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EDITOR’S NOTE

This annual Survey of Florida Law provides a compilation and analysis of significant developments in Florida law from July 15, 1991 through July 15, 1992.

The Board of Editors wish to thank the contributing authors of this Survey for their time and efforts in supporting the goal of the Nova Law Review — enhancing the resources of Florida’s local practitioners.

I would like to thank the entire Law Review staff, with special thanks to the Board of Editors, for their contribution to this endeavor.

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In ancient Greece, there was a king of Corinth, named Sisyphus. Sisyphus offended the God Zeus mightily. As a result, Zeus imposed punishment—for eternity, Sisyphus would push a boulder, several times his size, up a mountain in Hades. The one catch was, each time Sisyphus and the boulder would near the top, Sisyphus would lose control. The boulder would rumble down to the bottom. Sisyphus would have to start all over again.

This Greek myth captures the real life practice of law in Florida today. There is great dissatisfaction among lawyers—many say it isn’t fun anymore.

It is very stressful dealing with people in conflict, dealing with human beings in general, and problems and other attorneys in particular.

Also, the average financial rewards are not what "LA Law" or the American Lawyer would have you believe. In Florida, sixty-two percent of the Bar has practiced more than ten years, yet the average income is $70,000 a year or less.

Roughly seventy percent of the lawyers in private practice, are either solo practitioners or in firms of five or fewer lawyers. This means the daily pressures of running a small business, complete with cash flow struggles, overhead and personnel management problems. Several years ago, a study found a lawyer had to bring in $65,000, before the first dollar could go to the lawyer’s paycheck. I can only guess what that number is today.

This does not make lawyers with school loans the size of house mortgages feel very secure.

Factor in the country’s economic doldrums, the growing competition from both legal technicians and the almost geometric growth in lawyers (The Florida Bar had 12,000 lawyers in 1970, 28,000 in 1980, and 50,000 today,);

* President elect of the Florida Bar. Partner, Steel, Hector & Davis; J.D., Georgetown University Law Center, 1973; B.A., cum laude, Kansas State University, 1968.
Add the basement level regard the public has for lawyers (They see us below Scrooge in our level of arrogance, greed, and lack of simple human decency), and you can begin to see the basis for comparison with Sisyphus and his rock.

Yet last year, the nation’s law schools graduated 34,000 new would-be-lawyers.

These come out of the law school womb, and in utter shock at the difference between school and practice, gasp “what did I spend three years learning”, as nothing prepares them to cope with the business side of practice—managing people, satisfying clients, collecting fees, to say nothing of drafting documents, serving subpoenas or providing quick, practical, common sense solutions to people’s problems.

Given all the negatives, why does anyone chose to become a lawyer? Because it offers the best opportunity this world has, to use our talents to help others, to make a positive contribution in service to our community, to keep growing and learning everyday.

People who enjoy the practice of law, are positive realists, who see the glass as half full, knowing it will never be completely full.

We accept that no endeavor by which we earn our daily bread is without monotony, aggravation, frustration, stress and conflict.

The ability to use our brains, creative talents and other gifts to help others, however, provides the psychic return that makes pushing the rock up the hill a worthwhile daily activity.

For those of you who go on to become lawyers, I must confess, you will be pushing your rock through a swirling storm. In addition to the economic and competition factors I described, our profession is in great flux.

As we near the 21st century, there are increasing technological advancements which often cause more problems then they solve to say nothing of their cost.

The “win at all cost” attack mentality has severely eroded our professional collegiality which used to buffer the inherent job stresses.

The “me” generation’s equation of a person’s worth with income, or with the size and costs of their adult toys has devalued our commitment to common good and honest service to others. It has focused us on things rather than people. This in turn has caused irrepairable riffs in our essential human connections with each other.

The fixation on the billable hour has produced a time famine, with its distressful impact on lawyers’ delicate balance between their professional and personal lives, to say nothing of their involvement in the community.

The truth of the matter is that these are times of change. Change causes disquiet and discomfort to most. In fact it is fair to say the only person who truly delights in change, is a wet baby.

In these swirling, changing times, I offer you a tested compass. It will give you a true course as you push your rock up the mountain. It is also guaranteed to keep your rock from crushing you, as it crashes down the mountain.

The compass is our value system as lawyers. Florida lawyers have summarized those values in our Ideals and Goals of Professionalism.

Those Ideals are: 1) commitment to equal justice under law and the public good; 2) an adherence to a fundamental sense of honor, integrity, honesty, candor and fair play; 3) a personal pledge to courtesy, respect for others, and the fair and efficient administration of justice; and lastly independence of judgment.

Our Ideals and Goals of Professionalism recognize that we live in an interdependent society—where we each must struggle to overcome the temptation to put our self-interest first at the expense of the common good.

In American society, we, lawyers, have special powers and privileges which come with the corresponding responsibilities to promote a just society. We are accountable to the public for this.

Our goal is justice; the vehicle is truth with fairness dictating the procedure. Put another way, whether representing a client or as an officer of the court, or as a public citizen, we must do justice, promote justice, honestly and fairly.

It is tough to live up to these Ideals in the rough and tumble of daily existence. In fact, you will often be tempted to blatantly ignore them.

The temptation is insidious—usually in the disguise of something good. Our zeal, advocacy or other self-deceptive motivation convinces us of the righteousness of our cause, the need to win at all cost.

Had we but followed our independent judgment, we would have come on the true fact of a lawyer’s life—there is at least a third version to every story each side protests is "The Truth". Few human disputes are all black or all white. They are mostly multiple shades of grey.

Yet yielding to the temptation puts us on the slippery slope downward. We may feel uncomfortable the first time, but the insidious process has started. The next time we are more immune to that feeling and we slip farther and faster downward.

Why is this important to you? Because when you ignore your Ideals, you sabotage your professional reputation, the crown jewel of which is your integrity. Your integrity is your only real security in this changing world.
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below Scrooge in our level of arrogance, greed, and lack of simple human
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lawyer, especially in dealing with clients. This readable text is an easy beginning. Work on other ways to develop "good bedside manners"; it will keep your malpractice claims down.

Three: Get a copy of the "Desiderata" by Max Ehrman, and read it or something similar once a day. Give yourself a gift of silence and peace for twenty minutes. It will help keep your abounding insecurities under control, and let you see the big picture of your law school education. You have a superb resource in Fran Abrams, in learn stress management skills. Use it.

Four: Balance law school's emphasis on litigation and give yourself two essential lawyering skills—take a negotiation workshop followed by a mediation workshop. In Federal court, ninety-six percent of the disputes are resolved by some form of negotiation or mediation. These skills are the hallmark of great diplomats and lawyers. Diplomats use warfare only when diplomacy fails. Good trial lawyers likewise use litigation only when good faith negotiations fail. With these skills, you will avoid one of the biggest deficits new lawyers suffer.

Five: In your third year, handle as many pro bono cases as you can. Nova has several excellent programs. In addition to insuring access to the legal system, handling individual clients teaches you the care and feeding of clients, the trials and tribulations of practice, as well as gives you a chance to develop creative, practical problem solving skills.

Finally: Attend a basic one day Bar seminar on law office economics and management. Ask the law school or the student bar association to arrange roundtable discussions or visits to the offices of your alumni in different types of practices. If the alumni will discuss the rewards and problems of each, you will have a truer picture of the variety of opportunities available to law school grads. Such can range from private practice to lobbying, to rural legal services, to in-house counsel, to being a law school dean to name just a few.

I wish the Class of 1995 great success in law school. If I can help in any way, answer any question, please call. I have no influence with the Board of Bar Examiners, though.

Each of you is special, with unique gifts to contribute to our profession and society. I am confident that every one of you, in your own way, can make a positive difference. I and your future Bar, look to you to make us proud to be lawyers.

In the meantime, welcome to "Rock Pusher Anonymous."
Thank you very much.
Nobody said being a lawyer would be easy. But by doing it the right way, the direct, honest way, you will achieve what we know you are capable of—namely being exemplary representatives of our profession. The choice is up to you, and only you.

Over the next three years, you will learn the art of legal analysis and deductive reasoning. You will learn to question and examine all facets before arriving at a conclusion. Use our ideals to judge the validity and fairness of the process. Keep focused on your primary goal—justice, ask if the process achieves it. If not, how can it.

The educational process you start today does not end in the 1,000 plus days Dean Roger Abrams calculates. It will be a daily experience for the forty-five plus years of your career, for ours is a learned profession.

Be patient with yourself and others. The wisdom and insight that will make you a revered counsel, is a slow, evolutionary process, requiring a steadfast commitment to our ideals, a healthy self-discipline, an understanding of ourselves and human nature, plus the trial and error of experience.

Based on the faculty introductions the Dean made this morning, I'd say Nova Law School is finding a resolution to the long and heated debate on the goal of law school education—should it focus on legal reasoning or turn out practitioners.

As a practitioner with an interest in the abilities of new Florida lawyers, I'd like to share six suggestions to fill important gaps in the standard law school education—namely dealing with human beings and the business side of the profession.

I recognize that you will be overwhelmed the first six months. However, I think you will enjoy these suggestions even though they may be a bit unorthodox.

First: Read the Bible, both the Old and New Testament, from cover to cover (use a modern translation with annotations). Not only is it our western civilizations' source book for many of our laws, such as our property laws, it shows the evolution of the concept of justice through the ages.

More importantly, it is one of the most comprehensive texts on human psychology. It has every act, motive, and consequence of human interaction imaginable. It is an easy way to understand people and their idiosyncrasies without leaving your room. It is also a good source for analogies, for examples of good and bad writing, and practical advice.

Second: Read Dr. Deborah Tannen's book "You Just Don't Understand" which discusses the differences in the way men and women communicate. Good communication and listening skills are essential to any lawyer, especially in dealing with clients. This readable text is an easy beginning. Work on other ways to develop "good bedside manners"; it will keep your malpractice claims down.

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