

Faculty Perspective

During the summer of 1986, Professor Norman Garland served as a volunteer prosecutor in the Office of the Ventura County District Attorney. In the following essay, he shares some of his observations from that experience.

My Summer Vacation: A "Busman's" Holiday in the Ventura County D.A.'s Office

By Professor Norman M. Garland

As I approached the Ventura County Hall of Justice on June 16, 1986, a little before 8:00 a.m., I thought back to February, 1965. The level of excitement and apprehension I was feeling as I was once again about to enter into trial practice in 1986 seemed greater than it had been when I was entering into the world of trial practice for the first time in 1965. Back then I was 25 years old and had only recently graduated from law school and passed the bar. I had been training to be a public defender in Washington, D.C. and was not really aware of how little I knew. This time I was a "veteran" trial lawyer and long-time law professor, specializing in trial advocacy and evidence, aware of all the things I do not know. Moreover, I had not been in a courtroom as a trial lawyer since early 1975. In short, I was fearful as I entered the Ventura County Hall of Justice.

I was reporting to work as a Deputy District Attorney, to reinstitute a law professor volunteer program in the Ventura County D.A.'s Office. I had never been a prosecutor before. Actually, I had only been in the position of plaintiff on two prior occasions, long ago. Come to think of it, I had only appeared in state court on two prior occasions—I had been a Federal Defender for almost all of my previous practice.

I entered the D.A.'s office and was greeted by the receptionists, who were expecting me. They led me to my supervisor and one of his assistants, both of whom had been my students some years before. Now, they were to be my teachers. I was reporting to the misdemeanor unit where I was to spend the next ten weeks, most of

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the time in jury trial.

Don Coleman, a 1979 Southwestern SCALE graduate, was my supervisor. I had remembered Don as a competent, low-key, pleasant student. He has been honed to a sharp-edged professional, whose appearance

bespeaks high quality and precision. He also has lost about 1/3 of his bulk since law school. He is "lean and mean" (with an undercurrent of good humor). I reported directly to Don and spent much of the next ten weeks getting advice from him, reporting results to him, and sharing war stories with him.

Rob Irmias, a 1982 Southwestern SCALE graduate, was working in the misdemeanor unit (most of the time doing complaint review) and welcomed me with sound counsel. He continued to advise me throughout the summer and lent me his DUI manual, the how-to-do it book for the prosecution (trial) of cases under Sections 23152(a) & (b) of the California Vehicle Code [misdemeanor driving under the influence of alcohol and/or drugs].

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I was assigned office space, and for the next week I studied all the books and manuals given to me, observed various court processes, drafted components of my own trial notebook, and generally fretted over how I would ever be able to try a case on my own as a prosecutor. I was surrounded by enthusiastic young lawyers, most of them between the ages of 25 and 30, recent graduates who had been trained in the trial of misdemeanor cases for the prosecution. They gave me kind encouragement during this week, allowing me to develop a sense of being at home in the office.

On Monday, June 23, I was preparing yet another check list for trial, when Don Coleman asked me to come with him to the office of the Chief Deputy District Attorney, Vincent J. O'Neill, Jr. He took me next door to the office of the District Attorney, Michael D. Bradbury, who swore me in as a Deputy District Attorney. It was as exciting for me as when I had been sworn in as an attorney some 21 years earlier.

I went back to my office at about 11 a.m. expecting to have about a week to prepare for trial. At 11:30, the telephone rang and a voice whispered "Norm you've got a trial." That whispered voice was to become very familiar to me—it was the Deputy in the misdemeanor assignment court. When a case gets assigned in open court, he calls the Deputy who is assigned for trial and whispers the assignment into the telephone. Very exciting!

So, there I was, off to my first trial in more than 11 years, about to conduct my first voir dire ever! [Voir dire in federal court is conducted by the judge, not the attorneys; so, in all my past trial experience, I had not conducted a voir dire.]

During the summer, I had six jury trials, about ten court trials, perhaps six evidentiary hearings, and numerous legal arguments relating to these cases. In five of

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the jury trials, the defendants were charged with driving a motor vehicle while under the influence of alcohol. In the sixth trial, the defendant was charged with misdemeanor assault with a deadly weapon.

Each trial presented a unique challenge. Having never been a prosecutor before, the burden of proof was a new experience. It proved to be more difficult than I had imagined as a defense lawyer. Although I had conducted some direct examinations before, the onus of calling all the witnesses to make the case was surprising. As a defense lawyer, I merely had to raise a reasonable doubt. Now, it was necessary for me to anticipate all possible arguments and plug the holes. Adept at cross-examination as a defense lawyer, I now had little if any chance to engage in it.

The DUI cases were particularly challenging. The issues in them are not too complicated, but those that go to trial usually have some problem from the prosecution's point of view. One of my pet topics in teaching trial advocacy is "theory and theme." I found it difficult to articulate the theory and theme for these DUI cases other than, "Would you give the defendant the keys and allow him to drive if you were the police officer?"

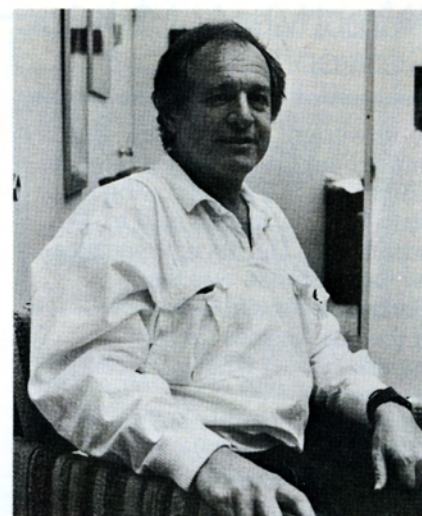
But, as I gained experience in these trials, I became more adept. An example of theory for a DUI "refusal" case (where the defendant refused to give a breath,

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blood or urine sample) was: "An experienced police officer who concludes the suspect is under the influence based on observation of driving pattern, physical characteristics of the suspect, and a few field sobriety test results should be believed. Refusal to submit to a chemical test is consciousness of guilt—the defendant could have answered the question of being under the influence by submitting to a chemical test." The theme of the case was: "As the conscience of the community, you the jury must give the defendant the message that he cannot thumb his nose at authority and get away with it."

One of the things I learned (actually I had been teaching it for years) is that I can now make a pitch to the jury with a lot more dramatic appeal than I could when I was a young lawyer of 25 or 30. I am old enough now to speak to the jurors as an equal without appearing to talk down to them.

My final trial was the biggest challenge of the summer. The



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defendant was charged with assault with a deadly weapon. The prosecution's case-in-chief consisted of six witnesses and 17 exhibits; the defense's case-in-chief consisted of seven witnesses and 15 exhibits. It took seven full trial days to complete the trial and another day for the jury to reach a verdict and for the defendant to be sentenced. The evidentiary questions posed during this trial were among the most sophisticated that one could encounter in a criminal case.

I learned many things this summer; many of which validated what I had learned years before and what I had accumulated as truths during the years I've been in litigation and legal education. Here are a few of those truths:

☞ What constitutes good and correct lawyering does not change.

☞ Hard work and preparation are the foundation of effectiveness.

☞ Always stand in court whenever you speak, unless the judge orders you to sit down.

☞ Do not ask a question to which you do not know the answer, unless you are sure the answer cannot hurt your case.

☞ Do not cross-examine by reviewing the entire direct examination, with a hope of bringing out some point or other; rather, have a plan and follow it.

☞ Start with a theme and theory of the case, state it for the jury and develop your case accordingly.

☞ Be respectful to all participants—judge, jurors, opposing counsel, witnesses and parties.

☞ Be patient in appearance, even if you are not so inside.


☞ Use visual and demonstrative aids, such as diagrams, charts, and photographs, whenever possible.


☞ Keep things moving, but do not hesitate to take your time when it is appropriate to do so.


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
Summer Vacation


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 *Do not be afraid to stand your ground, to argue for your position, even though doing so with respectfulness. In other words, don't back down too quickly.*

 *Tell a story in opening statement (and remember opening is a statement, not an argument).*

 *Do not be afraid to be dramatic and passionate in closing argument.*

 *Don't hesitate to seek counsel (advice and ideas) from your colleagues and friends--we all need another view when we are too close to a problem.*

 *Trust the jury system--it works!*

My experience this summer was truly terrific. I have had my enthusiasm for the practice of law and the trial of cases reignited. I have returned to teaching with a new, higher level of interest. Much of this is due to the environment in which I worked this summer. The D.A.'s office in Ventura is a place where team work is highly prized. The young lawyers on that team were always willing to help, advise, and urge me on. My supervisors continually gave me encouragement. I could not have asked for a better environment if I could have chosen it myself.
