

FORUM 8

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Eighth Judicial Circuit Bar Association, Inc.

May 2016

President's Message

By Rob Birrenkott



I am writing this column on April 3, the night before the men's NCAA basketball championship game (the culmination of the "March Madness") and I feel compelled to draw inspiration from the tournament. Before every game, the analysts talk about the importance of getting off to a "fast start," but since we are heading into the homestretch of the EJCBA year, I am going to focus on finishing strong.

In the second round of the tournament, Northern Iowa had a 12 point lead over Texas A&M with 35 seconds left in the game. It was over, right? The odds of coming back from being down so many points with such a small amount of time were 1-in-3,000. Yet, that is exactly what happened. They accomplished the impossible by finishing strong. My hope is that our association collectively, and our members individually, will draw inspiration and find the energy, will, and grit to take the tasks we have committed ourselves to and bring them to a successful completion.

We have a strong finish lined up for our members. In May, we have Law Day activities planned, our final installment of the inspirational leaders monthly luncheon series featuring Florida Bar President Ray Abadin on May 13, and the "Poised and Polished: Non-Jury Trial Skills Series" led by Judge Hulslander. Also, please mark your calendars and make plans to attend our end of the year celebration and meeting on Thursday, June 9 at the Florida Museum of Natural History where the buzzer will sound for the 2015-2016 EJCBA year and we will officially begin the next season.

Poised & Polished: Non-Jury Trial Skills Series/ Up To Free 12 CLE Hours

The focus of this series is to teach practitioners in marital and family law, real estate, estate planning, probate and guardianship law how to litigate cases effectively. The course is led by Circuit Court Judge Victor Hulslander.

Trial Topics that will be taught include:

Effective and concise opening statements, courtroom etiquette, direct and cross examinations, how to refresh a witness' memory, predicates for impeachment, proper predicates for the admission of documents & other evidence, proper objections & responses, judicial notice, expert witnesses, electronic evidence, children as witnesses, child hearsay, contempt proceedings and closing arguments.

Important Dates:

April 28th:	2:00-5:00 p.m. Class 1
May 6th:	2:00-5:00 p.m. Class 2
May 13th:	2:00-5:00 p.m. Class 3
May 20th:	2:00-5:00 p.m. Class 4

(3 hours of CLE each)

*Observers are not required, although encouraged, to attend every session, but will only qualify for CLE credit on the dates attended.

It's that time again!

The Eighth Judicial Circuit Bar Association Nominations Committee is seeking members for EJCBA Board positions for 2016-2017. Consider giving a little time back to your bar association. Please complete the online application at goo.gl/QVaYDI. The deadline for completed applications is May 6, 2016.

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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

What is cognitive bias? It is the tendency to think in certain ways that can lead to deviations from a standard of rationality or good judgment. OK, we are getting that from Wikipedia, but it's a Wikipedia article that is really well footnoted. Actually, if you do an internet search for "cognitive biases" you will get

hundreds of quite fascinating articles about mental biases which affect your decision making, and often do not affect it in a very good way. We actually encourage you to do this because we cannot possibly address in this article the multitude of articles which apply cognitive bias to a plethora of situations. Trust us, they are all quite fascinating.

Your homework assignment is to do just that. Go on the internet, "google" the term "cognitive biases" and spend several hours learning, if you are honest, which ones affect you as a spouse, a lawyer, a judge, a business person, a shopper, a traveler, etc. Technically, we are supposed to link anything we write about to the alternative dispute resolution scenario. When it comes to cognitive bias, doing that is easy. Here are some cognitive biases, a description of the bias, and every once in a while we will chime in with an obvious potential application of that bias to decision making in a legal/mediation situation.

Anchoring: the tendency to rely too heavily on one piece of information when making decisions (usually the first piece of information that we acquire on a particular subject). Gee. Does a plaintiff or defendant or the attorney for either ever do that?!?

Backfire effect: when people react to disconfirming evidence by strengthening their beliefs. Golly, have you ever been in a mediation where someone is shown surveillance footage that destroys their case and yet they entrench? Have you ever had a client or another attorney react to compelling evidence by "doubling down?"

Confirmation bias: the tendency to search for, interpret, focus on and remember information in a way that confirms one's preconceptions. Don't we see that every day? Don't we do that every day? Well, knock it off.

Regressive bias: a state of mind wherein high values and high likelihoods are overestimated while

low values and low likelihoods are underestimated. Ever estimate high values? Ever buy a lottery ticket? Ever focus on the *potential* high damages in the case?

Empathy gap: the tendency to underestimate the influence or strength of feelings, in either oneself or others. One of the main purposes of mediation is to allow a party (no, not the attorney, but a party) to vent, express, emote and, well, just talk.

Endowment effect: the tendency for people to demand much more to give up an object than they would be willing to pay to acquire it. Holy cow, batman! Every mediation has that cognitive bias.

Focusing effect: the tendency to place too much importance on one aspect of an event. Might a plaintiff focus too much on damages? Might a defendant focus too much on liability?

Hot-hand fallacy: this is the fallacious belief that a person who has experienced success for a random event has a greater chance of further success in additional attempts. Sometimes it applies to recent trial success.

Optimism bias: the tendency to be over-optimistic, over-estimating favorable and pleasing outcomes.

Outcome bias: the tendency to judge a decision by its eventual outcome instead of based on the quality of the decision at the time it was made. Guess what: sometimes you are not smart, you are just lucky.

Over-confident effect: excessive confidence in one's own answers to questions. Psychologists suggest that for certain types of questions, answers that people say they feel 99% certain about turn out to be wrong almost half the time.

Pseudo certainty effect: the tendency to make risk-averse choices if the expected outcome is positive, but, make risk-seeking choices to avoid negative outcomes. Please note: we have written at least four articles and given numerous seminar talks on this cognitive bias. The good news: we can all use it to our advantage. Raise your hands if you want us to write another article about it

Semmelweis reflex: no, it's not that muscle

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Criminal Law

By William Cervone



Actions, they say, speak louder than words. It is amazing how many such simple truisms find their way into the law. Enter the doctrine of verbal acts.

A.J.M., obviously a poor misunderstood youth who meant no harm and who should never ever have been challenged for his behavior, trespassed at a McDonald's in Coral Springs a year or so ago. One can only imagine what less-than-appropriate or socially unacceptable behavior he was engaged in while there, or perhaps previously, to draw attention to himself, but be that as it may the local police arrested him based on a sign that was securely affixed to the outside of the building by the front door that read "Notice: All Coral Springs police officers are authorized to advise any person to leave these premises. Failure to leave the premises after being instructed will result in an arrest for trespass. Florida Statutes 810.09." The Trespass statute, of course, provides that an "authorized person" may order someone to leave and includes as an authorized person any police officer whose agency has received written authorization from the owner to tell someone to, well, get lost.

So how to prove that the particular officer who told A.J.M. to beat it was appropriately authorized? Call the owner or manager of the McDonald's to testify about that? Always a plus but so inconvenient. Introduce some sort of written letter to the officer's department granting that authority? Good old business records exception to the rescue but again time consuming. Or how about putting a photo of the warning sign into evidence to address the issue?

Foul! Or so cried the defense, for surely doing so would be a violation of hearsay rules because the sign amounted to a statement of someone else offered to prove the truth of what it asserted. In other words the sign, if it could speak, was testifying that it told the cop to roust A.J.M. but the sign wasn't there on the stand to be cross-examined and so on. Pretty standard stuff as objections go.

And wrong per the 4th DCA, for the words on the sign were a verbal act, and not hearsay at all. Rather, they had "independent legal significance - the law attaches duties and liabilities to their utterance." Those duties and liabilities, it seems, include A.J.M. being promptly whisked away to the nearest

detention center. Anyhow, the court went on, the posted words on the sign proved the communication of authority to act to the police and were operative once securely mounted on the wall. They were not, therefore, offered to prove the truth of their content and not hearsay. Please do not ask me to explain that semantic nuance, just accept that the posted sign bestowed the authority required by statute and was sufficient proof of that for A.J.M. to be duly convicted and sentenced, or whatever it is we do nowadays to juveniles, which isn't all that much and is becoming less each legislative session. But that's for another day.

To be sure there are other older cases in which the question of an officer's authority to act against a trespasser has been contested and in which such a happy result, at least for the prosecution, did not occur. Those, apparently, are distinguishable for the most part by the actual sign or some such display of the words not being offered into evidence as opposed to someone just trying to quote the sign, which would be hearsay. I suppose.

All proving once again that there is an exception for every hearsay violation if you look hard enough.

EJCBA 2016 Annual Dinner and Meeting

Thursday, June 9, 2016,
6:00 pm until 8:30 pm
(Cocktails 6:00 pm – 7:00 pm)

at the
Florida Museum of Natural History

Reservations required
\$35 for members and non-lawyer guests
\$55 for non-members

To RSVP
You may RSVP for you and your guest(s)
at

www.8jcb.org/event-registration/2016-annual-dinner/

Reservations must be received no later
than June 2.

You're Not the Boss of Me: Rule 1.350, Fla. R. Civ. P., and Employees' Personal Computers and Accounts

by Krista L.B. Collins, Siegel Hughes & Ross



Every civil litigator is familiar with Rule 1.350(a), Fla. R. Civ. P., which requires that upon request, parties produce relevant documents that are in the “possession, custody, or control of the party to whom the request is directed.” But what happens when a corporate party receives a request to produce documents from its employees’

personal email accounts? Or documents stored on a board member’s personal computer? Are documents belonging to an employee, board member or other agent sufficiently in the “possession, custody or control” of the employer to require their production under Rule 1.350(a)? To answer this question, we must define “possession, custody or control.”

The issue of how “possession, custody or control” is defined is most often seen in the context of corporations and their subsidiaries. For instance, in *Am. Honda Motor Co., Inc. v. Votour*, 435 So.2d 368, 369 (Fla. 4th DCA 1983), the Court held that it is not unreasonable for a parent company engaged in litigation to be required to produce the records of its wholly-owned subsidiary. *American Honda* essentially relies on the level of control exercised by the party over the non-party in possession of the requested documents. A parent company will generally have some level of control over the actions of its subsidiary. Likewise, employers generally have some level of control over their employees – but is it enough control for the purposes of Rule 1.350(a)?

Because the relevant portion of Rule 1.350(a) is virtually identical to Rule 34(a), Fed. R. Civ. P., we can look to federal law regarding control. The Eleventh Circuit has defined “control” as not just possession, but the legal right to obtain the documents requested upon demand. *Searock v. Stripling*, 736 F.2d 650, 653 (11th Cir. 1984). In *McDaniel v. Bradshaw*, 10-81082-CIV, 2011 WL 2470519 (S.D. Fla. 2011), *aff’d* sub nom. *McDaniel v. Sheriff of Palm Beach County, Fla.*, 491 Fed. Appx. 981 (11th Cir. 2012), the Court gave examples of documents that it considered an individual had the legal right to obtain (and therefore, controlled): income tax returns in possession of the IRS; medical records from the medical provider; and cancelled checks from the individual’s bank. *Id.*

Notably, none of these examples involved another individual’s personal records or accounts. Does an employer have the legal right to obtain access to an employee’s personal email account or home computer upon demand? When phrased this way, it is clear the answer must be no.

And so it is, although only a few cases actually deal with the level of control exerted by a corporation over an individual employee or agent. In *Sithon Mar. Co. v. Holiday Mansion*, CIV. A. 96-2262-EEO, 1998 WL 182785 (D. Kan. 1998), the plaintiff alleged that the defendant, Mercury Marine, controlled both another corporate entity, Motomarine, S.A., and an individual, Mr. Magiras, who plaintiff alleged was a local Mercury representative in Greece. *Sithon* at *5. The plaintiff alleged the following facts to show that Mercury controlled Mr. Magiras:

(1) Magiras admitted under oath that he has been an authorized Mercury representative in Pefkohori, Greece since 1994; (2) on May 23, 1997, Magiras assisted Mercury in its inspection and sea trials of one of Sithon’s boats; (3) Magiras permitted Mercury’s counsel and its expert witness, Jack Riggleman, to photograph and withdraw oil samples from six of the Sithon returned engines that are presently in Magiras’ workshop; (4) Mr. Magiras met with Mercury counsel on at least three occasions prior to his deposition to discuss this matter at length, at which time he most likely showed Mercury’s counsel the same documents which Sithon seeks in this motion; and (5) finally, Magiras commenced his deposition as Mercury’s witness on May 28, 1997. *Id.*

The Court noted that federal courts have “universally” held that possession, custody or control means that either the party has actual possession, custody or control, or has the legal right to obtain the documents on demand. *Id.* at *6. The Court also noted that the burden lies with the requesting party to prove that the opposing party has such control. *Id.* Accordingly, the Court held that the plaintiff failed to demonstrate that Mercury had the requisite control over documents in Mr. Magiras’ possession, and that the facts alleged fell “well short of showing the requisite control.” *Id.* “Unless Mercury could order Magiras to surrender the documents to it, it lacks the requisite control.” *Id.*

In *Kickapoo Tribe of Indians of Kickapoo Reservation in Kansas v. Nemaha Brown Watershed*

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Florida Bar Board of Governors Report

By Carl Schwait



The Florida Bar Board of Governors met on March 11, 2016. The major actions of the Board and the reports received included:

The [Legislation Committee](#) reported that Florida's 2016 legislative session was scheduled to conclude that day. A bill to impose term limits on appellate judges was not heard by the Senate (and did not pass by sine die). [The Florida Bar opposed term limits for any state court judges in Florida, either on the trial or appellate bench.](#) A death penalty bill was approved by the governor on March 7. The state budget, as approved by the Legislature after the board meeting ended, contained the following court funding priorities: Infrastructure needs for the Supreme Court facility, including security support: \$315,774; Operational support for State Court Systems: \$707,789 (including 6 FTEs); 3rd DCA Court remodeling for ADA, security and building systems upgrades: \$6,482,222; 4th DCA courthouse construction: \$7,509,276; 2nd DCA facility space study: \$200,000; 2nd DCA facility lease needs: \$518,000; Restoration of Glades County courthouse: \$350,000; Renovation, restoration or expansion of Charlotte County Justice Center: \$1,000,000; Renovation, restoration or expansion of Okaloosa County Courthouse: \$1,000,000; Emergency renovation and repairs for the Nassau County Courthouse: \$300,000; and Operational increases for the Judicial Qualifications Commission: \$115,671. For summaries of legislation of interest to the legal profession and weekly updates published throughout the session: www.floridabar.org/legislativeactivity

A report was received from the [Board Review Committee on Professional Ethics](#) and the [Board Technology Committee](#) regarding amendments to rules [4-7.22](#) and [4-7.23](#), the lawyer referral service and lawyer directory rules. Proposed amendments were accepted on first reading and will be published for input from members. In the proposed amendments, the definition of a qualifying provider is broadened and restrictions and requirements to participate are reduced.

An informational report was given for the [Special Committee on Legal Education](#) which was recently appointed to review proposed changes to the [certified legal intern rule](#) and to the bar exam. The special

committee is comprised of law school deans, Florida Supreme Court justices, representatives of the [Florida Board of Bar Examiners](#) and other attorneys. Law school deans have said they spend countless hours preparing students to pass a 27-part exam that includes subjects the students may never use in their careers, rather than allowing them to work at externships and get real-life training. The committee is also looking at the background clearance necessary to serve as a Certified Legal Intern (CLI). Under the current rules, the student must apply to the Board of Bar Examiners and receive a clearance letter before being certified as a CLI. There is some concern regarding how long this process takes with the result being fewer students becoming certified as CLIs. Other reasons for the decrease are also being studied. Upon graduation, CLIs have to pass all parts of the bar exam.

The [Florida Bar Young Lawyers Division's Survey on Women in the Legal Profession](#) has received national media attention. A link to the survey was emailed to a random sample of more than 3,000 female members of [Young Lawyers Division \(YLD\)](#) and more than 400 responded. Key findings include: many respondents indicated they had experienced one or more serious issues, such as gender bias and harassment from opposing counsel, and employer or the court; more than one-quarter reported resigning from a position due to a lack of advancement opportunities, a lack of work-life balance and/or employer/supervisor insensitivity; 21% of respondents felt that they were not paid comparatively to their male counterparts; and 42% cited difficulties in balancing work/life responsibilities as a challenge or concern they face as practicing attorneys. In April, the YLD is presenting weekly free CLE webinars open to all Florida lawyers to support and recognize the achievements of women in the legal profession and at the [Annual Convention in June](#) will present "Engage: Advancing Women is a Cause for All Lawyers," a three-hour seminar. In addition, the YLD is introducing the Outstanding Woman Lawyer Achievement Award this year. The programs and the webinar schedule was published in the [April 1 issue of The Florida Bar News](#).

One special appointment was made: Mark Herron of Tallahassee was appointed to a four-year term on the Supreme Court Judicial Ethics Advisory Committee beginning July 1, 2016. Three applicants

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Is Justice Blind? Recognizing Bias in the Legal Profession and Beyond: A Leadership Roundtable

By Kate Artman

Lawyers, individually and as a profession, make an impact in the lives of people across all racial and socioeconomic lines. Within the profession, law student populations have become increasingly diverse - but the makeup of practicing lawyers and judges continues to be remarkably homogenous. To account for this discrepancy, experts have recently turned their focus to implicit bias.

Implicit bias: two words that shape our understanding of the world around us without us even knowing it. In layman's terms, implicit bias is what drives our gut feelings: it helps us make quick decisions under pressure, creating assumptions about people in situations where we have incomplete facts and need to move quickly. But it also plays a role in everyday interactions with other people, affecting every aspect of our professional and personal lives. On March 11, 2016, judges, lawyers, law professors, and law students came together to learn about implicit bias, how to recognize it, and to discuss ways to overcome it in the legal profession.

Following on the heels of the 2014 Leadership Roundtable "Women, The Law, and Leaning Into Leadership" and the 2015 Leadership Roundtable "Redefining Success in the Legal Profession," the focus of the 2016 Leadership Roundtable turned inward to implicit bias and how it affects everyday decisions by lawyers and judges. Stephanie Marchman, Chair of the Roundtable Planning Committee, worked closely with a number of local bar associations, including the Clara Gehan Association for Women Lawyers, Eighth Judicial Circuit Bar Association, Josiah T. Walls Bar Association, and North Central Florida Chapter of the Federal Bar Association, as well as the University of Florida Levin College of Law and the University of Florida Bob Graham Center for Public Service, to organize and host this event. The program would not have been possible without the efforts and resources of these organizational sponsors and the Federal Bar Association Activity Chapter Grant and the Florida Bar Voluntary Bar Association Diversity Leadership Grant. In addition, a number of local law firms generously contributed to the program this year, including Avera and Smith; Dean Mead; Fine, Farkash and Parlapiano; The Miller Elder Law Firm; and Salter Feiber. These contributions allowed nearly 40 law students to attend the luncheon and program at no cost.

To set the stage for the 2016 Roundtable, American Bar Association President Paulette Brown, who is also Partner and co-chair of the firm-wide Diversity & Inclusion Committee at Locke Lord LLP, spoke at the Eighth Judicial Circuit Bar Association Luncheon on implicit bias in the legal profession. As part of her presentation, President Brown showed participants a short video featuring several federal and state judges recognizing and coming to terms with their own implicit biases, and simple tools they have implemented to address their biases. Implicit bias is like an emotional reaction – instead, be humble, slow down your decision making process, and be internally motivated to be fair and square. Lawyers love their gut instincts, but the evidence proves that their guts aren't nearly as good as they think.

Following President Brown, the 2016 Roundtable began with an implicit bias introduction and workshop under the direction of Professor Jason Nance, Associate Professor of Law and Associate Director for Education Law and Policy at the Center on Children and Families at the University of Florida Levin College of Law. Professor Nance defined implicit bias as the "unconscious association or preference that is so established as to operate without conscious thought." Beginning with the premise that all humans are implicitly biased, but that implicit bias can be recognized and corrected, Professor Nance conducted an abbreviated version of the Harvard University implicit association test with all of the Roundtable participants to demonstrate the strength of individuals' automatic association between objects and people. People classify other humans automatically along any number of categories, including race, gender, age, disability, and nationality. This unconscious categorization triggers attitudes and stereotypes about those people that affects all interactions with them, although implicit bias manifests itself the most when people are at their most vulnerable, such as when they are hungry, tired, or under stress.

Professor Sarah Redfield, tenured professor at the University of New Hampshire School of Law and nationally published author, spoke on how implicit bias directly affects lawyers. The legal profession is one of the least diverse professions (topped only by veterinarians), largely due to our natural preference for our self-identified groups. This manifestation of implicit bias explains the lack of diversity in the legal

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EJCBA Golf Tournament beats 90% chance of rain to raise \$11,001 for Guardian Ad Litem Foundation

By Claudia Stantzyk-Guzek

Despite starting the week with a 90% chance of rain for the day of the tournament, the Eighth Judicial Circuit Bar Association was able to hold the annual Charity Golf Tournament on UF's Mark Bostick Golf Course on Friday, March 18, 2016 without a single drop of rain. Almost 70 golfers competed in the first ever "Player's Choice" tournament where golfers competed in two-person or four-person teams for gross, net and hole prizes. Thanks to these golfers and our 21 incredible sponsors, the EJCBA was able to exceed its prior checks to the Guardian ad Litem Foundation, with a donation this year of \$11,001. The Guardian ad Litem program is a volunteer-based organization that provides representatives to children involved in court proceedings, primarily as a result of alleged abuse or neglect. Thanks to the generous contributions of everyone involved, the EJCBA was able to once again donate an estimated 30% of the Guardian Foundation's annual budget to help the children in our community. Event sponsors and contributors included the following:

Dharma Endowment Foundation, Inc.
McCarty, Naim & Keeter, P.A.
Faulkner Realty, Inc.
Zaxby's
Capital City Bank Investments
Roberts Insurance, Inc.
The Liquor & Wine Shoppe at Jonesville
Folds & Walker, LLC
Steve Rappenecker
Smith Asset Management Co, LLC
Stripling Mediation & Arbitration
Jones Edmunds
Marilyn McLean
LogistiCare
Community State Bank
The Resolution Center
Renaissance Printing
UF Mark Bostick Golf Course
Courtney Johnson
Clay Electric Cooperative, Inc.
Gainesville Health & Fitness
Jeffrey & Carey Meldon
Freeman Realty, Inc.

Following a catered lunch by Zaxby's, the tournament golfers of ALL skill levels began with a shotgun start at 1 p.m., competing against other two-person and four-person teams in this multi-format tournament. The afternoon's cloudy skies allowed lawyers and community members alike to stay dry

but shaded from the sun, while coming together to support the Guardian Ad Litem program. Golfers were able to stay hydrated on the course thanks to The Resolution Center, which graciously sponsored all of the on-course beverages. The post-round reception food was deliciously home-cooked by tournament chair Mac McCarty and committee member Courtney Johnson, and adult beverages were provided by the Liquor and Wine Shoppe at Jonesville. In total, it was a great day enjoyed by all, but more importantly, the EJCBA and all of the participants were able to raise money for this great cause that benefits the children within our community.

Not the Boss of Me

Continued from page 5

Joint Dist. No. 7, 294 F.R.D. 610, 618 (D. Kan. 2013), the Tribe sought production of "mirror images" of the personal computers of employees of the District, or more specifically, all notes, emails, texts, records or documents related to the Tribe or the lawsuit's issues. The Tribe argued that the information from the employees' personal computers was necessary because the District's discovery responses were incomplete and suggested that any privacy concerns could be handled through search protocol and protective orders. *Id.* The Court rejected the Tribe's arguments, noting that while forensic imaging of hard drives has been allowed previously in very specific circumstances, the Court has never allowed the inspection of the personally owned computers of employees of the responding party. *Id.* The Court held that the District did not have possession, custody or control of the personally-owned computers and that the Tribe had nothing more than speculation upon which to base its claim that the employees had used their personal computer for District business. *Id.* at 619.

Looking at the cases both from Florida and federal courts across the country, it seems clear that employees' email accounts and personal computers are not within their employers' control for purposes of Rule 1.350(a). The ability to ask an employee to provide documents from personal email accounts or personal computers does not equate to the control to require an employee to provide them. If a corporate party receives a request to produce documents from its employees' personal email accounts or documents stored on an employee's personal computer, it can—and should—object to the request.

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Thank you to all of the participants and volunteers. Your invaluable support helped to make the 2016 tournament one of the most successful tournaments to date.

A special thank you to volunteer photographer Lua Lepianka for all the photos taken on the day of the event.

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James H. "Mac" McCarty
Julie Naim
Elizabeth Keeter

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Back row, from left to right: Steve Varvell, Sean O'Connor, David Jarvis, Brad Reimsnyder. Front row: Lindsey Reimsnyder.



From left to right: Charlie Hughes, Joe Crawford, Adam Lee, Ron Kozlowski.

Is Justice Blind?

Continued from page 7

profession for people of color and women: even while law schools are turning out more diverse graduates, lawyers who are established in their profession have an innate preference for people they identify as similar to themselves. Thus, the diversification of lawyers in positions of power (equity partners, law school administrators, judges) is much slower than at entry-level positions. To fight implicit bias, Professor Redfield advised participants to be intentional in their decision making, to not make assumptions, to engage in meaningful contact with others that do not fall within their self-identified group, and finally, to intervene when others are acting on implicit bias. She also encouraged everyone to take the implicit association test.

Following the implicit bias workshop, groups of experienced lawyers, new lawyers, judges, law students and other legal professionals broke out to discuss their personal experiences with implicit bias and suggestions for de-biasing their decision making. At the end of the discussion, table moderators reported back to the larger group on their small group's discussion. Several major themes emerged as a result of the small group discussions. Although many attorneys and lawyers had been unfamiliar with the term "implicit bias" prior to the workshop, Roundtable Moderator Ray Brady pointed out that every person present had experienced the assumptions that others make about members of the legal profession, but posited the theory that individuals who are frequently the victims of much more aggressive implicit bias - such as people of color or individuals with physical disabilities - are the most likely to have already started recognizing implicit bias and addressing it in their own interactions with others.

To remedy implicit bias, most small groups agreed that it is important to slow down and make conscious, deliberate decisions. Roundtable Moderator Julie Waldman suggested that if decisions made while angry, tired or while feeling threatened are the most susceptible to implicit bias, then the most elegant solution is to simply slow down and make mindful, intentional decisions. While slowing down may not always be possible - especially for members of the judiciary with steadily growing dockets - a conscious effort to recognize those stressors can go a long way in de-biasing decisions.

Other table discussions focused on ways to address implicit bias as a group. Roundtable Moderator Julie Naim urged lawyers and judges

to educate others about implicit bias at two critical times: active intervention when lawyers see others acting on their implicit biases, and also through formal education in law schools and CLEs. By educating others about implicit bias, lawyers and judges can impose accountability standards for the profession and actively engage in positive messaging.

Implicit bias is a universal human condition - it affects our decisions about others, as well as how others interact with us. It is a condition that cannot be cured, but it can be treated. The 2016 Leadership Roundtable demonstrated that the very first step is to recognize implicit bias when it occurs both in our own personal interactions and in others. With vigilance toward implicit bias and its effects on our decision making, our choices can be made on sound reasoning and ensure justice for all.

ADR

Continued from page 3

cramp you get in the middle of the night. It is the tendency to reject new evidence that contradicts a paradigm. Another term for it: it's disappointing, but, we refuse to be disappointed.

Defensive attribution hypothesis: attributing more blame to a harm-doer as the outcome becomes more severe, or, as personal similarity to the victim increases. In other words: the greater the damage/harm, the more we tend to blame the alleged harm-doer. "You are more liable because the injury is severe!"

Confirmation bias: tending to listen only to information that confirms our preconceptions. Some authors have stated this is an example of why it's so hard to have an intelligent conversation about climate change.

Conservatism bias: the tendency to favor prior evidence over new evidence. An example: people refused to accept the earth was round because they maintained their existing understanding that the world was flat.

In summary, our views, decisions and judgments are filled with errors and are influenced by biases that we can't even keep track of. However, certain biases are so common (and we haven't even touched the surface with the above examples) that we should make a concerted effort to recognize them in evaluating legal cases, during negotiations, and most importantly, dealing with our friends and family. Cognitive biases, we are told, help us survive by making decisions quickly; not necessary correctly.

A Double-Dip Of Paid Parental Leave, Anyone?

By Laura Gross



On April 5, San Francisco became the first U.S. city to guarantee new parents time off that is fully paid to provide care for their new child. While the Family Medical Leave Act of 1993 (FMLA) has long required that employers with 50 or more employees provide 12 weeks of parental leave for eligible employees who are new parents, paid leave is not required. The State of California provides partially paid parental leave, 55%, for 6 weeks, and this benefit is funded by mandatory tax contributions to the state's disability insurance program. The new ordinance in San Francisco requires the employer to pay the balance of the employee's pay so that new parents receive 100% of their regular wages during those 6 weeks. Parents can double-dip with both simultaneously enjoying fully paid leave. Unlike the state law, the local law gives employees who take such leave the right to return to their old jobs at the end of the six weeks. The law will apply to employers of 50 or more employees effective January 1, 2017, and employers of 20 or more employees effective July 1, 2017.

Improvement of benefits for parents and families is just another part of the nationwide effort against income inequality. Just a day before the San Francisco ordinance was passed, New York's governor signed a bill to provide private sector employees 12 weeks of paid family leave, making it the sixth state to pass paid parental leave legislation, joining California, Connecticut, Massachusetts, New Jersey, and Rhode Island, and several cities.

While Florida does not have a state law mandating employers to offer parental leave (except that state career service employees are entitled to up to 6 months of unpaid parental leave), employers that are governed by the FMLA must: (1) provide 12 weeks of unpaid leave to qualified employees, (2) restore them to their same position when they return to work, and (3) maintain group health insurance coverage, including family coverage, for an employee on FMLA leave on the same terms as if the employee had continued to work. And, employers who are not covered by the FMLA must carefully navigate the Americans with Disabilities, Title VII, the Florida Civil

Rights Act, and local laws which have requirements governing leave for pregnancy and pregnancy-related conditions. Enforcing the rights of pregnant women in favor of allowing leave is currently a top governmental priority.

Final EJCBA Luncheon for 2015-2016 Features Florida Bar President Ramón A. Abadin



To conclude EJCBA's leadership luncheon series for 2015-2016, our featured speaker for the May 13, 2016 luncheon is Florida Bar President Ramón A. Abadin.

President Abadin is a partner in the Miami office of Sedgwick LLP, where he focuses on complex commercial, insurance and corporate litigation.

His focus as Bar president is on technology and challenging the Bar's membership and leadership to recognize the transformation revolutionizing the legal services marketplace and to embrace that change. He joined the Bar's Board of Governors in 2006. He has chaired the Legal Education Committee of the Vision 2016 Commission, an in-depth study of the future practice of law.

President Abadin, who received his J.D. degree from Loyola University New Orleans School of Law in 1985 and a Bachelor of Arts degree from Tulane University in 1981, is fluent in English, Spanish and Portuguese.

He is married to Kimberly Cook, who is managing partner in the same Miami office of Sedgwick LLP, and they have three children.

Register on or before Monday, May 9 at noon at www.8jcba.org/event-registration/may-2016-luncheon/

EJCBA Luncheons for 2016-2017:

While we take a hiatus from luncheons in the summer months, we will be hard at work booking luncheon speakers for 2016-2017. If you have ideas for potential speakers for 2016-2017, please contact Meshon Rawls at rawls@law.ufl.edu. Thank you and have a great summer!

Florida Bar Board of Governors Report

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for [one of the two public member seats on the Board of Governors](#) were approved to be sent to the Supreme Court to make a two-year appointment: Judy Doyle, of Orlando, Sharon B. Middleton, of Ponte Vedra Beach, and Herbert E. Polson of St. Petersburg beginning in June 2016.

SPECIAL APPOINTMENTS COMING UP AT THE MAY BOARD MEETING

[Applications and deadlines for these special appointments are posted on the website.](#)

ABA House of Delegates (2 lawyers – includes under 36 delegates for 2-year terms beginning August 2016)
Florida Legal Services, Inc. Board of Directors (5 lawyers for 2-year terms beginning July 1, 2016)
Florida Lawyers Assistance, Inc. Board of Directors (3 lawyers and 2 non-lawyers for 3-year terms beginning July 1, 2016)
Florida Board of Bar Examiners (2 lawyers for 5-year terms beginning November 1, 2016)
Florida Medical Malpractice Joint

Underwriting Association (1 lawyer for 2-year term beginning July 1, 2016).
Supreme Court's Commission on Professionalism (5 lawyers for 4-year terms beginning July 1, 2016)
Judicial Nominating Commissions (1 lawyer for each of the 26 JNCs for 4-year terms beginning July 1, 2016).

IMPORTANT LINKS

The Florida Bar's Law Related Education Committee has launched a new mobile "#JustAdulting" app to help young adults understand the legal rights and responsibilities that will greet them when they turn 18: www.floridabar.org/justadulting. The Practice Resource Institute (PRI) provides guidance, resources and assistance to Bar members and staff: www.floridabar.org/PRI. Receive important Florida Bar announcements and news on the profession via social media at www.floridabar.org/socialmedia.

May 2016 Calendar

- 4 EJCBA Board of Directors Meeting – CANCELED
- 5 Deadline for submission of articles for June Forum 8
- 5 LAW DAY Program: Miranda: More Than Words, Matheson History Museum , 513 E. University Ave., 6:00 p.m.
- 6 Poised & Polished: Non-Jury Trial Skills Series continues, 2-5 p.m.
- 11 Probate Section Meeting, 4:30 p.m., Chief Judge's Conference Room, 4th Floor, Alachua County Family & Civil Justice Center
- 13 EJCBA Luncheon, Ramon Abadin, President, The Florida Bar, The Woolly, 11:45 a.m.
- 13 Poised & Polished: Non-Jury Trial Skills Series continues, 2-5 p.m.
- 17 Family Law Section Meeting, 4:00 p.m., Chief Judge's Conference Room, Alachua County Family & Civil Justice Center
- 20 Poised & Polished: Non-Jury Trial Skills Series continues, 2-5 p.m.
- 30 Memorial Day, County & Federal Courthouses closed

June 2016 Calendar

- 8 Probate Section Meeting, 4:30 p.m., Chief Judge's Conference Room, 4th Floor, Alachua County Family & Civil Justice Center
- 9 EJCBA Annual Dinner and Meeting, 6-8:30 p.m., Florida Museum of Natural History
- 15-18 66th Annual Florida Bar Convention, Orlando

Have an event coming up? Does your section or association hold monthly meetings? If so, please fax or email your meeting schedule to let us know the particulars, so we can include it in the monthly calendar. Please let us know (quickly) the name of your group, the date and day (i.e. last Wednesday of the month), time and location of the meeting. Email to Dawn Vallejos-Nichols at dvallejos-nichols@avera.com.