

## Positive Changes in Unpredictable Times: Dept. of Indigent Defense Services

By Marcie Ryba

The Nevada Department of Indigent Defense Services was created by the 2019 legislature. In the November issue of Unreasonable Doubt, Marcie Ryba, the Executive Director of DIDS, introduced the agency to our members. This article will provide an update on the agency's progress.

### Training

The extended use of teleconferencing has improved connections with rural attorneys and has expanded access to CLE from many public defense agencies. Recently, NACJ members Joel Mann and Chip Seigel presented an hour-long training on "DUI Basics – A Webinar for Litigators." This CLE provided the nuts-and-bolts of DUI defense and provided a forum for DUI case brainstorming among attorneys.

The Department's Virtual Training is slated for April 22-23, 2021. Presenters include Washoe County Public Defender John Arrascada and Douglas County Indigent Legal Services Provider Maria Pence presenting "Anatomy of a Case from Complaint to Cross;" Dr. Melissa Piasecki with Clark County Chief Deputy Public Defender Julia Murray and Lyon County Public Defender Mario Walther will discuss "Representing the Challenged Client – Competency, Intellectual Disability, and Mental Illness;" and the conference will close with Larry Pozner presenting "Pozner on Cross: Advanced Techniques Using the Chapter Method."

To learn more, please visit the CLE Calendar: <https://dids.nv.gov/Training/Resources/>. Or if you are interested in providing CLE for indigent defense attorneys, please contact Jarrod Hickman at [jarrod.hickman@dids.nv.gov](mailto:jarrod.hickman@dids.nv.gov).

### SOAR

The Department of Indigent Defense Services and UNLV Boyd School of Law have teamed together to create the Support, Outreach and Assistance Resource (SOAR). *The NAPD Fund for Justice* awarded a grant to the Department for the creation of this program. This initiative provides mentorship, training,

and professional development opportunities for rural public defense attorneys with a statewide support system. Rather than indigent defense attorneys being separated by offices or jurisdictional boundaries, indigent defense attorneys can come together as one for the benefit of our clients.

If you are interested in participating in SOAR as a mentor, or if you are an indigent defense provider that is requesting assistance, please send an email to [didscontact@dids.nv.gov](mailto:didscontact@dids.nv.gov) with SOAR in the subject line.

### Expert Directory

Our Department is creating an expert directory connecting indigent defense providers with experts for use in criminal defense cases. If you are an expert or know of an expert that should be added, please contact Marcie Ryba at [mryba@dids.nv.gov](mailto:mryba@dids.nv.gov).

### Weighted Caseload Study

A big thank you to the indigent defense providers and their staff across rural Nevada who have been actively keeping time in the weighted caseload study with Nevada Center for State Courts (NCSC). The weighted caseload study began on January 25 and will run until March 5. The data collected during the study is essential to developing workload standards that will help determine staffing needs for the rural counties.

### Regulations

Since our last article, the Board of Indigent Defense Services adopted Temporary Regulations on January 28, 2021 with an anticipated effective date of March 5, 2021. The regulations establish provisions for funding of indigent defense services; county plans for the provision of indigent defense services; training, education, qualification, and compensation of indigent defense providers; and establish reporting requirements. The temporary regulations can be found at: <https://dids.nv.gov/Regs/Standards/>.

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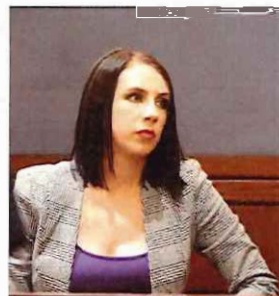
# UNREASONABLE DOUBT

February 2021

## President's Column – Sarah Hawkins

In the first six months of litigating homicide cases, I was part of a meeting that included, among others, the then Clark County Coroner and the District Attorney. During this meeting, I brought up the role of cognitive bias in manner-of-death determinations, specifically my concern that police involvement in the autopsy process was unduly influencing these determinations. As often happens to vocal women in rooms full of entitled men, I was “shushed” and my concerns summarily dismissed. The conversation continued without me.

This moment precipitated a more than two-year collaborative journey with a world-class cognitive bias expert and four forensic pathologists. The result was the first-ever study to establish cognitive bias in forensic pathology decisions. “Cognitive bias in forensic pathology decisions” was published in the *Journal of Forensic Sciences* this month, and you can read it here: Dror I, Melinek J, Arden JL et al. *Cognitive bias in forensic pathology decisions*. *J. FORENSIC SCI.* 2021; 00: 1–7, available at <https://protect-us.mimecast.com/s/!WJrCg!VZlul67X6ToPShY?domain=onlinelibrary.wiley.com>.



If I had named this publication, I would have called it “Empirical Vindication: Underestimate Me Again, I Dare You.” Apparently, this title was not scientific enough. Shocking, I know. This is why defense attorneys outraged at the criminal legal system’s innumerable injustices need measured and methodical experts. They are indispensable rage filters—at least for yours truly—and this cutting-edge research turned groundbreaking study could not have been realized without them.

Our data revealed cognitive bias in forensic pathologists’ manner-of-death determinations by analyzing two corroborative datasets: (1) all Nevada death certificates for children less than six years old whose deaths were designated “accident” or “homicide”; and (2) an experiment involving 133 forensic pathologists across the country, each of whom examined a randomly-assigned, hypothetical child death case. This case contained identical medical information supplemented by varied nonmedical contextual information, including race and caregiver relationship.

Ultimately, the Nevada death certificates revealed that pathologists more often deem manner of death “homicide” when the decedent child is Black. The corroborating experimental data revealed that pathologists were five times more likely to declare “homicide” than “accident” as to Black children. Manner of death in White children was “homicide” approximately half as often as it was “accident.”

Does this mean that forensic pathologists are racist according to archival and experimental data? No. It does, however, suggest that the persistent, implicit racial bias that infects other realms of the criminal legal system also finds a home in the coroner’s office. More broadly, it demonstrates that forensic pathologists’ manner-of-death determinations are undeniably (and avoidably) affected by extraneous, medically irrelevant information.

Criminal defense practitioners must use these findings to scrutinize death investigations and manner-of-death determinations by exploring the answers to these and other begging questions: Do (or how often do) the forensic pathologists in your jurisdiction receive training in identifying and mitigating their own cognitive biases?

What non-medical information do these forensic pathologists receive, when, and from whom? Do these forensic pathologists itemize and explain the relevance or irrelevance of nonmedical evidence their reports? Does the coroner’s office in your jurisdiction employ or employ sufficient or sufficiently employ safeguards to minimize interference of cognitive bias in manner-of-death determinations?

I don’t know about you, but I have quite a few questions for the next pathologist who hits my witness stand. And for members of the coroner-medical examiner’s office who assisted at autopsy, are omitted from reports, and left unidentified as witnesses by the State. And for coroner investigators who rely blindly on police interpretations of the scene and/or witness statements. And for homicide detectives who are inexplicably present during autopsies and cannot keep their speculative two cents to themselves. And for coroners who fail to implement policies and procedures to minimize cognitive bias or deny the problem altogether.

Who’s with me?