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The Lawyering Process Program: Building Competence and Confidence

By Jennifer B. Anderso and Terrill Pollman

Like their colleagues at law schools across the country, students at the William S. Boyd School of Law spend the early part of their law school careers learning the basics of legal research and writing. Unlike many of their fellow 1L's, however, Boyd students also learn other important concepts and skills. The Lawyering Process ("LP") Program at Boyd is a unique, three-semester class that includes significant instruction and experience in four areas: (1) legal writing and analysis; (2) legal research; (3) lawyering skills; and (4) professionalism. Each semester of LP instruction builds upon the last, so students gradually build competence - and confidence - in these areas.

Lawyering Process I

In the first semester of the LP Program ("LPI"), students learn to write in a predictive mode for inter-office communication. LPI students begin the semester writing several short memos of increasing difficulty that introduce the conventions of organization and legal analysis. Next, students are given extensive guidance through staged assignments as they research and write a memo involving multiple authorities. Finally, students independently research and write an inter-office memo involving multiple authorities and issues.

Concurrently with instruction in legal writing and analysis, students learn introductory manual research skills in the first five to six weeks of the semester. Law library faculty assist in teaching students how to research statutes, cases, and secondary sources as well as to update research including *Shepardizing*. Near the end of the semester, students train in

commercial computer research services (Westlaw and LEXIS). Basic citation is introduced in this semester as well.

In LPI, the faculty also allocate about four class hours to introduce the lawyering skill of interviewing. Students interview each other to learn the fact pattern for their final memo and provide feedback on one another's interviewing techniques in the form of written evaluations.

The LPI class also devotes between six to ten class hours on professionalism issues in the first semester. Students bring a fresh perspective when they participate in what often become very lively discussions. The professionalism issues we address include the roles of lawyers in society, styles of lawyering, professional organizations, the adversary system, confidentiality issues, and bias in the profession. Students keep a professionalism journal that gives them an opportunity to break from the more formalistic conventions of legal writing and communicate in a more expressive, personal style about the complex ethical decisions lawyers face.

Lawyering Process II

The second semester of the Program ("LP II") introduces students to persuasive writing. We begin by revisiting the topic of the last objective memo of the previous semester, this time as an advocate writing a pretrial motion. For the remainder of the semester, we address one complex problem, usually involving a federal statute, which simulates an actual case. The largest assignment is a memorandum in support of a motion at the trial level. In addition to the major writing

assignments, students complete five minor writing assignments. These may vary from year to year, but have included a letter to a legislator recommending a change in legislation; a demand letter to opposing counsel on an ethical issue; a settlement agreement; a counseling plan; and a memo to the file on an ethical issue.

In the second semester, students continue to hone their researching skills. Law library faculty assist in teaching sessions on research of legislative history, administrative law, internet research and cost-conscious, but effective ways, to combine electronic and manual research. Additionally, students research the problem they write about for the semester.

The new skills introduced in the second semester are oral argument, client counseling, negotiation, and mediation. Students argue the motion they have worked on all semester before their professor, who assumes the role of a trial level judge. LP Faculty also introduce client counseling and ask students to write a counseling plan on the problem they have been writing about. Negotiation is a popular class topic during this semester, with students negotiating the problem they have worked on all semester. After completing negotiations, students and their opponents jointly write a settlement agreement. Finally, we demonstrate mediation by inviting a local mediator to mediate the same problem with volunteer students acting the part of the parties and their attorneys.

We continue to introduce students to important professionalism issues in LP II. One of two writing assignments on ethical issues

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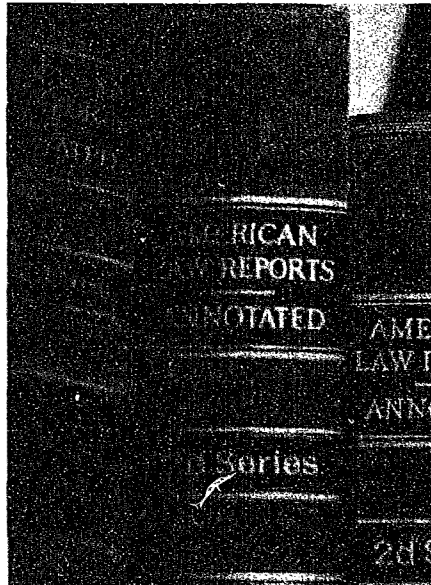
concerns a conflict of interest issue built into the fact pattern of the semester's major writing assignment. The second ethical issue varies. For example, last year the students wrote a memo to the file on a lawyer's responsibility for a paralegal's actions in contacting a represented party. Additionally, the LP II students experience working cooperatively in firms. At the beginning of the semester, students are divided into law firms. Students write their motion in firms, counsel and negotiate in firms, and limit their conversation about the assignment issues to firm members. Working cooperatively is difficult for the students at times, however, most find it to be a valuable experience that prepares them for the realities of law firm practice.

Lawyering Process III

In the third semester ("LP III"), students write persuasively at the appellate level and learn legal drafting skills. For the brief assignment we choose a case on the current Supreme Court docket. This year, the case we chose, *McCarver v. State of North Carolina*, raised the issue of whether execution of a mentally retarded person for first-degree murder violates the Eighth Amendment prohibition against cruel and unusual punishment. Students individually write a brief in which they must comply with all U.S. Supreme Court formatting rules except word count and professional printing. The issues are challenging, but students also find the experience rewarding and very much look forward to receiving an actual decision in the case. In addition to writing the appellate brief, students work in "firms" on drafting projects that usually include a representation agreement, a complaint, and an answer. Finally, we introduce the students to time-pressured writing by administering a simulation of the

Multistate Performance Test, a component of the bar examination in numerous states including Nevada.

In LP III, students continue to build on the research and lawyering skills introduced in earlier semesters



by researching the brief. We also instruct them about reading and taking notes on an appellate record. Students are given the record of the actual case. Although we edit it a bit for manageability, it can still be quite extensive. Students once again perform an oral argument, this time arguing their brief before a three-judge panel of attorneys and professors. We review interviewing skills by students interviewing each other to get the facts for writing the legal drafting assignments.

Finally, students face new professionalism questions as we address issues related to client billing and appellate advocacy. We discuss billable hour requirements and ethical issues surrounding billing practices, a discussion that is eye-opening for most students. Students must keep track of the "billable hours" they spend working on the various assigned writing projects. Finally, we discuss the particular

ethical requirements of appellate practice.

Lawyering Process Faculty

Some law schools continue to assign substantial responsibility for teaching legal research and writing to student teaching assistants or part-time professors. However, the faculty at the Boyd School of Law felt that the rigorous nature of the Lawyering Process Program argued against this practice. At Boyd, everyone who teaches Lawyering Process is a full-time faculty member whose primary focus is on teaching and student mentoring. The six members of the Lawyering Process faculty represent a rich diversity of backgrounds and experiences. They received their education at some of the nation's top law schools, and have over 35 years of combined experience teaching legal research and writing, as well as other subjects. Lawyering Process faculty members have practiced in a variety of settings including private practice, government, and public interest, and in areas such as administrative law, commercial litigation, civil rights, criminal defense, employment, environmental law, and health law. The faculty's desire to have full-time professionals dedicated to legal writing, skills and professionalism instruction reflects its sound investment in the writing abilities and professional excellence of future Boyd School of Law alumni.

Conclusion

The LP Program at the William S. Boyd School of Law is a product of the faculty's belief that the teaching of legal analysis, legal writing, legal research, lawyering skills, and professionalism are naturally intertwined. The overall goals of the program are to prepare students to be thoughtful, reflective lawyers who: (1) analyze legal issues logically and thoroughly;

(2) communicate clearly; (3) grasp the basics of lawyering skills such as interviewing, counseling, and negotiation; and (4) understand the nature of the lawyer-client relationship, as well as the roles lawyers play in our society and the responsibilities those roles carry with them. In meeting these goals, the LP Program furthers the stated mission of the law school to "serve the State of Nevada and the national and international legal and academic communities by developing and maintaining an innovative and excellent educational program that will train ethical and effective lawyers and leaders for Nevada and for the legal profession ..."

Terrill Pollman is the Assistant Professor of Law and Director of the Lawyering Process Program at the UNLV Boyd School of Law. She began teaching legal writing in 1991 at the University of Illinois at Urbana-Champaign. From 1993 to 1996, she was the Director of Legal Writing at Stetson University College of Law. Professor Pollman later returned to the University of Illinois at Urbana-Champaign as Director of Legal Writing. She has taught courses in Advanced Legal Writing, Advocacy, Feminist Jurisprudence, and U.S. Law. Professor Pollman directs the Lawyering Process Program and teaches Lawyering Process and Property.

Jennifer B. Anderson is a Lawyering Process Professor at the UNLV Boyd School of Law. From 1994 to 1998, she practiced commercial and health care litigation in Phoenix, Arizona with the law firms of Snell & Wilmer and Lewis and Roca. She subsequently worked as a staff attorney at the Arizona Center for Law in the Public Interest, where her practice focused on environmental and natural resources litigation. Professor Anderson teaches Lawyering Process, Health Law Policy, and Bioethics.



State Bar of Nevada
Maintaining the highest standards of the legal profession

ATTORNEYS AND JUDGES NEEDED TO ASSIST WITH MOCK TRIAL COMPETITION

Preparations are underway for the Fourth Annual Nevada High School Mock Trial Program. The project teaches Nevada's high school students how the law works by allowing them to act as attorneys, judges and witnesses on mock cases. This year's competitions will be held in February and March. The assistance of attorneys and judges throughout the state is urgently needed. Volunteers will help coach the students or act as judges.

More than 25 high schools across the state are expected to participate this year. If you have helped in the past, please help us again, and PLEASE encourage your associates to take part in this rewarding and exceptional event. With the anticipated growth of the program, your help is needed now more than ever. Last year there was a shortage of volunteers; don't let this happen again!

Coaches will be expected to put in 4-8 hours a month for each month prior to the competition. Those unable to make this time commitment may sign-up to judge one or more of the weekend competitions. Complete the questions below and send your response to: Audrey Bath at the State Bar via fax (702) 385-2878, or, via mail at 600 E. Charleston Blvd.; Las Vegas, NV 89104. Do so NOW. We need to begin assigning coaches and distributing case materials. A Mock Trial Coordinator will contact you within the next several weeks with more information. Thank you in advance!

Sincerely,
Audrey Bath, J.D.
 State Bar 2002 Mock Trial Liaison

NEVADA HIGH SCHOOL 2002 MOCK TRIAL VOLUNTEER REGISTRATION FORM!

I am interested in participating as a: Coach Judge

Coaches:
 If possible, I would like to coach the team from
 _____ High School.

Judges & Assistants:
 I am available for the following competitions:

- Saturday, Feb. 23, 2002 - So. District Competition
- No. District Competition - Date TBD, contact the Washoe County Bar Assoc.
- Friday, March 22, 2002 - State Competition - Round 1
- Saturday, March 23, 2002 - State Competition - Round 2-5

Name _____
 Phone _____ Fax _____ E-mail _____

Correspondence Address:
 Street _____
 City _____ State _____ Zip _____

600 East Charleston Boulevard • Las Vegas, Nevada 89104 • 702-382-2200 • 800-254-2797 • Fax 702-385-2878
 1325 Airmotive Way, Suite 140 • Reno, Nevada 89502 • 775-329-4100 • Fax 775-329-0522

ORDER OF SUSPENSION

Mona L. Snape
SC No. 37025
Filed Oct. 3, 2001

This is an automatic appeal from a Southern Nevada Disciplinary Board hearing panel's recommendation that attorney Mona L. Snape be suspended from the practice of law for one year, and that her eventual reinstatement be subject to several conditions, discussed below.

Mona Snape was admitted to practice law in Nevada in May 1993. Following her admission, she worked for Dennis Kist & Associates until sometime in 1996. Beginning in mid-1996, she maintained a solo practice in Las Vegas. Snape's license was administratively suspended in 1998 for failure to pay state bar dues.

Snape alleges that in November 1997, she received a serious head injury in an accident involving an all-terrain vehicle. She further asserts that the accident caused her to suffer from debilitating headaches and chronic pain. Snape claims that she has no documentation of her alleged medical problems because she could not afford health insurance, and so she could not afford to obtain treatment for her condition; she also testified at the disciplinary hearing that she "hate[s] doctors." Following the accident, Snape left the state for a time, and worked in various non-legal jobs. It appears that her administrative suspension occurred during this period.

Snape maintains that all of the conduct forming the basis for the complaint in this matter arose after her accident. She further asserts that she is now recovered, and estimates herself to be "90%" of her former self. She states that she is capable of practicing law, but indicates that she

would "go slowly," so as not to put too much stress on herself. Snape does not contest that she engaged in most of the conduct underlying the disciplinary complaint, but asserts that the misconduct was caused by the accident and that the accident should be a mitigating factor.

Count I of the complaint is based on Snape's representation of Eugene Shults. Snape was retained in early 1997 by Thomas Beatty, executive director of the Nevada Service Employees' Union, to evaluate a potential civil claim of Shults, a union member, against his employer. Snape failed to respond to numerous requests for information by Beatty and Shults. Shults eventually retained new counsel, but Snape failed to return Shults' file to him. Shults, through new counsel, obtained a district court order directing Snape to turn over the file, imposing \$250 in sanctions, and awarding costs of \$258.88 to Shults. Snape failed to pay the sanction or the costs, and Shults still did not have his file at the time of the formal hearing in this matter.

Beatty and Shults complained to the state bar. Despite the bar's repeated attempts to contact Snape about the pending grievances, Snape failed to respond. Snape finally appeared at the state bar offices in June 1999 in response to a subpoena issued by the state bar; she was given the complaint and was granted an extension of time, until July 12, 1999, to respond. She still failed to respond to the grievances.

Count II of the complaint was based on Snape's representation of Kenna Perkins. Perkins retained Snape in April 1997 for \$1,500 plus costs to represent her in a discrimination suit against her employer. Snape filed a complaint on Perkins' behalf in federal court in

June 1997. After November 1997, Perkins, despite repeated attempts to contact Snape, was unable to communicate with her about the case. Snape essentially abandoned the case in the middle of discovery, and failed to formally withdraw. Perkins' case was dismissed in September 1998 as a discovery sanction. Perkins only learned of the dismissal when she herself called the court in early 1999 to check on the status of her case. In February 1999, Perkins wrote a letter to the court asking for reconsideration of the dismissal; the federal court treated it as a proper person motion, and Perkins was eventually successful in reviving her claim, without Snape's assistance.

Perkins filed a fee dispute against Snape with the state bar, and obtained an arbitration award of \$1,764.40. Snape failed to pay the award, despite Perkins' demand. Perkins also filed an ethics grievance. Despite numerous requests by bar counsel, Snape failed to respond to the grievance. Even after meeting with bar counsel and promising to file an answer to the complaint, and despite having been granted an extension of time, she still failed to respond.

Count III of the complaint was based on Snape's representation of Joseph Magenti. Magenti retained Snape in August 1996, for \$1,500 plus costs, to represent him in a federal lawsuit. The complaint was filed in November 1996, and Magenti worked closely with Snape on his case until February 1998. From then on, Magenti was unable to communicate with Snape at all. Snape essentially abandoned the lawsuit, and failed to formally withdraw. Magenti wrote to the federal judge assigned to his case, advised him that he could not communicate with his counsel, and

asked for time to retain new counsel. He was successful in doing so, and was able to avoid the dismissal of his lawsuit. After he had retained new counsel, Magenti and new counsel were unable to obtain Magenti's file from Snape. Consequently, Magenti filed a grievance with the bar. Snape finally returned Magenti's file in July 2000, after the state bar filed a formal complaint against her. Despite bar counsel's numerous requests, Snape failed to respond to the grievance.

A formal disciplinary complaint was filed on October 13, 1999. Snape attempted to evade service of the complaint by telling the process server that she was "Lisa Smith," and that the owner of the house, Snape, did not live there. The process server nevertheless left the complaint with her, and later, after looking at Snape's bar application photo, identified Snape as the woman who had called herself "Lisa Smith." Snape testified that she pretended to be someone else because she was a woman living alone, without a close neighbor, and because the process server was a stranger.

A formal hearing was set for April 19, 2000, and was contemplated as a default hearing, as Snape had never answered the complaint. Snape personally appeared at the hearing and indicated that she would like to defend the matter on the merits. The panel chair continued the matter so that Snape could respond to the complaint.

In her response, Snape admitted to most of the conduct alleged, except as follows. She denied that she had represented Shults; Snape asserted that the Union was her client. Also, while she admitted that she had not filed proper motions to withdraw in the Perkins and Magenti matters, she asserted that she had sent letters to those clients indicating that she was forced to withdraw because of her medical problems. She later filed an amended response stating that she had found some documents in her garage, including the retainer agreement with the

Union and other correspondence in the Shults matter, as well as the Magenti file.

The continued formal hearing was held on October 4, 2000, and the panel entered its Findings of Fact, Conclusions of Law, Decision and Recommendation on October 19, 2000. The panel found that with respect to Count I, the Shults/Beatty grievance, Snape had violated SCR 153(diligence), SCR 154 (communication), SCR 165(safekeeping property -- failure to turn over file), and SCR 200(2)(failure to respond to disciplinary authority). With respect to Count II, the Perkins grievance, the panel found that Snape had violated SCR 151(competence), SCR 153 (diligence), SCR 154 (communication), SCR 165(safekeeping property -- failure to turn over file), and SCR 200(2)(failure to respond to disciplinary authority). With respect to Count III, the Magenti grievance, the panel found that Snape had violated SCR 153(diligence), SCR 154(communication), SCR 165(safekeeping property -- failure to turn over file), and SCR 200(2)(failure to respond to disciplinary authority).

The panel recommended that Snape be suspended for one year, to protect the public. The panel further recommended that before Snape could petition for reinstatement, she should be required to:

- Pay the sanction and costs in the Shults matter;
- Pay the fee dispute arbitration award to Perkins; and
- Be evaluated by a neurologist or neurosurgeon and a neuropsychologist to obtain reports demonstrating that she was competent to resume the practice of law.

The panel further recommended that, following her reinstatement, Snape be placed on probation for two years, subject to several conditions:

- That Snape enter into a mentorship program with the

State Bar for the probationary period;

- That Snape maintain malpractice insurance during the probationary period;
- That Snape pay the state bar's costs in this matter by the end of the probationary period, both for the formal proceedings and for services during the probationary period;
- That Snape cooperate with the State Bar and comply with all requests for information during the probationary period;
- That Snape maintain a current address with the State Bar pursuant to SCR 79;

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COURT NEWS

The Supreme Court Clerk publishes rule changes in the same manner as an opinion of the court. In accordance with the Nevada Rules on Administrative docket, Section 6, the Clerk will disseminate printed copies of the order, without charge to all subscribers, to the advance opinions of the Nevada Reports. Single, printed copies of the order are available from the Supreme Court Clerk for \$2 each. Photocopies are available for \$.50 per page.

ORDER AMENDING RULE 24 OF THE NEVADA RULES OF ARBITRATION

Notice is hereby given that on October 25, 2001, the Supreme Court of Nevada entered an order in ADKT No. 126 amending the Nevada Arbitration Rules. The order amends Rule 24 relating to the fees for arbitrators. The amendment shall become effective on December 24, 2001.

Dated this 25th day of October, 2001
Janette M. Bloom
Supreme Court Clerk



Access to Justice award recipients and their presenters - pictured l to r: State Bar President John Mowbray, Access to Justice Chair Judge Connie Steinheimer, Jim Jimmerson, Felix Stumpf, Cam Ferenbach (representing Lionel, Sawyer & Collins), Ann Price McCarthy, Chief Justice A. William Maupin, and Richard Campbell Jr.

BAR NEWS

The Access to Justice Committee of the State Bar of Nevada is pleased to announce the winners of its Access to Justice Awards who were acknowledged at a luncheon this past October. Each year, the State Bar honors distinguished men and women whose outstanding service, commitment, and achievements have advanced the cause of equal access to justice. This year's ceremony included for the first time a Lifetime Achievement Award.

"Every year, I have the privilege of participating in this prestigious awards ceremony and cannot express enough the magnitude of these fine men and women's contributions to our cause," said Judge Connie Steinheimer, Chair of the Access to Justice Committee. "These awards represent the great strides and advancements these individuals and law firms have played

in ensuring the continuance of equal access to justice for all Nevada residents, regardless of their socioeconomic status."

The Solo Practitioner Award winner was Ann Price McCarthy from Reno, NV. McCarthy has been instrumental to furthering the work of Volunteer Attorneys for Rural Nevadans (VARN), usually being the first to accept cases from the referral list. In 2000, she took 14 cases by herself.

Campbell & Campbell and Richard Campbell, Sr. are the recipients of the Small Firm Award. Campbell, Sr. is a semi-retired attorney in Reno, NV who has devoted countless hours to the Washoe County Senior Law Project. He interviews and counsels seniors weekly, assisting them in resolving a broad spectrum of problems, especially in consumer law.

Jimmerson Hansen was presented with the Medium Firm Award. James J. Jimmerson and his firm have been a dedicated force for pro bono activities in Clark County for years. They encourage their associates to take pro bono cases and volunteer in some of the toughest cases ranging from domestic violence to child custody. In the year 2000, Jimmerson Hansen took 17 pro bono cases, eight of which were handled personally by Jimmerson. He has taken cases since the inception of the Clark County Pro Bono Project in 1985.

Lionel, Sawyer & Collins is committed to pro bono activities throughout the State, and especially in Clark County. As such, they were chosen for the Large Firm Award. Many members in the firm volunteer their time sitting on boards of directors to legal service agencies. Additionally, many lawyers in the firm take on pro

bono cases in the areas of family law, consumer fraud, real estate fraud, bankruptcy and helping abused and neglected children.

The winner of the Public Lawyer Award was Mark Ghan. Ghan previously worked in the Attorney General's Office in Carson City and is now General Counsel to the University and Community College System of Nevada. He has devoted many hours to establish the self-help divorce clinics for VARN.

For the first time, the Access to Justice Committee presented a "lifetime achievement" award. The Committee was compelled to nominate Felix Stumpf to receive this special award for his solid devotion to the pro bono and legal services community in Reno for more than two decades. He was one of the founders of Washoe Legal Services and served as Dean of the Old College of Law in Reno, NV.

Judge Steinheimer said, "Presenting Access to Justice Awards to these outstanding individuals validates what these attorneys do. They support the fact that Nevada's attorneys provide a valuable community service, and increase awareness in the community, which helps in the recruitment of volunteers and getting funding."

The Board of Governors of the State Bar of Nevada approved a number of appointments at their October board meeting. James Bradshaw was reappointed to, and Jolee Wickes' status was changed from "alternate" to "attorney member" of, the Northern Disciplinary Board; while, Richard Pocker (Chair) and Daniel Albregts (Vice-Chair) were reappointed to the Southern Disciplinary Board. John Albrecht, William Brunson, Bryan Clark, Elana Hatch (Chair), Jenny Hubach, and Cookie Olshein (Vice-Chair) were reappointed, David

Neldert was appointed to, and Mace Yampolsky was appointed as ex-officio of the Continuing Legal Education Committee. Sam Stone, Michael J. Warhola and Richard I. Dretzer were appointed to the Professional Responsibility and Conduct Committee. Elizabeth Whitney was appointed as the Young Lawyers Section (YLS) Chair-Elect and Henna Rasul was appointed as a YLS Executive Council Member for the Carson City District.

The American Bar Association Section of Individual Rights and Responsibilities is seeking nominations for the 2002 Thurgood Marshall Award. Nominations must be submitted by Dec. 10. Nominees should be judges or lawyers who have made substantial and long-term contributions to furthering civil rights, civil liberties, or human rights in the United States. The award will be presented during the ABA's 2002 Annual Meeting this August. To request a nomination package, call (202) 662-1030 or visit the section Web site at www.abanet.org/irr.

PEOPLE

Nevada Supreme Court Chief Justice A. William Maupin will serve a second year at the helm of the state's highest court. The Supreme Court announced recently Maupin would be reappointed to the position he has held for the past year. His term as chief justice had been set to expire at the end of the year under an agreement with Justice Cliff Young, who was to assume the leadership role in January 2002 for one year.

Young will be retiring at the end of 2002, however, and has requested that Maupin continue in the position. "I believe it is vital to maintain continuity in programs and administrative issues pending before the Supreme Court," Young said. "I believe this would be the best way for the Supreme Court to reach its goals.

Chief Justice Maupin has been effective in dealing with current, pressing issues and he should continue to pursue those matters."

Current programs involve comprehensive changes in the rules of civil and appellate procedures, technical support projects for the rural courts, coordination of the newly created Commission on Multijurisdictional Practice, new internal operating procedures at the Supreme Court, and efforts to deal with the massive influx of complex construction defect litigation in the urban courts.

Three Nevada attorneys have been appointed to high-level federal positions. Larry Hicks, former Washoe County district attorney, was appointed to the federal bench, Jay Bybee, a professor from the Boyd School of Law at UNLV, was confirmed as assistant attorney general for the Office of Legal Counsel in the Justice Department, and Daniel Bogden, the acting U.S. Attorney, was confirmed last month by the U.S. Senate as U.S. attorney for Nevada.

Hicks, a Republican, had been nominated twice before for this lifetime position on Nevada's U.S. District Court. His appointment, as the sixth full-time federal judge in the state, comes nearly a decade after he was first nominated for the post. Originally nominated in 1992 by President Bush, Hicks had not been confirmed before Bill Clinton was elected president, and the Democratic administration gained control of the appointment process. He was nominated again this year by President George W. Bush.

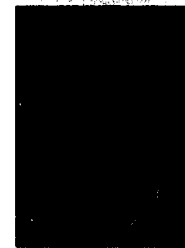
Hicks has spent his 30-year career mostly in civil litigation and is presently an attorney at the law firm McDonald, Carano, Wilson, McCune, Bergin, Frankovich & Hicks and was recommended by Sen. John Ensign, R-Nev.

Bybee started his new position last month after having finished a

compressed class schedule at UNLV. He is moving from Las Vegas to Washington D.C. and will advise Attorney General John Ashcroft and the Bush administration on constitutional issues involving proposed bills and planned executive actions.

The Office of Legal Counsel is technically the lawyer for the United States Attorney General, the federal government's highest ranking legal officer. In his new role, Bybee will guide the President on numerous, significant matters, such as the constitutionality of substantive legislation passed by Congress and awaiting the President's signature. As such, Bybee will be informing the Chief Executive when actions he contemplates instituting may violate the United States Constitution.

As a federal attorney, Bogden will prosecute criminal and civil violations of federal law and represent the United States in civil matters. There are presently 28 federal attorneys in Las Vegas and Reno.



Bill Isaeff, a 29-year Nevada lawyer, is retiring this month from the city of Sparks, where he was the special assistant to the city manager. Isaeff began his

career as a law clerk in Washoe Co. District Court and went on to spend 17 years in the Nevada Attorney General's office, including six years as Assistant Attorney General, the number two position in the office. He then began an environmental law practice in the Reno City Attorney's office for six years, followed by almost seven in the Sparks city manager's office.

Isaeff was the first chairman of the Public Lawyers Section of the State Bar, serving from 1989 until 1995. He was also active on the CLE Committee, both devising and presenting programs, and serving as

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The Trial Every Lawyer Needs to Observe Now Available On Video

By Joel Santos, YLS Chairman

'Twas the night before Christmas and all through the house, not a creature was stirring, except for Goldilocks??? That's right. That cute, little, innocent girl was pacing up and down the hallway of the Washoe County Courthouse, awaiting word from the jury as to whether she would be doing hard time for the alleged crimes she committed. In case you have not seen the trial of "Goldie" yet, the Young Lawyers Section was able to obtain a video of the entire trial, plus exclusive interviews and bonus footage. If you want to view a copy of the video, just ask. It is yours for free. However, there is just one minor catch. You will need to bring the tape to your local elementary school and watch the tape along with a group of fourth graders.

YLS has finally completed production of "Goldilocks, The Trial." The video, filmed in the classic backdrop of Judge Peter Breen's courtroom at the Washoe County Courthouse, shows the humorous trial of Goldilocks for the breaking and entering of "da" Bears' house and destruction of their property. Members of the Bar will take the video to fourth graders statewide. A short introduction will be given, and then the children will watch the film. At the conclusion of the video, the judge delivers the jury its instructions and the fourth graders are asked to deliberate. It is a great program and the children have a blast.

Up and coming director John Vasicek and producer Chris Smith, both of More Fyre Productions, along with John Rogers of Lenz Films, a professional film production outfit,

put all of their talents together to make the video a high quality production. Make-up artist Sara Fisk did an outstanding job with make-up, especially on the three bears. The



actors are made up of YLS members and volunteers and rumor has it that some have already received offers from Hollywood. (But then again, we should never listen to rumors, right?) Special thanks are given to our Not Ready For Prime Time Players who performed in the following roles: Goldilocks - Stacie Brown; The Honorable Judge Justice - Herb Santos, Jr.; Defense Attorney - Joel Santos; Prosecutor - Elizabeth Whitney; Papa Bear - Michael Kattleman; Mama Bear - Lyn Carlson; Baby Bear - Adrienne Yeung; Bailiff - Wendy Vanderpool;

Court Clerk - Sara Fisk; News Reporter - Rebecca Rivenbark; Weather Expert - Patricia Halstead; Jurors - Joey Santos, Jarred Santos, Hannah Santos, (my nephews and niece), Brad Fournier, Tyler Fournier, Andrew Pitman, Kathryn Pitman, Kyle Wise-carver, and Jordan Wisecarver.

If you are interested in presenting the program to a 4th grade class, please contact me. Any member of the Bar is eligible to give a presentation. The tape will premier statewide this January.

Lawsuits Day was a huge success again and we wish to thank all those who donated their time, efforts and clothing to the cause. It has been greatly appreciated.

Our office equipment/supplies drive for the victims of the WTC attack is moving forward in a positive direction. If you have any office equipment and/or supplies that you are willing to donate, please contact me at

IASLawyer@aol.com or at (775) 323-1084. A special thanks to those who have already generously responded.

Finally, in honor of our men and women in the armed forces who are so bravely defending our great country, YLS wishes each and every one of them our best wishes, and in their honor I will continue to end each of my monthly articles with those words that are so special to all of us as Americans - God Bless America!

On behalf of the executive council of YLS, we wish everyone a happy holiday season!!!

The Latest on Irrevocable Burial Trusts

by Elyse M. Tyrell, Esq.

When a patient or their representative is applying for Medicaid benefits for nursing home care, they are faced with limitations on the allowed value of prepaid funeral and burial plans. In a dual effort to make sure the patient's complete funeral and burial needs are pre-arranged and paid for, as well as to legitimately "spend down" a patient's assets in an effort to qualify for Medicaid benefits, Irrevocable Burial Trusts have been a useful tool.

An Irrevocable Burial Trust works as follows: the purchaser/client enters into a contract with the funeral home, wherein the client transfers and irrevocably assigns to a trust, funds to pay for future funeral or burial costs and services. While the laws of the State of Nevada do not have provisions for such type of burial contracts to be drafted and entered into within this state, local mortuaries are able to assist clients in purchasing such policies through branches located within other states that permit this type of contract. In the past, the State of Nevada Welfare Division has approved Medicaid applications for patients who meet all of the eligibility requirements, and who have irrevocable burial trusts, so long as the contracts were validly purchased out of state prior to the Medicaid application being filed and were not offered or sold within the State of Nevada.

Recently, however, there has been a change of opinion by the Attorney General's Office, who serves as the legal counsel for the State of Nevada Welfare Division. The opinion of the Deputy Attorney General, who currently represents the State Welfare Division, and recent ruling by its client, is that the purchase of an irrevocable burial trust is considered a transfer of an asset, not for value, thus potentially invoking a period of Medicaid ineligibility.

While this opinion is consistent with the transfer of asset rules relating to irrevocable trusts, under the MAABD manual (Department of Human Resources Welfare Division Medical Assistance for the Aged, Blind and Disabled Program Manual), the guidelines for Medicaid eligibility here in the State of Nevada, comes at a price for some patients/clients. This recent opinion has been received in the form of a denial of Medicaid benefits to an individual who had already entered into this type of irrevocable burial contract in another state. The assets were irrevocably transferred and assigned to a trust now out of the reach of the patient, who currently meets all of the other requirements for Medicaid benefits.

As Elder Law practitioners, who are asked to advise our clients on the proper ways to qualify for Medicaid benefits, we need to remember that while the Federal Government establishes the guidelines for Medicaid benefits, States have leeway in their interpretation, which may change without notice.

The author is a member of the State Bar of Nevada's Elder Law Section, along with the National Academy of Elder Law Attorneys, the Southern Nevada Estate Planning Council, the Clark County Bar Association, and the Jewish Federation of Las Vegas, Foundation Committee. She is a featured speaker presenting seminars on probate, Medicaid planning, trust and estate planning.

Nevada Law Foundation

STATEMENTS OF FINANCIAL POSITION - DECEMBER 31, 2000 AND 1999

Figures printed here are excerpted from the audited financial statements of the Nevada Law Foundation. A complete copy of the original report is available by contacting the Nevada Law Foundation or the Nevada Supreme Court.

ASSETS			
Current Assets:		2000	1999
Cash and cash equivalents	\$ 550,426		\$474,443
IOLTA contributions receivable	136,393		96,518
Current portion of unconditional promises to give	32,375		20,625
Accrued Revenue	1,356		575
Prepaid expenses	3,456		3,584
Investments, net	372,667		349,668
Total current assets	<u>1,096,683</u>		<u>945,413</u>
Furniture and office equipment	36,399		36,399
Less accumulated depreciation	<u>28,638</u>		<u>26,014</u>
Net furniture and office equipment	7,761		10,385
Unconditional promises to give, less current portion	<u>27,554</u>		<u>41,616</u>
Total assets	<u>\$1,131,998</u>		<u>\$997,414</u>
LIABILITIES AND NET ASSETS			
Current liabilities:			
Accounts payable and accrued expenses	\$ 6,022		\$ 5,808
Grants payable	<u>350,000</u>		<u>300,000</u>
Total current liabilities	<u>356,022</u>		<u>305,808</u>
Net assets:			
Unrestricted	716,047		629,366
Temporary restricted	<u>59,929</u>		<u>62,240</u>
Total net assets	<u>775,976</u>		<u>691,606</u>
Total liabilities and net assets	<u>\$1,131,998</u>		<u>\$997,414</u>

A Year In Review

THE COMMISSION'S ANNUAL REPORT SHOWS INTERESTING TRENDS IN COMPLAINTS AGAINST NEVADA JUDGES

by Alan B. Rabkin Executive Director and General Counsel, Nevada Commission on Judicial Discipline

Nevada Lawyer presents this column each month to further a more comprehensive understanding of the Judicial Canons and decisions governing full-time, part-time and magistrate judges and referees. Featured is a summary of an out-of-state decision or current issue regarding judicial conduct and how it compares to the Nevada Code of Judicial Conduct. All decisions may be subject to further disposition and appeal. The opinions expressed in this column are those of its author.

December is a logical time to reflect on efforts taken during the past year. The Annual Report of the Nevada Commission on Judicial Discipline (NCJD or the Commission) has recently gone to press and some interesting statistics have surfaced as part of the effort to prepare it. This *Canon Corner* will review year-to-year statistics for 2000 and 2001 for the NCJD. More elaborate information and related charts can be found in the actual report which will soon be sent to all members of the judiciary, other key governmental officials and libraries and is available from the NCJD's office upon request.

First, regarding numbers of complaints, in fiscal year 2000 the NCJD received 124 complaints and in fiscal year 2001 it received 141 complaints. This is about a 16% increase year-to-year. However, this could also be explained by the significant growth in the Nevada judiciary in the past few years. Regarding types of complaints, during fiscal year 2000, the cases being complained about numbered 46 related to family or domestic; 36

criminal; 34 civil; and eight other. During fiscal year 2001, criminal took a leap up to 67; family or domestic declined to 38; Civil stayed about the same at 32 and other category fell to four.

Second, who is filing complaints in Nevada regarding judicial officers? During 2000, an overwhelming 92 cases came from litigants; 15 from inmates; ten from interested citizens; four of the complaints were filed by the Commission on its own; and three were filed by attorneys. During 2001, the percentage filed by litigants dropped significantly to 82 cases; inmates cases rose dramatically to 44; Citizens stayed about the same at seven; the Commission initiated three of the complaints; and attorney filed complaints rose slightly to five.

Next, how did the NCJD dispose of the complaints filed? In 2000, it screened and dismissed 109 at the first stage of review; it investigated and dismissed another ten; it investigated and confidentially resolved another four; and it went public with formal charges on one. In 2001, it screened and dismissed 108 at the first stage of review; investigated and dismissed twice as many complaints as in 2000, at 20; investigated and confidentially resolved another five; and was still reviewing eight complaints for action as of July 1, 2001.

Finally, which jurisdictional type of Nevada judicial officer is most likely to have a complaint filed against him or her? In 2000, general

jurisdiction judges (district court) were complained of 75 times; limited jurisdiction judges (justice of the peace and municipal court) were complained of 45 times; and Nevada Supreme Court Justices were complained of seven times. In 2001, general jurisdiction judges dropped to 63; limited jurisdiction judges rose to 55; the Nevada Supreme Court Justices increased to 19; and an additional category of masters, commissioners, hearing officers and referees came in with four complaints.

Some practical pointers that arose from the statistical effort are that a great majority of the conduct complaints filed mistakenly attack the decision of the judicial officer rather than detail his or her bad judicial conduct or judicial disability. They are therefore not within the NCJD's jurisdiction. Also, many complaints lacked specific details, evidence or testimony to comply with the significant standard of review set by the Legislature for the Commission. That standard generally requires a *reasonable probability* of success to pass a matter to advance stages of investigation and *clear and convincing evidence* to find an actual violation of the Code.

For more information about judicial conduct in Nevada, or to request a copy of the report of the Commission, please visit the Nevada Commission on Judicial Discipline's web site at www.judicial.state.nv.us. Alan Rabkin can be reached at arabkin@judicial.state.nv.us.

BOOK REVIEW

"On Trial: Lessons from a Lifetime in the Courtroom"

by Henry G. Miller, Esq.

ALM Publishing

www.lawcatalog.com

192 Pages, \$24.95

Copyright Sept. 15, 2001

ISBN: 0-9705970-4-5

Submitted by Neil Galatz

On Trial is a book written by Henry Miller, which contains his concise statements of the rules of trial advocacy with short picturesque illustrations. All trial lawyers can benefit from reading this cleverly written book. The young lawyer will gain the insight of a seasoned trial lawyer's observations, while the seasoned lawyer will find the book a shorthand refresher on the many points acquired through long experience.

Mr. Miller has cataloged the mental notes and lessons an experienced trial lawyer has accumulated over the years. *On Trial* provides a list of significant points and thoughts to keep in mind as you try a jury case.

The discussion on jury selection helps guide a lawyer's behavior, while recognizing the limits of voir dire, and identifies the hoped for realistic end result. The section dealing with opening statements succinctly reminds us of their significance and the techniques required to ensure effectiveness.

The book is written from the vantage point of the author's extensive trial background and observations. It serves both as a guide and reminder, and is written with a pleasantly humorous and refreshing outlook. The rules are clearly stated and brief, and the illustrations provide clarification of the guides discussed.

The author even offers words of consolation for those of us who have tried cases and lost them. He quotes another famous trial lawyer who said, *Young lawyers think trying cases is all glory. But trial lawyers pay a price unknown to our armchair colleagues who never stray beyond the safety of their desks. Trial lawyers lose cases.*

This down-to-earth, highly readable book is well worth the few hours it takes to read.

About Henry G. Miller, Esq. - The author has more than four decades of trial experience. He is a senior member of Clark, Gagliardi & Miller and the former director of the International Academy of Trial Lawyers and the New York State Trial Lawyers Association. He lives in White Plains, New York.

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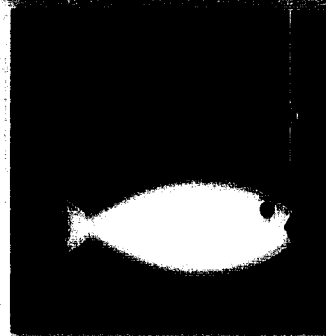
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