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The WRIT

OFFICIAL PUBLICATION OF THE WASHOE COUNTY BAR ASSOCIATION

When you see this arrow, it means the article includes a website address for more information

Wednesday, May 11, 12 noon, Harrah's

Social Media, Technology & Your Practice
What's already here and what's coming. . .

Mark Howitson, Deputy General Counsel of Facebook, Inc.
Mike Kattelman, Partner, Silverman, Decaria & Kattelman, Chtd.

Whether you are a regular on Facebook or you have no idea what it means to "post," you will want to hear from our speakers about the intersection of social media, the courts and the law. Even if you never plan to tweet or have a presence on a social media site, your practice will be impacted by social media.

Mark Howitson is the Deputy General Counsel of Facebook, Inc. He will discuss the world of Social Media and eDiscovery, with analysis of the Electronic Communication Privacy Act (ECPA) and the Stored Communications Act (SCA), which addresses wire intercepts, remote computing and electronic communications services.

Law.com posted an article by contributor Amy Miller reporting that "LegalTech keynote speaker Mark Howitson said Facebook is looking for clarity from a federal ruling."

As set forth in Miller's article, "Facebook's legal department is ready for a fight. Almost every day, law enforcement officials and civil litigators request information from a user's Facebook account, Deputy General Counsel Mark Howitson told several hundred lawyers in a packed ballroom during his keynote address at LegalTech New York. But he is still waiting for a case on Facebook's policies to go before a federal judge to define exactly what content on Facebook is protected so that it's clearer to everyone. (Find a link to the Miller article on wcbar.org under the luncheon registration.)

'There's some public misunderstanding about what Facebook's legal responsibilities are to protect user's privacy, Howitson said. 'We don't want to have to deal with these requests.' A federal hearing could help clear up some of the confusion. 'We're itching for that fight,' he said.

Mike Kattelman, WCBA Board Member and Secretary, attended the American Bar Association's Bar Leadership Institute with Vice President Clay Brust. Part of that program focused on technology and social media. Mike will discuss how technology will shape the legal industry over the next five to ten years, including advanced "wall" teleconferencing; remote computing; cloud computing; and tablet use in the office and in the courtroom.

RSVP no later than Monday, May 9. $25 per person, $200 for table of 8. RSVP online at wcbar.org/events. Fax the form on page 19 or call 786-4494.

RANDOM THOUGHTS PG 2	CONVERSATIONS ON DISCOVERY PG 3	BRIEFS PG 5	COURTS PG 6	JUDICIAL ETHICS PG 8	ACROSS THE LINE P. 10	BYTES PG 13	FAMILY LAW PERSPECTIVES PG 13	CLASSIFIED PG 16

Elliott Sattler, President

IGNORANCE MAY NOT BE BLISS

What were you doing on your eighteenth birthday? Just sit and think about it for a minute. Can you remember anything about that date? I cannot remember a single thing about my eighteenth birthday. I do know I was a senior in high school and I just missed being able to vote in a Presidential Election won by Ronald Reagan. I just looked on-line (something that didn't exist then) and found out that the top grossing movie the week of my eighteenth birthday was "The Terminator". Who knew that guy who could not speak more than three syllables in English would go on to be Governor of California. The top pop song was Wake Me Up Before You Go-Go by Wham! It all seems like such a long time ago….. because it was!

Most people who were turning eighteen in my era would have been thinking about themselves and their social calendar. I am guessing that the average eighteen year old male would have been thinking about possibly going to a party of some sort on the weekend. He may have been thinking about meeting a girl and, if he was really lucky, there may have been a chance to get past what we referred to as "second base." The chances are that our fictional senior in high school would have been "hooking up" with someone younger than he was. At the party there may have been alcohol served. This probably would be a typical weekend for an eighteen year old both then and now.

One thing that young people often don't think about during that first weekend as an adult is how different their actions are viewed simply by passing that one birthday. By "hooking up" with that underage girl our new adult has committed, at a minimum, a gross misdemeanor and will have to register as a sex offender for the rest of his life. By drinking and driving he may now be arrested for a DUI, again at a minimum, and be 1/3 of the way to being a felon: two more DUI's before his twenty-fifth birthday and it is felony time. If he is under the influence and unfortunate enough to be in an accident where his underage girlfriend is in the car she could be injured. He is now a felon and he will not be graduating with his senior class in a couple of months: he will be a prisoner in the Nevada State Prison until he is at least twenty-one. How is that for a "senior trip"! When he gets out of NSP he can legally drink.

If you have kids around this age, have you had a discussion about these issues? Many parents have not. You may not be familiar with all of your children's new responsibilities even though you are a lawyer. The WCBA has a highly successful tool to help teachers, students, and kids learn about all of their new responsibilities. It is "*NOW THAT YOU ARE 18: A SURVIVAL GUIDE.*" The Guide is a newspaper-style publication that goes out to every Northern Nevada High School and many youth related organizations. The Guide is edited and updated by your peers and covers almost every conceivable subject our kids need to think about after becoming an "adult." If you haven't seen the Guide go to nowthatyouare18.org. The entire publication is digital.

The Guide has received outstanding reviews by teachers and students. WCBA is looking for volunteers who will visit local schools, youth organizations and community organizations to discuss topics it covers. After you have read the Guide, you may want to support WCBA by joining our speaker's list: We need civil and criminal speakers. Call WCBA if you can help.

Another way to help is to request a printed copy of the Guide to give to a loved one who is anywhere near 18 — younger or older. You will be giving them a gift greater than money. You may be keeping them out of trouble that could haunt them for years to come. If the recipient is anything like I was, they would also appreciate a little money too. So, maybe give them $20.00 if they read the thing.

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Conversations on Discovery

By Wesley M. Ayres, Discovery Commissioner

I recently came across two cases that discuss the inadvertent production of electronically stored information ("ESI"). The cases are *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 250 F.R.D. 251 (D. Md. 2008), and *Rhoads Indus., Inc. v. Building Materials Corp. of Am.*, 254 F.R.D. 216 (E.D. Pa. 2008). These cases are particularly interesting because they involve similar factual scenarios, yet the courts came to different conclusions. As the need to obtain ESI becomes unavoidable in civil litigation, practitioners need to understand how discovery issues are approached by courts in the brave new world of electronic discovery.

In *Victor Stanley*, plaintiff served defendants with a request for production of documents, and defendants responded by producing only paper documents. Subsequently, the court ordered the parties' computer forensic experts to identify a joint protocol to search and retrieve responsive ESI from defendants' system. After the ESI was retrieved, defendants' expert determined that some ESI files were text-searchable, while others were not. One defendant worked with defense counsel to create a list of seventy keywords that their expert could use to retrieve potentially protected documents from the ESI files that were text-searchable; each of those files was then reviewed by this defendant to determine whether it was, in fact, protected from disclosure. ESI files that were not text-searchable were manually reviewed by this defendant and an attorney. However, defendants determined that a manual review of the ESI files that were not text-searchable would encompass tens of thousands of documents, and that time constraints would allow an initial review of the page titles only. Documents whose page titles indicated that protection might be applicable were then reviewed in their entirety.

After defendants' ESI was produced, plaintiff discovered 165 electronic documents that they thought might be subject to a privilege or the work product doctrine. Defendants argued that all of those documents were inadvertently produced, and that their efforts to protect against the disclosure of protected documents were reasonable under the circumstances. They belatedly provided plaintiff with a privilege log regarding those documents. Plaintiff then filed a motion seeking a ruling that any protection was waived through defendants' disclosure. Specifically, it argued that defendants failed to take reasonable precautions by performing a faulty privilege review.

The magistrate judge briefly reviewed the approaches taken by courts in determining whether inadvertent disclosure of privileged information constitutes a waiver of protection. He determined that the Fourth Circuit probably follows the "strict responsibility" approach, and that defendants' production of 165 privileged documents resulted in a waiver of any protection. However, he observed that other district courts within the Fourth Circuit had applied an intermediate approach that required courts to balance various factors on a case-by-case basis, and he provided an analysis of the issue under that approach. One of those factors requires the court to assess "the reasonableness of the precautions taken to prevent inadvertent disclosure," and the judge found that defendants had not demonstrated that their precautions were reasonable. As explained by the court:

> Defendants, who bear the burden of assessing whether they waived attorney-client privilege by producing the 165 documents to the Plaintiff, have failed to provide the court with information regarding: the keywords used; the rationale for their selection; the qualifications of [Defendant] M. Pappas and his attorneys to design an effective and reliable search and information retrieval method; whether the search was a simple keyword search, or a more sophisticated one, such as one employing Boolean proximity operators; or whether they analyzed the results of the search to assess its reliability, appropriateness for the task, and the quality of its implementation. . . .

Victor Stanley, 250 F.R.D. at 259-60 (footnote omitted). Citing several authorities, the judge emphasized the "well-known limitations and risks" associated with keyword searches. *See id.* at 260-62 & n.10; *see also* The Sedona Conference, "The Sedona Conference Best Practices Commentary on the Use of Search & Information Retrieval Methods in E-Discovery," 8 Sedona Conf. J. 189, 194-95, 201-02 (2007).

Significantly, prior to production of the ESI, the parties discussed the possibility of a "clawback agreement" to protect against waiver of privilege or work product protection due to inadvertent production of documents or data. However, defendants instead opted for a document-by-document privilege review. They also could have sought additional time for their document review, but they failed to do so. The judge emphasized these omissions in his analysis: "In these circumstances, Defendants' protests that they did their best and that their conduct was reasonable

rings particularly hollow." *Id.* at 263.

The judge briefly considered the other factors considered by courts following the intermediate approach in advertent disclosure cases—the number of disclosures, the extent of those disclosures, delay in seeking to remedy the disclosures, and the overriding interests of justice—but he found that those factors generally supported a finding of waiver. *See id.* He also determined that Defendants had failed to make a showing adequate to support a finding that any documents were protected from disclosure. In that regard, the judge provided guidance regarding the importance of preparing an appropriate privilege log, and about the various steps followed in resolving a dispute over whether documents are protected from disclosure. *See id.* at 264-67. Based upon all of the foregoing, the judge granted plaintiffs' motion.

In *Rhoads Indus.*, plaintiff recognized that extensive electronic discovery of email messages would be necessary once litigation was commenced. It promptly retained a consultant who recommended and used a fairly sophisticated computer program to perform the necessary electronic searches. Plaintiff's consultant and three attorneys developed search terms, and a search retrieved over 210,000 emails. He then ran additional searches to filter out privileged documents, and he re-ran the searches to verify the accuracy of the search. A revised keyword search on non-privileged documents reduced the number of emails to 78,000. Counsel then manually reviewed emails from certain email mailboxes, and removed additional privileged documents. A manual review of certain paper documents also was conducted. Ultimately, all responsive documents were produced to defendants, and two privilege logs—one for ESI and one for paper documents—were provided as well.

After defendants notified plaintiff's counsel that the production appeared to include privileged documents, plaintiff's counsel conducted another review of the 78,000 emails, and identified 812 of those emails as privileged. A new privilege log was sent to defendants, together with a request that defendants sequester the inadvertently produced documents. In accordance with Rule 26(b)(5) of the Federal Rules of Civil Procedure, plaintiff notified defendants of this claim, and defendants segregated the asserted privileged documents and provided them to the court for in camera review. Defendants then filed a motion to deem waived any privilege as to the 812 emails, arguing that plaintiff's document production was careless, that it delayed too long in seeking return of the documents, and that it failed to provide complete and accurate privilege logs. Following a hearing, plaintiff found 120 additional privileged documents that had not previously been identified in any privilege log. The court found that any privilege had been waived through tardiness as to those 120 documents, and it then considered whether protection had been waived as to the other 812 emails.

The court recognized that ESI presents challenges for individuals attempting to ensure that privileged information is not inadvertently disclosed, citing both *Victor Stanley and Amersham Biosciences Corp. v. PerkinElmer, Inc.,* No. 03-4901(JLL), 2007 WL 329290 (D.N.J. Jan. 31, 2007). It also noted that under Rule 502 of the Federal Rules of Evidence, inadvertent disclosure of privileged documents does not constitute a waiver of protection if the holder of the privilege or protection took reasonable steps to prevent disclosure and to rectify the error. This rule essentially adopts the intermediate "case-by-case" approach to inadvertent disclosure, although it does not limit the factors that courts may consider in a given case. The court reasoned that the producing party must first show minimal compliance with the Rule 502 factors, a burden satisfied by plaintiff in this case; in fact, the only disputed factor was whether plaintiff took reasonable steps to prevent disclosure. Because plaintiff had made the initial showing, and "reasonableness"

Discovery cont.

remained in dispute, the court considered the five-factor balancing test identified above. It analyzed the evidence presented, and identified the specific facts favoring each side's position. *See Rhoads Indus.*, 254 F.R.D. at 223-26

The court determined that the first four factors favored defendants, emphasizing plaintiff's failure to adequately prepare for the segregation and review of privileged documents in advance of the inevitable production of a large volume of documents. In that regard, it found that plaintiff was obligated "to put adequate resources to the task of preparing the documents, which was completely within Rhoads's control"; the mere desire to minimize litigation costs was not a sufficient excuse. See id. at 226-27. However, the court viewed the fifth factor—the interest of justice—as strongly favoring plaintiff:

> Loss of the attorney-client privilege in a high-stakes, hard-fought litigation is a severe sanction and can lead to serious prejudice. Although I have little knowledge of the content of Rhoads's privileged documents, I assume they contain candid assessments of the facts and strategy in this case, as to which Rhoads understandably has a high degree of proprietary interest.

Id. at 227. On the other hand, defendants would suffer no prejudice because (a) they were not entitled to these documents in the first place, (b) 120 other privileged documents would be produced to defendants, (c) the merits of the case had been thoroughly explored through discovery, and (d) defendants might yet be able to demonstrate a waiver of privilege as to any documents that were disclosed to plaintiff's testifying experts. Although the question was close, the court concluded that defendants carried the burden of establishing a waiver of privileges, and that it had not met that burden as to the 812 privileged emails. Therefore, the motion was denied with regard to those documents.

Wes Ayres is Discovery Commissioner for the Second Judicial District Court. His columns are online and searchable at wcbar.org.

Briefs

Probate Lawyer Goes to the Other Side

I am deceased. Found that out today from my mileage credit card company, who has closed my account. The mini storage called to let me know that my monthly charge was declined. I had to call them back and tell them of my demise. But I also assured them that I would call them back tomorrow. They are ok with that.

My friends offered helpful suggestions on Facebook. Brian McQuaid suggested that I could be the first probate lawyer ever to represent his own estate. Another asked: "Who did my estate plan?" Does it cover death without actually dying? I reviewed the NRS, and determined that there were no statutes that precluded me from representing my own estate. And, I could posthumously amend my estate plan, assuming that the notary does not notice the change in my status. I feel the same, and look the same, but somehow feel liberated.

More telephone calls from the credit card company. Their representative, from the collection department for the deceased, is very polite. He offers his sincere condolences each time. My explanation that I am not actually deceased doesn't seem to make it to his computer screen, as maybe there is no code number associated with that response. On one occasion I was referred to a supervisor, who angrily demanded to know who I was. I suppose its ok to intimidate the deceased. Then it became more interesting. Did you know that a credit card company will substantially discount a current balance of a deceased person in order to close their books on the account quickly? Even after explaining that I was living, the company offered a 30% discount if the balance could be paid within two days. I said that I was amazed that you would make this offer, and would have to consider it.

In the meantime, more calls from the credit card company division for un-deceased customers. They also offer condolences, but assure me that they will reopen the account. One week after my demise, the account was reopened and restored to its former glory.

But the saga does not end there. The next day I received another call from the collection department on the deceased side. Had I made a decision about the discount for immediate payment? I had better refer the matter to an experienced probate attorney . . .

Doug Clark reported this episode recently on Facebook®, updating his "status" over several days. As our May luncheon features Facebook® we asked him to retell the story for this issue of The Writ.

Doug Clark

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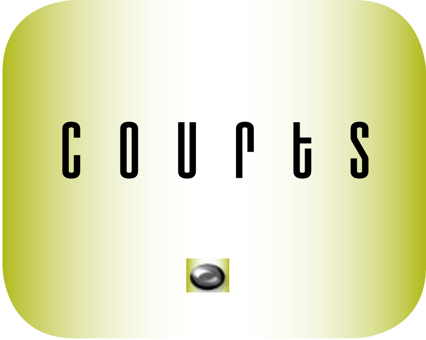

Supreme Court Spearheads Law Day Activities Across Nevada

The Nevada Supreme Court is again spearheading a statewide celebration of Law Day, including the innovative Law Day Live—an interactive Internet forum that will electronically link courtrooms in three communities.

The American Bar Association set this year's Law Day theme as ***The Legacy of John Adams – from Boston to Guantanamo.***

John Adams, the second president and first lawyer-president, was a staunch advocate of the principles that this nation is governed by the rule of law and persons accused under the law are entitled to a legal defense. The principles are at issue today because of the controversy over if or where to try alleged terrorists being held at the prison in Guantanamo, Cuba.

LAW DAY LIVE

Law Day Live on May 5 is an educational tool, connecting middle and high schools across the state through a live streamed Internet forum to explore the principles that John Adams advocated.

Courtrooms in Las Vegas, Carson City, and Winnemucca will be linked through video conferencing technology so that discussions can take place statewide.

Panels at each location will include judges, prosecutors, defense attorneys, and law enforcement. Supreme Court Justice Nancy Saitta, who chairs the Supreme Court's Judicial Public Information Committee, will moderate Law Day Live from Las Vegas.

Law Day Live will begin with a showing of the film "The Response", which is a thought-provoking 30 minute courtroom drama about the inner workings of the Combatant Status Review Tribunals at the U.S. Naval Base at Guantanamo Bay.

The video will be broadcast on the Supreme Court website prior to the panel discussions and available to everyone in Nevada with Internet access, and even worldwide. Students or the public will be able to comment on issues or ask questions through Twitter or Facebook links.

"The high-tech event reaches out to students and citizens across the state in the only way possible because of the distances separating Nevada's communities," Justice Saitta said. "Technology is a way of shrinking those miles and providing services and access to justice for many of our citizens."

LAW DAY MORE THAN ONE DAY

Although Law Day officially is only one day, in Nevada there will be weeks of Law Day 2011 events.

"Just as in past years, it will not be possible to incorporate all of Nevada's Law Day activities into a single day," said Justice Saitta, who is heading the Law Day projects. "We simply have too many events scheduled—from Law Day Live to award presentations to forums in schools and before civic groups. Our partners in the legal profession, law enforcement, and education are working diligently to promote the rule of law and access to justice in Nevada."

LEGACY OF JUSTICE AWARD AND CONTESTS

Law Day activities traditionally begin with the presentation of the Supreme Court's third annual Legacy of Justice Award to a person or persons within the judicial system whose contributions, innovations, and achievements have resulted in significant improvements in the justice system and benefitted the citizens of Nevada.

The first Legacy of Justice Award was presented in 2009 to retired Supreme Court Justice Bob Rose. The second was shared by Drug Court pioneers District Judges Jack Lehman (Clark County) and Peter Breen (Washoe County).

Poster and essay contests for students, sponsored by the State Bar of Nevada, will also continue this year. Cash and other prizes will be awarded to the winners.

FEDERAL CJA PANEL APPLICATIONS

The Clerk of the Court will accept applications for appointments of new Federal Criminal Justice Act Panel attorneys (appointment of counsel for indigent defendants) for the Las Vegas Office. All persons interested must submit an application to Lance S. Wilson, Clerk of Court, by **July 15, 2011.** Attorneys applying for the Appeal panel **must** also submit a writing sample. Appointments will be effective October 1, 2011. Those interested may pick up blank applications at the U.S. District Court Clerk's office or may request one via E-mail at ruthann_schaefer@ndv.uscourts.gov or marlaina_belles@nvd.uscourts.gov. Applicants must be members in good standing of the bar of the Federal Court and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Federal Sentencing Guidelines. Attorneys on the CJA Panel also must have demonstrated an interest in providing criminal defense services and a reputation for competent and vigorous representation. Members of the panel are required to participate in 6 hours of training in federal criminal practice, with at least 3 of the 6 hours on the Federal Sentencing Guidelines, per year which shall be provided through the Federal Public Defender's Office or other court approved provider of Continuing Legal Education.

Counsel who do not have Federal Criminal Court experience may wish to apply for the Mentor Program. Counsel may apply for the Mentor Program by completing the CJA Panel Application and noting on the top right corner "Mentor Program."

WCBA Nominates Officers for 2011-12

The executive board of Washoe County Bar, acting as the nominating committee, proposes the following slate of officers for 2011-12. The Bar's bylaws call for notice of the nominations and election of officers at the June annual meeting.

Clay Brust, currently vice president, automatically succeeds outgoing president Elliott Sattler. Brust is a partner at Robison, Belaustegui, Sharp & Low. He serves as the Bar's liaison to the State Bar's Diversity Committee.

Michael V. Kattelman is currently secretary and is nominated for vice president. Kattelman is a partner at Silverman, Decaria & Kattelman. He serves as president of the Washoe County Bar Foundation.

Jasmine Mehta is currently treasurer and is nominated for secretary. She was previously employed by Lewis & Roca and moved April 1 to the Attorney General's Office where she practices environmental law.

Tiffinay Barker Pagni is now sergeant-at-arms /Writ editor and is nominated for treasurer. She is a partner at Lemons, Grundy & Eisenberg.

The Board nominates Cotter Conway as sergeant-at-arms for 2011-12. Conway is in private practice as a solo practitioner, practicing primarily criminal law. He was a Deputy Public Defender in Washoe County for 14 years, staffed the newly created Alternate PD's Office and represented the interests of the criminal defense bar before the Nevada Legislature.

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Doug Clark

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Hon. David Hardy, Second Judicial District Court, Department 15

"From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law."[1]

The Sixth Amendment guarantees the right to a speedy and public trial by an impartial jury. "A fair trial in a fair tribunal is a basic requirement of due process."[2] The theory of a fair trial is that conclusions "will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print."[3]

The judge is the guarantor of fairness. It is the judge who protects the jury from immaterial and prejudicial influences. Judges have responded to spontaneous outbursts (such as "applause, laughter, yells and shrieks, or statements") from the spectator gallery with curative instructions and mistrials.[4] The Nevada Supreme Court has even wrestled with unintended interference from courtroom spectators.[5]

Judges should now consider their response to a different and growing species of spectator participation: non-verbal communication through symbolic or expressive clothing, badges, buttons, and ribbons intended to capture the judge and jurors' attention and influence the fairness of a criminal proceeding. Whether spectator participation of this type enhances or erodes fairness is a question beyond the scope of this essay.[6] The constitutionality of intentional spectator non-verbal communication is an "open question in our jurisprudence."[7]

The U.S. Supreme Court has protected jurors from external influences in a number of decisions. In *Turner v. Louisiana,* 379 U.S. 466 (1965), the sequestered jury fell under the charge of several sheriff's deputies. The deputies "drove the jurors to a restaurant for each meal, and to their lodgings each night. The deputies ate with them, conversed with them, and did errands for them." Two such deputies who were in "close and continual association with the jurors" were also the state's primary witnesses. The Court noted juries are "extremely likely to be impregnated by the environing atmosphere" of trial. It therefore concluded the association between jury and prosecution witnesses was unconstitutionally impermissible.

In *Estes v. Texas*, 381 U.S. 32 (1965), the Court held the presence of television media within the courtroom impermissibly impacted the jury, who was the "nerve center of the fact finding process." Similarly, in *Shepard v. Maxwell,* 384 U.S. 333 (1966), the trial judge was criticized for not controlling disruptive influences in the courtroom and not preventing the media-driven "carnival atmosphere" from permeating the proceeding.

In *Estelle v. Williams*, 425 U.S. 501 (1976), the defendant requested permission to wear civilian clothes at trial but was compelled to wear clothes distinctly marked as prison issue. The Court concluded this was error because of the "possible impairment of the presumption so basic to the adversary system." Specifically, "[t]he defendant's clothes is so likely to be a continuing influence throughout the trial that . . . an unacceptable risk is presented of impermissible factors affecting the jurors' judgment, thus presenting the possibility of an unjustified verdict of guilt."

In *Holbrook v. Flynn*, 475 U.S. 560 (1986), five co-defendants were tried together. Customary court security was supplemented by four uniformed officers seated in the first row of the spectator gallery. The defendants argued the appearance of additional security compromised the presumption of innocence. The Court disagreed but indicated in dicta that "in our supervisory capacity, we might express a preference that officers providing courtroom security in federal courts not be easily identifiable by jurors as guards." Finally, in 2006, the Court declined to address the specific issue of "private-actor courtroom conduct, noting the question was open for resolution at a different time."[8]

The issue is timely now because a Minnesota judge was recently charged with ethical misconduct for comments and action from the bench regarding a court monitoring organization in his courtroom. The proceeding is pending and no discipline has been imposed. The organization entitled WATCH ("We're At The Court House") was founded in 1992. The WATCH mission is to "make the justice system more effective and responsive in handling cases of violence against women and children, and to create a more informed and involved public."[9] It accomplishes its mission by "bringing a public eye to justice."

WATCH contends that public scrutiny of the courts is essential to ensure the courts are fair. "The presence of observers in the courtroom sends the message that the public cares what happens there."[10] WATCH has trained more than 750 volunteers who have donated more than 35,000 hours and monitored over 64,000 hearings. WATCH volunteers are identified by the red clipboards they prominently display in the courtroom.

WATCH and the Minnesota judge

first clashed in 2000 when WATCH took issue with the judge's bail amount rulings. WATCH even sought the judge's re-assignment away from hearings at which initial bail amounts were set. The relationship reached its public low point in 2009 at a sentencing for a defendant convicted of criminal sexual conduct against a child.

After hearing the victim impact testimony the judge announced that he wanted to "raise another issue on my own, here, that I've given some attention to."[11] He then read a lengthy statement regarding WATCH. He noted WATCH had been present throughout the proceedings involving this defendant. He conceded the WATCH volunteers did not say anything to him verbally or misbehave in the courtroom. The volunteers did not threaten him, attempt to influence him or otherwise attempt to "get him." The judge then stated:

> The red clipboard is an ingenious device, communicative far beyond its mere garishness. It says, principally to the judge but to others as well: We are watching you. We do not trust you. We expect you to be severe to the defendant, to impose high bail, onerous conditions of release, harsh sentences. We expect you to restrict the use of exculpatory evidence, but to be liberal in receiving the damning stuff. We expect you to be sympathetic, kind and protective toward victims and complaining witnesses, but not toward defendants (who may construe fairness and understanding for endorsement of their conduct). . . . We expect these things and more--or else. Or else, we shall convey our displeasure to your superiors, we shall demand that you be assigned to cases where our interests are not involved, we shall campaign against you in your next election, we shall hold you up to obloquy in our newsletter and in the press, we shall urge the Board of Judicial Standards to punish or remove you, we shall perhaps demand your resignation.
>
> All this and more is expressed by the simple flash of a red clipboard. Judges know this, because the organization's leaders write them personal letters telling them how to conduct their courtrooms, how to speak and act, how to rule on certain issues, how to do their jobs, and they will expatiate upon these things in their periodical newsletter which they duly send unsolicited to the judges, to keep them edgily aware of their ubiquitous presence.[12]

The judge also stated, among many other things, that 1) those who carried red clipboards were a "cheering section" for the victim and prosecution, 2) the red clipboards were a "not very subtle threat to the judge," 3) the red clipboards were "arguably ex parte communications to judges about pending cases," 4) the red clipboards "represent strongly partisan communications of a threatening nature to judges," 5) the defendant "will have a plausible argument that [the red clipboards] create either an actually biased court, or a palpable appearance of bias," 6) when a red clipboard is carried into court a judge should notify the defendant that an advocate of the accuser has said to the judge, "Do it our way or we'll get you," and 7) the red clipboard is designed to call attention to itself. In his response to the complaint, the judge stated: "It is signal different only in kind from a secret hand sign to a witness, the red pants of a member of the Bloods, or a button with a victim's face on it."

The judge distributed a copy of his prepared remarks with a 24-page handout of legal research examining spectator conduct in the courtroom. The judge continued the sentencing to a later date. Based upon the judge's comments, the defendant filed two pro se motions for relief that were referred to other judges for decision.

The Minnesota Board of Judicial Standards charged the judge with various canon violations, such as 1) failing to uphold and promote the independence, integrity, and impartiality of the judiciary, 2) failing to avoid impropriety and appearance of impropriety, 3) failing to comply with the law, 4) failing to promote public confidence in the judiciary, 5) abusing the prestige of judicial office, 6) failing to perform the duties of judicial office impartially, competently, and diligently, and 7) failing to perform judicial duties without bias or prejudice.[13]

The judge responded that he was required by the Code to comment upon a non-party's deliberate attempt to influence his judicial decision. He asserted his actions promote public trust and confidence in the judiciary. His well-stated defense relies upon the very canons he is accused of violating.

The discipline proceeding will be interesting to follow. It involves a novel issue, passionate but competing arguments grounded in the same rules, and not so subtle threats to judicial independence. Judicial discipline should not be a remedy for legal error, which is typically found in incorrect factual findings, misapplication of the law, or abuse of discretion.[14] Judges should be particularly interested in the Minnesota outcome as this important principle may be at risk. Trial judges know they are susceptible to appellate review and public correction when wrong. The possibility of personal discipline for being legally wrong has far-reaching consequences I hope the Minnesota Board of Judicial Standards will consider.

NOTES

1 *Gideon v. Wainwright,* 372 U.S. 335, 344 (1963).
2 *In re Murchison*, 349 U.S. 133, 136 (1955).
3 *Patterson v. State of Colorado ex rel. Attorney General,* 205 U.S. 454, 462 (1907).
4 Sierra Elizabeth, *"The Newest Spectator Sport: Why Extending Victims' Right to the Spectators' Gallery Erodes the Presumption of Innocence,"* 58 Duke L.R. 274, 281 (2008)
5 *See Beck v. District Court,* 113 Nev. 624, 939 P.2d 1059 (1997).
6 *See* Sierra Elizabeth, *"The Newest Spectator Sport: Why Extending Victims' Right to the Spectators' Gallery Erodes the Presumption of Innocence,"* 58 Duke L.R. 274 (2008); Meghan Lind, "*Hearts on Their Sleeves: Symbolic Displays of Emotion by Spectators in Criminal Trials,*" 98 Journal of Criminal Law and Criminology 1147 (2008).
7 *Carey v. Musladin,* 549 U.S. 70, 76 (2006).
8 *Id.*
9 WATCH website, www.watchmn.org (last accessed on 4/11/11).
10 *Id.*
11 Inquiry into the Conduct of the Honorable Jack S. Nordby, *Formal Statement of Complaint*, BJS File No. 2009-124.
12 Mark Cohen, Judge Nordby: WATCH worth watching, January 4, 2010, found at http://minnlawyer.com/minnlawyerblog/2010/01/04/judge-nordby-watch-worth-watching/ (last accessed 4/11/11).
13 *See Complaint*, supra note 13.
14 *See generally* Cynthia Gray, *The Line Between Legal Error and Judicial Misconduct: Balancing Judicial Independence and Accountability,* 32 Hofstra L. Rev. 1245 (2004).

This is number 44 in a series of essays on judicial ethics authored by Judge David Hardy, Second Judicial District Court, Dept. 15.

Across the Line

James E. Simon of Porter Simon

When Might Attorney-Client E-mails Lose Their Confidentiality?

While we as attorneys are familiar with the practical considerations of the confidentiality of e-mail communications, and try to be sensitive to the consequences of clicking "Send" on the e-mails we write, a new California case raises some disturbing issues concerning confidentiality of attorney-client e-mail communications sent by, or to, a client from her workplace computer. (*Holmes v. Petrovich Development Corp*. (2011) 191 Cal.App.4th 1047.)

HOLMES CASE: E-MAILS TO/FROM A WORK E-MAIL ACCOUNT MAY WAIVE ATTORNEY-CLIENT PRIVILEGE

In a recent decision by the highly regarded California Third District Court of Appeal, the privileged nature of an e-mail communication sent by a client to her lawyer was deemed waived under circumstances where, even though the e-mail was sent on her individual, personal, password protected, company e-mail account: (1) the computer she used was owned by her employer to be used only for company business, (2) employees were prohibited from sending and receiving personal e-mails; and (3) the employee/client had acknowledged reading, and agreeing to, an employee handbook stating that use of the company's computers for personal e-mail messaging would not result in a right of privacy, and that the e-mails may be inspected by her employer. While the ruling in the case is understandable given the particular facts involved,[1] the implications of this precedent raise a host of practical considerations for litigants in conducting e-discovery, and may create a need for addressing e-mail confidentiality early in the attorney-client engagement. Employers might be reminded to check their employment manuals as well, in view of the policy considerations discussed in the decision.

The fundamental premise of the court's ruling was grounded on the principle that the confidential nature of attorney-client communications can be waived and such communications may be compelled to be disclosed, if the employee had no expectation of privacy in her work e-mail account. Because the employee/client in the *Holmes* case had elected to communicate with her attorney using her company e-mail address, the court compared the confidentiality of her communications to "consulting her attorneys in one of defendant's conference rooms in a loud voice, with the door open . . .". The waiver was further evidenced by proof of the client's understanding that use of e-mail at her job did not involve a reasonable expectation of privacy as stated in her employee handbook. While the court blurred the distinction between privacy rights (generally addressed in the California Constitution, Article I), and the sanctity of confidentiality involving communications between lawyers and their clients (codified by statute in California), the court felt persuaded that attorney-client confidentiality is waived where the mechanism and content of the communication is "owned" by the employer/defendant, and where the employer/defendant has advised the employee/client that e-mails are not private, may be monitored, and are to be used for business purposes only; and when the employee/client agrees to such conditions by receipt of a company policy manual upon her acceptance of employment. Regrettably, this rule ignores the practical realities inherent in the use of e-mail in the workplace.

> Regrettably, this rule ignores the practical realities inherent in the use of e-mail in the workplace.

In reaching its decision, the *Holmes* court noted that the communication by the employee/client also could not be "confidential" within the meaning of California Evidence Code section 952 (communication made in confidence by a means which, so far as the client is aware, discloses the information to no third persons . . .), confidentiality is an element required in order that an attorney-client communications remain privileged. The court implied that the communication in this case did not meet that standard, presumably because, by virtue of the employee handbook, the employee should have expected disclosure of her e-mails to her employer. Interestingly, the decision does not identify whether a specific "disclosure" to her employer, of her communication to her lawyer, ever actually occurred. Apparently, once the litigation began, the employer searched through the employee's e-mail account, discovered what it thought were incriminating communications between the employee and her lawyer sent by the employee on her company

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HOLMES CONT.

e-mail account, and attempted to use them in support of a motion for summary judgment; successfully as it turned out. However, there is nothing to suggest that the client affirmatively made a disclosure to her employer of the confidential communication, but rather only that she had acknowledged upon the commencement of her employment that such communications *may* be subject to monitoring. Mere acknowledgement of a company policy suggesting the possibility of e-mail monitoring is, under the court's reasoning, now equivalent to an affirmative "disclosure," of a confidential communication between a client and her lawyer sufficient to constitute a waiver and destroy the privilege.

In support of its decision, the court also found that the privilege is waived where a client "consents" to disclosure; shoehorning into its analysis a conclusion that consent must have occurred under the facts presented by the employee's/client's acknowledgment and signature of the employee handbook. Ordinarily, consent is "manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure . . .". While it does not appear that the client, in acknowledging the company's handbook, made a specific consent to disclosure of specific attorney-client communications, the court was satisfied that her awareness of the potential of monitoring by her employer, amounted to such consent.

POSSIBLE EXCEPTIONS TO *HOLMES*

The court suggested, but did not make clear, the potential of an exception to the waiver of the attorney-client privilege for "personal, web-based e-mail accounts accessed from an employer's computer," where use of such an account was not covered by the company's policies and the communications contain "a standard hallmark warning," that they were personal, confidential, attorney-client communications, citing *Stengeart v. Loving Care Agency, Inc*. (2010) 201 New Jersey 300.

Furthermore, had the communication been sent from the client's "home computer to which some unknown persons involved in the delivery, facilitation, or storage may have access" (a nod to Cal. Evid. Code § 917(b)), the court reasoned that her communications would have remained privileged, *unless* she allowed others to have access to her e-mails and disclosed their content. It is unclear whether this potential exception to the preservation of confidentiality sent from a home computer, requires a client to both allow access to e-mails by others *and* disclose their content. Wow.

IMPLICATIONS OF *HOLMES* DECISION

The *Holmes* decision has potentially far-reaching implications, which may make for questionable policy. Assume a family has an e-mail account, e.g., smithfamily@provider.com in which all members of the Smith family, husband, wife, and teenage children, have access. Perhaps an anomaly in these days, but nevertheless, follow along. The wife communicates with her own individual lawyer using the home computer on her generic Smith family e-mail account. If the e-mail is accessible by her son or husband, and actually read by them, is the privileged nature of the communication with her lawyer waived such that disclosure may be compelled? The *Holmes* decision suggests that it is. What about e-mail accounts which involve automatic forwarding to others? E-mail accounts which are monitored by others for illegal activity? E-mails sent and received by a client on a smart phone issued by an employer but used by the client for personal matters as well? E-mail using a Facebook® account? Tweets? And how about a confidential e-mail sent by a lawyer to a client at the client's workplace, where the *Holmes* factors are in place? What steps must the lawyer take to be sure that the e-mail address to which he or she sends e-mails to a client is 100% *Holmes*-proof?

What the *Holmes* decision points out are the potential legal repercussions of electronic communications where an assumption of privacy might normally be made, yet where such confidentiality is not assured under California law when accessibility to, or control of, electronic communications may rest with third parties.

PRACTICE POINTERS TO MAINTAIN CONFIDENTIALITY

In light of this decision, attorneys might consider advising their clients to communicate with them by receipt and sending of e-mail, only on a secure, private e-mail address, using a means of electronic communication (computer, iPad, cell phone), owned by the client, and not accessible by others. In an appropriate case, a discovery request addressing the details of the manner and method by which the opposing party sends and receives e-mail might be appropriate in order to determine if a *Holmes* waiver exists. Hopefully, some refinement of the rule announced in *Holmes* will be forthcoming, as the realities of the holding receive more scrutiny. In the meantime . . . keep your conference room door closed.

NOTES

[1] In *Holmes*, a wrongful termination case, the plaintiff/employee communicated with her attorney by e-mail from work involving her case against her employer, the defendant. However, it would appear that the rationale for finding a waiver could apply even where the employer is not a party to the litigation, but is an unrelated third party, because the lack of expectation of privacy remains no matter who has the right to monitor the employee's e-mails.

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Ira Victor, DataClone Labs

The CyberJungle: News and Analysis on Security, Privacy and The Law

At the very end of March, Epsilon Marketing announced a large scale data breach. Epsilon Marking provides email marketing services to some 2500 large US companies, including Citi, Charter, JPMorgan, Marriott, Krogers, Best Buy, and Walgreens. The leak included the email addresses, names and business that consumers did business with. In an Epsilon statement, the marketing company said "an incident was detected where a subset of Epsilon clients' customer data were exposed by an unauthorized entry into systems. The information that was obtained was limited to email addresses and/or customer names only."

The thrust of Epsilon's statement: The attackers only took customer names, email addresses and the names of companies the customers do business with, so there is not much of risk of harm. The risk of harm is that social engineering attacks, phishing attacks, and other attacks could be launched against customers. Users are more likely to respond to a message from, say, Walgreens, if in fact they are already a customer of that store. As social engineers have shown, once trust and rapport is gained, an attacker can do significant harm. There could be wide-spread consumer harm, extending to employer data, since many people give a work email address for these services. Security and human resource administrators should consider holding a staff training meeting to help protect the information assets of the business, and protect the staff members from personal cyber attacks that could hurt worker productivity.

Typically, the media has focused on Personally Identifiable Information (PII) ID theft: credit card breaches, financial account information theft, and healthcare data breaches. There has been little attention paid to business data theft, by the media, pressure groups and many of the businesses that house the data, since business data is not typically regulated like PII is. This might be a watershed moment when the attention is shifted to business data. According to a report released last month by McAfee/Intel and SAIC, "...cybercriminals have made the shift from stealing personal information, to targeting the corporate intellectual capital of some of the most well-known global organizations. Cybercriminals understand there is greater value in selling a corporations' proprietary information and trade secrets which have little to no protection, making intellectual capital their new currency of choice..."

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The focus of attention in the Epsilon story is consumer data. Big story number one not yet getting much attention: the wide-spread theft and re-sale on the digital black market of business intellectual property like trade secrets, technologies, sales data, price lists, key customer contacts, manufacturing processes, software code, salary info, and more.

Another big story not getting much attention: contrary to the spin from data collectors and pressure groups, the biggest data risks associated with the collection of consumer information is not that the data collector will sell the data to another firm. The biggest risk is that the data these data collectors gather will end up in the hands of cyber criminals, a government agency, or become part of damaging civil litigation, all risks that can cause much great harm to consumers.

Ira Victor is digital forensic and compliance analyst with Data Clone Labs in Reno, Nevada,. He is also Co-Host of CyberJungle Radio, the news and talk on security, privacy and the law. Ira is President of Sierra-Nevada InfraGard, and a member of The High Tech Crime Investigator's Association (HTCIA). Follow Ira's security and digital forensics tweets: @ira_victor .

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FINANCIAL DISCLOSURE IN THE FAMILY DIVISION OF THE SECOND JUDICIAL DISTRICT COURT – WHICH REIGNS SUPREME – NRCP 16.2 OR ADMINISTRATIVE ORDERS REGARDING CASE MANAGEMENT?

There is a conflict between the financial disclosure requirements of NRCP 16.2 and Administrative Orders of the Family Division of the Second Judicial District Court. NRCP 16.2(a)(1) mandates that each party file a Financial Disclosure Form "no later than 45 days after service of the summons and complaint." The Administrative Orders issued by Departments 2, 5, 11 and 12 require the filing and service of a Financial Declaration "at least ten days before the Case Management Conference." This discrepancy creates confusion as to when the financial disclosures are due and whether all departments of the Family Division are uniformly following the same procedures.

It is also not clear as to whether the Family Division is consistently following NRCP 16.2, not only as to financial disclosures but in other particulars, such as evidentiary disclosures, lay and expert witness disclosures, discovery, supplementation of all disclosures and discovery and other matters specifically addressed by the Rule. This article posits that NRCP 16.2 exclusively controls disclosure and discovery in family law cases and that the Administrative Orders are a relic of the past and should be dissolved.

To understand why the Administrative Orders came into being and why they now conflict with NRCP 16.2, a brief history is necessary. The original Order was the experimental progenitor of Family Division case management in Washoe County and later, underpinning for the case management rules of NRCP 16.2.

Within ten years of its creation, the Family Division of the Second Judicial District Court was overwhelmed by the number of family law cases being filed, especially those involving unrepresented litigants. Parties appearing in propria persona had no idea what information they would need to present their cases and routinely did not provide the court the information it needed to assess the issues and to enter interim financial and custody orders, or to rule at trial. A plan to effectively manage the Family Division caseload became imperative, as the old case management method was ineffective in dealing with the high volume of cases.

Believing the sooner a judge took control of a case the faster it would move through the system—at less cost to the litigants—a bench-bar committee devised a program where the court would begin supervising its cases shortly after filing. In its original design, there were to be three tiers of cases, each of which would be managed according to its complexity. The first tier would be the low income/asset cases and those in which one or both parties were unrepresented; the second tier, mid-range financial cases with fairly routine issues and represented parties; and the third tier, high-end financial matters and complex cases.[1] The management of each tier would vary, depending on the needs of the litigants and the complexity of issues presented.

Shortly before he retired, Judge Scott Jordan initiated the pilot case management program in Department 11 of the District Court by entry of an Administrative Order which became effective on July 1, 2004. The initial trial tested the efficacy of the plan for management of the first tier cases, the "pro per" cases, which were bogging the system.[2] Judge Jordan's Administrative Order, which remains in effect in Department 11, requires the scheduling of a Case Management Conference shortly after a matter is filed. No Financial Declaration is due until ten days before the Case Management Conference, at the same time each party is to file and serve a Case Management Conference Statement.

After Judge Jordan retired, Departments 5 and 12 issued a joint Administrative Order adopting Judge

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Jordan's administrative order, effective January 20, 2005. Department 2 adopted the Administrative Order, effective November 11, 2005. Departments 13 and 14 have not yet adopted the Administrative Order.[3]

In 2005, the Nevada Supreme Court amended the civil discovery rule, NRCP 16.1. It quickly became apparent that the remarkable new civil discovery process did not work in family law litigation. When the family bar brought its concerns forward, the Nevada Supreme Court quickly responded by appointing a bench-bar committee headed by Justice Maupin to tailor the family law discovery and disclosure procedure of NRCP 16.2, which became effective on July 1, 2008.

NRCP 16.2 is designed to "front load" financial, witness and document disclosure and discovery so that each party may have early access to all financial and other information. Mandatory financial disclosure by both parties of income, assets and debts, and living expenses, must be made "no later than 45 days after service of the summons and complaint." The earlier both parties have the same information and the ability to intelligently analyze it, the sooner a case may be resolved by settlement or trial. Knowledge is power and should not be the exclusive province of the "in" spouse. Further, cases may settle very early in the process if both sides are reasonably confident they know the pertinent facts. As long as an imbalance of information exists, cases will not settle and long and expensive discovery will follow. The courts should adhere to the policy underlying NRCP 16.2: parties should have equal information as early in the litigation as possible.

The Nevada Supreme Court put strong teeth into NRCP 16.2, allowing sanction of a party who does not timely make disclosure or discovery, or supplement disclosure and discovery. The Rule also requires early involvement of the judge. A Case Management Conference is to be held within sixty days of the filing of an answer, but no more than ninety days after service of process. Discovery may begin thirty days after service of the summons. The Nevada Supreme Court adopted the detailed discovery and case management Rule, intending it to be uniformly followed in all family matters statewide. As such, it trumps all other orders, rules and practices.

The time limitations of NRCP 16.2 requiring the filing of a financial declaration within 45 days of service of the complaint, conflict with the Family Division's Administrative Orders, which postpone the financial disclosure until ten days before the Case Management Conference. It is not clear whether the Family Division is following and enforcing NRCP 16.2 in all particulars, or whether the old Administrative Orders which predate NRCP 16.2 are given precedence. If so, the failure of the courts to follow NRCP 16.2 eviscerates early disclosure and in great part renders the Rule useless.

As an example, under the Administrative Orders, the financial disclosure is due on the same day the Case Management Conference Statement is due ‑ ten days before the conference. The late filing of the financial disclosure effectively denies the "out" spouse vital financial information prior to preparing his/her Statement and limits his/her ability to present informed discourse to the court as to what an appropriate interim financial order should be. It also postpones the opposing party's ability to engage in meaningful discovery and to present a discovery plan to the court. Often, Case Management Conferences are scheduled beyond the time lines of NRCP 16.2. While that may be reasonably necessitated by the calendars of the court, counsel and parties, following the Administrative Orders instead of NRCP 16.2 delays financial disclosure for weeks or months beyond the mandate of the Rule.

NRCP 16.2, if followed, provides clear structure to move a case through the system, advances and protects each party's right to full knowledge and prompt disclosure, gives the court the data it needs to issue informed interim orders and to push the case to settlement or early trial. It also gives the court the ability to sanction delay tactics and discovery games. Where pro per litigants are involved, NRCP 16.2 arms them and the court with relevant information to effect settlement at an early stage of the case or to be ready for trial. The Administrative Orders have served their purpose, but are now outmoded by NRCP 16.2 and should be laid to rest. The procedural rules or orders of the local courts should not conflict or inhibit parties' rights and responsibilities under the Nevada Rules of Civil Procedure.

Judge Jordan and his bench-bar committee brought the Family Division a long way by implementing uniform family court case management procedure in Washoe County. Justice Maupin and NRCP 16.2 did the same at a statewide level. If our Family Division is not uniformly following and enforcing NRCP 16.2 it does great disservice to family law litigants and the family bar. The Family Division must correct the procedural discrepancies and confusion of practice by dissolving the outdated Administrative orders and consistently following and enforcing NRCP 16.2.4

NOTES

1 Recollection of author.
2 Recollection and opinion of author.
3 Procedures for the second and third tiers have not been adopted.
4 If it does not, we face fragmentation and difficulties similar to that plaguing the Family Division in Clark County.

Mary Anne Decaria is a partner in Silverman, Decaria & Kattelman, Chtd. She served on the Family Law Section Executive Council and chaired the Northern Nevada Disciplinary Board. Her columns are online at wcbar.org.

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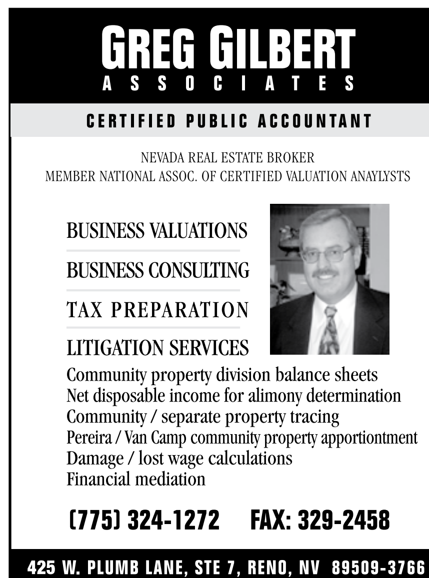

DOCTORS/LAWYERS BASKETBALL GAME, 2011

Me shooting 40% at the foul line is just God's way to say nobody's perfect.
Shaquille O'Neal

Unlike Shaquille O'Neal, the Doctors and Lawyers shown below were all perfect on April 1, 2011. Not for their field goal or free throw percentages, but because they netted over $7500 for Camp Sunrise, an American Cancer Society summer camp for children with cancer.

This year's event featured a Spaghetti Feed at the Coney Island Bar a few days before the game, where we were lucky to share the evening with the likes of Senator Bill Raggio, Justice Jim Hardesty, Judge Bridget Robb Peck, Nevada Coach David Carter and Bighorn Coach Eric Musselman. There was some humorous jawing amongst the players, which was welcome. And not a single fight broke out! The evening was fantastic.

The actual game was played at the Reno Events Center on the Bighorns court. Everyone played their hearts out in front of a large crowd of family and friends. Unbelievable, baby! It was like being at the Final Four in Houston, TX without having to jump on a plane. The Doctors took an early lead. But with two minutes left in the game, the Lawyers pulled within 2 points. You'll have to purchase a DVD to see the final score.

All action (including the crowd) was captured by three professional camera operators and play-by-play commentator Dan Gustin. As you will see, the referees let them play. The DVD package includes shooting and defensive highlights as well as a "One Shining Moment" segment. The DVD package may be purchased for $10 (that is cost) by e-mailing me at mbruce@brucelawgroup.com or calling me at 624-1000.

The Doctors and Lawyers would like to thank: Sunshine Litigation Services, Reno Carson Messenger Service, Coney Island Bar, Soaring Audio, Reno Bighorns and Nevada Basketball.

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PEOPLE

IN MEMORIUM

Lovelock lawyer Roland "Doc" Belanger passed away April 9 at his home. Belanger was born in 1925 in Eureka, Nevada. Belanger attended Lovelock schools and served in the U.S. Navy from 1943 through 1946. He then attended Santa Clara University and graduated from Georgetown University Law School in 1954. He began practicing law in 1954, served 20 years as Pershing County District Attorney, where he was president of the Nevada State District Attorney's Association. He was a member of the Washoe County Bar Association for over 40 years.

Following his terms as DA, Belanger went into private practice with the Honorable Richard Wagner and Todd Plimpton, who was still his law partner at the time of his death.

Roland Belanger was very active in the Lovelock community, helping to acquire land for the Lovely Baseball Association, serving as volunteer fireman and ambulance driver, Chairman of the State Democratic Convention (1960).

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Holidays: Closed on Monday, May 30, 2011 for Memorial Day.

We would like to thank the following attorneys who participated in Lawyer in the Library programs during the month of March: Madelyn Shipman, Patricia Phair, Sarah Carrasco, Donald Pope, and Kenneth Ching volunteered for our Wednesday night program. We would also like to thank David O'Mara, Graeme Reid, Tamara Jankovic, Victoria Mendoza, and Muriel Skelly for volunteering for our Tuesday night program, which is reserved for family law matters.

A special thanks to Geoffrey Giles, Esq., for presenting the legal seminar *How Foreclosure Works and Why* in March.

Please call Nikki Britt at 328-3250 if you would like to volunteer for our weekly Lawyer in the Library programs, or if you are available to give a seminar. Our seminars are held the 4th Thursday of every month.

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10 The Bruce R. Thompson Chapter of the American Inns of Court meets on the Eighth Floor of the Federal Building, 300 S. Virginia St. Rob Dotson leads Part Two of a Two Part Trial Program. Social portion starts at 5:15 p.m., 90-minute presentation begins at 5:45 p.m. Members and guests welcome.

11 WCBA Luncheon, 12 noon, Harrah's. Social Media, Technology and Your Practice. Speakers Mark Howitson, Deputy General Counsel, Facebook® and Mike Kattelman, Silverman, Decaria & Kattelman. RSVP by Monday, May 9. $25 per person. Register online at wcbar.org, fax the form below or call 786-4494.

17 NNWLA, 5:30 p.m. Atlantis. Former Reno Chief of Police Jerry Hoover discusses U.S. Department of State's efforts to train the Afghanistan Police Force. Slideshow of present situation in Afghanistan, cultural effect of the training program, the suicide attack on Kandahar, the status of women in Afghanistan and the influence of Shari'a Law on women's efforts to become more independent. Cost is $35 for NNWLA members, $40 for non-members. Please RSVP to Kelly at kgunderson@gundersonlaw.com.

18 Nevada Association of Women Lawyers luncheon meeting at noon, at the Black Bear Diner on So. Virginia. Cost for lunch and 1.0 of CLE is $18. Please make reservations with Micki Nichols, PLS, at mnichols@mcdonaldcarano.com, or call her at 788-2000.

21 WCBA CLE, DUI: Solving the Mystery, 9 a.m. - 4:30 p.m. Speakers: Larry Dunn, Karena Dunn, John Oakes, Officer Rob Sheffield, Walter Fey, Steven Charter. Federal Courthouse. $239 members, $259 nonmembers. Register online at wcbar.org/events or call 786-4494.

JUNE

8 WCBA Luncheon, 12 noon, Harrah's. WCBA Annual Meeting. Speaker is Michael Sommermeyer, Lead Program Analyst, Nevada Supreme Court AOC and former administrator Clark County Courts.

30 Young Lawyers Section night at the Reno Aces—Aces v. Salt Lake City Bees, 7:05 p.m. YLS will host a pre-game happy hour (6:00 p.m.) at 250 Lounge in the Freight House District. YLS members can RSVP to Jenny at jsparks@lionelsawyer.com to reserve a FREE ticket. If YLS member would like to bring a non-member guest, send a check for $5, made payable to the "Young Lawyers Section - Nevada State Bar", to Lionel Sawyer & Collins, Attn: Jenny Sparks, 50 W. Liberty St., Ste., 1100, Reno, NV 89501.

WCBA LUNCHEON, WEDNESDAY, MAY, 11 HARRAH'S, 12 NOON

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