinions and she isn't afraid to say what's on her mind. As shown in the picture below, she's already starting her legal career. I know she will make an excellent EJCBA President in the 2052-2053 year.

I want to thank a few individuals for their continued help in leading the EJCBA. Thank you to Sharon Sperling and Dominique Lochridge-Gonzales, who serve as the Treasurer and Secretary respectively. To be completely honest, these two jobs are far harder than President. Their continued role in these positions means a lot to the entire Board. Thank you to Dawn Vallejos-Nichols for keeping the newsletter running smoothly, and not chastising me for any of the last minute submissions I've made for the newsletter, which I would totally deserve. Thank you to Phil Kabler and Ray Brady for their continued help regarding any historical knowledge about the EJCBA and their parliamentary wisdom. Thank you to both Derek Folds and Lauren Richardson for their amazing party planning abilities. Finally, thank you to Judy Padgett, our Executive Director, who is the real mastermind behind the EJCBA.

I'm excited to be turning over the reins to Robert Folsom. He has a lot planned for the 2022-2023 year, and I'll be excited to help in any way I can. I hope everyone has a happy, and safe, summer. I'll be looking forward to seeing everyone back in the fall!

Evan Gardiner
(Almost Past) President



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Contribute to Your Newsletter!

From the Editor

I'd like to encourage all of our members to contribute to the newsletter by sending in an article, a letter to the editor about a topic of interest or current event, an amusing short story, a profile of a favorite judge, attorney or case, a cartoon, or a blurb about the good works that we do in our communities and personal lives. Submissions are due on the 5th of the preceding month and can be made by email to dvallejos-nichols@avera.com.

About this Newsletter

This newsletter is published monthly, except in July and August, by:

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Any and all opinions expressed by the Editor, the President, other officers and members of the Eighth Judicial Circuit Bar Association, and authors of articles are their own and do not necessarily represent the views of the Association.

News, articles, announcements, advertisements and Letters to the Editor should be submitted to the Editor or Executive Director by Email. Also please email a photograph to go with any article submission. Files should be saved in any version of MS Word, WordPerfect or ASCII text.

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Deadline is the 5th of the preceding month

Alternative Dispute Resolution

By Chester B. Chance and Charles B. Carter

Cognitive Bias: In Our Legal and Personal Lives

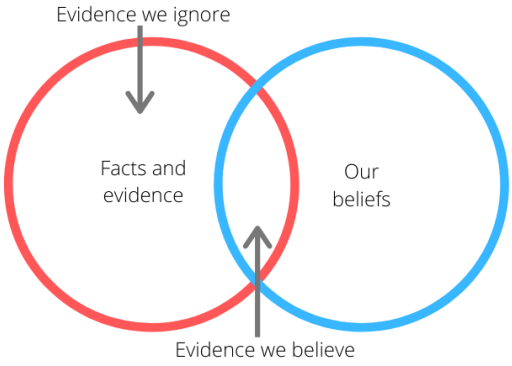
Recently, while sitting in an airport waiting to depart, we picked up a copy of an airport magazine. Along with various articles extolling the city where the airport was located, the magazine included a few articles unrelated to hotels, sights, or food. The article that caught our eye was entitled "The Cognitive Bias That Divides Us."

In one or two prior articles we addressed cognitive bias and how it affects our evaluation of cases, evidence, etc. We will not totally re-plow that ground. One of the biases we previously discussed was 'self-confirmation bias' and we will plow a bit in that field as self-confirmation bias was the focus of the airport magazine article.

The article focused on a book by Keith Stanovich entitled *The Bias That Divides Us: The Science and Politics of Myside Thinking.*

An example that Gator fans may relate to:

In the 1950s researchers showed Princeton and Dartmouth students a film of a recent football game between the two schools. The game had gained attention for the high number of penalties assessed by the game officials. Students from the two schools had a significant discrepancy in perception of the game and the fouls to the point it seemed the students from each school had watched two different games. Why? Self-confirmation bias "…is reinforced when the beliefs and worldviews with which we have an emotional commitment come into play."



Translation: Individuals may perceive the same stimulus (penalty flag during a football game) and yet interpret it differently depending on which side you are on. That applies to evidence, the law, and a myriad of day-to-day stimuli.

Simply put: "…peoples' assessment and production of evidence, as well as the testing of hypotheses, are biased by their own prior beliefs, opinions and attitudes." Obviously, that is why there is a voir dire procedure when selecting jurors. Voir dire seeks to determine a juror's beliefs, opinions and attitudes so as to select or reject a particular juror based on cognitive bias; specifically, self-confirmation bias. That is why a juror might be asked about bumper stickers.

Another example: when people are shown a film containing images of demonstrators confronting police, the viewer witnessed the images by either siding with the demonstrators or police. Why? The scene was interpreted based on what researchers said was the purpose of the demonstration. If told the protestors in the film were demonstrating to prevent abortions from being performed, left-wing viewers validate the behavior of the police; right-wing viewers will validate the actions of the protestors. If told the protesters came to protest a ban on gays joining the army, those on the right will justify the police actions and those on the left will justify the actions of the protestors. This tendency is triggered when issues involving our political, religious or moral positions diverge, according to the referenced book and the referenced article.

Is the described tendency irrational? No, according to Stanovich:

> "Projecting our worldview onto facts, and assessing new information against our own beliefs, is a rational strategy. As our previous beliefs have allowed us to navigate the world until now, we have no interest in deviating from them."

As lawyers, we are aware of self-confirmation bias in others (jurors, clients, other lawyers, judges) but we rarely see it in ourselves. In fact, Stanovich suggests self-confirmation bias is strongest in those deemed highly intelligent and educated.

As lawyers, we sometimes acknowledge that eye-witness testimony may not be the best evidence. Perception is distorted by self-confirmation bias, not to mention other cognitive biases. However, as lawyers, our own confirmation bias almost forces us to accept as compelling any testimony which supports our position. We do that in the law, in our political lives and in our social lives. We do it so much that Stanovich refers to self-confirmation bias as The Gordian Knott of self-confirming opinions. So much so that Stanovich believes reducing the described cognitive bias is necessary to save our democracies. Reducing the bias might also lead to the resolution of more cases.

AFFIDAVITS MUST BE MADE ON PERSONAL KNOWLEDGE - WHAT DOES THAT MEAN?

By Siegel Hughes & Ross

We all know that an affidavit presented to support or defeat summary judgment must be made "on personal knowledge." What does that mean, and how do we establish such "personal knowledge"? Many times, we attempt to do so with the statement that, "Affiant has personal knowledge of the matters set forth in this Affidavit." That is not enough.

Rule 1.510(4), Fla. R. Civ. Pro., requires that an affidavit submitted to support or defeat a Motion for Summary Judgment, "… show that the affiant or declarant is competent to testify on the matters stated."[1] The seminal case interpreting this provision is *Carter v. Cessna Finance Corp.*, 498 So.2d 1319 (Fla. 4th DCA 1986). In that case, claiming damages to an aircraft, the Court addressed an affidavit stating the affiant had "personal knowledge that the aircraft was damaged in Cessna's possession." The Court rejected the affidavit because it did not indicate the factual basis for the affiant's knowledge.

What about the ubiquitous statement that "Affiant has personal knowledge of the facts set forth in this Affidavit?" Not enough. The "requirement that [the affidavit] show affirmatively that the affiant is competent to testify to the matters stated therein is not satisfied by the statement that he has personal knowledge; there should be stated in detail the facts showing that he has personal knowledge." *Id.* at 1320, quoting 1967 Author's Comment to Rule 1.510.

The First District has followed this lead in *TSI Southeast, Inc. v. Royals*, 588 So.2d (Fla. 1st DCA 1991). Quoting *Carter, supra,* the Court held, "Mere conclusions by the affiant are insufficient, and a party does not create a fact question merely by placing his assertions in affidavit form." *Id.* at 310. Also, *Skelton v. Real Estate Solutions Home Sellers, LLC.,* 202 So.3d 960, 963 (Fla. 5th DCA 2016) ("The oft-repeated statement that the witness has personal knowledge of the matters set forth in his/her affidavit, standing alone, is insufficient. 'A factual predicate for [the affidavit] testimony is required, just as it would be required at trial.'" (Quoting *Johns v. Dannels,* 186 So.3d 620, 621 (Fla. 5th DCA 2016)).

There is one exception to the specificity rule. We need not state the obvious. "A factual basis for the affiant's knowledge need not be set out where the affiant is shown to be in a position where he would necessarily possess the knowledge." *Carter v. Cessna Finance Corp., supra* at 1321. The example given by the *Carter* court is a bank executive giving an affidavit about the business of the bank.

In summary, an affidavit presented to support or oppose a motion for summary judgment must be made on personal knowledge, must state facts that would be admissible at trial, and must state in detail the facts showing that the affiant has personal knowledge.

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[1] This is not a change brought about by the amendment to the rule. Former Rule 1.520(e) contains the same language.

June 2022 Calendar

2 EJCBA Annual Meeting & Dinner, 6:00 p.m., The Wooly
8 Probate Section Meeting, 4:30 p.m. via ZOOM
20 Juneteenth National Independence Day (Federal courthouses closed)
22-25 2022 Annual Florida Bar Convention, Signia by Hilton Bonnet Creek & Waldorf Astoria, Orlando

Changes at Three Rivers Legal Services

By Marcia Green, Pro Bono Director/Gainesville

This article is one of the most difficult and exciting articles I have had the privilege of writing. I am retiring! After 43-1/2 years with Three Rivers Legal Services, I am leaving to spend time with my family and to explore places I have yet to discover. This potential freedom is totally unknown territory for me.

You may have read some of the history of Three Rivers previously; if not, you should! Most recently, there is an article in the November 2020 issue of the *Forum 8* (p. 5). You can find it online at https://8jcba.org/page-18058 or a more in-depth history at our website https://www.trls.org/history/. It is a good story; the story of a great group of attorneys who cared, and still care, about our community.

I started in the fall of 1978. I won't subject you to the details that almost got me fired after my second week. Judy Collins, who will re-retire in July, had started with Storefront Legal Aid and was one of the original Three Rivers attorneys. Some of the other early staff are still my closest friends -- we raised our children together, weathered funding cuts and increases together, and served the neediest in the community together. In January 1985, my focus became the pro bono program.

I didn't go to law school although I thought about it often, especially in those early days. I was so inspired by our staff and volunteer attorneys. For multiple reasons, I wasn't able to make a commitment to more school at the time. I have no regrets as I have so enjoyed doing the important work for the clients of Three Rivers and working with the amazing attorneys, paralegals and firms in our community.

I will miss this! I will miss Ask-A-Lawyer, which just restarted in April. I will miss our Eviction Clinic and Advance Directives Clinics. Before we switched to telephonic Eviction Clinic, a group of volunteer attorneys would come to our office in the early evenings twice a month and meet with clients. We would have snacks and talk about our families, our activities and, of course, brainstorm about how to best serve our clients.

The Advance Directives Clinics involved a group of volunteer attorneys who would travel to some of our rural communities to meet with seniors at community meal sites. Sometimes we would be overwhelmed by interest; other times potential clients would take naps or indicate they would prefer to watch TV or play bingo. These too will restart soon as the senior centers are re-opening for visitors. In early 2020, when we had to scale back some of the projects that needed in-person interaction, our volunteer attorneys continued to work with us, accept referrals, participate in telephonic client interviews and work with our staff on some of our more complicated cases. I will miss my interactions with you and that you mostly responded to my emails and requests to help our clients with a "sure" or "yes, I can do that!" I have been extremely fortunate.

The exciting news, though, is that Three Rivers and the Volunteer Attorney Program will continue to be in very good hands! Samantha Howell, who came to Gainesville to run Southern Legal Counsel's statewide pro bono project, joined Three Rivers near the end of May. Her position is Director of Pro Bono for all 17-counties served by Three Rivers. We are so excited for the new ideas, projects and innovations that she will be bringing to the program. Please be sure to reach out to her with your availability, suggestions and expertise. Samantha is available at samantha.howell@trls.org.

Three Rivers is near and dear to my heart -- the attorneys, the staff, the work we do and the volunteer attorneys and community leaders who provide so much support. Check out our 2021 Annual Report on our website https://www.trls.org/ and review the accomplishments made during this past difficult year. Contact Samantha; meet her (and all of the wonderful attorneys at Three Rivers) at bar events and out in the community.

Thank you! Thank you for allowing me to be a part of this legal community for more than half my life. Thank you to Three Rivers for being a place in which the work I've done has been for good and for being a place to raise my children and to have opportunities to learn so much. I wish I could individually thank all of you who have meant so much to me over these years, to express how much I have enjoyed working with you, laughing with you and, realistically, feeling frustrated with you. I look forward to seeing you out-and-about (maybe even at an Ask-A-Lawyer event).

Florida Statute § 776.041(2): Provocation and Justification

By Steven M. Harris

The treatment of provocation by modern statutes and caselaw may derive from the common law sentiment expressed in *Wallace v. United States*, 162 U.S. 466, 471 (1896): "Where a difficulty is intentionally brought on for the purpose of killing the deceased, the fact of imminent danger to the accused constitutes no defence; but where the accused embarks in a quarrel with no felonious intent, or malice, or premeditated purpose of doing bodily harm or killing, and under reasonable belief of imminent danger he inflicts a fatal wound, it is not murder." It is widely believed that an "aggressor" (one who "initially provokes" another to threaten or use force) automatically suffers the loss of the defense of justification. That is not the law in Florida. Further, while many states distinguish mere provocation from what has been called "provocation with intent," Florida does not.

A person who is the "aggressor" in threatening or using force loses the right to assert the defense of justification only as dictated by § 776.041(2), *Fla. Stat*. The provision applies when justification is asserted under § 776.012, § 776.013 or § 776.031, *Fla. Stat*. The provocation and the victim's action must be contemporaneous. See *Johnson v. State*, 65 So.3d 1147 (Fla. 3d DCA 2011). Other states (for example, Illinois, Kansas and North Carolina) have a similar statute. Of note: Forcible felony actors do suffer outright loss of the defense of justification under § 776.041(1), *Fla. Stat*.

A defendant is not required to prove he or she was not the "aggressor" in order to assert Chapter 776 justification, or to be entitled to pretrial immunity under § 776.032, *Fla. Stat*. The statute is silent about the nature of the State's burden to prove "aggressor" provocation and to disprove compliance with any condition imposed on an "aggressor." Depending on the state of the evidence, applicability of the "aggressor" provision may be determined by the court or submitted to the jury. A provocation instruction should not be given unless there is competent evidence from which a reasonable juror could find the defendant initially provoked the threat or use of force against himself or herself.

The concept of "aggressor" under § 776.041(2), *Fla. Stat*., does not apply to a law enforcement officer making an arrest or otherwise lawfully engaged in official duties. See February 2022 ***Forum 8.*** It doesn't apply when deadly force justification is asserted pursuant to § 782.02, *Fla. Stat*. See *State v. Floyd*, 186 So.3d 1013, 1020 (Fla. 2016). The wording of the statute also renders the concept inapplicable to an "aggressor" who asserts justification in threatening or using force in the defense of another. See *Bouie v. State*, 292 So.3d 471 (Fla. 2d DCA 2020) (defendant's provoking a threat to a third person distinguished from provocation upon himself). Defense of property justification and forcible felony prevention should be treated similarly.

Under § 776.041(2)(a), *Fla. Stat*., an "aggressor" opposing what is reasonably perceived to be deadly force loses the defense of justification unless before threatening or using deadly force he or she "exhausted every reasonable means to escape such danger other than the use or threatened use of force which is likely to cause death or great bodily harm to the assailant." "Reasonable means" may include threatening or using non-deadly force and an attempt at disengagement or retreat, when apparent and achievable. See *Darling v. State*, 81 So.3d 574 (Fla. 3d DCA 2012) (defense of justification for deadly force is lost unless "there is no means of escape other than the use of deadly force"). Of note: The privilege of nonretreat can be lost in a deadly force situation independent of § 776.041(2), *Fla. Stat*., if one is "engaged in a criminal activity." See § 776.012(2) and § 776.031(2), *Fla. Stat*.

The defense of justification also remains available to an "aggressor" if "in good faith" he or she "withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use or threatened use of force, but the assailant continues or resumes the use or threatened use of force." See § 776.041(2)(b), *Fla. Stat*. Thus, compound incidents (back-and-forth physical force) require careful temporal scrutiny.

The meaning of provocation is fairly settled. Mere words do not constitute provocation. The jury should be given an instruction which explains provocation. See *Gibbs v. State*, 789 So.2d 443, 444-445 (Fla. 4th DCA 2001) (jury should be informed that "provoked" as used in the standard instruction does not refer to mere words or conduct without force). Other states (for example, Oklahoma, Virginia and West Virginia) treat mere words similarly. Of note: The use of lawful force (such as non-deadly force pursuant to § 776.012(1) or § 776.031(1), *Fla. Stat*.), is not provocation.

Criminal Law

By Brian Kramer, State Attorney and Brian Rodgers, Assistant State Attorney

In pondering the underpinnings of the criminal justice system in the 8th Judicial Circuit of Florida and, really, everywhere else in America, there is one universally accepted cornerstone, the Constitution. However, the Constitution is the bedrock that supports the astounding weight of all great American ideals – life, liberty, and pursuit of happiness. So then, what of the specific foundations of the criminal justice system? Is it too supported by one massive keystone or is it more of a collection of pillars? A three-legged stool maybe, each leg equally reliant on the others? Perhaps it's more like the Parthenon with dozens of awe-inspiring columns stabilizing its historic structure. Notwithstanding the metaphorical conundrum created by the attempt to evoke architectural imagery in support of the quality and stability of our criminal justice system, it can be unequivocally stated that in the Eighth Judicial Circuit, the State Attorney's Office (SAO) works to support several important elements of justice. These include fairness, transparency, voice, and parity.

Much of what constitutes justice is adherence to process. What is the process undertaken by prosecutors when a case is forwarded to the SAO by one of our community's law enforcement agencies? First, though the SAO and law enforcement must and do have good working relationships in furtherance of justice and public safety, it's important to remember that prosecutors are not the police. Though we assist when called upon to obtain warrants or subpoenas, we do not tell law enforcement officers which cases to investigate or how to investigate them. We are not their lawyers. They have their own legal advisors to help develop and facilitate agency policies. However, when a law enforcement agency investigates an alleged crime and believes that probable cause is developed, the case in then forwarded to the SAO for an independent review. It is then assigned to a specific prosecutor, which is often based on the type of alleged crime (i.e. SVU crime, gun crime, etc.).

Once the case is at the SAO, the prosecutor reviews the investigation; reviews any statements of witnesses, the victim, and the accused; and reviews available recorded media in the case. Victims or witnesses with material information about the alleged crime are subpoenaed to provide sworn testimony about the case. The backgrounds of the victim, witnesses, and the accused are explored. Prosecutors sometimes consult each other, their supervisors, or the State Attorney himself about. the facts of a given case, potential evidentiary issues, potential defenses, any known mitigation, and other considerations in a process that may be as informal as a conversation among colleagues or as formal as a round tabling of the case, both of which work in furtherance of fairness, parity, and impartiality in charging decisions. The victim or their representatives are consulted regarding their desire to prosecute or what they consider to be an appropriate eventual resolution for the case. If a prosecution is to be declined, the case is dismissed, the victim is informed, and there is nothing more to say or do on the matter. Those cases in which charges are formally filed enter the adversarial criminal justice system and are prosecuted with professionalism and appropriate earnestness. Importantly, though, to paraphrase former Supreme Court Justice George Sutherland, prosecutors recognize their obligation as servants of the law and justice, the two-fold aim of which is that guilt shall not escape or innocence suffer.

In furtherance of the element of fairness, prosecutors are careful to avoid conflicts of interest or the appearance of impropriety. Indeed, there is a formal process to seek reassignment of a case to a different State Attorney's Office in the event of any such conflict or inappropriate appearance. Additionally, prosecutors strive to make charging decisions without consideration of the victim's or the offender's race, gender, socioeconomic status, sexual orientation, religious affiliation, etc. We are certainly cognizant of potential, or inherent, or implicit biases, though we return always to the adherence to process and to the elements of justice as a means of minimizing or eliminating any such effects. Additionally, prosecutors recognize their role in a criminal case can often be viewed and often actually is somewhat outsized. After all, the SAO is but a part of one of the co-equal branches of government. But a prosecutor's adherence to fairness is bolstered by the other elements of justice. We are held to standards and a spirit of transparency laid out in the Bar rules, statutes, procedural rules, and case law with respect to the discovery process, disclosure of any exculpatory evidence, and strict faithfulness to an accused's rights. Prosecutorial ethics and the oaths sworn by prosecutors as members of the Bar and sworn Assistant State Attorneys demand that only fair means be employed in any prosecution and then only to bring about a just result for the case. Finally, prosecutors are the representatives of the citizens in enforcing their criminal…

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Criminal Law

Continued from page 7

laws in the courtroom and thus are rightly subjected to public scrutiny as a further mechanism to protect the element of fairness.

Hand in hand with fairness is the element of transparency. This is governed at the SAO in two important ways. First, cases that are formally prosecuted are subject to the rules of discovery. Prosecutors are required to turn over or otherwise make available to defendants and their counsel all witness statements, recordings, photographs, reports, expert reports, materials related to informants, lists of physical evidence, lists of all material witnesses, all material that may be exculpatory for the defendant, and all materials that may tend to impeach or otherwise call into question the credibility of state witnesses. Everything that is materially relevant, everything that is good for the defense, and everything that is bad for the State must be and is disclosed to a defendant to allow him or her to prepare a defense or make an informed decision on how to proceed in the case. Here at the SAO, our discovery practice is especially transparent in that we err on the side of disclosure whenever there is a close call on whether to disclose. We rarely object to disclosure except when another important policy goal needs protection, such as the protection of victims from unnecessary harassment or embarrassment. The second manner in which transparency in the process is protected is that nearly all materials compiled and relied upon in any prosecution become as quickly as is practicable the property of the very citizens we represent at the SAO. Such materials are accessible to view or copy through an easy process of requesting public records. That process is governed by a clearly delineated legal process complete with sanctions available for any failures to engage the public's business in the sunshine in accordance with the law. Here at the SAO, we even employ staff that are assigned specifically to handle matters related to public records to make the process as efficient and expedient as possible.

Another important element of justice is voice – that is, regular and effective communication with all stakeholders in a case to provide them an opportunity to speak and, perhaps more importantly, be heard about the case. This of course includes victims and victim representatives in a case, whose right to have a voice has been formalized in Florida's Constitution under this state's version of Marsy's Law. At the SAO we typically give substantial weight to the wishes of a victim on whether to prosecute or what types of resolutions to seek. We keep an open door to communication with victims to keep them informed about the state of a case, the reasoning for a decision by the prosecutor, and to give them an opportunity to be heard by the Court when appropriate. Beyond victims, though, that same open door is offered to witnesses, law enforcement officers, neighbors, or other interested members of the community. Indeed, many of our most important cases involve the grand jury, made up of a collection of randomly chosen citizens, as partners in the decision making process on whether to proceed in a given case. The grand jury is charged with determining whether to prosecute cases involving our most serious charge - first degree murder. Additionally, at the SAO, any case in which a citizen is killed by a law enforcement officer is presented to the grand jury who serve as a citizen's advisory board on whether the use of deadly force against that citizen was justified or not.

Certainly, defendants and their lawyers also have an important voice in the process. We encourage open lines of communication with the defense to achieve appropriate resolutions to cases, to work through legal or evidentiary concerns, or even just to hear counter-perspectives on a case. Providing defendants and their lawyers an opportunity to communicate mitigation is an especially important aspect of prosecution and one to which we are always open. Prosecutors are cognizant that an effort must be made to ensure that criminal offenders have a voice and understand the process by which they are being prosecuted. The hope is that offenders observe an impartial process and not believe that their future was decided on a whim. The goal is that offenders, victims, their families, and the community believe they have been party to a fair process and are willing to accept the outcome in each case through an understanding of the process.

Finally, parity is an important element of justice for prosecutors. Parity in the charging decision making process and the prosecution of the case is guarded by those elements of fairness, transparency, and voice as already discussed, but parity goes beyond the charges and the prosecution and must necessarily include sentencing. It is the sentencing phase where the SAO recognizes that parity as an element of justice is not always practical but must always be aspirational. After all, the Courts have ultimate purview over sentencing, though it is certainly guided to a degree by statutory schemes and charging decisions. In the 8th Judicial Circuit's criminal system there are County judges who preside over misdemeanor and criminal traffic cases, and Circuit judges who preside over felony cases. In Alachua County, there are multiple divisions in both County and Circuit Court which are organized by alphabet with defendants assigned based on the first letter of their last names. The judges who preside over these courts sometimes rotate to different divisions or sometimes to different assignments altogether. Judges retire and new judges are elected …

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HANDING OVER THE REINS....

By Raymond F. Brady

It is my pleasure to announce that at the end of the EJCBA program year this June, I will hand over the chairmanships of several EJCBA committees to new leaders!

The EJCBA Professionalism Committee will be chaired by Derek Folds, Esq. Ms. Folds has long been dedicated to the numerous professionalism activities that we offer in the 8th Circuit. I know that she will apply her organizational talents and her vision to take this Circuit in new directions to enhance our professionalism and our dedication to civility and ethics in the practice of law.

The EJCBA Pro Bono Committee will be chaired by Jan Bendik, Esq. Mr. Bendik has not only worked on many of this Circuit's pro bono events, but he has created and fostered some of his own. Mr. Bendik has a passionate drive to provide legal assistance to the many low-income and disenfranchised citizens who reside in our Circuit.

Lastly, the EJCBA's partnership role in the Driver's License Reinstatement Clinic (known for short as "the DL Clinic") will be chaired jointly by Samantha Howell, Esq., and Robin Lemonidis, Esq. Ms. Howell and Ms. Lemonidis have made invaluable contributions this past year toward the successful operation of the DL Clinic. They have proven to be tireless in providing pro bono legal services to assist our Circuit's drivers on their paths to reinstate their licenses.

It is time to afford these talented lawyers the opportunity to make their mark on these outstanding EJCBA programs, as I have been privileged to do for many years. With our support, they will excel. I will happily continue to serve on the aforementioned committees in order to assist these leaders in their endeavors, and I also will continue to serve on the talented EJCBA Board.

In closing, I sincerely thank each and every lawyer and judge (there are dozens of you, far too numerous to thank in this limited space) who has partnered with me on the EJCBA programs and projects that I have chaired. I cherish the personal and professional relationships that I have developed with you all in furtherance of the EJCBA's mission. Working together, both Bench and Bar, we have achieved much. I look forward to continuing to work with you all on our numerous award-winning EJCBA projects. As I recently heard our Florida Bar Board of Governor's Representative Stephanie Marchman, Esq., say of the 8th Circuit, "We are small, but we are mighty." I proudly second that, Stephanie!

Criminal Law

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or appointed. In each of these senses, there is a randomness to the determination of which judge will preside over a case and, in the event of conviction through a plea or after a trial, will have purview over a given defendant's sentence. The individual judges making the sentencing decisions on particular cases may adhere to their own set of ethical guidelines, are often subjected to their own scrutiny, and have available tools at their disposal such as scoresheets, data, and legal experience to guide them in sentencing decisions, but the courts are not monolithic. The individual judges are guided by their own humanity. Perhaps it is better that way, perhaps not.

At the SAO, we recognize the separate and vital role of the judiciary, especially in sentencing, and prosecutors can only control that which is contained within their own orbit. Nevertheless, at the SAO it is an extremely important principle of our State Attorney to aspire towards parity in sentencing regardless of division or county, and regardless of the identity of the prosecutor or the defendant. Each individual prosecutor at the SAO is afforded a substantial amount of discretion guided by the experience, professionalism, and ethics of that prosecutor, but each prosecutor is further guided by the policy goals of the State Attorney. This is not to portray sentencing as somehow simplistic. On the contrary, sentencing is extraordinarily complex. The particular crime, the nature of the criminality, the amount of injury or loss, the existence or lack of evidentiary concerns, the desires of the victim, the criminal background of the defendant, and any mitigating or aggravating circumstances in the case or as to the defendant are all important considerations in determining an appropriate sentence to offer or for which to argue in Court. A serious crime should and typically does result in a serious sentence, just as a relatively minor crime should and does result in a more minor sentence. Still, here at the SAO there is little tolerance for sentences offered or argued by prosecutors that are substantially outside what should be predictable norms.

Hopefully, this article engenders its readers with confidence in the SAO and our adherence to process in furtherance of fairness, transparency, voice, parity, and justice. We certainly understand if other stakeholders in the community and justice system wish to critique our processes or in any way further the discussion on the role of the prosecutor. We welcome all comments.

10th Annual Leadership Roundtable: EJCBA's Diversity Conference - Path to Unity

April 22, 2022

Stephan P. Mickle, Sr.'s portrait and the traveling portraits of the five honorees of The Florida Bar's Path to Unity at the Stephan P. Mickle, Sr. Criminal Courthouse.

Dr. Brian Marchman, new Director of P.K. Yonge Developmental Research School, addresses the attendees at the morning session of the Conference, many of whom are students of P.K. Yonge.

Judge Kristine Van Vorst leads an instructional question and answer session regarding U.S. Constitutional Law.

Mrs. Evelyn Mickle provided special remarks regarding Judge Mickle at the 10th Annual Leadership Roundtable & Diversity Conference.

Students and faculty of P.K. Yonge Developmental Research School gather around the photos of the trailblazers honored at the Conference.

Trailblazer and Honoree Larry D. Smith was the keynote speaker as attendees moved to the Wooly for the luncheon and roundtable portion of the program, moderated by attorney Simone Chriss.