



# MESSAGE FROM THE PRESIDENT

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## THE CONGRESSIONAL CURE: MORE LAWYERS?

Welcome to the February edition of *Nevada Lawyer*, affectionately known as the Legislative Issue. The enclosed articles address the proposals and landscape facing our own state legislature, historically set to embark on its first session with a majority of women legislators in the State Assembly. The significance and impact of this development on legislation and governmental affairs is, to date, unknown and largely unpredictable. Beyond this change, the November election results will have numerous other unanticipated effects on our state's politics and history. But all of this will pale in comparison to the sea change that will occur in our *other* legislative body, the U.S. Congress.

Capitol Hill is poised to become the center of a metaphorical storm the likes of which we have not seen in a couple of decades. The new majority in the House of Representatives has promised a flurry of subpoenas directed at the executive branch, which will no doubt be answered with "fire and fury" from the administration's supporters in the Senate. Investigative "sturm und drang," as the Germans would say, all in furtherance of the hallowed tradition of "congressional oversight," enshrined in both Constitution and American tradition. Ironically, I have firsthand experience with the reality of congressional oversight and its special place in our sometimes tortured national political dialogue. The virtues and the flaws of this process are both abundantly clear.

One of the singular professional honors I have experienced was the opportunity to serve as Chief Counsel to the Select Subcommittee of the House International Relations Committee in 1996. It was the height of the "Gingrich Revolution" and smack in the middle of the pre-Monica Lewinsky Clinton administration. Appointed as Chief Counsel for the Republican majority (headed by Congressman Henry Hyde), I was tasked with leading an investigation into allegations euphemistically described in the press as "Clinton's Bosnian Iran-Contra," stemming from the president's decision to turn a blind eye to Iranian shipments of weapons (along with flesh and blood Iranians) to war-torn Bosnia, in order to arm the Muslim factions in their struggle with the Milosevic-backed Bosnia Serbs, all of course, in violation of the United Nations Arms Embargo. (Yeah, I know...seriously? Can you repeat that?)

Armed with subpoena power, a talented staff of highly credentialed lawyers and FBI agents, and our congressional diplomatic passports, we set about taking depositions of ambassadors, CIA officials, Army officers, White House staffers, State Department mandarins and even the Grand Imam of Croatia's Muslim community, plowing through troves of intelligence reports (in the pre-internet age), and writing a several-hundred-page report on the investigation's findings and recommendations. When the administration's censors were finished with their review, half of the report was classified for 20 years, making for awkward reading of our foreign policy/national intelligence masterpiece, with all those missing or blacked out words and

phrases. All things considered, however, it was representative of congressional oversight at its best: in lawyerly parlance "discovery" for the citizenry, present and future. Functioning as it should, the oversight power allows Congress to find the facts and hold the government accountable in its operations.

When at its worst, congressional oversight can become a wasteful and annoying distraction from the true legislative function of Congress, leading unfortunately to "oversight" of the negative definition, as in neglect or omission. To be sure, 1996 was a presidential election year and the White House was not unaware that the politics of Bosnian conflict and potential terrorism could throw a huge monkey wrench into the president's electoral prospects. The Republican opposition leaders were hoping for an explosive revelation that would expose international perfidy and diplomatic blunders. But respect for the secrecy and classified nature of such endeavors held strong, and leaks to the press were almost nonexistent. The people's inquiry proceeded as to policy, with the politics held at bay.

So, it is with cautious optimism that I watch the currently pending festival of oversight investigations, harboring the hope that obsessions with the president's tax returns, the records of the Clinton Foundation, or the umpteenth deposition of James Comey will not cause our lawmakers to overlook the serious issues upon which they need to be informed by the investigative power. Whether the challenge is climate change, our faltering economy, the rise and fall and rise of terrorism or energy independence, there is much to be overseen, and too great a risk that the needs of the citizens will be

overlooked, if our Congress members do not do this right.

Those observations bring us back to my favorite topic: the role and power of the legal profession. I have been (perhaps understandably) accused of trying to solve way too many problems by advising “add more lawyers.” But what ails Congress and the body politic is peculiarly the lawyers’ province, be it the writing of laws, investigation of misconduct or interpretation of factual evidence in a meaningful way. Congress needs good lawyers, not just people with law degrees from political campaigns or think tanks. It needs lawyers who have worked before juries, commissions, out in the community or amongst the judges who do the daily work of resolving disputes and dispensing justice. It has been a long time since Congress was populated by those with the legal ability of a Daniel Webster or a Henry Clay.

Reversing the drain of legal talent from Congress will not be easy. The Congress person’s job is in some respects starkly unappealing. Overwhelmed with the competing demands of reelection fundraising, constant campaigning, legislative bills so lengthy that no one

reads them and the need to cram all of one’s work into four days a week so as not to miss the kids’ soccer practice back home in the district, they don’t have it easy. Those who do serve and thrive can’t wait to burnish their mastery of television interviews, so as to leave Congress and host something like “Morning Joe” for 17 times their congressional salary. The vacuum created by the departure or absence of the capable draws a crowd of newcomers that, almost universally, fails to impress. In a variation of the *Atlas Shrugged* syndrome, the cost of failing to improve the quality of Congress is a mortal threat to democracy.

Where has the top-drawer talent gone, and how do we bring it back? Both questions might be answered by what is sometimes called “the Kennedy Rule.” In essence, the rule provides that, if you want to know where power, influence and sexiness resides at any point in modern American history, find out where the members of the Kennedy dynasty spent their energies at that point in time. The end of World War I and period of the Roaring Twenties were all about money, so the Kennedys were on Wall Street!

World War II and the Cold War were all about international drama and power, so the Kennedys flocked to the federal government and politics. In the 1980s, the media dominated the scene, so the next generation of Kennedys was in the magazine business, hosting television news and marrying an occasional Arnold Schwarzenegger. And today’s young employed Kennedys reflect the modern obsession with high-tech companies and the entertainment world. Well, most of them anyway. Watching last year’s State of the Union address news coverage, I caught an amateurish but touching speech to a group of suburban Boston workers by a scrawny young former deputy district attorney with alarmingly red hair, and a questionably toothy smile: a young lawyer, unquestionably bright and so obviously pleased to be representing his constituents and his famous family in Congress. Oh, and his name was Kennedy! So, if the Kennedy Rule holds up, it is plain to see where the aspiring influential, powerful and sexy young lawyers are headed. If that doesn’t lure you back, nothing will. For the sake of the country, I hope to see you there! **NL**

## CONGRATULATIONS TO OUR NEWEST PARTNERS



We are proud to announce that **Lisa Wiltshire Alstead** and **Lucas Foletta** have been named partners in our law firm. Lisa is distinguished for her business litigation expertise, with a focus on representing insurers and employers in workers’ compensation matters. Lucas develops successful strategies for a broad spectrum of clients to tackle their legal, political and policy challenges. Both have proven their value to our clients, and we welcome them into our partnership.

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