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Navigating Apologies with Clients

by Jamila Johnson

Hema O'Shea sits in a small office at a local public elementary school. Around her are crayon stick figures on 8 ½" x 11" paper taped to the walls. A shelf of old textbooks lines the north partition. O'Shea is a Seattle Public Schools psychologist. She, along with educators and parents, teaches children social skills, such as the art of a good apology. Ask any third-grader about apologies and they will tell you that it is good to say, "I'm sorry." But O'Shea strives to take apologies one step further. She asks for children to understand and express why they are saying that they are sorry — and, in the apology, take ownership of their actions.

"They sometimes think just saying you are sorry makes everything better," she says. O'Shea explains that just saying you are sorry is almost an unconscious reaction to certain situations, but making a true apology requires a bit more. In our society, the phrase "I am sorry" only goes so far, and a partial apology does not mean much to someone who has been injured.

This wisdom, imparted to children on the playground, is also being imparted to adults facing the possibility of a lawsuit. Last year, the *New York Times* published an article about medical centers across the country adopting the policy of disclosing error and apologizing. The result: fewer lawsuits, smaller settlement awards, and lower malpractice insurance. But just as O'Shea sees on the playground, there is also a difference in the adult world between a full apology and just saying, "I'm sorry."

In 2002, Jennifer Robbennolt, then a professor of law at Missouri University, conducted a study with interesting results for attorneys. This study revealed that when no apology was given, 52 percent would accept settlement instead of filing a lawsuit, compared to the 73 percent of the respondents who would accept the offer with a full apology. But interestingly, when a partial apology was given, only 35 percent would accept.

Washington law has some evidentiary protections for apologies. Washington Evidence Rule 408 makes inadmissible statements of compromise for the purposes of establishing or disproving liability or damages. In 2002, the Washington State Legislature enacted RCW 5.66.010, which states: "The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person involved in an accident, and made to that person or to the family of that person, shall be inadmissible as evidence in a civil action." But the statute also says that "[a] statement of fault, however, which is part of, or in addition to, any of the above shall not be made inadmissible." This is problematic, since studies suggest that partial apologies (those that do not include any statement of fault) do not deter litigation in the same way. In fact, under

Illustration by Ryan Graber

Robbennolt's study, a partial apology may be worse than no apology at all.

In 2006, the Legislature enacted RCW 5.64.010. The statute provided that an apology provided by a healthcare provider to an injured person (or that person's guardian), if made within 30 days of an act/omission that is the basis for alleged professional negligence action, is not admissible in a civil action, arbitration, or mediation. Unlike RCW 5.66.010, RCW 5.64.010 covers "any statement, affirmation, gesture, or conduct expressing apology, *fault*, sympathy, commiseration, condolence, compassion, or a general sense of benevolence." (Emphasis added.)

Regardless of whether an attorney represents plaintiffs or defendants, there are some dos and don'ts that attorneys should remember when it comes to apologies. Do ask detailed questions. Attorneys should be prepared to ask their clients a variety of questions about any statements made after an incident when litigation is a possibility. Attorneys should not provide blanket instructions to their clients to not apologize and instead remain silent. It is better to explain to clients what the pros and cons of an apology can be before an incident occurs — especially when it comes to professional healthcare providers.

In non-healthcare situations, attorneys should always ask whether any apologies included a statement of fault. Don't assume that a statement is excluded under ER 408 or RCW 5.66.010. Also, attorneys should evaluate the value of the case early. An apology admitting fault may be helpful to settling a case early when attached to a reasonable settlement amount. If settlement early is in the best interests of the clients, the sooner the apology occurs, the sooner settlement may be possible.

Just as it takes a bit of practice to learn how to apologize, lawyers may have just as many issues adapting to the philosophy that early apologies are good for a client. Litigators are often focused on winning. Somehow, "winning" has been seen as diametrically opposed to expressions of sympathy and fault. But as more studies emerge regarding the success of apologies, this impression is quickly changing. Being prepared to offer advice on the power of an apology is a must-have skill for attorneys in the twenty-first century. ◊

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Editor's Column: The Beauty of a Boutique

by Cynthia B. Jones

I just finished my first solo jury trial. What an experience: blissfully painful (if that makes any sense). Blissful because I feel like, at the end of the day, I did the very best that I could for my client. (And, since the jury found in our favor on the elements of fraud, that does add exponentially to the bliss factor.) Painful because I now know how much hard work it takes to do your best (preparation, preparation, preparation).

In the aftermath, my mind has been wondering – in its depleted state – about the meaning of balance. Of course, I turned to *Merriam-Webster*. Here's how it defines the word:

> balance: 1: an instrument for weighing: as a: a beam that is supported freely in the center and has two pans of equal weight suspended from its ends; b: a device that uses the elasticity of a spiral spring for measuring weight or force. 2: a means of judging or deciding. 3: a counterbalancing weight, force, or influence. 4: an oscillating wheel operating with a hairspring to regulate the movement of a timepiece. 5 a: stability produced by even distribution of weight on each side of the vertical axis b: equipoise between contrasting, opposing, or interacting elements; c: equality between the totals of the two sides of an account. 6 a: an aesthetically pleasing integration of elements; b: the juxtaposition in writing of syntactically parallel constructions containing similar or contrasting ideas. 7 a: physical equilibrium; b: the ability to retain one's balance. 8 a: weight or force of one side in excess of another; b: something left over : remainder; c: an amount in excess especially on the credit side of an account. 9: mental and emotional steadiness.

Finally. The definition I was looking for…was dead last on the list. (Do you see a trend here? How apropos.) For those of us fairly new to practice, balance in work, fitness, and social life is not easy to achieve. For some, throw on top of that children, spouses, and the family pets. (I do have two houseplants to care for…but I don't think that counts.) I used to pride myself on being so balanced. But being new to the practice of law necessarily tips the scales, and I find myself constantly battling with "balance" — definition number 9 above, of course — in my daily round.

Finding the right place to practice, the right place to learn and grow in this legal profession, is key to balance for me. If you find the right fit, you will necessarily be able to sacrifice balance once in a while because you love what you're doing. But restoration of balance is paramount. (I'm taking my own advice — taking that break to restore balance post-haste post-trial immediately following the conclusion of writing this column… Seattle in the rear view; Olympic Mountains in the front view!)

What keeps balance for you? Have you found the right fit in this profession of ours?

This edition of *DeNovo* includes an article by Karen Summerville about finding the right fit in your legal career. I highly recommend you check it out and ask yourself the questions she poses to all of us.

The fit that works for me (so far, given my obvious inexperience of having experiences in the legal field), and the one I feel so blessed to have found, is the small boutique firm. In this setting, I have found access to responsibility that usually takes years to get in most other settings. If you are the kind of personality that likes to slowly wade in the water and have a part of a case

to research and refine, a larger firm setting might be the ticket. (Again, I refer you to Ms. Summerville's questions.) Or perhaps transactional work is what you aspire to make part of your practice, so you never want to see the inside of a courtroom. We all have different needs, tastes, and desires.

However, if you've been bitten by the litigation bug, and you can't wait to hit the ground running, a small firm might be just the fit for you. (Of course, as a prosecutor or public defender, you will be in court more than any civil litigator.) I know a small firm is right for me; I have found my place. And, for now, I'm so enjoying the steep learning curve. I count my blessings, as well as my victories.

Enough of that. This column is about you: what is your best fit? If you, too, have found yours, will you share that with the rest of us? Oh, and keep those letters to the editor coming – it's been inspiring hearing from all of you. ◊

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President's Column

by Jaime M. Hawk

This has been a busy several months for WYLD as a division. We have been working to implement various public-service programs and initiatives, provide low-cost CLE programs to our members, and improve communication and outreach with our members.

As we continue to serve our thousands of members around the state, we remain committed to serving the unique needs of young and new lawyers at every stage of their career.

There is no question that for young lawyers today, the struggling economy and job concerns remain at the forefront of our minds, as well as the overwhelming law school debt facing young lawyers. Much like other professions, the legal community has not been immune from the economic and employment challenges facing our country and the world. As a result of the very limited government, public-interest, and private-sector jobs around the state, many young lawyers are opening their own solo practices. Here in Washington, WYLD wants to support our members in their efforts to market themselves in these tough times.

For those currently looking for new work, career placement professionals often recommend that those in the market for a new job connect with volunteer — or in our legal vernacular, pro bono — opportunities as a way to sharpen substantive legal skills and experiences while on the job hunt. It is a way to maintain positive exposure and build connections in the legal community while developing experiences relevant to one's legal career. Staying active in the profession and open to doors and opportunities that could take you to other parts of the state or into new areas of the law can help provide the new path you may be waiting for.

The WYLD is working to make these pro bono opportunities more accessible to our members around the state. We are particularly committed to supporting our new lawyer members who are transitioning into legal practice. Currently, you can get involved in WYLD pro bono activities by signing up for the WYLD Public Service Committee and its Washington First Responders' Wills Clinic, the Juvenile Records Sealing Clinic, or an immigration clinic.

Another helpful resource is the Washington State Pro Bono Opportunities Guide (www.advocateresourcecenter.org/oppsguide/), which highlights a number of local and state organizations that provide pro bono legal opportunities to serve the community and address unmet legal needs.

Additionally, the WYLD is working hard to expand the Greater Access and Assistance Project (GAAP) around the state and needs your help. GAAP provides an opportunity for young lawyers to gain valuable practice experience through "low-bono" client representation in many different areas of law and a means to address the vast unmet legal needs of many low- and medium-income individuals and families in our state. Sign up for the attorney referral list for the GAAP program in your area and commit to taking one case each year.

The domestic-violence pro bono and public-service opportunities are especially timely, given that February 2-6, 2009, is the National Teen Dating Violence Awareness and Prevention Week. In conjunction with the WYLD Board of Trustees meeting in Seattle on February 7, 2009, the WYLD Public Service Committee is organizing community programs to educate young lawyers about the unmet legal needs of teen victims and how young lawyers can take action to address these needs around our state. The Committee is working to implement the ABA YLD national domestic-violence public-service project, Voices Against Violence, and has plans to organize projects in other parts of the state. For more information about this project, please visit www.abanet.org/yld/dv and sign up for the WYLD Public Service Committee by sending an e-mail to: wyld-public_service-subscribe@yahoogroups.com.

There are other ways to market oneself within the legal community, or simply be recognized for pro bono service, without taking cases or doing direct representation. The Washington Rules of Professional Conduct encourage pro bono service, but they broadly define this service as including volunteer work in an effort to improve the profession. WYLD aims to make it easy for new and young lawyers to serve as leaders in the Bar and accumulate pro bono hours. Volunteering time with the bar association is a wonderful way to make new friends, connect with lawyers around the state in a wide variety of practice areas, and get involved with efforts to improve access to justice and the profession.

Regardless of your prior experience, or your newness in the profession, we want to get you involved. Whether you are interested in joining a committee to work on a particular area of interest or you want to run for a leadership position, please contact me, your respective trustee (listed in this copy of *DeNovo*), or check our webpage (www.wsba.org/lawyers/groups/wyld) to learn more about the opportunities available.

Finally, to bring together and partner with bar leaders around the state, WYLD will be organizing our first Young Lawyers Bar Leader Summit, a collaboration of leaders from the minority bar associations, county bar young lawyers organizations,

WSBA Leadership Institute, and the WYLD on March 21, 2009. The Summit will address a number of issues confronting young lawyers today, with a focus on the "Changing Face of the Profession." Through this effort, we look to unify the good work by the many young bar leaders around the state, and as a result, better serve the needs of all the new and young lawyers in Washington. ◊

Jaime M. Hawk is the 2008-2009 WYLD president. She is currently a trial attorney with the Federal Defenders of Eastern Washington and Idaho in Spokane. She can be reached at jaimehawk@hotmail.com.

If You Build It, They Will Network: Founding a Professional Networking Group

By Etan Basseri

We all know the benefits of networking: learn of opportunities, gain insights on your profession, and market yourself to others. Networking among attorneys is all well and good, but moving "outside the bar" can have added benefits. It gives us the chance to learn more about other professions, meet potential clients, and better our communities. Among young professionals who are all in the same boat as rookies, these opportunities are all the more exciting. How, then, is a young lawyer supposed to network with non-lawyers?

I faced this same question in 2007 when I returned to Seattle after finishing law school at the University of California, Davis. I was involved with non-profits and community organizations, but did not find the forum I wanted for networking with fellow young professionals. To be sure, getting started in a profession is intense, and sometimes all a person wants to do after a long day at the office is vent over a drink. Could that energy be channeled into something more productive? After all, young professionals — lawyers, doctors, or engineers, to name a few — often face similar challenges (long hours, high responsibility, difficult clients) and enjoy similar benefits (high-impact work, intellectually stimulating projects, war stories about difficult clients).

As an active member in the Seattle Jewish community, I liked the idea of having a worthwhile forum for young Jewish professionals. With that in mind, I formed a group on Facebook called "J-Pro: Young Jewish Professionals of the Greater Seattle Area." I invited young Jewish professionals with whom I had attended the University of Washington as an undergrad and convinced a few friends to do the same in their own circles. Thanks to the viral effect of online social networking, the group had more than 100 members within three months.

With the critical mass established, the next step was to formally establish a mission and recruit leadership. A mission would guide the programming, and leadership personnel would innovate and execute those programs. In the case of J-Pro, I was lucky to meet motivated individuals early on who stepped forward to take on leadership roles. Their input and past experience helped shape our mission: to build strong relationships among young Jewish professionals in the greater Seattle area; to create opportunities for learning and growth in their fields; to foster mentorship in their respective industries; and to create a culture of collegiality that encourages business referrals and philanthropy. On a personal level, I liked that our organization drew on traditional Jewish values in caring for well-being of the Jewish community, as well as the Seattle-area community at large.

Should you start your own networking group? First, identify your constituency based on locale, ethnicity, and common interests. Second, determine your mission. At the risk of sounding unoriginal, you could incorporate "advancing members' careers while providing a benefit to the greater community." Third, actively market the group. Facebook works really well for getting the word out on a new group. Finally, recruit leadership (even ad hoc volunteers) as early as possible and delegate the workload. J-Pro would not be what it is today if not for the hard work of everyone on its board of directors.

Programming is an anchor for your group: it keeps the sense of community strong and gives people an opportunity to meet in person. Depending on the character of your group, there are a number of program models that can work well. J-Pro events tend to always have a "meet-and-greet" component where members can chat and exchange business cards. The content of the program can focus on professional development, work-life balance, or a topic specifically relevant to your constituency. A good habit is to step back and ask, "Will this event give members an opportunity to learn something that is of value to them?"

There are also a couple points of caution worth noting. First, when forming a mission, I recommend against making overtly political affiliations. Such strong designations can be detrimental to building a broad membership base. Second, maintain focus on the goals you set out by not trying to achieve too much. There exist a number of young professional groups that try to serve every need of the demographic; if you spread yourself too thin trying to do everything, you may end up doing nothing well.

To summarize, starting a professional organization requires at least three things: focus, delegation, and follow-up.

1. Focus by defining a formal mission.
2. Delegate the workload by recruiting leadership through ad hoc volunteers, eventually through a board of directors.
3. Follow up by communicating with members for feedback and input on their needs and preferences.

A possible fourth element is creating a nifty acronym, but after having strayed from that with "J-Pro" (more of an abbreviation, really), I have omitted it. Best of luck to you.◊

Etan Basseri is the current chair of J-Pro's Board of Directors. He is an associate at the Law Office of Evan L. Loeffler, where he focuses on real estate litigation and landlord-tenant relations. He can be reached at 206-443-8678 or ebasseri@loefflerlegal.com.

Telling Your Client's Story in Eleven Sentences Leads to Better Trials

by Thomas M. O'Toole, Ph.D., and Jill D. Schmid, Ph.D.

The mention of Mr. Hagedorn, my ninth-grade English teacher, still makes me cringe. He tortured freshmen with the same miserable writing assignment week in and week out: the dreaded eleven-sentence paper. If you wanted anything higher than a "D," you learned to keep your papers to eleven sentences because, to him, there was no idea that could not be persuasively communicated within such limits. Study courtroom communication and you begin to understand that Mr. Hagedorn was on to something: effective communication and argumentation begins with clarity and simplicity. Using Mr. Hagedorn's eleven-point formula, lawyers can utilize the keys of effective story writing in trial preparations.

1. Analyze your setting. In litigation, the setting is established by the area of law. The particular type of litigation dictates the particular stories that can be told, as well as how the stories must be told. Both of these are defined by the range of experiences and attitudes jurors bring to the courtroom. For example, with medical malpractice litigation, most jurors will have a host of personal experiences with doctors and hospitals, meaning they also have certain expectations about the case (i.e., how and why doctors and nurses act) before the first word has been spoken by either side. But most jurors have little experience in the area of patent litigation. They are blank slates, which means they often defer to more general attitudes about the fruits of hard work and dedication. Analyze the common experiences and attitudes jurors hold about the issues associated with the litigation area.

2. Choose your central character. A verdict is a product of what jurors choose to talk about in the deliberation room. The central character of your narrative helps focus the facts and testimony in ways that support one story over another. The same story can be told from different perspectives with different results. Central characters focus the discussions during deliberation. For instance, if jurors are talking about the plaintiff's choices, it means they are not talking about the defendant's conduct. Attorneys must carefully consider the implications of choosing one central character over another. The key question is: What are the most interesting discussion points for each possible central character and how do those discussion points orient jurors toward your desired case narrative? In cases where the client possesses a laudable story of accomplishment, he or she may offer the best candidate for the central character. On the other hand, in cases where the client is a natural target for criticism or skepticism, an alternative central character may be the best option.

3. Define your key characters. Once the central character is chosen, each of the key characters, including the central character, must be defined. This is not a focus on what they did, although that is important to the development of the action in your narrative, but it also includes who they are and what motivates them — why they did what they did. In defining these characters, attorneys must be honest with themselves about how they can realistically portray particular characters. For example, few jurors will accept that large corporations act out of the goodness of their hearts. But most jurors are accepting of corporations that made the right decision, even if for the wrong reasons (e.g., the "bottom line"). In fact, because it plays on popular stereotypes, it may provide opportunity for a more compelling narrative.

4. Pick the supporting cast. What would Entourage be without Lloyd? What would Mad Men be without Midge? What would Boston Legal be without Jerry Espenson? None of these are the main or even a key character, but they are integral parts of a complex story. They help us understand our main characters. When deciding who to leave in and who to leave out, ask yourself these questions: What part of the story does this person tell? Is there someone else who can tell it? Will it be redundant to include this person? What does this witness bring that no one else can? If any of the answers

indicate the possibility that the person is superfluous, the attorney should consider not including him or her. While members of the supporting cast are important, if the person is not contributing to the plot, they are at a greater risk of being a distraction.

5. Determine where your story starts and ends. The selection of the starting and stopping points is one of the most overlooked aspects of narrative development. The start and stop points of your narrative can actively shape the meaning jurors give to everything that falls between. A recent patent case provides an interesting example of how the defense failed to consider an appropriate starting point. The plaintiff began by telling his great invention "aha" moment, when he first began working on his breakthrough idea. The defendant, a large corporation, began by discussing when it filed for the patent — a date that clearly preceded the plaintiff's "aha" moment. While "technically" the defense was correct in its claims, the jurors naturally focused on the plaintiff's invention story, which offered a more interesting and stimulating focal point, and used this to push for a plaintiff victory in the name of "justice." Unfortunately, it turned out the defense also had a compelling invention story, but chose to focus on the legal technicality instead, which effectively handed the plaintiff the narrative advantage.

Mr. Hagedorn was on to something: Effective communication and argumentation begins with clarity and simplicity.

6. Define the psychologically satisfying resolution. Jurors work hard to render what they believe is a fair and just verdict. Because of the tremendous amount of energy they devote to the process, they will naturally seek out the most emotionally and psychologically satisfying verdict. In the case above, not only had the defense not set up its patent filing with an equally compelling invention story, but they failed to end the story by providing jurors with a psychologically compelling reason to support the large corporation. In deciding who wins, would you like to vote for a "technicality" or "justice"?

7. Establish the plot. People are drawn to stories with plots — with action. Typically, the plots involve relationships in which something goes wrong, and then, in the end, it is all resolved. It's the typical "boy meets girl, boy loses girl, boy gets girl back" scenario. Many legal cases involve a similar pattern. Two parties find themselves in a relationship of some sort, whether it be doctor/patient, product manufacturer/customer, or employer/employee. At some point, the actions of one party lead the other to believe they have been damaged. At trial, the jurors are asked to repair this damage.

With this in mind, an attorney can develop the plot of the case narrative by answering a few basic questions. How did the relationship between the plaintiff and defendant begin? What were the expectations and understandings? What went wrong? How did the parties respond? What will it take to fix it? The answers to these questions are the cornerstone of your case narrative and will help focus it by providing clear turning points. Without a clear plot and characters, jurors lack the framework to make sense of the evidence, testimony, and overall case theory.

8. Frame the injury. The injury is the key factor that shapes jurors' understanding of "justice" as it relates to their verdict. Jurors are asked to determine the nature of the injury, its cause, possible mitigating or contributing factors, and, if necessary, an appropriate remedy. Each of these factors is influenced by the narrative frameworks adopted by the jurors and are consequently, open to interpretation. Different cases will pose different limitations. In some cases, attorneys can dispute whether or not damages are warranted, while in others an alternative damage theory is a must. It is crucial that you carefully consider how the answers to these questions fit the story you tell and the plea you make for how the verdict accomplishes justice.

9. Understand your role as the narrator. The attorney, for all practical purposes, is the narrator: the one who introduces the characters, keeps the story moving along, and adds "The End" at the close of trial. An attorney is an essential part of the story, but should not be a character within the story.

As narrator, your duties can be summarized as being honest, being prepared, and being nice. Jurors can tell when you're being disingenuous; they hate it when someone wastes their time; and generally they want you to be nice or respectful, only becoming aggressive if the situation warrants (a particularly hostile or rude witness). During recent post-trial interviews with jurors, the jurors indicated that they believed the attorney's "rustling of papers" or his coughing were supposed to distract jurors from listening to a particular witness's testimony. In the other, they did not like how he interacted with the witnesses and said he was "condescending" and "rude." Compare this to the comments about the winning side's attorneys: "He was clear," "She didn't waste our time," "He seemed more organized," "She asked the witnesses good questions."

10. Plan your presentation of the story. You can't win your case in opening, but you sure can lose it. Opening is a crucial opportunity to frame the case in a manner than orients jurors to interpret the evidence and testimony in a manner that favors your client. Without this foundation, jurors will seek out their own frameworks for organizing the information, which may be the narrative offered by opposing counsel.

Like any good story, an opening functions as an attention-getter by piquing jurors' interest, so that they will want to hear more about your story of the case. Much like the blurb on the back of the book we read before purchasing a book, opening needs to motivate jurors to open the book and start reading. But as you lay out the foundation of your case, it is important to remember that an opening statement is a set of promises about what will happen over the course of the testimony. Be careful to avoid over-promising and under-delivering. Once the foundation is laid, attorneys need to carefully consider how each part of the story will be told. One effective technique is to break down the overall narrative into key chapters (try Mr. Hagedorn's method, for instance!). Then, for each chapter of the story, list off the witnesses and evidence that tells that part of the story. At the conclusion of trial each day, the attorney can then use this as a checklist to determine whether or not the story is being told as planned.

11. Show the story. We live in a visual culture. Studies have shown that the average person watches 15,000 hours of television by the time he graduates from high school, compared to 11,000 hours spent in the classroom. Jurors have learned more than 80 percent of what they know visually. An image truly is worth a thousand words. A 1986 3M study by Douglas Vogel found that combining verbal with visual

presentations led to significantly greater retention of information.

Knowing this, attorneys can no longer claim "I don't want to look too slick," or use the excuse "I'm not comfortable using graphics." Basing your communication strategy around your own comfort level is a mistake. Jurors expect and actually need visual reinforcements of your message. A juror told us the other day that when the jury entered deliberations, they were completely confused and were jumping all over the place. He suggested that he make a timeline to organize the issues and the evidence. By the time his timeline was complete, he had successfully swayed four of the six plaintiff jurors to a defense position — and a defense victory. What would have happened had the plaintiff supplied a timeline with their "spin" on the evidence?

Like all skills in life, developing effective case narratives takes time and practice. No matter what the approach, the key is to start early. Discovery can be a treasure hunt or a prison cell. Developing the case narrative early in litigation helps the attorney focus discovery to best serve the needs of the client. Start with Mr. Hagedorn's guidelines. Force yourself to outline your case narrative in just eleven sentences. The exercise will bring much pain and frustration, but will prove invaluable in helping you craft a clear and coherent narrative that motivates and arms jurors to be advocates for your client in the deliberation room. ◊

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National Teen Dating Violence Awareness and Prevention Week, February 2–6, 2009

ABA Young Lawyers Division
Voices Against Violence

On February 7, 2009, from 9 a.m.- 12:30 p.m.,WYLD's Public Service Committee will launch a local project, "Voices Against Violence: Addressing the Legal Needs of Teen Dating Victims of Domestic Violence." The free seminar will include teen speakers and experts in the field. Register at: www.wsba.org/lawyers/groups/wyld/tdvsregandflyerattysw.forms1.pdf.

Here are other ways to get involved:

- Contact your local DV service providers to learn what programs and services exist for teens and how you can support their efforts (www.abanet.org/yld/dv/details.shtml).
- Present DV "Know Your Rights" programs to teens in schools, youth centers, church groups (www.breakthecycle.org/resources-free-material.html).
- Help to address the unmet legal needs of teens by providing pro bono legal services (www.probono.net/aba_oppsguide/).
- Advocate for state and federal legislation on DV issues (review the report card on WA state's laws related to providing rights to teen victims of dating violence: www.breakthecycle.org/resources-state-law-report-cards.html).
- Support the Teen Dating Bill of Rights (www.loveisrespect.org).

Visit the ABA YLD webpage for more resources to get involved: www.abanet.org/yld/dv.

The WSBA Young Lawyers Division's CLE Committee presents:

The Ethical and Professional Dimensions of Your Career Choices CLE

When: Thursday, March 19, 2009; 1:00 p.m. — 5:00 p.m.

Where: WSBA Office, 1325 Fourth Ave., Ste. 600, Seattle

$30 pre-registration; $50 at door

Please feel free to bring a lunch!

Registration is open through March 5, 2009, and the registration form can be found at: www.wsba.org/lawyers/groups/wyld/.

Career Success and Satisfaction — Finding a "Good Fit"

by Karen Summerville

Landing a position that is a "good fit" is the goal of each and every young lawyer. But what exactly does that mean? Sometimes it may appear elusive and impossible to define. Having worked with hundreds of lawyers over the past decade, I have developed a checklist to help my clients determine if their current position is a good fit for them.

Are you happy? This may be a surprising question, but it is probably the best indicator of whether you are in a position that is a "good fit" for you. Generally, if you are unhappy and do not land a new job within a year, it is likely that you will be asked to leave. When clients come to me and explain that they have been asked to leave, they often confide that they have actually been unhappy for quite some time but were afraid to look for other opportunities. They thought they had done a good job of hiding their unhappiness, but alas, that was not the case.

Are you learning and growing? Especially in your early years of practicing law, it is important that you are given increasingly more responsibility. Looking back over the past six to nine months, do you feel as though you have acquired new skills and taken on additional responsibility? If you ask for projects that will allow you to expand your repertoire of skills and experience, are your requests granted?

Do you have a mentor? In an ideal work environment, you will have someone who is looking out for you and helping to advance your career. Often, if you have a good mentor or supervisor, she will be able to steer the right projects and cases to your desk. But the most important role that a mentor plays is behind the scenes. We all need someone to tell us what is not obvious, especially when it comes to office politics. Inevitably, we all make mistakes. The difference a mentor can make in those situations is often critical. A mentor can help us quietly contain and resolve a small error before the client is adversely affected and before others in the organization even become aware of the problem.

Do you feel appreciated? When we are in the right work environment, we feel as though our talents and skills are being well utilized, and even if no one says "thank you" on a daily basis, we know we are appreciated. Do you respect your co-workers, and do they respect you? When you look around you, do you seek to emulate the other attorneys in your organization? Do you look to them for guidance? Do their professional reputations reflect well on you? Most importantly, if there was an opening in your organization for an attorney, would you recommend a colleague or friend?

Next Steps

If you answered "yes" to most of the questions above, congratulations! You are probably in a position that is a good fit for you. No doubt you know many attorneys who are envious.

What if you answered "no" to most of the questions? First, make sure that your unhappiness is not detrimental to your clients' needs. As an attorney, your ethical obligations to your clients are your highest priority at work.

Then assess whether there are steps you can take to improve the fit in your current situation. Sometimes it is possible to turn things around by being reassigned to a different department or practice group. If you have already tried that approach, and the results were not satisfactory, you should probably begin looking for another opportunity.

How do you find a new position that is a better fit? Before you begin sending out your résumé, do a careful and thoughtful self-assessment to determine your talents and motivations. Often when we look back at those times in our lives when we did something well, enjoyed it while we were doing it, and were proud of it when we were done, we will have some clues as to what might be a "good fit." ◊

Karen J. Summerville is a former Seattle law firm partner who now offers outplacement and career counseling to attorneys. She can be reached at her firm, Legal Career Management, by phone at 206-224-7608. Visit her website at www.legalcareermanagement.com. If you would like a copy of her article "Top Ten List — Career Search in Challenging Times," e-mail her at kjsummer@comcast.net.

Join Us For the Next WYLD Express "Ski-LE"!

A free CLE will be held at Gonzaga University in Spokane on Saturday, March 7, 2009. Then join us for skiing at Mt. Spokane on Sunday, March 8.

For more information, visit the WYLD webpage at: www.wsba.org/lawyers/groups/wyld/default.htm

Or subscribe to the Membership Committee list serve by sending an e-mail to: WYLD-Membership-subscribe@yahoogroups.com.

"Lawyering in a Diverse World" Workshop Series at SU Law

by Fé Lopez and Diana Singleton

Seattle University School of Law launched in September a year-long workshop series designed to create awareness and empower students with skills and practical knowledge on diversity issues. The workshops give students a competitive edge for effective lawyering in an increasingly diverse and complex world. Students are gaining tools to better understand, and engage in, issues of inclusion, diversity, and cross-cultural competence. These are not only global and business imperatives, but are also a necessity for justice.

The workshop series started in September with "Inclusion, Diversity, and Cross-Cultural Competence as Justice Imperatives," led by Ada Shen-Jaffe, senior advisor to Seattle University School of Law Dean Kellye Testy. Through this foundational and interactive workshop, students learned about the basic building blocks of self-awareness and emotional intelligence. They then addressed anti-oppression frameworks relating to status, social rank, and power, which will help ground their work as effective advocates and as leaders in an increasingly diverse and global world.

Following this foundational workshop, students participated in a lunchtime training session in October called "How to Be a Mentee and Creating Useful Networks," which was led by Stacey Lara-Kerr, associate director of the Center for Professional Development, and Fé Lopez, assistant director for Student Life. Establishing and utilizing networks and seeking guidance from mentors can serve a very important role in students' professional lives, particularly students from diverse backgrounds. In these workshops, students were presented with information on the do's and don'ts of being a good and effective mentee and taught how they can create and maintain networks within the legal community.

The law school makes it a priority to provide space to discuss critical issues of race, class, gender, ability, and sexual orientation. To ensure ongoing productive discussions, students are invited to participate in Diversity Table Talks — informal, small-group discussions over dinner facilitated by the Seattle University Office of Multicultural Affairs. A recent Table Talk in October focused on race, gender, and the election. Participants watched two short clips in advance to spark conversation about the intersection of race and gender in political power.

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The semester ended with the workshop "The Disability Perspective," presented by Andrea Kadlec, David Carlson, and Stacie Siebrecht, from Disability Rights Washington. This training focused on understanding and advocating for people with disabilities. Students learned about the protection and advocacy system established by the federal government and the services Disability Rights Washington provides. After getting an overview of the different types of disabilities, students gained an understanding of the importance of using people-first language and the disability culture. The training also provided students with tips on interviewing individuals with disabilities in order to obtain accurate information. Students also engaged in a discussion about applying the Rules of Professional Conduct (RPC) to providing services to people with disabilities with a specific focus on RPC 1.14 and 1.6.

Students have been enthusiastic about what they have learned. "The Lawyering in a Diverse World series provided me with the opportunity to begin thinking about transitioning from law student to practicing attorney in a safe and encouraging environment," said Kristi Cruz, who graduated in December. "It was insightful and provided me with tools to begin the ongoing process of recognizing and navigating a diverse world in a respectful and appropriate manner."

2L Bette Fleishman said she has attended two of the trainings so far. "They were motivating and enforced why I decided to go to law school," she said.

The workshops began again in January with "Cross-Cultural Lawyering," led by Professor Paul Holland, director of the School of Law's Ronald A. Peterson Law Clinic. To be effective in a multicultural society, lawyers must develop the ability to anticipate, identify, and overcome culture-based assumptions, their own and those of the many others with whom they interact (e.g., clients, co-counsel, opposing counsel, judges). This highly interactive session introduced students to a variety of practices that will improve their ability to avoid the

pitfalls of our human tendency to make such assumptions.

February offers a week of activities in conjunction with the School of Law's annual Diversity Week that runs from February 23-26. A Diversity Week Reception is scheduled for 5:30 p.m., Feb. 26 in the 2nd Floor Gallery. All members of the legal community committed to diversity issues are invited to attend. The School of Law will be highlighting the importance of diversity education both in law school and in continuing legal education.

In March, students will have an opportunity to participate in a "Safe Spaces" workshop, led by Dr. Manivong J. Ratts of the Department of Counseling and School Psychology at Seattle University's School of Education. This training will focus on being an ally to the lesbian, gay, bisexual, transgender, and questioning (LGBTQ) community. Basic LGBTQ concepts and theories as well as strategies on how to create an inclusive environment for LGBTQ individuals will be explored. Students will have opportunities to practice ways to address anti-LGBTQ comments and develop skills to address common LGBTQ-related questions.

The last workshop for the academic year, "Bias in the Courtroom," will be in April and will be led by Jeff Robinson, attorney at Schroeter Goldmark & Bender, and Jill Otaki, assistant United States attorney. Lawyers representing either side in a criminal or civil case can and should seek decisions that are free of racial bias for tactical and ethical reasons. This training will discuss why avoiding racial bias is in the mutual interest of both sides in criminal or civil litigation and will cover techniques designed to reveal racial bias in potential jurors and promote race-neutral decision-making in the courtroom.

All Seattle University law students are welcome to attend any and all of the Lawyering in a Diverse World workshops. While there is no requirement to attend the entire series, students are encouraged to attend as many as they can so that they can gain a comprehensive experience. Each student who attends four of the trainings and at least one Diversity Table talk will be awarded a Certificate of Completion of the Lawyering in a Diverse World workshop series.

To find out more about the Lawyering in a Diverse World workshop series, please visit the Seattle University School of law website at www.law.seattleu.edu/Student_Life/Diversity.xml. If you have any questions or comments, please e-mail Diana Singleton, director, Access to Justice Institute, at singletd@seattleu.edu, or Fé Lopez, assistant director for student life, at lopezf@seattleu.edu. ◊

The WSBA Young Lawyers Division's Membership, CLE, and Diversity Committees present:

Minority Voting Rights CLE

When: Thursday, February 26, 2009
4:00 – 5:30 p.m.
Reception to follow

Where: Seattle University School of Law

Cost: $25

The WYLD Membership, CLE, and Diversity Committees, in conjunction with Seattle University School of Law's Diversity Week, will be hosting Part 4 of their Election Law series on Thursday, February 26, 2009, with noted speaker and Seattle University School of Law Professor Joaquin Avila. This CLE will describe how methods of elections that have a discriminatory effect on minority voting strength serve to deny people of color a meaningful opportunity to participate in the political process.

Registration is open through February 16, and the registration form can be found at: www.wsba.org/lawyers/groups/wyld/default.htm.

Save the Date

Young Lawyers Business Law CLE and Networking Event

Especially for lawyers in their first six years of practice

When: March 5, 2009
1:00 — 5:15 p.m.
Reception to follow

Where: Davis Wright Tremaine
1201 Third Ave., Ste. 2200, Seattle

Cost: Approx. $25

Brought to you by the Business Law Section and the WSBA Young Lawyers Division

This is an opportunity to get CLE credits aimed at lawyers practicing in corporate and business law, to interact with your peers practicing in transactional law, and meet other lawyers from across the state. Plus, find out more about the Business Law Section of the WSBA.

Space is limited to 100 attendees. To register, go to: www.wsba.org/lawyers/groups/wyld/default.htm.

Meet the Law Student Trustees

Seattle University

Name: Justin D. Farmer

Year: Third year (woohoo!)

Pre-Law School Education: University of Washington, Business Degree

Intended Areas of Practice: Although I am not sure exactly which area, I fully plan on a career in litigation and, eventually, public service via local, state, and national politics.

Other Law School Activities: Current SBA president; SBA treasurer last year; KCBA law student trustee, as well as WSBA law student trustee; National Moot Court Competition finalist at the Williams Institute.

Civic Activities: Volunteering at the Housing Justice Project during my first and second years of law school

Hobbies: Intramural Champion Flag Football (currently undefeated this season); two-time law school Intramural Basketball Champion; golf; diehard Seahawks and Husky fan.

University of Washington

Name: Danan Margason

Law School: University of Washington School of Law

Year in Law School: Second

Pre-Law School Education: Rutgers University, B.A. in Philosophy and Political Science

Intended Areas of Practice: Land use, litigation, or venture capital

Other Law School Activities and Memberships: Pacific Rim Law and Policy Journal; president, American Constitution Society, UW Chapter; Student Bar Association; UW Admissions and Tenure Committees; International Legal Society

Hobbies: Rowing, cycling, hiking in the Cascades, running, basketball, reading philosophy, traveling to Central America, solving the Rubik's Cube

Gonzaga University

Name: Sam Colito

Law School: Gonzaga School of Law

Year in Law School: Third

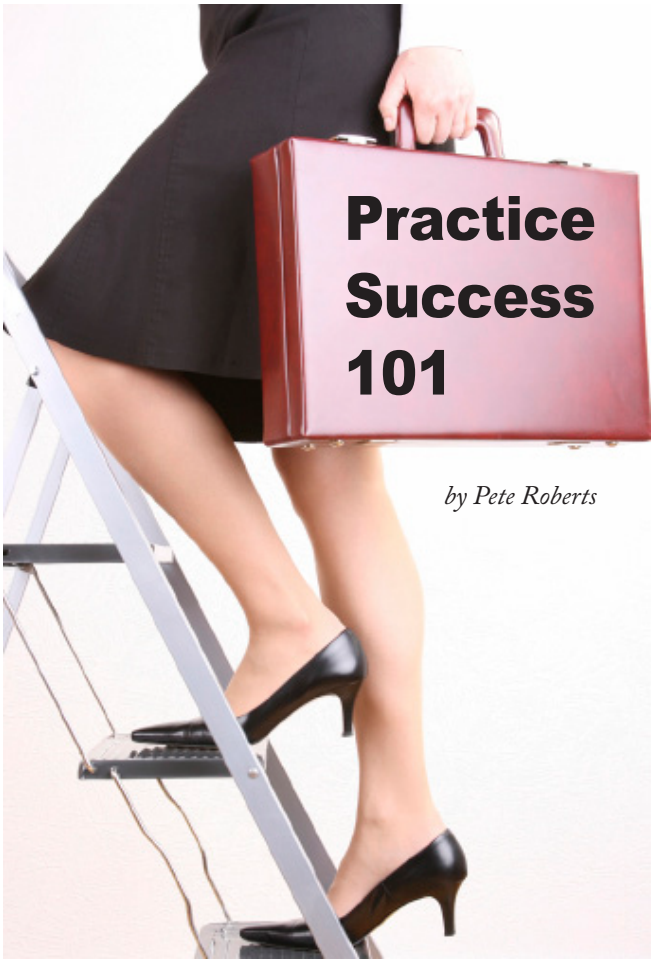
Pre-Law School Education: B.S. Biology, Loyola Marymount University

Intended Areas of Practice: Patent law

Other Law School Activities and Memberships: Gonzaga Intellectual Property Law Association, Phi Delta Phi, Sports and Entertainment Law Club

Civic Activities: Big Brothers/Big Sisters, Spokane Neighborhood Action Programs

Hobbies: Reading, cooking, sports



by Pete Roberts

"You cannot know too many lawyers!" Become known by becoming a "joiner" of bar sections, committees, and task forces. Be volunteer faculty for CLE programs. Your networking includes your volunteer time on nonprofit boards, committees, projects, and municipal or charitable activities. These groups appreciate having a lawyer as a member.

Among your colleagues, you want to cultivate referrals that fit into your practice goals. It is, of course, a two-way street. Be alert to refer out cases that may repay you with a fair return of new work. Your professional reputation defines how others will gauge any risk of referring matters to you in terms of probable return referrals, client comfort, and your getting the work done timely. Referrals arise because the lawyer has an unwaivable conflict, the work required is beyond the lawyer's capabilities, or the lawyer's schedule precludes additional work. Another reason is that the lawyer may not feel totally comfortable with the client's personality or other circumstances of the matter.

Do not overlook any opportunities for leadership within the profession. The WSBA includes a variety of sections that offer the lawyer the opportunity to meet other lawyers with similar practice interests. Consult your local or specialty bar for similar opportunities. Sections and specialty bar associations may have referral mechanisms such as list serves, discussion groups, and a case referral service for the public.

There are also boards and committees of the bar that provide opportunities to shape policy, as well as to meet other lawyers. The WSBA especially offers such opportunities to serve on committees, boards, and panels that may affect the practice of law statewide. Contact your representative on the Board of Governors or see the FYI section of *Bar News* for further information.

Volunteering as faculty for CLE events is a very good way to meet other lawyers who are co-presenters, as well as the attendees themselves. This activity enables you to enhance your professional credentials in a very visible fashion.

Consider formally or informally mentoring or otherwise assisting other practitioners who may have a future need to refer matters to you.

Avoid accepting "any" matter that comes in the door. Retain control of your law practice by proactively assessing each potential client opportunity. Be prepared to turn some prospects down. Each new matter that you do accept is a major commitment of time, hard work, communication, and attention. The new matter should fit as easily as possible into your competence to practice (or to reasonably reach that level relatively quickly), your case calendar, your personal calendar, and your personality. You may say that you "are not accepting any new matters for the time being."

You are "on display." Even if you do no overt "marketing," you remain on display because you are a lawyer. Business cards are essential. Always have them handy — including having them in your blue jeans pocket on weekends! Use high-quality card stock. Consider including information on the back of the card that describes your practice in layman's terms. For a DUI practice, you may include on the card certain tips for communicating appropriately with the police. Use a font size and design that are easy to read, particularly if you represent elderly clients.

Your reputation and conduct as a professional inexorably builds your image in the public and legal communities. Influence this process and prosper!

Every client involves many potentialities, both good and not so good. Experienced lawyers know that anything can happen. Remember that the client is under stress, so your communication (written and oral) must be careful and precise.

In Washington, the recognition of an attorney-client relationship is described. In *Bohn v. Cody*, 119 Wn.2d 357, P.2d 71, the court opined:

> [3] The essence of the attorney/client relationship is whether the attorney's advice or assistance is sought and received on legal matters. See 1 R. Mallen & J. Smith § 11.2 n.18; 7 Am. Jur. 2d Attorneys at Law § 118 (1980). The relationship need not be formalized in a written contract, but rather may be implied from the parties' conduct. *In re McGlothlen*, 99 Wn.2d 515, 522, 663 P.2d 1330 (1983). Whether a fee is paid is not dispositive. *McGlothlen*, at 522. The existence of the relationship "turns largely on the client's subjective belief that it exists." *McGlothlen*, at 522. The client's subjective belief, however, does not control the issue unless it is reasonably formed based on the attending circumstances, including the attorney's words or actions. See 1 R. Mallen & J. Smith § 8.2 n.12; *Fox v. Pollack*, 181 Cal. App. 3d 954, 959, 226 Cal. Rptr. 532 (1986); *In re Petrie*, 154 Ariz. 295, 299-300, 742 P.2d 796 (1987).

The client relationship can arise whether or not you intend such a relationship to arise. Lawyers are careful to have several types of written communications to use in the varying circumstances. The varying circumstances might be:

- Non-engagement: You decided not to represent the party.
- No decision yet: You think it over and do the conflict check first.
- No decision yet: The party owes you several documents first.
- Accept the party as a client: Triggers a series of steps.

Document the understanding for each of these circumstances, so that there is reasonably no doubt in the client's mind. The party is likely experiencing stress about the legal issue and may not hear and/or understand your verbal communication.

Consider that each client may act or react as follows:

- Will he pay you?
- Will he tell you the truth?
- Will he call you too often?
- Will he show up for meetings?
- Will you meet his expectations?
- Will he dislike you?
- Will he produce promised documents?
- Will he send e-mail expecting immediate responses?

Experienced practitioners say that it is best to avoid a potentially troublesome client by watching for the "red flags." Go with your gut if in doubt about taking on a particular matter. Use a friendly worded engagement letter and/or fee agreement to lay out your scope of work and the client's obligations to you. Start work in earnest after the client has signed off and returned a copy of the letter to you.

Include a paragraph in your fee agreement or engagement letter about communication. You expect the client to be available and to respond to you. Your client expects you always to be available, particularly by e-mail. E-mail messages do not demand immediate responses. You can visually scan your e-mail as it arrives, but you should shelter yourself from the expectation of an immediate response. Indicate in your engagement letter that you will respond to e-mail "usually within two business days." It is also a good idea to include a description of your file retention and destruction policy and who owns the file and pays for copies of the file, if ever necessary.

Communicate often and be sure to return telephone calls within four hours. You need not return the call yourself if you can ask an assistant to do so. Calling to say that there is nothing new on the matter actually says two things to the client:

1. Nothing is new.
2. I remembered you and you are important to me.

The major side benefit of returning telephone calls timely is the glowing recommendation of you to others. This point cannot be overemphasized. Never hesitate to ask your clients to recommend you to others.

Consider your several reputations:

- Your professional reputation establishes you among colleagues. Your practice area, integrity, honesty, level of service, knowledge of the law, and how easy you are to deal with all come into play.

- Your social reputation establishes you among colleagues, friends, family, and staff. Your social reputation includes how others perceive your table manners, use of alcohol (if applicable), and general social bearing as you engage in professional activities, hobbies, sports activities, and cultural interests. Are you available at all or always "busy"?

- Your street reputation establishes how you are perceived by staff. Your street reputation describes your office and how you handle the management of your practice. Examples are your level of professionalism and respect when communicating with your staff, non-monetary fringe benefits such as staff scheduling flexibility, and, of course, your management of anger and how you communicate reprimands.

All of these networks can attract or repel new business. ◊

Pete Roberts has 18 years of experience as a legal administrator in law firms. Pete has an MBA from The College of William & Mary and a Certificate as Small Business Webmaster from the University of Washington. He is a frequent speaker and has consulted with over 400 WSBA members in Washington, Idaho, and Oregon. Since 2001, Pete has been the Practice Management Advisor in the Law Office Management Assistance Program (LOMAP) of the Washington State Bar Association. He enjoys tennis, travel, and tries to enjoy the Seattle Mariners. Reach him at 206-727-8237, peter@wsba.org, or www.lomap.org.

From Gavel to Hammer: Letting the Law Wait

by G. Martin Bingisser

Even though I am sitting in the middle of the backwoods, familiar sights surround me. A framed diploma from the University of Washington School of Law hangs above my desk. A neat row of legal books sandwiched on each side by slender bookends stand next to my computer. This picture would not have been beyond the reach of my imagination three years ago. I say this knowing that the centerpiece of my book collection — the eight volumes of the Internal Revenue Code and accompanying Treasury Regulations — rarely enters anyone's imagination. But while the setting is familiar, the location is not.

I did not envision the current location of my desk. I would have thought that the desk would be situated in the Columbia Tower or another one of Seattle's high-rises. Perhaps the desk would be in the other Washington, a stone's throw away from the nation's power center. Instead, my desk sits in a daylight basement apartment on the outskirts of Kamloops, British Columbia.

You have likely never heard of Kamloops: neither had I. The city is located about three to four hours northeast of Vancouver. You follow the main highway east until all signs of civilization have disappeared and then continue north for another two hours over two mountain passes and past twelve million pine trees until you arrive in this quaint 80,000-person town. While the town has been around for nearly 200 years, it truly grew as prospectors came to the area during a 1860s gold rush. I, too, am here in search of gold: the Olympic gold.

Let me explain. I compete in the hammer throw. Like Kamloops, few have heard of the hammer throw. It isn't a competition to see who can throw a carpenter's hammer the furthest. That would be far too simple. Instead, it is an obscure track and field event where men hurl a four-foot-long, sixteen-pound steel ball and chain over two-thirds

the length of a football field.

I fell into the sport almost by accident in high school. I have been infatuated by it ever since. Up until I graduated from law school this past June, I had been able to manage both the demands of school and my commitments to athletics, but this balancing act would no longer be possible after graduation. I was forced to choose only one of the two to continue with. If I were to choose to pursue a legal career, I would not have sufficient time and energy to train. If I were to choose to truly dedicate myself to reaching the Olympics, I would not have the time required to work as an attorney. Something had to give.

To make the decision more complicated, the lack of adequate training facilities and coaching in Seattle meant that if I really wanted to give athletics a fair shake, I needed a change of venue. This is where Kamloops enters the story. A few years ago, I stumbled across a retired gold medalist named Dr. Anatoli Bondarchuk. He walked with a limp due to a lingering hip injury, sported a thick accent, and had an English vocabulary that could have fit on a single sheet of paper. Back in 1972, Dr. B won the gold medal in the hammer throw for the Soviet Union. He also began coaching at that time and used a scientific approach to revolutionize the event's technique and training methodology. He continued to train and won the bronze medal in 1976, but while standing on the podium, he found that his true calling was coaching. It was his protégé who had beaten him for the gold. He has been a dedicated coach ever since. His athletes won every Olympic medal from 1976 to 1992, with the exception of the boycotted 1984 Games. After the fall of the Soviet Union, he was offered a healthy sum to coach in Kuwait. But the insufferable heat, along with the lack of vodka, tested his patience and led him to start a transition towards retirement by seeking a low-key job in Kamloops.

After meeting Dr. B, I began to drive up to Kamloops frequently to pick his brain to try and understand everything about his approach to the event. He was my Mr. Miyagi. When I first arrived, the training sessions had more elements of sign language than spoken word as he attempted to describe what I was doing wrong. Luckily, his sense of humor transcended language and lightened the situation. I could not understand many of his jokes, but that made the punch lines even funnier as they seemed to arise out of the mist. Progress with him was quick, and I began to realize that Kamloops was where I needed to be if I wanted to truly pursue athletics at the highest level. Kamloops provided a stark contrast to Seattle, where I was without a coach, without any training partners, and without proper training facilities.

Like any law student, I analyzed, and then overanalyzed, the situation to come to a decision. Many factors came into play on both sides of the equation. It was Olympic glory versus courtroom glory. Muscle shirts versus dress shirts. Physical challenge versus intellectual challenge. Being close to my friends and family versus training with world-class athletes and an eccentric coach.

The decision also involved the negatives that came along with each option. For example, the repetitiveness of taking thousands of throwing attempts versus the monotony of document review, or sore muscles from weightlifting versus back pain from hunching over a computer for hours

on end. And, as much as I didn't want to consider it, money was a large factor. There is a large difference between a six-figure law firm salary and what I make now. I've tried, but hammer throwers can't obtain as many sponsors as Tiger Woods. I do a good job of budgeting, but I still grew tired of ramen several years ago.

As I ran through the pros and cons for each option, I began to realize that every advantage a legal career offered was something I could nevertheless attain if I delayed my legal career for four years. I had the rest of my life to become a lawyer, but the clock was ticking on my athletic career. I'll reach the prime age for hammer throwers in 2012, and that will be my best chance to succeed at the Olympics. The decision was clear. After graduating from law school in June, I loaded up my car and headed north. I don't regret the decision one bit and am well on track to reach my goals. The diploma still hangs on my wall and gathers some dust for now, but I'll get my use out of it someday. For now, it is a constant reminder of the other aspirations that are waiting for me once this odyssey is complete. ◊

G. Martin Bingisser received his Bachelor's Degree, Juris Doctorate, and L.L.M degree from University of Washington School of Law. He is seeking admission to practice in Washington and is licensed in New York. To follow Mr. Bingisser's progress, visit www.mbingisser.com.

A Long Way From Tacoma: Practicing Law in the Kingdom of Saudi Arabia

by Thomas W. Donovan

"What do you mean the court will close?" my client repeated. "It's only 1:30 in the afternoon!" The judge glared at us through his round spectacles, past his full-length beard, red head scarf, and immaculately tailored and cleaned full-length white robe, called a *tobe*, and said, "It is prayer time, court will reconvene shortly following." My Saudi Arabian colleague shot a condescending glance in our direction, wondering how anyone could not have known that all ministries and courts of general jurisdiction close 10 minutes before any of the day's five prayer times which may coincide with the Saudi work day. He then accompanied the judge, opposing counsel, bailiff, court reporter, and the rest of the audience to the door. Upon exiting into the inlaid marble and alabaster hallway, the men hung an abrupt right and went to the male side of the green-domed mosque, and the two accompanying women, dressed in their flowing, full-length black veils, went to the left and entered the small doorway labeled "women's only section." Well, at least the commute time to the mosque wouldn't be too long, I thought. There was one mosque in every floor of every court house in Saudi Arabia.

I turned to the client in the now-empty court room to explain the situation. He was an ex-American military officer who is now the general manager for a defense contracting subsidiary from St. Louis in a dispute with his Saudi Arabian agent. I was wondering how I would explain that even though the Saudi agent had not paid an invoice in five years or appeared in court today, and it took us nearly three years to see a judge, everything would have to wait until after the mid-day prayer. "In Saudi Arabia," I said "they take their soccer and their religion very seriously." And so is practicing law in the Kingdom of Saudi Arabia. A wildly different experience, which offers unique insights into the development and establishment of other societies' concepts of good and bad, law and punishment, and right and wrong.

The modern laws of Saudi Arabia are derived from the Qur'an and the Sunnah (life stories of the Islamic prophet Mohammed). The strict interpretations of Shari'a (Islamic law) are followed with several notable exceptions. Interest in lending or bank transactions is allowed, as opposed to the classical interpretation of Islamic finance that these should not exist. Women and foreigners have standing to argue, defend themselves, and act as their own attorneys, albeit in severely constricted capacities. Courts are separated due to their subject matter and often are presided by lawyers who are experts in the particular field, as opposed to one larger court staffed by a cleric. There is an inheritance court, contract court, divorce court, and labor court. The criminal court stands apart and strictly follows Islamic guidelines.

As compared to Washington state, it takes time to acclimate both to the Saudi Arabian weather (temperatures reach into the 100s in August) and the Saudi work style. The work week, or "business week," begins on Saturday and goes to Thursday midday prayers (the most attended of the required five daily). Every day is punctuated by prayer-time breaks where, if you are not careful, you will find yourself in an empty grocery store where the doors will be locked, the registers will be closed, and all employees will have scattered. The only day that is completely free is Friday, which is the Muslim Sabbath. On Fridays, nearly every store, mall, Ministry, court, office, restaurant, or business is closed. Even though the work week is long, it is rare that Saudi Arabians are involved in all affairs of business. Expatriate labor, whether from the Philippines, Pakistan, Egypt, or elsewhere compromise the bulk of the Saudi work force. Saudi Arabians themselves often work in governmental or quasi-governmental positions, although their attendance is often not required or expected.

As there is no reciprocity of legal licensing, it is necessary to associate with an individual who has a Saudi Arabian law license. The bar is not one large multi-faceted test. Law is studied in the undergraduate level, and upon graduation the candidate apprentices for almost three years and takes a smaller, more limited bar exam. If a student fails the exam, he may take it again at any time within the next year. Upon finishing the apprenticeship, he is conferred a member to the Lawyers Department of the Royal Ministry of Justice. Such graduates are free to practice any area of law, must pay dues, and must

maintain their credentials by either staying active in the practice of law, or taking a Saudi Arabian version of Continuing Legal Education.

The criminal system is entirely separate, however, and has a separate courthouse next to the national jail. In such a place, punishments can be severe. The criminal courts in Riyadh are held in downtown Riyadh near the headquarters of the Committee for the Propagation of Virtue and the Prevention of Vice, a governmental entity which tasks itself with the enforcement of morals and the Islamic faith. After being accused of a crime, a trial is held with a cleric, or religious-educated judge with a bar license, and the case is heard. The defendant may speak in his or her own behalf and challenge the accuser. The defendant may have an attorney. The trials are often streamlined, and exoneration is decreed or punishment ordered. For smaller petty offenses, a fine, public lashing, or imprisonment may be ordered. For the more serious offenses against property, such as theft, the punishment is amputation of the right hand. For the extremely rare crimes of murder and rape, it is beheading. The square is also a short commute from the court room. And on certain Fridays, after midday prayers, the crowds slowly start to gather. The children come first, followed by their extended families. The experienced bring folding chairs, stools, and umbrellas for the sun. The yellow bricks are now a stained rust color. The drainage grid over the sewer in the middle of the square is removed, and a sturdy but temporary stage is built over it. There is an announcer on a PA system in front of the large hooded man with an axe.

I am told that, as a foreigner, I should not be there. The security situation may best be described as a relaxed vigilance. Everyone is on the lookout. Life as an American expatriate is a never-ending exercise in surrounding oneself with security. Whether it is a large automobile and ever-shifting routes to the office with a driver and bodyguard, or living in a compound with twenty-feet high walls and a tank at the front gate, the security situation is never far from immediate conversation. Fellow expatriates often ask if someone you know worked with or knew a recent victim of a kidnapping or attack. One Australian consultant described life here as "not a question of if something will happen to the expat community, but rather a question of when."

While the court system can be described by a Westerner as generally autocratic, religious, and misogynist, there are many signs of a slow thaw. The highly publicized law of not allowing women to drive has not been enforced in many years. Bribes to judges, Mutawas (Islamic prosecutors/police), and government officials are increasingly rare. In its absence, the court system and civil governance have become more responsive and transparent. The education system and large number of expatriate workers ensure that English is widely spoken and understood. This understanding of English has allowed for a larger role of Western news, movies, and television programming, albeit through the ever-present censorship of the Ministry of Communication. The newly enacted Royal Decree on Corporate Governance is transparent and dependable and has taken many aspects of corporate governance from the Delaware Corporate Code. The stock exchange, even though deemed "un-Islamic" by many leading clerics, functions and has attracted an abundance of wealth given the benefit of high oil prices. Several incredible engineering designs have been initiated. The King has announced the establishment of "economic cities" to be built in the desert. Designed to house almost half a million citizens, the cities will be built from scratch. A bridge is designed to connect Arabia to Africa.

Unlike desert mirages that surround Riyadh, distorting and inverting distant objects, a judicial change can be seen in Saudi Arabia. Not talk of change or promises of such, but real change in the way that can be measured by the society the court serves. The Saudi judicial system is charting its own future and navigating between an ancient legal system, an all-encompassing religion and a modern autocratic ruling family, while trying to judiciously respond to loud voices of disgruntlement within society. Along with international judicial assistance, individual Saudi judges, attorneys, employees, prosecutors, and defense counsel have successfully improved the system's autonomy and efficiency. The road ahead will be bumpy and will not be easy. It has many challenges, including the formidable ruling family and clerical influence, which involves itself in every aspect of the legislative process. But for one WSBA member in their midst, who happens to be a long way from Tacoma, I applaud the Saudi attorneys for hard-fought and hard-won progress. ◊

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De Novo is published for the young lawyers of the Washington State Bar Association. Its general mission is to provide a forum for the exchange of ideas, information, and commentary, and to encourage discussion amongst the readership regarding the broad experience of young lawyers. *De Novo* additionally serves as a vehicle to facilitate the dissemination of information regarding member services, public service, programs, and activities of the Young Lawyers Division.

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