

COMMISSION ON JUDICIAL SELECTION APPLICATION

FIRST JUDICIAL DISTRICT
DEPARTMENT I

By

Jason Woodbury



Personal Information

1.	Full Name	Jason Donovan Woodbury
2.	Have you ever used or been known by any other legal name (including a maiden name)? If so, state name and reason for the name change and years used.	No
3.	How long have you been a continuous resident of Nevada?	48 years
4.	City and county of residence	Carson City
5.	Age	51

Employment History

6. Please start with your current employment or most recent employment, self-employment, and periods of unemployment for the last 20 years preceding the filing of this Application.

Current or Last Employer	Carson City District Attorney
Phone	775.887.2072
Physical Address & Website	885 East Musser Street Suite #2030C Carson City, Nevada 89701 https://www.carson.org/government/departments-a-f/district-attorney-s-office
Date(s) of Employment	January 5, 2015 to present
Supervisor's Name and Title	Elected position
Your Title	District Attorney
Describe Your Key Duties	Public prosecutor for Carson City; Provide legal representation for Carson City officials, employees, departments and public bodies; Establish and direct implementation of policy; Supervise and direct administrative functions including personnel, budget and facilities
Reason for Leaving	Current position

Previous Employer	Kaempfer Crowell
Phone	775.884.8300
Address & Website	510 West Fourth Street Carson City, Nevada 89703 https://kcnvlaw.com/
Date(s) of Employment	July 1, 2006 to December 31, 2014
Supervisor's Name and Title	Bob Gronauer, Managing Partner
Your Title	Partner
Describe Your Key Duties	Represented clients in general commercial litigation and administrative matters before public bodies; lead counsel in several cases of statewide significance, including initiative petition and election cases and cases implicating constitutional and separation of powers questions
Reason for Leaving	Elected Carson City District Attorney

Previous Employer	Crowell, Susich, Owen & Tackes
Phone	775.884.8300
Address & Website	510 West Fourth Street Carson City, NV 89703 https://kcnvlaw.com/
Date(s) of Employment	January 17, 2006 to June 30, 2006
Supervisor's Name and Title	Bob Crowell, Partner Steve Tackes, Partner
Your Title	Associate
Describe Your Key Duties	Provided general legal services, primarily criminal defense, in small Carson City law firm
Reason for Leaving	Law firm merged with larger statewide law firm of Kummer, Kaempfer, Bonner & Renshaw (now Kaempfer Crowell)

Previous Employer	Law Office of Jason Woodbury
Phone	775.721.0083
Address & Website	408 East Telegraph Street Carson City, Nevada 89701 No website
Date(s) of Employment	March 12, 2003 to January 16, 2006
Supervisor's Name and Title	Solo practice
Your Title	Owner
Describe Your Key Duties	General counsel to family trust; criminal defense; administration of solo practitioner law practice
Reason for Leaving	Joined law firm

Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.
- Elko High School, 987 College Avenue, Elko, Nevada 89801; September 1987-June 1991; High School Diploma; Graduated.
 - Northern Nevada Community College (now Great Basin College), 1500 College Parkway, Elko, Nevada 89801; September 1990 – June 1991 and June-August 1992; As a high school senior, I participated in a program that allowed me to take four courses for college credit, and I took one class during the summer between my first and second year at the University of Nevada, Reno.
 - University of Nevada, Reno, 1664 North Virginia Street, Reno, Nevada 89557; August 1991 – May 1995; Bachelor of Arts in Political Science with Criminal Justice minor; Graduated.
8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

During high school, I participated in student government and served as Student Body President for the 1990-91 school year. I was also involved in athletics, specifically basketball, baseball and football, and was a co-captain of the 1990-91 varsity basketball team. In 1990, I was a delegate to Boys' State. As an underclassman, I competed in forensics. I was also a member of the National Honor Society.

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

- University of Utah College of Law (now S.J. Quinney College of Law), 333 South University Street, Salt Lake City, Utah 84112; Juris Doctor awarded May 23, 1998; Class rank: top 12%*

*In 1998, the University of Utah College of Law did not individually rank graduates. However, it did maintain data showing grade point average distribution reflected in a chart showing the number of graduates holding GPAs broken down by tenths of a point (i.e., 1 student in GPA range 3.80-3.89; 4 graduates in GPA range 3.70 to 3.79; etc.) Based on this information, my GPA of 3.529 was no lower than 15th in a class of 130.

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

I was not employed during the school year while attending law school. However, I was employed during the summer breaks as follows:

- Blach Distributing Company, 131 West Main Street, Elko, Nevada; full-time employment as driver/delivery person for beverage wholesaler, May-August 1996;
- Puccinelli & Puccinelli, 700 Idaho Street, Elko, Nevada (no longer in business); part-time employment as student law clerk, May-August 1997; and
- Lockie & MacFarlan, 960 Idaho Street, Elko, Nevada (no longer in business); part-time employment as student law clerk, May-August 1997.

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, and extracurricular activities.

- Utah Law Review: Staff Member 1996-97; Executive Editor 1997-98
- Moot Court Competition: 1996-97
- Constitutional Law I tutor: 1997
- Civil Law Clinic: Spring semester 1997

Law Practice

12. State the year you were admitted to the Nevada Bar.

1998

13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission.

None.

14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations.

No

15. Estimate what percentage of your work over the last five years has involved litigation matters, distinguishing between trial and appellate courts. For judges, answer questions 15-19 for the five years directly preceding your appointment or election to the bench.

Legal Discipline	Percentage of Practice
Domestic/family	0
Juvenile matters	10
Trial court civil	10
Appellate civil	5
Trial court criminal	25
Appellate criminal	10
Administrative litigation	5
Other: Please describe	35*

*Approximately one-third of my time as District Attorney is utilized to perform administrative functions.

16. In the past five years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials?

In the past five years, 90% of my litigation matters have involved cases set for jury trial and 10% have involved cases set for non-jury trials.

17. Give the approximate number of jury cases tried to a conclusion during the past five years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period.

I have tried one jury case to conclusion in the past five years as lead counsel. I have not tried any non-jury cases to a decision as lead counsel in the past five years.

18. List courts and counties in any state where you have practiced in the past five years.

- Nevada Supreme Court, State of Nevada;
- Nevada Court of Appeals, State of Nevada;
- First Judicial District Court, Carson City;
- Second Judicial District Court, Washoe County; and
- United States District Court for the District of Nevada, State of Nevada.

19. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), complete the following tables:

Case 1
Case name and date: <i>Clean Water Coalition v. The M Resort, LLC, et al.</i> (May 26, 2011)
<p>Court and presiding judge and all counsel:</p> <p>Courts: Eight Judicial District Court, David Barker, District Judge; Nevada Supreme Court</p> <p>Counsel for The M Resort: Jason Woodbury; Chris Kaempfer; Severin Carlson</p> <p>Counsel for parties aligned with The M Resort: John F. O'Reilly; Timothy R. O'Reilly</p> <p>Counsel for Clean Water Coalition: Robert W. DeLong; Michael R. Kealy</p> <p>Counsel for State parties: Charles Wayne Howle; Kevin C. Powers</p>
<p>Importance of the case to you and the case's impact on you:</p> <p>I led a team of attorneys representing a coalition of fee payers which had paid fees to the Clean Water Coalition ("CWC"), a local public entity created to fund water treatment projects in the Las Vegas Valley. In an effort to mitigate a budget shortfall, the State enacted a law sweeping the CWC's funds into the State General Fund. Our team initiated litigation on behalf of the feepayers, asserting the sweep violated Nevada's constitutional prohibition against "local or special laws" which target localized groups and are not generally applied throughout Nevada for the purpose of generating revenue. Ultimately, the Nevada Supreme Court held in favor of our clients and invalidated the State's sweep of CWC funds.</p> <p>The case was an intriguing opportunity to research, examine and apply two arcane provisions of Nevada's founding document in the context of highly unusual circumstances. The case prompted a philosophical debate on profound questions about the very foundation of Nevada's government, the limits of the Legislature's authority and the legal status of political subdivisions. The experience was remarkably educational for me personally as I advocated with and against very talented and experienced attorneys on the issues and observed even more accomplished judicial officials navigate those same issues.</p>
Your role in the case: Lead litigation counsel for The M Resort

Case 2
Case name and date: <i>Vogel v. Grierson</i> (March 21, 2014)
<p>Court and presiding judge and all counsel:</p> <p>Court: Nevada Supreme Court</p> <p>Counsel for Eight Judicial District Court: Jason Woodbury</p> <p>Counsel for Las Vegas Justice Court: Thomas Dillard, Jr.; Peter M. Angulo; Walter Cannot</p> <p>Counsel for Clark County: Steven B. Wolfson; Yolanda T. Givens</p> <p>Counsel for Clark County Deputy Marshals Association: Adam Levine; Daniel Marks</p>
<p>Importance of the case to you and the case's impact on you:</p> <p>I was engaged by the Eighth Judicial District Court ("Court") to defend it in a Quo Warranto and Writ of Prohibition action where an association of court deputy marshals claimed to be employees of Clark County and not of the Court. The case was orally argued before the Supreme Court <i>en banc</i>. In preparing for oral argument, I arranged several mock sessions with a large group of Clark County district judges. The sessions were grueling and, candidly, somewhat terrifying. But having access to dozens of the sharpest legal minds in the State was such an anomaly it would have been foolish to waste the opportunity. I have never been as prepared for anything as that ten-ish minutes of argument, and the experience helped me fully appreciate the importance of meticulous preparation in the legal field.</p>
<p>Your role in the case: Lead counsel for Eighth Judicial District Court and its Court Administrator.</p>

Case 3
Case name and date: <i>State of Nevada v. William Dresser</i> (June 19, 2015)
Court and presiding judge and all counsel: Court: Carson City Justice Court; John Tatro, Justice of the Peace Counsel for the State of Nevada: Jason Woodbury Counsel for William Dresser: Nevada State Public Defender; Karin L. Kreizenbeck
Importance of the case to you and the case's impact on you: The Defendant in this case was an 88-year-old man whose wife of 63 years sustained an injury from a fall in their home that would result in her being a quadriplegic with no chance of recovery. She repeatedly told family members that she preferred to die rather than endure the remainder of a short, pain-filled life. Using a handgun he acquired from a pawnshop, the Defendant shot and killed his wife in her hospital bed. He tried to kill himself, but the gun malfunctioned. The Defendant was arrested and, prior to my election, the District Attorney's office charged him with Open Murder. On a technical level, this was an open and shut case of willful, deliberate, premeditated first-degree murder. Notwithstanding those technical merits, I dismissed the charge. Not every crime is wrong. A fair amount of understandable criticism was leveled against me for the dismissal. But of all the decisions I have made as District Attorney, I take the most pride in that one.
Your role in the case: Lead prosecutor

Case 4
Case name and date: <i>State of Nevada v. John Thomas Aston</i> (Nov. 13, 2017)
Court and presiding judge and all counsel: Court: First Judicial District Court of the State of Nevada, Steven R. Kosach, Senior Judge Counsel for the State of Nevada: Jason Woodbury and Kristin Luis Counsel for John Thomas Aston: Nevada State Public Defender; Karin L. Kreizenbeck and William M. Murphy
Importance of the case to you and the case's impact on you: This case involved an individual who stalked and terrorized a Carson City judge for several years through a series of attempts at violence toward the judge. Law enforcement had been able to collect and analyze a DNA profile of the stalker, but they still had not identified the individual by name. As the statute of limitations loomed on the first and most serious act, the perpetrator's name was still unknown and we risked forfeiting the opportunity to hold the perpetrator accountable unless a charging document was filed. I incorporated the "DOE" pleading concept of civil litigation into a criminal action and charged the case in a Criminal Complaint which identified the Defendant not by name but by his DNA profile. When the suspect was apprehended many months later, the DNA was matched, and I amended the charging document to reflect his name. The extremely unusual circumstances of this case provided me an opportunity to be creative and apply my civil litigation experience to a criminal case, thereby preserving an opportunity to hold the perpetrator fully responsible for his conduct.
Your role in the case: I prosecuted the case together with Kristin Luis, who was Assistant District Attorney at the time.

Case 5
Case name and date: <i>State of Nevada v. Nicholas Jay Barash Vietti</i> (June 20, 2024)
<p>Court and presiding judge and all counsel:</p> <p>Courts: Second Judicial District Court, Kathleen M. Drakulich; Nevada Court of Appeals</p> <p>Counsel for the State of Nevada: Jason Woodbury and Tyson League</p> <p>Counsel for Nicholas Jay Barash Vietti: Washoe County Public Defender; Scott Fahrendorf and Bridget Matos</p>
<p>Importance of the case to you and the case's impact on you:</p> <p>I took this case on as a Special Prosecutor in Washoe County and charged the Defendant with two felony counts of Intimidation of a Public Officer through a Threat of Immediate Violence. This was a very challenging case that required navigation of the difficult line between unlawful threats of violence toward public officials and protected speech. The Defendant was ultimately convicted, and the conviction was upheld on appeal. But what I will always remember about this case is the trial judge. She was the hardest working person in the courtroom. In this complicated and emotionally charged case, she created and maintained an atmosphere of diligence and professionalism, setting an unspoken but unmistakably firm standard of expectations for attorneys and everyone else in the court. Over my objection, the trial judge included a defense instruction that I strongly felt overextended the scope of First Amendment protection. A couple months after the trial, the U.S. Supreme Court issued an opinion which concluded that such an instruction is required in a threats case. For me, this entire case was a lesson in how effective the justice system can be when administered by an exceptional judge.</p>
Your role in the case: Special Prosecutor for Washoe County

20. Do you now serve, or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.

No

21. Describe any pro bono or public interest work as an attorney.

Since being elected, I have not engaged in any pro bono or public interest legal work beyond the performance of my duties as District Attorney. Prior to being elected, my recollection is that I assisted with walk-in clinics in Carson City on two occasions. Unfortunately, I have been unable to locate records regarding those clinics, so I am unable to provide additional detail.

22. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

- State Bar of Nevada
- First Judicial District Bar Association
- Nevada District Attorneys Association; President 2019; Secretary/Treasurer 2020-23.

23. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past five years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge?

<u>Sponsor</u>	<u>Course</u>	<u>Date</u>
First Judicial District Bar Association	Felony Specialty Courts in the First Judicial District Court	September 6, 2024
State Bar of Nevada	Balancing the Scale: Healthy Screen Habits and Mindfulness for Lawyers	May 10, 2024
State Bar of Nevada	Implicit Bias	April 17, 2024
Clark County District Attorney's Office	Lessons from Appeals	October 4, 2023
State Bar of Nevada	2023 Nevada Government Civil Attorneys Conference	September 6, 2023
State Bar of Nevada	Above the Law: Elevating Your Mental Health	August 17, 2023
First Judicial District Bar Association	Gaming Law Update	June 9, 2023
State Bar of Nevada	Intersectionality and Resilience: Healing in the Midst of the Storm	June 9, 2023
State Bar of Nevada	Tips for Avoiding Disputes and Defending Your Fees	June 9, 2023

<u>Sponsor</u>	<u>Course</u>	<u>Date</u>
State Bar of Nevada	Attorney Well-Being: It's More Than a State of Mind.	June 7, 2023
State Bar of Nevada	Preventing Business Burnout: A Panel Discussion	June 7, 2023
State Bar of Nevada	IOLTA Town Hall	June 7, 2023
Supreme Court of Nevada, Administrative Office of the Courts	2023 District Court Judges Annual Seminar	April 28, 2023
First Judicial District Bar Association	Carson City Treatment Court Program	January 6, 2023
State Bar of Nevada	Constitutional Law with Professor Chemerinski 2022	December 28, 2022
Nevada Supreme Court	Behind the Scenes at the Nevada Supreme Court	December 20, 2022
Clark County Public Defender	THC Cannabis - Recognizing Impairment	December 19, 2022
State Bar of Nevada	Ethics Year in Review 2022	December 7, 2022
Nevada Supreme Court	An Evening with the Court	November 29, 2022
Nevada State Bar	Financial Wellness	November 4, 2022
First Judicial District Bar Association	State Bar Board of Governors and State Bar of Nevada Updates	November 4, 2022
First Judicial District Bar Association	Strike it Rich! Nevada Supreme Court Law Library Resources to Help You File Your Claim	October 14, 2022
State Bar of Nevada	When Zealous Advocacy Crosses the Line	December 22, 2021
State Bar of Nevada	Creating Cohesion & Happiness in a High Stress Profession	December 31, 2020
State Bar of Nevada	Functionality of the Addicted Brain	December 31, 2020
Carson City District Attorney's Office	Ethical Obligations of Prosecutors as Mandatory Reporters	December 4, 2020
First Judicial District Bar Association	Employment Law - Updates by Jordan Walsh, Esq.	February 21, 2020

<u>Sponsor</u>	<u>Course</u>	<u>Date</u>
First Judicial District Bar Association	New Updates to Changes in Criminal Codes, Legislative Changes to NRS	September 20, 2019

I am in compliance with the continuing legal education requirements applicable to me as a lawyer.

24. Do you have Professional Liability Insurance or do you work for a governmental agency?

I work for a governmental agency.

Business & Occupational Experience

26. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

Yes. I was a member of Appearances, LLC, a Nevada limited liability company from January 2, 2007 until June 2, 2017 when it was dissolved. I also had an ownership interest in Kelsay Investments, LLC, a Nevada limited liability company from January 23, 2007 until December 3, 2015 when it was dissolved. However, I was not a member or a manager of Kelsay Investments.

27. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? If so, please provide details as to:

- a. the nature of the business
- b. the nature of your duties
- c. the extent of your involvement in the administration or management of the business
- d. the terms of your service
- e. the percentage of your ownership

Yes. I was the sole owner, director and officer of the Law Office of Jason Woodbury, a Nevada Professional Corporation from March 13, 2003 through January 16, 2006. This enterprise was associated with my work as a solo practitioner during the same dates. I was solely responsible for the enterprise and for the administration of my legal practice, including maintenance of all financial and corporate records, and completion of all accounting, insurance and licensing functions.

28. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership.

I am a co-trustee with my wife of our family's trust of which I am a 50% owner.

Civic Professional & Community Involvement

29. Have you ever held an elective or appointive public office in this or any other state?

Yes

Have you been a candidate for such an office?

Yes

If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

In 2014, I won a contested election for Carson City District Attorney. I was re-elected in 2018 and 2022 without opposition. I have served as the Carson City District Attorney from January 5, 2015 to the current date.

30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

I have completed the following courses:

- June 10-14, 2019: “The Executive Course” presented by the National District Attorneys Association
- January 2023: “Essential Management Skills in the Public Sector” presented by the Nevada Public Agency Insurance Pool and Public Agency Compensation Trust (“POOL/PACT”)
- August 20, 2024: “Influential Leadership” presented by POOL/PACT

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

Date	Forum	Course/Program
2015-2024 (biannual)	Carson City Sheriff’s Office Crisis Intervention Training	Mental Health in the Criminal Justice System
2015-2023 (annual)	Carson City Leadership	Overview of Carson City District Attorney’s Office
December 15, 2023	Carson City Department of Alternative Sentencing	First Amendment Auditors
May 16, 2023	Carson City District Attorney Internal Training	Civil Liability of Prosecutors

<u>Date</u>	<u>Forum</u>	<u>Course/Program</u>
October 18, 2022	Carson City District Attorney Internal Training	Cross-Examination
2016-2021	Police Officer Standards and Training	Constitutional Law
2020-2021	Police Officer Standards and Training	Crimes Against Persons
2020-2021	Police Officer Standards and Training	Crimes Against Property
2021	Police Officer Standards and Training	First Line Supervisor Instruction
2019-2020	Police Officer Standards and Training	Laws of Arrest
December 8, 2020	Carson City Rotary Club	Overview of the Carson City District Attorney's Office
September 23, 2019	Nevada Association of Counties Annual Meeting	Handling Tough Meetings (panel discussion)
September 20, 2019	First Judicial District Bar Association and Douglas County Bar Association	Assembly Bill 236 of 2019 Legislative Session
April 13, 2019	Ideas on Tap	How to Fix the Criminal Justice System (panel discussion)
March 14, 2019	Carson City Judicial Process Meeting	Marsy's Law Overview
November 3, 2017	Douglas-Carson Legal Professionals	New Marijuana Legislation— 2017 Legislative Session
September 20, 2017	Daughters of the American Revolution	Grand Juries in Nevada
March 3, 2017	First Judicial District Bar Association	Recreational Marijuana Legislation

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

I served as a member of the Board of Directors for the Boys & Girls Clubs of Western Nevada from 2003 to 2017, including a term as President in 2008. I completed the Carson City Chamber of Commerce's "Leadership Carson City" program in 2011. In 2014-15, I was a founding member of the Western Nevada affiliate of the National Alliance on Mental Illness. I have been a member of the Partnership Carson City Steering Committee from 2015 to present.

During the Fall and Spring semesters of 2003 and 2004, I taught courses at Western Nevada College, including Criminal Law (CRJ 230)/, Evidence (CRJ 225) and Criminal Procedure (CRJ 220)

33. List honors, prizes, awards, or other forms of recognition.

UNDERGRADUATE SCHOOL:

- 1995: Most Outstanding Political Science Student

LAW SCHOOL:

- 1996: William H. Leary Scholar for Outstanding Academic Performance during Spring Semester 1996
- 1996: Award for Outstanding Achievement in Criminal Law
- 1996: CALI Excellence for the Future Award in Constitutional Law II

ATTORNEY:

- Named to Nevada Business Magazine's "Legal Elite" in 2013
- Recognized by Best Lawyers in America in Commercial Litigation 2013
- AV-rated attorney by Martindale Hubbell since 2013

34. Have you at any time in the last 12 months belonged to, or do you currently belong to, any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.

No

35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

- Presentation and Discussion on Nevada Open Meeting Law and Nevada Ethics in Government Law (March 19, 2024); available at:
 - https://carsoncity.granicus.com/player/clip/2396?view_id=2&redirect=true

- Carson City returns “justifiable homicide” verdict in coroner’s inquest on Malone death (May 17, 2021); available at:
 - <https://www.carsonnow.org/story/05/17/2021/carson-city-jury-returns-justifiable-homicide-verdict-coroners-inquest-malone-death>
 - <https://www.nevadaappeal.com/news/2021/may/17/stabbing-death-clint-malone-ruled-justified/>
- Carson City District Attorney clears 3 officers in fatal standoff with man holding infant hostage (August 31, 2020); available at:
 - <https://www.carsonnow.org/story/08/31/2020/carson-city-district-attorney-clears-3-officers-fatal-standoff-man-holding-infant-h>
- 5 questions for Cason City DA Jason Woodbury regarding court system under quarantine (April 8, 2020); available at:
 - <https://www.carsonnow.org/story/04/08/2020/five-questions-carson-city-district-attorney-jason-woodbury-regarding-changes-court>
- Carson City District Attorney Ordinance Drafting Manual 2019, *Foreword*; available at:
 - <https://www.carson.org/home/showpublisheddocument/67554/637032747215530000>
- Carson City District Attorney: Foster care shortage is a solvable problem (December 2, 2017); available at:
 - <https://www.nevadaappeal.com/news/2017/dec/02/jason-woodbury-foster-care-shortage-is-a-solvable-/>
 - <https://www.carsonnow.org/story/12/03/2017/carson-city-district-attorney-foster-care-shortage-urgent-solvable-community-involv>
- Carson City District Attorney Report: Deputy Howell acted ‘justifiably’ in 2015 fatal shooting (July 10, 2017); available at:
 - <https://www.carsonnow.org/story/07/10/2017/carson-city-district-attorney-report-deputy-howell-acted-justifiably-2015-fatal-sho>
- Carson City DA motions [sic] to dismiss murder charge in 2014 hospital mercy killing (June 18, 2015); available at:
 - <https://www.carsonnow.org/story/06/18/2015/carson-city-da-motions-dismiss-murder-charge-2014-hospital-mercy-killing>
- Determining Whether Miranda Warnings Are Necessary: Utah’s Definition of Custody, Comment, 1997 Utah L. Rev. 189-200

36. During the past ten years, have you been registered to vote?

Yes

Have you voted in the general elections held in those years?

Yes

37. List avocational interests and hobbies.

United States history; leatherworking; lawn care.

Conduct

38. Have you read the Nevada Code of Judicial Conduct and are you able to comply if appointed?

Yes

39. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges, and dispositions.

No

40. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to the corresponding question in the confidential section.

No

41. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.

No

42. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.

No

43. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.

No

44. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?

No

45. Are you aware of anything that may require you to recuse or disqualify yourself from hearing a case if you are appointed to serve as a member of the judiciary? If so, please describe the circumstances where you may be required to recuse or disqualify yourself.

If I am appointed:

- In accordance with Rule 2.11(A)(6)(b) of the Nevada Code of Judicial Conduct, I would recuse myself from any case in which I personally participated in my capacity as Carson City District Attorney;
- In accordance with Rule 2.11(A), Rule 2.11(A)(1) and Rule 2.11(A)(6)(a) I may recuse myself from all cases involving matters which had been submitted to or involved legal advice from the Carson City District Attorney's office during the time I was District Attorney, including matters and legal advice in which I did not personally participate, because my impartiality in such matters might reasonably be questioned; and
- Alternatively, in accordance with Rule 2.11(C), in cases involving matters which had been submitted to or involved legal advice from the Carson City District Attorney's office during the time I was District Attorney but in which I did not personally participate, I may disclose on the record the basis of my disqualification to the parties and their counsel for the purpose of considering whether any party or counsel wishes to disqualify me or whether all parties and counsel waive disqualification.

Other

46. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.

Not applicable.

47. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what education, experience, personality or character traits you possess, or have acquired, that you feel qualify you as a supreme court justice. In so doing, address appellate, civil (including family law matters), and criminal processes (including criminal sentencing).

Attached.

48. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

If I haven't made clear that the First Judicial District holds a hallowed place in my heart, then I haven't done a very good job with this application. The standard of judicial excellence Judge Russell has established for all who will succeed him is likely a standard that can never be matched. Nevertheless, if appointed, I will bring an earnest commitment to strive for that standard and to be worthy of the public trust that is even bigger than Judge Russell, bigger than Judge Griffin, bigger than all the legal legends who have occupied the benches of the First Judicial District. The jurisdiction that includes both Nevada's capitol and its most magnificent courthouse (with sincere respect to Esmeralda and Eureka Counties) deserves nothing less.

49. Attach a sample of no more than ten pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past five years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

Attached.

Personal Statement

One of the profound joys of my life is a career that has been exceptionally challenging and fulfilling. That career began as Judge Michael Griffin's law clerk in Department 1 of the First Judicial District. Judge Griffin passed away in 2016, but I have no doubt he would be amused by the unexpected arc which has me applying for the very office he occupied for almost 30 years. I am not certain what he would say about all this. I wish I did know, because it would be funny. Although likely at my expense.

As his clerk, I very quickly experienced the jarring expanse of the First J.D.'s docket. From fiercely contested divorces to murders to esoteric litigation, I learned this district sees it all. But I didn't know the half of it until a chilly December evening in 1998.

As 5:00 approached, I was lowering the flag in front of the old courthouse (one of my duties). Just then, a half-dozen or so sharply dressed people dashed by, sprinting toward the clerk's office. A second group followed not far behind. I soon discovered what the action was all about. A month earlier, Harry Reid had won re-election over John Ensign by a slim 400 votes. Ensign demanded a recount and was challenging a decision by the Secretary of State which allowed Washoe County to use duplicate ballots in the recount instead of a number of damaged original ballots that could not be accurately counted by machine. Ensign's attorneys were hoping to get an immediate hearing on their request for an injunction, so Reid's attorneys were on hand just in case. Judge Griffin rejected the idea of an impromptu hearing, but he did want to hear about the time constraints for a decision. And so it was that a horde of the most powerful and prominent lawyers in northern Nevada piled into Judge Griffin's chambers as I fetched volumes of NRS. For a constitutional nerd like me, the surreal scene was akin to hanging out backstage with rock stars.

That was the first time, but far from the last, I was struck by the unique privilege of practicing law in this jurisdiction. Being the district that includes Nevada's capitol, the court's docket often requires adjudication of issues which have significant and extensive repercussions. That's intimidating. But a person who recognizes and, better yet, welcomes and, better still, reveres this Court's special responsibilities will fight through that intimidation with a distinctive commitment to the work. I believe I'm in that category.

In addition, the extensive variety of my legal experience matches the diversity of the First J.D.'s docket. I have worked on both sides of criminal cases, trying more than a dozen jury trials to verdict. In private practice I worked primarily in litigation, representing both plaintiffs and defendants in cases involving business and property disputes as well as torts. Most notably, I also worked on several matters which are the unusual types of litigation that disproportionately land in the First Judicial District. These cases have included a constitutional challenge to the Legislature's power over local funds; a congressional election contest; the legality of local and statewide initiative petitions; disputes implicating the separation of powers and the extent of legislative authority over judicial budgets and personnel; takings, regulatory takings and inverse condemnation; and judicial reviews of agency decisions on several subjects.

As a district judge, easy decisions don't earn your paycheck. Hard ones do. And the thing about making tough decisions is that it's like most other hard things in life. You improve with practice.

I've had a lot of practice with that as District Attorney. Is egregious medical malpractice criminal neglect of a patient? Is a husband who purposefully shoots and kills his terminal and suffering wife of 63 years at her request a murderer? How do I

explain the legal nuances of a Fourth Amendment violation to the victim of a crime who feels betrayed by a strategic decision to plea bargain? Should we force a trial on a domestic battery charge even though the victim wants the case dismissed after reuniting with the defendant? These challenges aren't exclusive to criminal cases, and I've made difficult calls on the civil side as well. You don't win friends by directing the cancellation of an important public meeting because of a legally deficient agenda or by advising a public official to recuse from a decision because of a conflict of interest over that official's ardent disagreement.

Regularly processing difficult questions like these have sharpened my ability to make tough decisions. Through experience, I have come to understand the noise of personal, social and political biases contaminate the decision-making process. Considerations such as how people will think of you or whether your chances of election will suffer are not on the path to a good decision. Excluding that kind of noise doesn't make a hard choice easier, but it does make the path to the best available decision more clear. This is the guiding philosophical foundation I would utilize if appointed.

Writing Sample

(III) The trial court correctly applied *Mitchell v. State*.

A. Standard of review.

A trial court’s decision in regard to granting or denying a request for a personal examination by an opposing party’s expert “is within the sound discretion of the district court and will not be set aside absent an abuse of discretion.” *Abbott v. State*, 122 Nev. 715, 723, 138 P.3d 462, 467 (Nev. 2006) (*citation omitted*)).

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B. Factual background.

Prior to the trial, the defense served its *Notice of Expert Witnesses Pursuant to NRS 174.234* indicating that Dr. Suzanne Best would be called as an expert witness at the trial. I JA 6-9. According to the *Notice*, the defense planned to qualify Dr. Best as an expert in clinical psychology, specializing in post-traumatic stress disorder (“PTSD”). I JA 6. As to the subject matter of her testimony, the *Notice* was exceptionally vague. I JA 7. Nothing in the *Notice* suggested the defense expert would offer an opinion as to whether Mr. Vietti, in fact, suffered from PTSD.

The prosecution conditionally objected to the *Notice*. I JA 10-17. The objection was based on two grounds. First, if Dr. Best intended to offer an opinion that Mr. Vietti had PTSD, the *Notice* was deficient as it failed to disclose this critical information. I JA 13-14. Second, if there was not going to be any evidence presented tending to establish Mr. Vietti has PTSD or had PTSD at any time pertaining to the charged offenses, Dr. Best’s testimony was irrelevant. *Id.*

The response to the objection was more forthcoming in regard to the scope of Dr. Best’s testimony. *See generally* I JA 143-90; II JA 191-96; *Respondent’s App.* 1-11 (hereinafter “RA”). The defense clarified that it anticipated that Dr. Best *would* offer an expert opinion that Mr. Vietti

suffered from PTSD. II JA 193; RA 5-6. Alarming, however, that important opinion would not be offered directly by Dr. Best. In fact, Dr. Best was not properly licensed to perform a direct and personal evaluation of Mr. Vietti. RA 4. Rather, the defense explained that Dr. Best's opinion would be based entirely on "hearsay information." II JA 193; RA 5 ("Dr. Best, while having not specifically evaluated Mr. Vietti, should be able to testify, after reviewing all of the listed hearsay information, that Mr. Vietti has PTSD."). In fact, Dr. Best did ultimately offer an opinion that "Mr. Vietti suffers from PTSD." IV JA 731.

The "hearsay information" upon which Dr. Best's opinion was based included "Compensation & Pension Reports" ("C&P Reports"). I JA 143-50; RA 5. In all, Dr. Best reviewed a total of four C&P Reports which evaluated Mr. Vietti's condition, specifically as to PTSD. IV JA 737-40. The C&P Reports upon which Dr. Best based her opinion involved an extensive personal examination of Mr. Vietti. *See* IV JA 744-45 (C&P Reports involve a "45-minute[] structured diagnostic interview" of the subject by clinician and review of multiple "self-report questionnaires" concerning "combat experience"). The trial court characterized the C&P Reports as "expert reports", observing the comprehensive scope of information, including a personal "psychological exam" of Mr. Vietti. I JA 162-65.

C. Application of *Mitchell v. State*

Under such circumstances, the prosecution is clearly entitled to an opportunity to examine the defendant. *Mitchell v. State*, 124 Nev. 807, 192 P.3d 721 (Nev. 2008), is the controlling authority on this question. In *Mitchell*, a defendant claimed to suffer from PTSD which caused him to “overestimate the threat of attack” during a confrontation in which he shot and killed the victim. *Mitchell*, 124 Nev. at 810-16, 192 P.3d 723-27. Two experts were engaged on behalf of the defendant and testified at trial. *Mitchell*, 124 Nev. at 810-11, 192 P.3d at 723. Those experts personally interviewed and examined the defendant before testifying. *Mitchell*, 124 Nev. at 810, 192 P.3d at 723. At trial, the defense experts presented their psychiatric evaluations and testified the defendant suffered from post-traumatic stress disorder. *Id.*

Because the defense intended to present evidence concerning the defendant’s mental state based on a personal examination of the defendant, the prosecution requested an order compelling the defendant to present himself for an independent examination by its expert. *Mitchell*, 124 Nev. at 809-11, 192 P.3d 723-24. The trial court granted the order, the defendant was independently examined by the prosecution’s expert, and the expert testified at trial. *Mitchell*, 124 Nev. at 810, 192 P.3d at 723.

On appeal, the Nevada Supreme Court affirmed the trial court's decision. *Mitchell*, 124 Nev. at 809-16, 192 P.3d at 723-27. Relying on the reasoning in cases involving insanity and battered-spouse syndrome, the *Mitchell* court reasoned that compulsory submission to independent personal examinations is appropriate when a defendant "put[s] his mental state into issue" and bolsters his contention with expert testimony supported by a personal examination of the defendant. *Mitchell*, 124 Nev. at 815-16, 192 P.3d at 726-27. Under such circumstances, the prosecution may request that the defendant be ordered to submit to personal examination by the prosecution's expert. The Court explained,

Concluding otherwise would permit [a defendant] to enjoy the unfair asymmetry of being able to introduce defense expert witness testimony based upon personal interviews while denying State expert witnesses the same access.

Mitchell, 124 Nev. at 809-10, 192 P.3d at 723. The United States Supreme Court's jurisprudence is in lockstep with *Mitchell* on this issue, as are other courts which have considered this circumstance. *See, e.g., Kansas v. Cheever*, 571 U.S. 87, 93-95 (2013); *State v. Schackart*, 858 P.2d 639, 645 (Ariz. 1993); *Durham v. State*, 636 S.E.2d 513, 516 (Ga. 2006); *Commonwealth v. Rosen*, 42 A.3d 988, 997 (Pa. 2012); *State v. Martin*, 950 S.W.2d 20, 22-23 (Tenn. 1997); *State v. Manning*, 598 N.E.2d 25, 28 (Ohio Ct. App. 1991)). Among other states, California and Idaho have adopted the

same rule in statute. *See* Cal. Penal Code §1054.3(b)(1) (Deering 2023); Idaho Code §18-207(4).

The FTS endeavors to distinguish this case from *Mitchell* in two unpersuasive ways. First, it argues the defense in *Mitchell* was based on a legal justification, self-defense, whereas the defense in this case did not implicate any affirmative defense of justification. FTS at 16. This is an unreasonably narrow interpretation of *Mitchell*. Fairly read, *Mitchell* is triggered by a defendant's decision to put "his or her mental state at issue" regardless of the legal category of the chosen defense. The fact that this case involved an effort to negate the *mens rea* element while *Mitchell* involved an effort to provide evidence of self-defense is inconsequential. The point is that Mr. Vietti's mental state was put in play. For *Mitchell*, it doesn't matter exactly how the defense put it in play. The FTS cites no authority to the contrary.

Second, the FTS attempts to evade *Mitchell* by arguing the defense expert did not, herself, personally examine of Mr. Vietti. But this argument makes the underlying principle of *Mitchell* more applicable to this case, not less. In lieu of a personal, professional, current, reliable examination, the defense's expert would instead simply and uncritically rely upon reports authored by individuals who had personally examined Mr. Vietti. Those

individuals were not called as witnesses. Their methodology was not explained. Their underlying data was not presented or even available for review. No evidence was presented concerning their “special knowledge, skill, experience, training or education”, if any. NRS 50.275. Most importantly, none of the individuals purporting to diagnose Mr. Vietti with PTSD would ever be subject to cross-examination in order to allow the jury to critically evaluate whether that diagnosis was reliable. Rather, the defense would simply sneak the PTSD diagnosis through to the jury using Dr. Best, exploiting NRS 50.285’s loophole which allows experts to rely on inadmissible evidence in forming opinions.

Under these circumstances, the principle of symmetry underlying the *Mitchell* decision applies with more force, not less. Nothing in *Mitchell* can be fairly read to indicate it is *only* triggered when the expert who testifies is the same expert who personally examined the defendant. Indeed, such a limitation would be logically unfounded. If the examining expert testifies, the reliability of the examination can be tested through cross-examination. As such, the additional scrutiny afforded by an independent examination by an adverse expert, while still important, may not be quite as imperative. However, when the evaluation of the examining expert is not presented through testimony, but rather, serves as the basis for a second expert’s

opinion, the examining expert's conclusions are immunized from cross-examination and effectively assumed to be reliable. This contradictory outcome would be antithetical to the adversary system of justice. In these circumstances, an independent examination is even more critical than in cases where the examining expert testifies.

The FTS briefly references an additional complaint on this general subject that the prosecution's expert was permitted to examine Mr. Vietti outside of his counsel's presence. Once again, no authority is cited in support of the complaint so it would be appropriate to reject the contention out of hand. *Jones v. State*, 113 Nev. 454, 468, 937 P.2d 55, 64 (Nev. 1997).

In any event, this argument lacks merit. First, the presence of any third-party observers is violative of ethical standards and compromises the integrity and reliability of the expert's evaluation. RA 24-27.

Furthermore, even though Nevada has yet to rule directly on this issue, many other jurisdictions have. *See generally* Timothy E. Travers, *Right of Accused in Criminal Prosecution to Presence of Counsel at Court-Appointed or -Approved Psychiatric Examination*, 3 A.L.R. 4th 910 (2021). Nearly all those jurisdictions have determined that a defendant has no right to counsel at a court-ordered examination to evaluate the defendant's mental health. *See id.* In particular, *United States v. Byers*, 740 F.2d 1104 (D.C. Cir. 1984)

offers a compelling explanation as to the reason it is permissible for a trial court to exclude defense counsel from an examination of a defendant's mental condition, namely that such an examination is not a "critical stage" of a prosecution. *Byers*, 740 F.2d at 1118-19 (holding mental health examination is not critical stage because defendant is not confronted with "decisions in the nature of legal strategy or tactics" to make and examining mental health profession "is not an adversary" or "expert in 'the intricacies of substantive and procedural criminal law.'" (*citation omitted*)). This Court should follow the better-reasoned authority of most courts on this issue and determine the trial court did not abuse its discretion in allowing the prosecution's expert to examine Mr. Vietti outside the presence of his counsel.

Even if this Court were to determine the trial court abused its discretion in allowing the prosecution's expert to examine Mr. Vietti without his counsel present, the error was harmless. There is nothing indicating or suggesting that the presence of counsel would have altered the expert's examination or any testimony in the case. As such, the FTS is unable to establish the trial court's decision affected Mr. Vietti's substantial rights in this case. Consequently, any error is harmless under NRS 178.598 and the verdict should not be disturbed.