The Admissibility of Video Recordings in CRIMINAL and CIVIL Trials

BY CANDACE LAYERS, NIKISHA THOMPSON and CATHISHA WILLIAMS

Developing technology has led to changes in what evidence is available at criminal and civil trials. In order to control the admissibility of video evidence in particular, special rules have been developed to balance the public interest with the dangers of relying on evidence that can be easily manipulated.

CRIMINAL TRIALS

A video recording is defined by the Evidence Act (“the Act”) s. 15(j) as “any recording, on any medium from which a moving image may by any means be produced and includes the accompanying soundtrack.”

The general test for the admissibility of video recordings, as well as any other type of evidence, is relevance.

Video recordings are admissible under the Act via s. 15 (i) for the limited purpose of recording witness statements in indictable trials or where an indictable trial is being done summarily. For its use otherwise, we are guided by the common law.

Video recordings are admissible as evidence to prove what is recorded on the tape i.e. what was seen happening at a particular place and time: Taylor v Chief Constable of Cheshire (1986) 1 WLR 1479. The principles of admissibility in relation to video recordings may be summarised as follows:

- The authenticity and provenance of the recording must be established;
- The recording must be relevant to an issue in the case;
- The usual exclusionary rules apply; and
- The Judge has a discretion to exclude a recording that would be unfair to admit: R v Sang [1980] AC 402.

If the original recording is not available, a copy is admissible, provided that the court is satisfied of its authenticity: Kajala v Noble (1982) 75 Cr. App. R. 149. If neither original nor copy is available, a witness may give evidence of what he saw on the recording: Taylor.

Taylor was applied in Attorney General Reference (No.2 of 2002) [2003] 1 Cr. App. R. 21. The Court of Appeal opined that identification evidence of a suspect by a witness who was not present at the crime scene but who knew the suspect and recognised him on a video was admissible at trial.

Apart from that knowledge, which was essentially the basis of the recognition, no special skill, ability or expertise was required. The exceptions are in cases where the witness did not know the defendant so as to be able to

(Cont’d on page 3)
Unveiling Ceremony

BY TAMAR GRANT

ON SEPTEMBER 26TH, 2012, the Hugh Wooding Law School earned the distinction of being the first institution within the Council of Legal Education to display the national flags of the member states. Principal of HWLS, Ms. Miriam Samaru, expressed genuine pride over the significance of this achievement on the eve of the 40th anniversary of the School.

The project, a brainchild of the Cultural and Entertainment Committee Chairperson of the SRC, Miss Nikita Vaughn, was conceived to foster greater regional integration. For non-Trinidadian students, especially, it was a heart-warming gesture to have a tangible piece of their respective homelands prominently displayed within the School.

The ceremony featured short presentations by selected students on the history of their respective flags and what they believed defined their national pride. The presentations were informative and engaging; some were definitely entertaining and deeply moving.

The ceremony was an opportunity to gain an appreciation and admiration for the things that make each island unique but which ultimately link us together.

It reinforced the 2012 mantra of the Entertainment Committee: “Cultural Diversity … Not Division!”


Gavel Gives Back

The Gavel Team has embarked on its first charity project entitled "Gavel Gives Back". As Christmas is fast approaching in all its pomp and merriment, the groceries and merchandise stores are crowded with persons buying up a storm to either cook for or gift their special people. In this holy and merry season of Christmas, we should not forget that there are very needy persons in Trinidad and Tobago who do not know where their next meal is coming from each day. As such, we are endeavoring to collect as many non-perishable food items and even stationery from the school population.

We are asking you to kindly help us bring some joy to these poor families’ lives. We are collecting food items and monetary contributions, which we would use to buy food items, until the 11th December, 2012.

Depicted to the left and below are squatting sites in Trinidad and Tobago.

THANK YOU

THE GAVEL NEWS Team would like show our deep appreciation to James Allen. Your help has been a great gift to us and we hope that you enjoy your retirement.

We wish to express thanks to past pupil, Imran Ali and those members of the administrative staff who help us to publish every issue: Shevkumar Singh, Michael Rampersadsingh, Marlene Herriera, Diane Williams and Roger A. Ramgoolam.

“Many hands make the work light.”
The Admissibility of Video Recordings
In Civil and Criminal Trials  (cont’d)

recognize him but had acquired special skills in relation to persons appearing on the video by frequently playing and analyzing it.

Civil Trials
For the purpose of the Act, s. 35 provides that ‘document’ includes any film, negative, tape or other device in which one or more visual images are embodied so as to be capable of being reproduced therefrom.

Therefore a video recording is admissible in evidence, subject, when appropriate, to the statutory safeguards with regard to hearsay evidence: s. 36. The Act states that hearsay is admissible as evidence of any fact stated. If the parties agree to it and if the act itself provides for it, then hearsay evidence is admissible. However, if there is no element of hearsay, it is admissible regardless.

Public interest considerations also influence the admissibility of video evidence, especially where the manner of obtaining such evidence may involve improper conduct: Jones v University of Warwick [2003] 3 All ER 760. After consideration of the competing public interests, the court in that case decided, that a defendant to a personal injury claim was allowed to use as evidence, a video of the claimant that was obtained by filming the claimant in her home without her knowledge after the person filming had obtained access to the claimant’s home by deception. The court deemed the overriding objective was to deal with a case justly and that the claimant should be prevented from making an inflated or exaggerated claim if there was evidence to controvert it.

A party wishing to adduce video evidence to attack an opponent’s case is subject to all the rules of disclosure and inspection of documents contained in Part 28 of the Civil Proceedings Rules 1998 (“CPR”). In the interests of case management and in the discharge of the duty of dealing with cases justly arising under Rule 1.1 of the CPR, the party should raise the matter with the judge at the first practicable opportunity. In exercise of the judicial powers to control evidence at trial it may be appropriate for a Judge to give directions requiring a party to give notice in advance of those parts of the video footage relied on: Rail v Hume [2001] 3 All ER 248.

Most Outstanding Student 2012: Coping with the workload

BY THANDIWE BENN (Most Outstanding Student 2012)

THE WORKLOAD WAS much more difficult to manage in Year 2 than it was in Year 1. Although there is one less course in the 2nd Year, the added work from Legal Aid and Trial Advocacy can be quite overwhelming. One quite obvious but difficult to execute method to ease the added work from Legal Aid and Trial Advocacy can be quite overwhelming. After consideration of the competing public interests, the court in that case decided, that a defendant to a personal injury claim was allowed to use as evidence, a video of the claimant that was obtained by filming the claimant in her home without her knowledge after the person filming had obtained access to the claimant’s home by deception. The court deemed the overriding objective was to deal with a case justly and that the claimant should be prevented from making an inflated or exaggerated claim if there was evidence to controvert it.

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Pay special attention to tutorials and go prepared for them. Principles seem very clear in the lecture but when the time comes to apply them to a fact scenario, you find out just how well you understand those previously crystal clear principles. You also won’t truly gain an appreciation for all the fine, complexities of a certain point of law if you don’t prepare for the tutorial. Tutorials serve to clear up all misunderstandings but if you don’t prepare, how will you know what you don’t understand?

Don’t be discouraged if you don’t get the answer right on the first, second or even third attempt. If you’re wrong, you will be corrected and sometimes the correction will be harsh but this should never discourage you from asking more questions if there is anything you don’t understand. Don’t worry or be ashamed. Everyone has had moments like that!

Surround yourself with persons who can help you relax and forget about HWLS for a while. Have friends who laugh with you and cry with you; friends who will be honest with you and tell you when you need to just slow down and take a break; friends who will take that break with you and once you’re refreshed, encourage you to get back on your feet and go again.

The most important tip: no matter how hard it seems, keep your eye on the prize. Many have done it before you, many will do it after you and you will do it as well.

I wish you all nothing but success in your journey at HWLS.

Most Outstanding Student 2012: Coping with the workload

BY THANDIWE BENN (Most Outstanding Student 2012)

THE WORKLOAD WAS much more difficult to manage in Year 2 than it was in Year 1. Although there is one less course in the 2nd Year, the added work from Legal Aid and Trial Advocacy can be quite overwhelming. One quite obvious but difficult to execute method to ease the pressure, is to deal with new tasks very shortly after they have been assigned. When you’re asked to prepare an opinion, draft some document or are given an assignment, do it as soon as possible because when you put it off to be dealt with at some later date, another new task will emerge and that is when you will find it difficult to cope.

It’s also important to understand that work does not end when you get on the shuttle or in your vehicle to head home. If that disposition is adopted then the already heavy workload will seem heavier. Making it successfully through these two years will mean staying up until 5:00am some days, getting two hours of sleep and waking up in time to get to your 8:00am class just so that you can clear your schedule and get ready to face the challenges of the day ahead.

Tips on how to survive HWLS
From an academic point of view, I would always recommend paying attention in class. When the time comes to start preparing for exams, the voices of your lecturers will be clear in your mind discussing certain topics. If you have a mental recall of those lectures, it greatly reduces the amount of work you would now be learning in preparation for exams.

Pay special attention to tutorials and go prepared for them. Principles seem very clear in the lecture but when the time comes to apply them to a fact scenario, you find out just how well you understand those previously crystal clear principles. You also won’t truly gain an appreciation for all the fine, complexities of a certain point of law if you don’t prepare for the tutorial. Tutorials serve to clear up all misunderstandings but if you don’t prepare, how will you know what you don’t understand?

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I wish you all nothing but success in your journey at HWLS.
THE CARIBBEAN LAW Clinic is a creation of the American Caribbean Law Initiative. The Clinic, hosted this year by the Florida Coastal School of Law in Jacksonville, Florida, USA, offered students the unique opportunity to work collaboratively with students from multiple countries on live legal issues referred by Attorney Generals in the Caribbean Basin. In 2003, under the leadership of Principal Annestine Sealey, the Hugh Wooding Law School (HWLS) in Trinidad & Tobago joined the ACLI and began participating in the Caribbean Law Clinic.

On the first day of the programme, each student was assigned one of the three questions to be discussed. After brief introductions, students were divided into three groups based on the questions they were assigned. Each of the groups met to flesh out the ideas and conclusions they had arrived at. We were given the task of merging all of our ideas into one solid group presentation to be presented to the judges. Thankfully, we had a practice session, where each group presented to a panel of tutors from each school.

After these mock presentations, we were invited to a forum which discussed the recent rise in police killings in Jacksonville. This forum enlightened us on the methods that were being used to train the police in the United States and the legal issues that arose when prosecuting police officers accused of committing these crimes. The forum also presented us with the opportunity to compare the U.S. situation with what occurs in each of our jurisdictions. Subsequently, a reception was held in honor of the students at the Clinic, which gave us the opportunity to interact with more students of the Florida Coastal School of Law.

Presentations were then made to the Judges of Middle District of the Florida State Court, who posed questions to the students. We could not have performed successfully without the assistance of our dedicated coach, Mr. Akhail Khan.

The mission of the American Caribbean Law Initiative (ACLI) is to advance the common interest of its members in the growth and development of the Caribbean Basin by facilitating collaborative relationships and by strengthening its legal institutions.
“TRAVEL SAFELY….” THESE were words often used by the late Mrs. Kathleen Andrea Rochford on bidding goodbye to persons as they left the Hugh Wooding Law School. It would be accompanied by a warm smile and an air of genuine concern for the particular individual.

A caring and loving individual, strong yet gentle, fiercely independent yet espousing the values of team effort. This complex yet simple lady was a mother, friend, sister confidant, mentor, teacher, counselor and at times nurse to persons with whom she came into contact.

Mrs. Rochford joined the Council of Legal Education in the capacity of Assistant Registrar in 1986. On her retirement in 2012 as Registrar, her influence, service and legacy touched all three Law Schools of Council and all the various organs of Council itself. Her advice and institutional knowledge were relied upon by all persons who have served in the various positions of leadership within the Council of Legal Education.

It is with the students, however, that Mrs. Rochford’s passion was most evident. Her care and compassion for their needs and empathy in their times of challenge is a legacy remembered by the thousands whose lives she touched over the years. It was a genuine concern that manifested itself in all aspects of her service and her personality.

The sudden passing of Mrs. Rochford came as a shock to all; none could imagine that this energetic lady could be subdued. The tributes have poured in from all quarters of the legal fraternity, locally, regionally and internationally.

We at the Gavel join in tribute to the late Mrs. Rochford. “Travel Safely….”

Beloved Mrs. Kathleen Rochford

Mr. David West on Extradition

BY SADDAM HOSEIN AND KHADIJA MAC FARLANE

TO THE AVERAGE layperson, extradition may seem as if anyone charged with an offence could easily be shipped off to be tried for the offence in a foreign country. However, there’s much more involved in extradition proceedings and the guest lecture by Mr. David West helped to cement and clarify what was taught in our Criminal Practice and Procedure lectures about Extradition.

Extradition is simply the process where a person accused of an extraditable offence in one state (the Requesting State) is found in another state (the Requested State). The Requesting State wishes to try the offender and so seeks his return from the Requested State based on an Extradition Treaty between the two States. Of course there is also local legislation governing Extradition namely the Extradition (Commonwealth and Foreign Territories) Act (1985), which lists the offences a person may be extradited for, bars to extradition and habeas corpus applications, to name a few.

Mr. West left no stone unturned and his application of the various processes and principles of law to real life cases gave us a sound understanding and appreciation of these complex Extradition proceedings. Further, Mr West was able to engage our minds and encourage meaningful dialogue in answering questions relating to the Extradition proceedings. At the end of the lecture the audience was left impressed and satisfied with Mr West’s PowerPoint presentation. According to Jonas Salk – “The reward for work well done is the opportunity to do more”, therefore we look forward to continued support from Mr West at the Law School.
Cooling down the pace: Mr. Allen & Mrs. Renie

BY EILEEN BENJAMIN-RYAN

TWO STALWARTS OF HWLS will be leaving us before the end of this year. The Gavel Team takes this opportunity to wish good luck and success to Mrs. June Renie and Mr. James Allen, who together have between them 75 years committed service to the Law School, especially to the students.

It’s been a good journey!

For 40 years Mr. James Allen has been employed at HWLS, quietly and unassumingly ensuring that all documents are printed in time for distribution. As the Law School’s Printing Operator, Mr. Allen started working here even before the first intake of students in 1973. He remembers when the School moved to Gordon Street in 1983. He remembers also the ‘borrowed’ Law Faculty Office at the University of the West Indies, where the School initially operated, before moving to its own office on campus, then to the old building on Warner Street and now the present modern, spacious accommodation. In those days, there was no printing room/office, just a desk.

He admits that his greatest challenge is the volume of work, especially with the larger intake of students over the last couple years. He has learnt to deal with ‘getting documents late and wanting it by yesterday’.

Mr. Allen has a passion for music, although he has not been able to pursue it as vigorously as he would have liked to. He’ll never forget the first Christmas Party concert and his trumpet solos in 1983/84.

He was a member of the Ray Sylvester Orchestra from 1976 to 1983 and travelled to New York, Grenada and Venezuela with the band. He hopes that now he’ll find time to invest in his love for music. Hopefully, what was supposed to be a profession could now be his occupation.

It’s been wonderful, exciting and fulfilling!

Mrs. June Renie has been a librarian at HWLS for the past 35 years. It has been a revolution! She recalls when there were 60 students and a budget of $40,000 and she had to buy books and sell to students and then wait to get money back from them. Today the library’s budget is $1m plus for some 600 students. She relates with pride how the Law School has changed over the years, how administration has improved to keep up with the changing times of education and technology. She has witnessed firsthand and participated in the revolution of improving service and administration at the Law School.

She has dealt with all challenges head on and ‘it’s been wonderful, exciting and fulfilling’. She cited three main challenges during her tenure at HWLS. Firstly, the cost factor, which increases exponentially in providing service, although some years are better than others; the rising costs of purchasing online services; and managing staff during the whole change management process and encouraging their commitment, as it takes a while for new staff to buy into change. She understands the necessity to maintain service levels despite increasing client numbers and falling purchasing power and the demands on service from external users, members of the profession.

One of her several memorable events is setting up LAN and being able to connect various departments electronically and training staff to use it. As she speaks, you can tell this was a proud moment.

She plans to enjoy her retirement. She looks forward to the freedom to do as she pleases, in her own timing, reconnect with herself and ensure a healthy, wholesome lifestyle, while she continues to chart new courses.
Homosexuality in the Commonwealth Caribbean

BY CHRISTIE A.M. MODESTE, Attorney-at-Law
HWLS, Class of 2010.

THE LEGAL LANDSCAPE of the Commonwealth Caribbean, save for The Bahamas in certain respects, features the persistent criminalization, suppression and exclusion of homosexual relations in a variety of contexts. In the various jurisdictions homosexual behaviour is prohibited under the rubric of “gross or serious indecency”, “unnatural or abominable crime”, “buggery”, “sodomy” and “sex per anum.” This phenomenon is a decidedly resilient relic of our formerly colonial past and has been mainly seeded by the United Kingdom’s 1861 Offences Against the Person’s Act - bolstered in no small part by the region’s staunch public adherence to traditional Judeo-Christian conceptions of immorality in some respects. It is noteworthy that England has long since abandoned these rules (almost half-century ago); along with many other Commonwealth nations, such as Australia, Canada and South Africa.

From this writer’s observations, many of the provisions do not require that there be the absence of mutual consent for such offences to be committed and are therefore distinct from those provisions, which treat with the offence of rape. Male homosexuality is particularly targeted, with many provisions in the various statutes failing to ostensibly address female homosexuality. However, this is not the case in all jurisdictions and in particular Trinidad and Tobago, whereby the offence of “serious indecency” is defined as “an act, other than sexual intercourse … by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire.” The Act goes on to explicitly exclude from the application of this provision an act “committed in private between a husband and his wife, or a male person and a female person” over the age of sixteen, both of whom consent. — see Section 16 of Trinidad and Tobago Sexual Offences Act of 1986 (as Amended). Evidently, though fornication is permissible, all homosexual conduct, regardless of the age of the parties concerned, or its consensual nature, is deemed to be offensive by the law.

This is sometimes accompanied by rather severe consequences for infringement. For example, the Barbados Sexual Offences Act 1992 penalizes a conviction on indictment for the offence of buggery with possible imprisonment for life. In Trinidad and Tobago, the Immigration Act Chap. 18:01 classes homosexuals with prostitutes, or those earning a living off of prostitutes, as being generally prohibited from entry into the country. This Act also subjects homosexuals to the continuous threat of deportation upon discovery.

The legal framework in this regard is a product of and certainly a continued catalyst for, a pervasive and distinct tendency towards homophobia, structural and social discrimination and acts of violence against homosexuals. This is curiously juxtaposed against the fact that Commonwealth Caribbean authorities have exhibited a clear habit of practical non-enforcement of the relevant penal provisions. Notwithstanding, there is a resolute reluctance to de-criminalize homosexuality entirely.

In addition to clear constitutional provisions that are arguably affronted, most Commonwealth Caribbean nations are parties to well respected and widely observed international treaties such as the International Covenant on Civil and Political Rights and the American Convention on Human Rights. Significantly, Caricom has adopted its own Charter of Civil Society in 1992. All of the above employ strongly emotive language in emphasis of the sanctity of the principles of equality before the law, the right to privacy, freedom of religion and belief and of thought, cultural and personal expression; as well as the eradication of the injustice associated with discrimination. In 1981 the European Court of Human Rights ruled in Dudgeon v The United Kingdom Appl. No. 7525/76, Oct. 22 1981 that the continued criminalization of male homosexuality in Northern Ireland was in contravention of similar provisions of the European Convention on Human Rights - in particular the right to privacy. The situation is, quite frankly, philosophically and jurisprudentially embarrassing. Even if they were appropriate in constitutional democracies that fiercely defend the individual’s right to freedom of religion and conscience, hackneyed allusions to religious moral strictures are unconvincing in their spotty and inconsistent application. There is no satisfactory explanation for why some religious taboos are formally ignored (see fornication above for just one of many such examples) and others so keenly and slavishly entertained. This quote from the 1957 Wolfenden Report is most apt: “Unless a deliberate attempt is made by society, acting through the agency of law, to equate the sphere of crime with that of sin, there must be a realm of private morality and immorality which is, in brief and crude terms, not the law’s business.”

It has been emotionally and intractably argued by those in opposition to reform that regional legislatures are not entitled to initiate any change in the status quo that is inconsistent with general public opinion on the point. This argument amounts to nothing more than the expression of the view that the majority of any population has the right to effect tangible disadvantages upon those falling into any isolated category of difference – whether it be a difference that is chosen or immutable. History has sung that vicious song before, and we should all be only too familiar with its unhappy verses.

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THE GAVEL

2012 Legal In-service

Experience In Guyana

BY ASA STUART SHEPHERD

THE IN-SERVICE TRAINING 2012 was my first practical introduction to the way the judicial system of Guyana functions. It is unlikely that I will forget the ten weeks spent at the Law Offices of Messrs. Hughes, Fields and Stoby, throughout the rest of my legal career. Further it has reinforced my desire to be the best legal practitioner that I can be.

The Law Offices of Messrs. Hughes Fields and Stoby is one of the largest firms in Guyana and handles a variety of high profile cases. Thus, one of our very first tasks was to research and assist in the drafting of a Constitutional motion and this was just the beginning. Throughout my time there, my colleagues and I were exposed to civil litigation, criminal, land and constitutional matters, arbitration and the most memorable of all, human rights matters.

We were required to do everything from the preparation to the completion of a matter. This included research and submission of opinions and drafting where necessary. We were however not limited to written work but were also required to attended numerous court sessions, in all the courts of Guyana, except for the Court of Appeal. In these courts we were introduced to the various Magistrates, Judges and even the Chief Justice of Guyana.

We were exposed to a lot and thus there were many memorable moments that arose from this exposure. There were some however that had a major impact on me for differing reasons. These included:

- Visits to the prisons and interviews with clients on death row, whose sentence were just successfully commuted;
- The visit to the magistrate’s court and hearing women (in matters not related to ours) pleading for financial support for their children from men, who either were unwilling or unable to provide;
- Seeing prominent attorneys battling in court and/or chambers. Along with this was the experience of seeing the importance for practitioners to keep abreast of changes to civil procedures.
- Most of all, assisting in the representation of clients whose family members were shot or either severely injured or killed in the recent Linden protests, which spanned over 30 days. I saw my country, my people and myself in a totally different and more holistic way after these events.

From these events I learnt of the difficult but privileged road a lawyer walks. I fully learnt that being the best means more than what one earns and how many cases are won but how it is done and how one treats others in the process. Overall my In-service training was informative and life changing and my experiences gathered in chambers will stay with me for a very long time.
Attorneys at Last

BY LESLEY-ANN MARSANG

AT 4:30 PM on the November 2nd, 2012, 97 Law School graduates including myself, were declared by the Honourable Chief Justice of Trinidad and Tobago, Mr. Ivor Archie, Attorneys-at-Law. Finally, the 5 years of the mental break downs, severe insomnia and hard work has FINALLY paid off!

After a two hour long preparation ensuring the perfect hair and collettes, I was off to the Hall of Justice to meet with my colleagues for 1:30pm. At the Registrar’s Office I was greeted with lots of smiles from my classmates who seemed even more excited than I was. After filling out a couple forms we collected a slip which contained our very own BAR NUMBER! I kept thinking to myself that this IS REALLY happening today.

We were briefed by the Assistant Registrar on the dos and don’ts during the ceremony. Finally, after a quick rehearsal we filed one by one, in alphabetical order, into the Convocation Hall. As I took my seat and looked around, an overwhelming feeling of joy came over me. We were surrounded by some of the most well-known individuals in the practice. From The Honourable Mr. Justice Saunders of the CCJ to several renowned Senior Counsel and even our own Legal Aid Tutors and Lecturers. Looking up, the entire balcony was filled with our parents and loved ones who were looking on at this auspicious event.

There was a lot of murmuring and excitement until the Court Marshall announced the ever so famous line, “All rise.” The side door swung open and a parade of judges filtered unto the bench for the Court sitting. What a rare sight to behold, approximately 15 judges on the bench with three presiding judges including the Honourable Chief Justice, The Honourable Mr. Justice Rampsad and Madame Justice Dean-Armorer. The Registrar handled the formalities whereby each petitioner and the presenting attorney-at-law rose and said a formulation of the following words, “My Lords, I beg to present the petition of…”. Thereafter we each stood up one by one, raised our right hand and said our names until the 97th person said his/her name and in unison we recited the oath.

We had the pleasure of having Justice Rampsad give the “Judgment” which incorporated valuable advice for new attorneys-at-law. He noted that there is always room for good attorneys-at-law and we should all strive to uphold the nobility of the profession. He stressed that honesty and integrity play a great role as attorneys-at-law and sometimes our clients’ whole lives will be placed in our hands, so one should not cut corners. As I absorbed his words, I realised that as students of the Hugh Wooding Law School, we should all be very grateful for having the opportunity of being exposed to the Ethics course. In concluding, Justice Rampsad pointed out that as attorneys-at-law, there is more to life than status and money and we must appreciate our family and loved ones who supported us along the way.

After the ceremony, although picture taking was at the fore of everyone’s mind, we still had one last step in the process, signing our names in the Roll. Upon handing over the pen and letting go a sigh of relief, I realised that the journey had only just begun.
Graduation Address:
A Thousand Lawyers Under the Sea

BY TAMAR GRANT

JOKE: WHAT DO you call a thousand lawyers under the sea?
Answer: A good start for society.

Statements like this demonstrate the unflattering perceptions of the legal profession. These “perceptions are created as much by one person as by the whole legal fraternity”.

This warning was given by Dr. The Honourable Kenny Anthony, Prime Minister of St. Lucia at the Hugh Wooding Law School Ceremony of Graduates, held at The Sport & Physical Education Centre, University of the West Indies, St. Augustine on the October 6th, 2012.

Under the caption “Persistent Perceptions” Dr. Anthony noted that damage is being done to the image of this profession. Aside from the usual dogma that lawyers are manipulative liars and thieves, the increasing numbers of practitioners being hauled before the courts is affirming this negative perception.

Dr. Anthony informed graduands that this profession is built on respect and trust. He challenged graduands to disprove these negative perceptions by assuaging the fears of their future clients and dealing competently and honestly in their practices.

Our legal associations need to be less about the law and more about the community. Dr. Anthony told graduands that they must make society realise that the law exists in everyday life. As society advances and changes we must be prepared to meet new challenges. Dr. Anthony suggested that graduands look into specialising. He noted in particular, opportunities in accounting, engineering and technology.

So, what should you call a thousand lawyers under the sea?
Answer: “Deep seated” individuals persistently pursuing perfection of the law. They are the pearls of this profession.
Gala 2012
Divali, a Light to Remember at HWLS

BY GINA MAHARAJ

DIVALI IS THE festival of lights and is celebrated on the darkest night of the year. It represents the triumph of good over evil and light over darkness. The Hugh Wooding Law School’s Hindu Society hosted its annual Divali programme at the Law School on October 31st, 2012. The Law School was illuminated with the celebration’s festive performances. In Divali’s true sense of art and devotion, the programme encompassed a range of performances from devotional dances, musical pieces, a modeling segment and inspirational messages. As usual the talents of the students of Hugh Wooding shone through, showing that lawyers not only possess academic abilities but also hidden talents.

Shanna Lutchmansingh commenced the programme with a devotional dance that echoed salutations to Mother Earth. There were also a few musical pieces done by guest performers. The modeling was a great part of the programme as it not only displayed the variety of beautifully adorned clothing evoked during the season of Divali but, it also showed the beauty and harmony of Caribbean people. Students from all over the Caribbean took part in the modeling segment. This showed the unity Caribbean people share and how academic bodies such as the Hugh Wooding Law School have facilitated such unity.

Amongst the glitz and glamour, Pundit Rudranath Maharaj gave an inspiring delivery on the message of Divali. He spoke about the “light of honesty”, which should always burn bright within us all. He articulated the importance of becoming good lawyers and keeping our “deyas burning bright to dispel the darkness”. He reminded us that our actions will remain immortal and we should therefore live our lives in love, peace and compassion.

The programme was well orchestrated and gave a true representation of Divali. Special thanks to Jomokie Phillips, Sasha Sukhram and the President of the Hindu Society, Ganesh Rampersad. It was a night to not only remember what the festival of Divali represents, but also to share the culture of Trinidad and Tobago with our fellow Caribbean brothers and sisters.
Bajan Night

BY RICKY HARRISON

IT WAS A “splendiferous” experience! For those of you who missed it, you are probably still crying in your Banks Beer or drowning your sorrow with some Cockspur White, which by the way were some of the giveaways at Bajan Night. Skillfully marrying the modern ZR (or maxi taxis) culture with 1950’s Barbados, the play “Bajan Bus Stop wid a Twist” written by Kimberley Alleyne, recaptured a time when the bus stop was a popular meeting point to be “malicious”, or “macocious” as Trinbagonians say.

The Play featured popular characters such as Pearlie- the village gossip, Seymour- the drunk, Poor Great- who went to England for two weeks and returned with an accent and Ottalese- the only character who could read a newspaper. The “speechifier” or certified lyricist, Brudda Daddy, entertained the crowd with his constant use of ‘big’ words (some of them made up) to impress women.

The play was filled with humour from start to finish and portrayed the talents of law students by day, actors and actresses by night.

The food was a gourmet’s delight with every type of Bajan delicacy, except flying fish (sadly). Kudos to Desiree Brown and her culinary team for tantalizing patrons with our ‘glorified’ Macaroni pie, rice and stew, fish cakes, finger licking baked chicken, sweet bread, cassava pone, cou-cou and saltfish. All this was complimented by the ambiance of a romantic, candle lit, dining area envisioned by Jamila Burgess and her team.

With full bellies it was then time to “wok up” as Bajans say. The fete was a blast as popular Barbadian tunes pounded throughout the night. The heavily patronised bar was well-stocked to overflowing with Banks Beer and Twist Shandy.

Bajan night was a blast and as some persons remarked, set the bar very high for the Guyanese and Trinbagonian nights to follow.

We take our blue, gold and black hats off to the entire organizing committee for another wonderful and successful Bajan Night, 2012. ■
OECS Night: a smashing great time

BY ANDREW RAMSUBEIK

“AWESOME! COOL! FUN! Bess! Great! Bess!!” Some of the words used by the audience to describe the OECS night at Hugh Wooding Law School held on November 17th, 2012. Having been in attendance myself, I would safely say that these words are in no way any exaggeration.

The night began with some entertainment in the form of videos, dramatic skits, song and dance. It was a segmented programme with presentations being done by students of each jurisdiction of the OECS, namely Dominica, St Lucia, Grenada, St Vincent. Each presentation started off with a small multimedia video about the jurisdiction in question, showing flora and fauna, picturesque scenery, lush vegetation, culture, nightlife and of course the beautiful beaches native to each of those specific islands.

The short multimedia presentations were followed by skits and plays, which depicted everything from the interesting, fun and unique dances in the portrayal of “Estefan” by our colleagues of St Lucia and Dominica; the native folk tales of the Lajabless, a beautiful female specter and her seduction and disposal of unsuspecting young men over tall cliffs, so well portrayed by our brothers and sisters from Grenada (guys if ever you see a beautiful young woman and find yourself unable to resist her charms and it seems your legs have minds of their own…bring a parachute); and a combination of Caribbean pride and humor in a skit about three locals from St Vincent who convince a visiting tourist to stay a few extra weeks on the island, explaining to him all he had to miss: food, culture, nightlife and all around a “smashing great time”.

After the night’s entertainment was concluded, it was time to feast! Our colleagues from the OECS really outdid themselves! FOOD!! There was a diverse assortment of different cuisines, each of which reflected the island to which it was native. There was delicious fish chowder, mouth watering chicken dishes, oil down (bread fruit and pig tail and dasheen bush melted together by use of coconut milk), steamed breadfruit, sweet potato pie, sweet potato pudding and of course delicious fruit juices to wash it all down. It was definitely good eating.

Following the treat for the eyes and the tease for the tongue, it was time for everyone to have some feteing fun. The OECS Fete! Good music, good company and good drinks. The fete was held in the Dining Hall and all HWLS students and guests to the night’s earlier activities certainly had a GREAT time. One of those nights you’d remember. If you weren’t there, have no fear, there’s next year, so OECS night, you know where.

Well done to our friends and colleagues from the OECS.
Dress for Success

BY KARINA SINGH
Conveying competence and confidence is essential in a profession where it is extremely important to win a prospective client’s trust. First impressions count and the public’s perception of you is critical to your long term professional success.

In the current USA series "Suits", starring Gabriel Macht, who plays the leading male role of Harvey Specter, a sharp and sleekly dressed star litigator. Specter immediately gives a first impression of “I’m the boss!” One of the episodes was reminiscent when Mike Ross enquired “What does it matter how much I spend on suits?” He wore skinny ties and equipped with his messenger bag, which is relatively popular with the younger generation but note it’s not the perfect image for the corporate environment. Specter’s reply was, “People respond to how you dress so like it or not this is what you have to do.”

A suit sets the tone that you are serious but also respectful. Respect is also received from the client and thus helps to pave the way for a courteous client – attorney relationship.

Currently, suits are cut closer to the body to accentuate a flatter, gym-toned physique. There is a seeming preference for two button jacket over three and pants fit tighter with single pleats. Dressing down is favored more than sticking strictly to formal suits.

Let’s not forget the ladies! Jessica Pearson from "Suits" served as an inspiration with her upscale chic look. Jessica is the epitome of a strong female character with style and grace.

Martha Costello’s role in "Silk" as an outstanding, hardworking litigator and potential QC is a revelation. Her wardrobe is incomparable to Jessica Pearson’s fabulous fresh “out of the boutique” looks. One can only dream of having a wardrobe like hers, feminine yet maintaining a powerful look. Notably, the show does not portray the accurate image of a law firm nor is Ms. Pearson’s attire entirely appropriate for the court room. However, it reveals how one can dress conservatively and yet stand out in the male-dominated world.

In the BBC series "Silks", Martha Costello portrays the life of a diligent practitioner focusing more on the serious side of the profession as she pursues her “QC” application. Apart from her deep red lipstick she is outfitted with the customary black and white skirt suit with the infamous barrister’s wig reminiscent of past practitioners wearing their gowns and wigs. This does not apply in the Caribbean courts but conveys the message that it is important to send the right image that you want conceived by the public and clients. Martha’s overall image ideally reflects the more real-world outlook as the demands of the legal profession leaves little time to ‘dolls up’.

Although we don’t have the support staff to assist us in producing the make-over as seen in our favorite series, there is one thing we can definitely take away from their power dress: their power attitudes.

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THE GAVEL

BY KARINA SINGH
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All for Advocacy

The Official Launch of The First ever Hugh Wooding Law School Debating Society and a “Taste of Things to Come”.

BY MUDASSAR KARAMATH (MEMBER OF THE MOOTING COMMITTEE)

“ASTUTE DEBATERS CAN wiggle their way out of any situation while doing so with composure and skill”, the words of our very own Mr. Roger Ramgoolam at the launch of the Hugh Wooding Law School Debating Society. These words encapsulates advocacy in all forms. Some of you such as our future conveyancers, corporate secretaries, mediators etc. may be minded to say advocacy is not my cup of tea; I’d remain an “out of court lawyer”. However, inevitably you may be required to argue to a body on behalf of your client, negotiate terms with a fellow attorney or even speak at a public forum. For these occasions only one maxim will apply to you should you fail to grasp the opportunity to hone, sharpen and tighten your advocacy skills, that is, “It is better to have a great skill and never be called upon to use it, than to be called upon to use it and you don’t have it.”

The Launch Served 3 purposes:
• To Introduce the Debating Society and Encourage Participation
• To acquire staff approval and insight
• To bring you a taste of things to come re “Part 1 Project Toughen your skin”

The purpose of the Debating Society is specified in Section 4 of the Debating Society’s Constitution: “The Purpose of the Society is to provide a platform for students to engage in a fair, transparent forum, to which all students can have an equal opportunity to elevate their level of eloquence and to build their debating skills…”

In support of this mandate, the Debating Society proposes to bring to you the Inter year Seminar Group Debating Competition. The competition is carded for January 2013 and groups will be selected to debate at select times. The competition will only have three rounds-preliminaries, semi-finals and finals. Teams on the day will be asked to speak for or against a controversial topic and a time will be allotted for deliberation, speaking and rebuttal. Arguments need not be legalistic and can be gleaned from all walks of life.

The Mooting Committee in conjunction with the Debating Society will also be bringing to you Part 2 of “Project Toughen Your Skin.” This forum is intended to eradicate the fear of speaking. Our next endeavour is to bring you a lecture series the theme of which is, “Avenues for young lawyers in the Caribbean”.

In my final words, I would like to express my appreciation, on behalf of the Mooting Committee, to all persons present at the Launch and we look forward to your continued support and participation.

Evidence of Advocacy Success: HWLS star team for the ICC moot: (L-R) Mansergh Griffith, Coach and Criminal Practice and Procedure Course Director, Mr. Roger Ramgoolam, Kevin Webster and Russell Warner (who took the best defence counsel award).
Four Species

BY STEPHEN N. ROBERTS

AND IN TODAY’S issue of “The Better Advocate,” an interview with four past students of the High Wording Lol School.

Reporter: So what did you think as you approached the doors of the Lol School for the first time?

Lord Bacchanalis': Ah ready fuh it! Ah come hay to fete, fete aftuh- fete aftuh - aftuh fete aftuh-fete!

Sir Talks-a-Lot: Well, I glanced at the unique shade of brown which glistened against the reflection of my eye in the silver handle of the door.

Dame Turn-Up: Lol is not an issue cuz ma tight skurt tun up! But Bacchanalis’, why yuh pants tun up mo’ dan ma skurt tho?

Mrs. Itsun-Done: She’s ah IMPS! We go organise ah lime latah Bacchanalis’---

[Bacchanalis’ interrupting]

Lord Bacchanalis’: D’ vybz cyah dun!

Reporter: I don’t think I want to send my child to al’ yuh Lol School yuh know. How can you change my mind?

Dame Turn-Up: [HUGE SMILE] Yuh daughter could be jus’ like me.

Sir Talks-a-Lot: One can assimilate from his conjecture that the outcome you have suggested is the precise result he is attempting to avoid.

Mrs. Itsun-Done: Come nah man, leave we nah. Yuh cuttin’ in on Doubles’ TIME!!!

Lord Bacchanalis’: Lewwe GO!!!!!!!

Reporter: Yet another successful interview by The Better Advocate.

And Now a Word from Our Sponsors:

Pikachu practiced for fifteen (15) years and a recommendation was made for him to assume a high Judicial Office. Team Rocket decided to do a background search on Pikachu which revealed some compromising images of Pikachu, frolicking with Squirtle and Bulbasaur. Chief Justice Ash was reviewing Pikachu’s recommendation. It was a sad day for His Honour, as he was forced to say, “Pikachu, I do not choose you.” © Hugh Wooding Law School Past Paper 2011/2012.

DISCLAIMER: Thankfully, the characters represented and views expressed do not in any way reflect any students of the Hugh Wooding Law School.

Contributors: Anonymous with good reason.
BY DELONI EDWARDS & DEVON JONES.

WE LAW STUDENTS often wonder, if law is really our true passion. For some it is, but for others, a greater passion comes from something much deeper than reading a case or delivering an argument. For us, it is the passion of cooking. Not just your typical Mac and cheese cooking but the type of cooking that appeases all the senses of the human tongue. For us, being able to use spices and herbs to intensify the flavour of a fillet of fish satisfies our climb to our ultimate passion.

We decided to enter the competition at the “Lawyers Can Cook & Fete 2012” event held by The Cotton Tree Foundation, not only to showcase our ability to cook but to showcase what happens when a law student creates what some consider a “taste of heaven”. We prepared the exotic dish of Fish Chowder with a serving of Garlic Bread. We, in the Eastern Caribbean Region have localized the traditional creamy soup dish and created chowder that leaves an everlasting taste.

We attempted to match the quality of our dish with the quality of our presentation, that attracted the attention of every person that glanced at our table. We received many compliments for both the taste of our fish chowder and our presentation. We were also awarded the “Best Overall Presentation of Dish” and are grateful for the experience.

For all you law students, never let your drive to become an attorney overpower your other passions. I can confidently say “Law Students Can Cook”.

Can Law Students Cook?

Master the fish chowder.

Prize winning Fish Chowder

Above: Devon Jones (left) and Deloni Edwards (right)
Master the fish chowder.
Etiquette and Ethics in the Legal Profession

(continued from page 20)

cedings in which to his knowledge the client has previously been represented by another attorney-at-law, unless he first notifies the other attorney-at-law of the change, and makes reasonable efforts to ensure that attorney has been paid for his service, but shall be deemed to have notified the other attorney-at-law if he has made reasonable efforts to notify him."

This Clause requires attorney “A” to first “notify” attorney “B” of the change. This seems to suggest that it is proper conduct for attorney “A” to accept the brief and merely notify attorney “B” of the change. The Clause requires attorney “A” to make “reasonable efforts to ensure that attorney “B” has been paid for his services without indicating what should be done if attorney “B” is not. The Clause also seems to suggest that, like a plumber or a carpenter, attorney “A” is under no constraints, before taking over a “job” from another attorney-at-law. The Clause appears to put no onus on attorney “A” to enquire into the reasons why the brief is being withdrawn from attorney “B”. But to read Clause 48 narrowly results in conduct which offends the spirit and letter of Clause 52 which specifically says that there should be no derogation from the existing rules of professional conduct and duties of attorneys-at-law. This means that Clause 48 should not be read in a way which offends the rule existing in 1987 when the Act came into force.

At the time the Act came into force the existing rules of conduct applicable to barristers-at-law and solicitors required that the usual and proper practice was for barrister “A” to communicate in the first instance with attorney “B” to enquire whether attorney “B” has any objection to his “A” accepting the brief. If attorney “B” does not waive his claim, attorney “A” ought to ascertain from the instructing solicitor whether there is a sufficient explanation why the brief is being withdrawn from attorney “B”. Unless a satisfactory explanation is given, attorney “A” ought to refuse the brief (See Rules of Enforcement 15 and 22 of the Rules of the General Council of the Bar approved by the Incorporated Law Society of the United Kingdom 1938). Attorney “A”, if free to accept the brief, was expected to ensure that the outstanding fees of attorney “B” were settled, since at that time barristers fees were considered honoraria and not recoverable as a debt. The commercial aspect of the rule was always considered subordinate to the ethical conduct in first advising the colleague that an approach had been made.

The purpose of the pre-existing rule is obvious. Arguably the client may be withdrawing the brief from attorney “B” for reasons which are unethical or totally unacceptable to the legal profession. The brief may be withdrawn from Attorney “B” for refusing to lead or tender evidence which he knows to be false or to have been manufactured. Worse – the client may not be giving any reason at all. If this is so, attorney “A” must refuse the brief. Attorney “A”, of course, can only find out the reason if he communicates with attorney “B” before accepting the brief to replace him. The other comment, of course, is that the duty to ensure that a colleague being replaced has been remunerated for work done, is higher than making reasonable efforts to ensure that this has been done. Provided attorney “B” satisfies the requirement that fees are reasonable in the circumstances, attorney “A” should refuse to accept the brief until attorney “B” has actually been paid.

The mistake seems to be sadly prevalent in Trinidad and Tobago to emphasize the purely commercial aspects of the legal profession as if it were any other job in the world of commerce. While admittedly the general world of commerce has or should have rules for the ethical conduct of business, the legal profession has or should always be regarded as requiring higher and more noble impertatives of service.”

-Karl T. Hudson-Phillips, Q.C.

emphasis is placed on the “contractual” nature of a retainer rather than on the duties and obligations to the client and professional colleagues involved in an engagement.

In the final analysis Codes of Conduct determine relations between legal colleagues. They regulate the etiquette and practice of the profession and through binding interference are not enforceable outside of the profession. In Re: Harrison, [1908] 1 Ch. 282 on a taxation of a bill of costs, the question arose concerning the engagement of particular counsel contrary to instructions of the client. The client objected to paying the fees and incidental costs of counsel. The solicitor sought to rely on the rules prepared by the Bar Committee, approved by the Attorney General and the Council of Incorporated Law Society, which entitled counsel who advised pre-trial to a brief at trial unless his instructions were specifically to the contrary. In his judgment Parker J. had this to say in ruling for the client:-

“In my judgment that answer is no good answer, because it assumes that these rules of etiquette as between members of the profession have an effect outside and beyond the relations between of members of the profession in both its branches. I do not think that they have any such effect, or indeed affect in any way the relations known to the law between solicitor and client. If they are enforceable at all, they are only enforceable because the members of the profession choose to govern their conduct by reference to them.”

In determining how improper conduct within the profession is to be dealt with, clause 2 of the Code of Ethics in the Act states:

“2. An attorney-at-law shall expose without fear or favor before the proper tribunals unprofessional or dishonest conduct by any other attorneys-at-law and shall not lightly refuse a retainer against another attorney-at-law who is alleged to have wronged his client or committed any other act of professional misconduct.”

This obliges attorneys-at-law to expose before the proper tribunals unprofessional or dishonest conduct by other attorneys-at-law. This obligation may not be restricted to exposure before internal tribunals where matters of unprofessional or dishonest conduct are raised in public. Members of the profession also have a duty to correct public misstatements on matters of professional conduct. The duty is not only to the profession but to the public as a whole. ■
Etiquette and Ethics in the Legal Profession

This article is by Karl T. Hudson-Phillips, Q.C. (below) Hudson-Phillips was called to the Bar in Trinidad and Tobago in 1959. He is a former Judge of the International Criminal Court in The Hague (2003-2007).

RECENTLY IN TRINIDAD and Tobago there was heated debate within the legal profession on the topic of legal ethics and relations between members of the profession. The discussion involved a consideration of two (2) issues. The first was the conduct of an attorney who is offered a brief to replace a colleague who has been appearing in a matter. The other was the conduct of one attorney to another when attorney “A” is offered a brief in a matter in which attorney “B” has already been appearing. Superficially it seems acceptable for one attorney merely to take over “the job” being done by another attorney. To some this is no different from one plumber or carpenter finishing a job started by another plumber or carpenter. Indeed the Code of Ethics in the Act seems to emphasize the purely commercial aspect of the matter.

In Trinidad and Tobago provision is made in the Legal Profession Act Chap. 90:03 of the Laws of Trinidad and Tobago (“the Act”) for regulating professional conduct. This involves individual conduct as a legal professional, conduct between legal professionals, duty to the Court and duty to the State and public. But there cannot be a comprehensive understanding of what is required without an understanding of the historical underpinnings of the subject.

The Code of Ethics in the Act recognizes this. While laying down specific guidelines, it makes it clear that the express statements in the Code are not comprehensive. Clauses 52 & 53 of the Code state: “52. Nothing herein contained shall be construed as derogating from any existing rules of professional conduct and duties of an attorney-at-law which are in keeping with the traditions of the legal profession although not specifically mentioned herein.”

“53. Where in any particular matter explicit ethical guidance does not exist, an attorney-at-law shall determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession.”

It is to be noticed that Clause 52 preserves “existing rules of professional conduct” although these may not be specifically mentioned in the Code. This is a recognition of the fact that prior to the Act there was already in existence a body of rules of professional conduct. The Act effected a merger of two (2) branches of the profession barristers and solicitors – with each branch having a distinct though sometimes overlapping Code of Ethics.

Barristers, very broadly speaking, were the advocates who had had audience in the High Court and all other Courts. Before the Act, those wishing to be barristers had to become members of the Inns of Court in England and pass Bar exams to be called to the Bar. As members of the Bar, barristers were subject to the Consolidated Regulations of the Inns of Court and the Regulations of the General Council of the Bar of the United Kingdom. These Regulations contained the detailed general principles governing conduct and practice by barristers. Barristers were held to the ethical standards applicable and specific to their branch of the profession. Those wishing to qualify as Solicitors had to be articled (serve a formal contractual apprenticeship) with a qualified registered Solicitor. To become a qualified Solicitor, the student had to pass the examinations of the Incorporated Law Society of the United Kingdom. These examinations were different in content from the Bar examinations for Barristers. The Incorporated Law Society had its special Code of Ethics for Solicitors which was different from that of the Bar Council for Barristers although there was overlapping in several areas.

The statement in Clause 52 incorporating “existing rules of professional conduct” as a result requires a knowledge of the rules of the two (2) professional bodies in the United Kingdom at the time that the Act was passed. It is important that the general guidelines in the Code of Ethics in the Act are read bearing in mind the broad provisions of Clause 52 and the rules of conduct which are preserved.

The recent debate within the profession concerned what was the appropriate conduct of one attorney to another when attorney “A” is offered a brief in a matter in which attorney “B” has already been appearing. Superficially it seems acceptable for one attorney merely to take over “the job” being done by another attorney. To some this is no different from one plumber or carpenter finishing a job started by another plumber or carpenter. Indeed the Code of Ethics in the Act seems to emphasize the purely commercial aspect of the matter.

The Code of Ethics in the Act seems to emphasize the purely commercial aspect of the matter.

48. An attorney-at-law shall not accept instructions to act in Court pro-

Cont’d on page19