PRACTICAL EVIDENCE IN THE DOMESTIC ARENA

I. INTRODUCTION:

Some years ago, I heard a lecture by an appellate court judge on evidence. She said, ***"Evidence either scares you to death or bores you to death."***

This judge gave a succinct analysis of what happened to a judge's decision on an evidentiary matter when it was appealed: (a) initially, there was a fifty/fifty chance of the judge being right; (b) fifty per cent of that, the attorneys think the Judge is right; (c) ninety per cent of those decisions will never be appealed and (d) eighty per cent of those appealed will be declared harmless error.

The appellate courts customarily rule in favor of "the discretion of the trial judge." The issue of evidentiary rulings on appeal was framed in ***Urbani v. Razza, 238 A.2d 383(RI 1968):*** "That the ruling was erroneous and foreclosed further inquiry into the subject matter does not necessarily call for a reversal inasmuch as an exclusion of evidence, even if wrongful, will not suffice for that purpose unless it causes 'substantial injury'. Injury to that degree occurs only if the evidence excluded was relevant and material to a crucial issue and if it can with reason be said that such evidence, if admitted, would probably have influenced the verdict or had a controlling influence on a material aspect of the case. Only infrequently does an exclusion of evidence have such an effect."

It is noteworthy that **Rule 103 of the Federal Rules - Rulings on Evidence-** incorporated the theory and language of ***Urbani v. Razza:***

"(a) **Effect of erroneous ruling.** Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected…."

II. APPLICABILITY OF RULES OF EVIDENCE

The purpose of this discussion today is not to teach a course on evidence. Rather, it is to isolate certain areas of domestic relations practice wherein the rules of evidence are habitually and customarily applied and involved.

While each state may have different rules of evidence and different interpretations, it certainly has been established that most jurisdictions have molded their rules of evidence based upon the Federal Rules of Evidence. Therefore, reference in this paper shall, in fact, be to the Federal Rules of Evidence and their applicability. No attempt is being made to apply each specific rule from each jurisdiction where it may vary from the Federal rules. However, utilizing the Federal rules should certainly give the applicability of these rules clear meaning even though there may be some distinguishing features from the local jurisdiction rules.

III. THE PURPOSE AND CONSTRUCTION OF THE RULES

Rule 102: "These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined."

An argument is often made during an objection that "Your Honor, I object on the basis that the evidence offered is prejudicial." When evidence is, in fact, offered by one side, it is supposed to be prejudicial in favor of that side. The issue is not prejudicial evidence. The issue is "is it unfairly prejudicial?" When an attorney objects before me on the basis of "it is prejudicial", I am truly desirous of mimicking some of my southern colleagues and say, "No Sheet!". However, discretion is the greater part of valor and I try not to revert to that response.

IV. In the trial of a domestic relations case, some of the most common evidentiary problem areas involve the following:

1. The child witness
2. Lay opinions
3. Present recollection refreshed
4. Past recollection recorded
5. Photographs
6. Statements made for medical diagnosis or treatment
7. Scope of cross-examination
8. Use of learned treatises
9. Use of summaries
10. A Motion to Strike
11. A view
12. The catch-all exception to hearsay

TOPIC: THE CHILD WITNESS

RULE: Rule 611 (a) provides: "**Control by court.** The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment."

Rule 601 provides "**General Rule of Competency.** Every person is competent to be a witness except as otherwise provided in these rules." This presumption was set forth prior to the Rules themselves in ***McCormick on Evidence, Sec. 62 at 152 (Cleary 3d Ed. 1984)***. In making the determination of competency, it is the trial justice who makes that determination. In ***Wheeler v. United States, 159 U.S. 523 (1895),*** the

United States Supreme Court specifically stated that "when a child is produced as a witness, it is the duty of the judge to examine him without the interference of counsel further than the judge may choose to allow." The Court further said, "A finding of the trial court that a child is a competent witness, made upon competent and sufficient evidence, is not revisable in the appellate court." In the more recent case of ***State v. Marr, 673 A.2d 452 (RI 1996)***, the Court rendered an excellent analysis of the testimonial capacities that are necessary for a child to be found competent as a witness: "The child may not testify unless and until the trial justice has been satisfied that the proposed witness can (1) observe, (2) recollect, (3) communicate (a capacity to understand questions and to furnish intelligent answers), and (4) appreciate the necessity of telling the truth." The Court further said, "The general rule has been stated that doubt should be resolved concerning minimum credibility of the witness in favor of permitting the jury to hear the testimony and judge the credibility of the witness for itself. ***1 McCormick on Evidence, §62 at 247-48 (4th Ed. Strong Prac. Treatise Series 1992.)***

It is not uncommon on direct examination for leading questions to be used when questioning a young child. In the case of ***In re C. M., 595 A.2d 293 (Vt. 1991)***, the Court specifically approved the use of leading questions when questioning a young child about sensitive and embarrassing matters. See also ***State v. Michaels, 642 A.2d 1372 (N.J. 1994)***.

TOPIC: LEADING QUESTIONS

RULE: Rule 611 (c) "Leading questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily, leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions."

USE IN DOMESTIC RELATIONS CASES:

1. To jog the memory of the witness to a topic -- not a specific answer sought.
2. Used with aged or infirm witnesses.
3. Used with child witnesses.

PRECONDITIONS TO USE:

In commenting on which suggestive questions are proper and which improper, Professor Wigmore said, "Questions may legitimately suggest to the witness the **topic** of the answer: they may be necessary for this purpose where the witness is not aware of the next answering topic to be testified about, or where he is aware of it, but its terms remain dormant in his memory until by the mention of some detail, the associated details are revived and independently remembered. Questions, on the other hand, would so suggest the **specific tenor of the reply as desired by counsel,** that such a reply is likely to be given irrespective of an actual memory, are illegitimate." **3 Wigmore Evidence (3rd Ed.) § 769, p. 122.**

The use of leading questions is rarely reversed on appeal. "It has, of course, long been settled that the admission of leading questions is within the discretion of a trial justice. In the exercise of that discretion, he has considerable latitude and his rulings will be reviewed only for manifest abuse of his discretion, or where substantial injury has been done." ***Urbani v. Razza, 238 A.2d 383 (RI 1968)***.

TOPIC: LAY WITNESSES AND OPINIONS

RULE: Rule 701 and 602

Rule 701 -- "Opinion Testimony by Lay Witnesses. If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness' testimony or the

determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702."

Rule 602 -- "Lack of Personal Knowledge. A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of rule 703, relating to opinion testimony by expert witnesses."

USE IN DOMESTIC RELATIONS CASES:

1. A family member testifies as to whether or not a parent is a good parent.
2. A witness testifies as to the reaction of a child either going to or returning from a scheduled visitation.
3. Impressions of fear, intoxication, anger.

PRECONDITIONS TO USEe:

An excellent analysis of this rule is found in **Trial Evidence** by Mauet and Wolfson, 58-59 (1997). "FRE 701 limits the witness' inferences or opinions to those that are 'rationally based on the perception of the witness.' That is, the witness must have personal knowledge to support the inference or opinion, and the inference or opinion must be one that a reasonable person could draw from that personal knowledge. In addition, FRE 701 requires that the inference or opinion be 'helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.' Both rules then require a witness' observation or perceptions as a foundation before sufficient reliability of the witness' answer is established. When faced with ruling on objections based on FRE 602 or 701, trial judges ask: *How does the witness know what the witness claims he knows?*" Further, "In real life, normal people, in everyday conversation, unconsciously mix facts and opinions when they communicate. Asking

such people, when they become witnesses in court, to suddenly adhere to a strict distinction between fact and opinion becomes unworkable. For example, a witness is asked to describe how someone looked after a collision. The witness answers, 'She looked scared.' Strictly speaking, this answer is not a fact; it is an opinion or inference. The *'facts'* are the facial expressions and other body language on which the witness bases her *'opinion'* that the other person looked scared, yet it is obvious that the witness would have a difficult, if not impossible, time trying to describe the *'facts'* underlying the 'opinion'."

In upholding a lay person's opinion, in ***State v. Bruskie, 536 A.2d 522(RI 1988)***, the court held:

> "We have held that a more progressive rule is to allow the short hand rendition of such external appearances as intoxication by lay witnesses as long as (1) the witness has had an opportunity to observe the person and (2) to give the concrete details on which the inference or description is founded."

TOPIC: STATEMENTS BY PARTY OPPONENT

RULE: 801 (d) 2)

Rule 801(d)(2) -- "Admission by party-opponent. The statement is offered against a party and is (A) the party's own statement, in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth…."

This is a statement which is not hearsay, as it is specifically exempted by the rules.

It is significant to note that Rule 613(b) is not applicable when the statement is introduced as an admission of a party opponent or its agent.

USE IN DOMESTIC RELATIONS CASES:

Cross-examination of a party by reason of an out-of-court statement.

PRECONDITIONS TO USE:

1. The witness heard the declarant make a particular statement, or
2. The witness identifies the declarant as a party opponent in a civil case, or
3. The statement is inconsistent with the party opponents position at trial, or use of interrogatory answers by the party.

See **Trial Evidence Foundations, Tarantino.**

TOPIC: SUMMARIES

RULE: Rule 1006 - "Summaries. The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court."

USE IN DOMESTIC RELATIONS CASES:

1. Documents upon which business valuation opinions were based
2. Printouts of computer data basis used in appraisal of real property
3. Preparation by a spouse of expense sheets based upon numerous bills and receipts.

PRECONDITIONS TO USE:

It is assumed that the evidence upon which the summaries are based would be admissible in the first instance. Therefore, a proper foundation must be made prior to the summary being offered into evidence under the Rule. Under the Rule, the underlying documents, papers and records which form the basis for the summary, must be available for examination or copying by the opposing party.

TOPIC MARKET REPORTS AND COMMERCIAL PUBLICATIONS

RULE **Rule 803 (17)**

Rule 803 (17) -- **"Market reports, commercial publications.** Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations."

USE IN DOMESTIC RELATIONS PROCEEDINGS:

1. Mortality tables (life tables) are commonly used in valuating pension rights.

2. In the area of business valuation, various tables are commonly used as a basis for an expert's opinion.

3. In valuing stock rights, publicly held stock of the parties is commonly valued by looking at the usual stock market quotations found in the daily newspapers.

PRECONDITIONS TO USE:

It has been commonly said that the basis for this hearsay exception is the degree of reliability and trustworthiness of this type of material.

TOPIC: **PAST RECOLLECTION RECORDED**

RULE **Rule 803 (5)**

Rule 803 (5) -- "Recorded Recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party."

USE IN DOMESTIC RELATIONS PROCEEDINGS:

Example:

1. Witness questioned regarding spouse not keeping visitation schedules within the past six months.

2. Spouse not coming home for periods of time without explanation.

3. The use of diaries, calendars and other documentation.

PRECONDITIONS TO USE:

1. The witness presently on the stand once had personal knowledge of a particular fact or event but now has insufficient recollection to enable him to testify fully and accurately about that fact or event.

2. The witness prepared a record of the facts or events, either contemporaneously or while the events or facts were fresh in the witness' mind. Further, that when the record was prepared, it was accurate. The witness is shown the document but even after a review of it, still has an insufficient recollection to enable him to testify fully and accurately with his memory refreshed. It again should be noted that the proponent of the evidence may not offer the document itself into evidence. The Rule limits that right to an adverse party. It may be read into evidence, but not offered as an exhibit by the proponent.

TOPIC: **PRESENT RECOLLECTION REFRESHED**

RULE: **RULE 612**

Rule 612 -- "Writing Used to Refresh Memory. Except as otherwise provided in criminal proceedings by § 3500 of Title 18, United States Code, if a witness uses a writing to refresh memory for the purpose of testifying, either

(1) while testifying, or

(2) before testifying, if the court in its discretion determines it is necessary in the interests of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial."

USE IN DOMESTIC RELATIONS PROCEEDINGS:

Example:

1. The witness is questioned regarding a spouse not keeping visitation scheduled within the past six months but needs his or her recollection refreshed.

2. A spouse is not returning home for periods of time without explanation and a calendar was kept, which the witness needs to look at to refresh his or her recollection.

3. Documents may have been used to prepare an expense sheet and without looking at the underlying documents, the witness cannot recall the full basis for the preparation of his or her expense sheet.

PRECONDITIONS TO USE:

1. Any document may be used to refresh the witness' recollection. In ***United States v. Rappy, 157 F.2d 964, 967 (2d Cir., 1946)***, Judge Learned Hand said:

> "Anything may, in fact, revive a memory: a song, a scent, a photograph, an allusion, even a past statement known to be false."

2. The witness testifies that he cannot recall facts or events to which he is asked to testify. The witness either states that a particular writing, object or thing could help refresh his recollection or the proponent of the evidence shows the witness a particular object, thing or writing and asks whether it helps to refresh the recollection. The witness then reads the "article" to himself and then testifies that his memory has been refreshed and testifies from his refreshed memory. See **Trial Evidence Foundations, Tarantino §655.** In the case of "past recollection recorded", the witness definitionally will have no independent recollection of what he wrote and therefore, the writing will in essence be an embodiment of his testimony and he will have used it in testifying as a substitute for any present recollection. In "present recollection refreshed, it is not the writing, but the witness' personal knowledge only refreshed by the writing that is offered into evidence by the proponent.

TOPIC: LEARNED TREATISES

RULE: RULE 803(18)

Rule 803(18) -- "Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits."

USE IN DOMESTIC RELATIONS PROCEEDINGS:

Example:

1. During the direct examination of the expert psychologist.

2. The direct examination of a real estate appraiser.

3. The direct examination of the business valuator.

4. On cross-examination, it can be used not only to impeach, but also for the truth of the statement in the learned treatise.

PRECONDITIONS TO USE:

1. The statements are called to the attention of an expert witness upon cross-examination or relied upon by an expert witness in direct examination.

2. The statements are contained in published treatises, periodicals, pamphlets with respect to an area of expertise.

3. The statements are established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. It should be recalled, that the burden upon establishing the reliability of the authority is upon the party who offers the item. It may be read into the evidence, but shall not be marked as an exhibit. The statements in the learned treatises are only admissible when called to the attention of the expert on cross-examination or relied upon by the expert when he is in direct examination.

TOPIC: AUTHENTICATION OF PHOTOGRAPHS

RULE: RULE 901

Rule 901 -- "Requirement of Authentication or Identification.

(a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."

USE IN DOMESTIC RELATIONS PROCEEDINGS:

Example:

1. Photographs of the home.
2. Photographs of household furniture, furnishings and effects.
3. Photographs of the neighborhood, of schools.
4. Photographs of the family in happier of days.
5. Photographs of the children.
6. Photographs of the spouse with a third party paramour.

PRECONDITIONS TO USE:

The witness is familiar with the scene or object which is depicted in the photograph. The witness explains how he gained familiarity with the scene or object. The witness identifies the scene or object depicted in the photograph. The witness identifies the photograph as a fair, true, accurate or good depiction of that scene or object at the particular time relevant to the facts of the case. That the photograph is relevant as tending to prove or disprove an issue in the case. See **Trial Evidence Foundations, Tarantino §581.**

TOPIC: MOTIONS TO STRIKE

RULE: RULE 103

Rule 103 -- "Rulings on Evidence. (Motions to Strike)

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context;…"

USE IN DOMESTIC RELATIONS CASES:

Too often an objection is made after the witness answers. Counsel then forgets to strike the testimony from the record. Thus, while the objection was sustained, the testimony remains on the record, not having been stricken.

PRECONDITIONS TO USE:

The motion to strike is used in a variety of situations. The first situation may be the case in which the question itself is proper but the witness' answer is improper. Secondly, the witness answers so rapidly that the opponent did not have a fair opportunity to interpose an objection. In addition, after the witness has given apparently proper testimony, it develops that the testimony was improper. For example, on direct examination, the lay witness purports to testify from personal knowledge; on cross-examination, the witness makes the concession that he was actually relating what he was told by third parties. In all three instances, the opponent should "move to strike" rather than "object". See **Evidentiary Foundations, 2d Ed. Imwinkelried, p. 15**.

TOPIC: STATEMENTS FOR MEDICAL CARE

RULE: RULE 803(4)

Rule 803(4) -- "Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment."

USE IN DOMESTIC RELATIONS PROCEEDINGS:

1. History given to psychologists or counselors in order to obtain treatment.
2. Cases involving alleged child abuse.
3. Situations where disability is an issue and medical testimony is required.

PRECONDITIONS TO USE:

1. "FRE 803(4) substantially expands the scope of the common law exception. First, the statement need not be by the patient. In some instances, the statements made by family members can be admissible if made for 'purposes of medical diagnosis or treatment' if the patient is unable to speak because of age or condition, someone responsible for the patient, such as the patient's mother, can make statements that fall within the exception. For example, a parent of a young child tells the doctor, 'Bobby's been complaining about his stomach hurting since this morning.' This statement is made 'for purposes of medical diagnosis or treatment' and falls within the exception." See **Trial Evidence, Mauet and Wolfson, p. 186**. "For example, several cases have held that a child abuse victim's statement identifying the abuser as a member of the victim's household is admissible under FRE 803(4). The information is relevant to the patient's future physical and emotional health and his psychiatric treatment."

"The statement need not be made directly to a doctor. It can be made to any health care provider, including doctors, nurses, therapists, ambulance attendants, and chiropractors." ibid

TOPIC: CROSS-EXAMINATION

RULE: RULE 611(b)

Rule 611 (b) -- "Scope of cross-examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination."

USE IN DOMESTIC RELATIONS PROCEEDINGS:

Conditions and/or restrictions on use of cross-examination

Rule 611(c) provides specifically that leading questions should be permitted on cross-examination. The permissible scope of cross-examination is usually determined by the

scope of the direct examination. Ordinarily, cross-examination is limited to the subject matter of the direct examination as well as matters affecting the credibility of the witness. Cross-examination, in order to elicit impeaching matter, always is proper as it affects the credibility of the witness and is specifically allowed by the rule. Cross-examination to establish bias, interest, motive, prior inconsistent statements, contradictory facts, prior convictions, character for untruthfulness, conduct probative of untruthfulness and treatises are ordinarily allowed. See **Trial Evidence, Mauet and Wolfson p. 353** . Oftentimes, an objection is made that the cross-examination is beyond the scope of the direct examination. While that may technically be correct, in a bench trial, in particular, it is addressed to the sound discretion of the trial judge. That is specifically set forth in the rule itself.

TOPIC: A VIEW

There is one element of potential evidence that is rarely touched upon in the bulk of the treatises on evidence. That is, the view by the court. In most instances, the court decides whether a photograph or videotape will provide the trier of facts with an adequate understanding of the scene to be viewed without actually going to the scene. See **Auto Owners Ins. Co. v. Bass, 684 F.2d 764 (11th Cir. 1982)**. In domestic cases, this certainly is something that would come up in a view of the home or neighborhood or the business that is involved in the valuation process. There is no uniform view on this. See **M. Graham, Handbook of Federal Evidence, § 401.11 170 (3d. Ed. 1991)**

TOPIC: THE CATCHALL EXCEPTION TO HEARSAY

RULE: Rule 807

Rule 807 -- " Residual Exception. A statement not specifically covered by Rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it

is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

USE IN DOMESTIC RELATIONS PROCEEDINGS:

Example:

1. Prior inconsistent statements that lack the oath requirement of FRE 801(d)(1)(A)
2. Former testimony where the lack of opportunity and motive to cross-examine keeps it outside of FRE 804 (b)(1)(C)
3. Records that are not quite business or public
4. An abused child's statement identifying the abuser, but not qualifying as an excited utterance.

See **Trial Evidence, Mauet and Wolfson, p. 228.**

PRECONDITION TO USE:

1. Trustworthiness
2. Necessity
3. Material Fact
4. Satisfy general purpose of rules and interest of justice
5. Notice to other party.

When all else fails in getting evidence admitted, this is the rule to use.

The trial judge has wide discretion. The key, however, is "***trustworthiness"***.

CONCLUSION

As the appellate court judge said, the Rules of Evidence can either scare you to death or bore you to death; however, properly utilized the rules can expedite the presentation of your case or in the hands of an expert adversary, can certainly derail it. The knowledgeable use of the rules can greatly assist the trial judge in allowing evidence in to make your case or exclude evidence that you do not want in. The true use of the rules allow the trial lawyer to use the law as a functional tool in order to persuade the judge in making the evidentiary rulings. As was said by Professors Mauet and Wolfson:

> "Many lawyers, while knowing evidence rules, are less capable of using those rules as functional tools to persuade trial judges to rule in their favor. Use the rules well and your trial will not only be more productive but certainly will be more enjoyable."

Howard I. Lipsey
Associate Justice
Rhode Island Family Court

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