

Foreword

In hindsight, it makes perfect sense for Steve Peskind to have written a definitive work on evidence for the family law practitioner. Seldom does a book offer the promise that this one does of making one a better trial lawyer for having read it and keeping it close while preparing for any evidentiary proceeding. I met Steve in 1994 when we attended the American Bar Association Family Law Section's Trial Advocacy Institute as students. For those who have not attended, this Institute, now presented in partnership with the National Institute of Trial Advocacy, is an unparalleled experience for turning the collection of facts and documents we assemble into a persuasive presentation for judge or jury. The collective experience of Institute attendance or, as some would say, survival creates bonds that last a lifetime. Since our attendance at the Institute, Steve and I have both been fortunate enough to be included in the faculty so once each year, we take a deep breath and plunge into 8 days of intensive trial training for lawyers who have practiced anywhere from 2 months to 20 years. Their common denominator is the desire to take their family law trial skills and their communications skills up a notch.

Steve's book is unique as "handbooks" go because, unlike most, it is organized in a format that can work for all family law trial lawyers regardless of whether they practice in a state that uses a variation on the Federal Rules or a common law body of rules on evidence. It is reminiscent of tried and true evidence handbooks, my personal favorite from law school being Thomas Mauet. The superlative ones enable the reader to quickly turn to the rules that pertain to particular types of evidence with ease for reference during

a trial. However, as I read this book, I decided that it sells the book short to call it a handbook on evidence because it is so very much more. It clearly articulates the philosophy and method we teach at the Trial Advocacy Institute and inspires anyone who reads the preface and introductory chapters to want to put cases together in a way that commands interest in the listener and in the style of great trial lawyers. By reminding all of us who practice family law that we are no less trial lawyers than those in other practice areas, Steve gives us the reasoning we need to work out our own evidentiary issues for the areas that will most certainly develop as the world evolves.

When Steve and I lecture on evidence, we remind students of the rule that everyone seems to overlook, namely, Federal Rule 901. We affectionately refer to this as the “It is What it Is” Rule. Steve reminds us in his chapters on Cutting Edge Digital and Electronic Evidence that because there is no Rule for them, we simply need to follow the tenets of Rule 901 and be in a position to demonstrate to the court that a text is a text and an e-mail is an e-mail. By getting us back to basics in a terse and organized way, a first reading of Steve’s book will make anyone a better trial lawyer whether they have been in practice for 2 months or 20 years.

I have seen the evidence of Steve’s particular brand of enlightenment in the associates he sends to the Institute and in the eyes of those to whom he lectures. His approach to all things legal inspires passion and thoughtfulness. He doesn’t take the reasons why we do things for granted. Since Steve undertook to write this book, he has risen through the leadership of the ABA Family law Section to be a leader on the Publications Board. For that, the Section is truly lucky. This book combines the substantive knowledge critical to making the reader facile with the concepts of evidence with a format that insures that anything the family law trial lawyer could want is easily found at a moment’s notice. Boiled down to its essence, Steven Peskind’s Family Law Trial Evidence Handbook is the next

best thing to attending the ABA FLS/NITA Trial Advocacy Institute. He is a gentleman and a scholar in the truest sense of those words, and I am privileged to count him among my dearest friends.

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