Combating Alternative Facts in Reproductive Health Care

By Priya Walla

Health care — what is quality health care, who gets it, who should pay for it — is a topic of much discussion, especially with the advent of the Affordable Care Act. To some, health care should be a fundamental human right for all, while others see aspects of health care — especially pertaining to women — as a wedge political issue.

At the core of these debates is an acknowledgement that health care providers play an important and special role in being not only providers of care, but trusted providers of information that enables us to exercise informed consent. For many, the human body is a great mystery; physicians empower us with the medical knowledge to turn aches and pains into treatments and therapies. What happens, then, when we cannot trust our providers for medically accurate information?

Since the 1970s, free so-called “clinics” called crisis pregnancy centers (CPCs), or sometimes limited service pregnancy centers (LSPCs), have been posing as walk-in medical clinics for women and girls. They often have no medical professionals on staff, and typically target young, poor, rural and otherwise vulnerable people through deceptive practices.

They use names and advertisements that mimic legitimate reproductive health clinics, their offices mirror express care clinics, and their information appears to be medically based. CPCs advertise their services using persuasive phrases such as “evidence based medical care,” “all options pregnancy counseling,” “high quality medical care,” and “accurate confidential services” to lure clients into their offices.

The funders of and volunteers at CPCs hold a deep-seated belief that abortion is immoral and must be stopped. But regardless of one’s personal beliefs, limiting access to abortion — or any medically necessary procedure — endangers the lives and health of women and girls. They often have no medical professionals on staff, and typically target young, poor, rural and otherwise vulnerable people through deceptive practices.

REPRODUCTIVE HEALTH CARE continued on page 8

Addressing the Five Myths of Document Management

By Kevin Harrang and Marty Smith

New technologies surprise us every day with their sophistication and capabilities. They promise welcome relief from the drudgery of managing information in our business and personal lives.

The latest smartphones can automatically label photos with locations and people. Easy-to-use apps can provide us with the fastest route through heavy traffic. And internet search engines instantly find information from the largest collection of knowledge ever assembled by mankind.

The email and data explosion

Yet, inside our law firms, we continue to struggle with managing an explosion of emails and documents that are coming at us at an ever-increasing rate, and law firms are not alone. Business data are growing now at more than 43 percent year over year. But we are behind in figuring out how to deal with this issue.

Clearly, a firm’s historic collection of knowledge and work product can be a huge asset. Think of the advantages of easily finding and reusing past work, quickly discovering and avoiding hidden conflicts of interest, dodging...

DOCUMENT MANAGEMENT continued on page 10
Gulp, I didn't exactly know how to respond to that one. He then laughed and said, "No worry. Those things sometimes happen. You know, my client just wants to get paid what he thinks is owed to him. Would you talk to your client and then call me back and tell me why payment isn't happening? Perhaps we can short-circuit this lawsuit and get this matter resolved." I told him I would and hung up the phone.

I called our client and learned more about what the case was about and, working with lawyer Jones and the lawyers for the other defendants, the case was settled relatively quickly.

I didn't fully realize right away what had happened in that phone call, but it began to sink in as I continued learning in the succeeding years about how to be a lawyer. In that call, he taught me three things that I have tried to implement ever since.

First, introduce yourself to the lawyer on the other side of a case or transaction, and communicate initially in person or on the phone. Letters, emails and now even text messages can form a force that sometimes can be a barrier to effective communication, and we all know that emails in particular can be wholly misconstrued. Don't neglect the person-to-person dialogue.

Second, recognize that lawyers are people, too. It is not about showing up the other lawyer or making life difficult for him or her. Or, worse, painting the other lawyer as the enemy. Practicing law is a tough job, with pressures from all sides. One of my senior partners always said, "If you can give a lawyer a break, do so."

Obviously, you should not do something that disadvantages your own client, but there is no reason to be a jerk. And, for those of you interested in business development, a major source of referral of new business will be lawyers you have met along the way. Don't burn bridges.

Finally, lawyer Jones's actions in asking for an early explanation of my client's position helped guide our inquiry to the heart of the problem. In other words, he was focused on reaching a resolution for the client, not on the lawyer or the lawyer's actions. It was a reminder to me of the obvious — our only job as lawyers is to help solve a problem for the client.

Using this kind of approach works even in our adversary system, in which we must and do fully represent our clients' interests within the dictates of the Rules of Professional Conduct. On behalf of your clients, you will often aggressively oppose the positions expressed by other attorneys. That is as it should be.

But, that does not preclude you from developing a cordial, or at least not a negative, relationship with the other lawyer, and treating the opposing lawyer as a colleague working to resolve a difficult situation. If you do that, you are more likely to solve your client's problems, and that will lead to satisfied clients, which is everyone's goal.
Bar Bulletin Highly Rated by Our Members

For comparison purposes, we asked respondents to also evaluate a two other legal publications to see how the Bar Bulletin stacks up. The state bar’s “Northwest Lawyer” magazine was highly rated (above average or excellent) by 56% of respondents and the ABA Journal received a 50% rating. That tells me KCBA is doing a very good job with its publication.

The most popular monthly feature of the Bar Bulletin is the Superior Court Presiding Judge’s column, rated as above average or excellent by 67% of respondents. Next up is the monthly Profile article, which is cited by 63% of our readers as a top feature. Round out the top three features at 59% is our monthly Bar Talk column, which contains reports of attorney and judge moves and awards. I won’t take it personally that my monthly column only scored a 49% “excellent” or “above average” score (next time I need to ask my mother to get her friends to take the survey and run up my score).

Here’s what we learned.

First, the Bar Bulletin gets high marks from members for the overall caliber of substantive legal news and analysis it reports each month; 78% of respondents (154 total) rated the Bar Bulletin either “above average” or “excellent” on this question. Only two respondents (154 total) rated the Bar Bulletin “average” score (next time I need to ask personally that my monthly column only scored a 49% “excellent” or “above average” score (next time I need to ask my mother to get her friends to take the survey and run up my score).

Next, I want to share your thoughts about the look of the publication. First, 65% of you find the look appealing and readable, while 19% find it outdated. Also, 57% of you in this latest survey tell us you prefer it in newspaper format, with just 24% saying you’d prefer a magazine format (19% had no opinion).

That said, what about moving away from a print version at all? Hard copies of a monthly publication? Sounds very old school!

Turns out our members prefer hard copy, too. Eighty percent of the respondents asked that we continue to print the hardcopy version even as we continue our work to make our online content more accessible. Just 12% of the respondents suggested that we stop using paper and ink altogether.

Interestingly, that statistic stays fairly constant even if we filter the results to show what Baby Boomers or older (pre-1965 birthdates) want versus what Generation X/Millennials (1965 or later) think. The pre-1965 bunch say “digital only” 5% of the time, while the post-1965 bunch say “digital only” at a 25% rate. Definitely a shift, but since the membership is still evenly divided between both demographic groups, the hybrid print/online solution still seems right to me.

On a related note, I want to encourage readers to check out the Bar Bulletin online to see what you think. Our survey reports that 80% of respondents haven’t read it online. KCBA may test sending a special monthly email with an online table of contents to see if that increases exposure to that alternate way to enjoy the Bar Bulletin each month.

Lastly, while 84% of our respondents reported they read the Bar Bulletin every month, the good shepherd in me is curious to know why the other 16% don’t. Is there something KCBA can do to improve the publication? The answer seems to indicate that I can’t solve this problem, though. The main reason given for not reading the Bar Bulletin: not enough time.

Given the positive feedback so many of your fellow lawyers and judges have offered about our 60-year-old publication, I hope all our members will try to make a little time for the Bar Bulletin. It will be time well spent.

From the Desk of the EXECUTIVE DIRECTOR

By Andrew Prazuch

As part of our Diamond Anniversary celebration for the Bar Bulletin, KCBA conducted an online survey last month to learn how our members see our premier publication. The results are in!

While not a scientific poll (respondents self-selected and the results were not reflective of our overall membership demographics), 260 of you took an average of four minutes each to answer the 13 main questions. Anytime moves and awards. I won’t take it personally that my monthly column only scored a 49% “excellent” or “above average” score (next time I need to ask my mother to get her friends to take the survey and run up my score).

Next, I want to share your thoughts about the look of the publication. First, 65% of you find the look appealing and readable, while 19% find it outdated. Also, 57% of you in this latest survey tell us you prefer it in newspaper format, with just 24% saying you’d prefer a magazine format (19% had no opinion).

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Andrew Prazuch is executive director of the King County Bar Association. He can be reached by email (andrewp@kcba.org) or phone (206-267-7061).

Eisenhower Carlson PLLC is pleased to announce

ARTHUR D. DELONG

has joined our firm as an Associate. Arthur is a business and corporation transactions attorney. His practice focuses on corporate organization, securities offerings, banking, mergers and acquisitions, intellectual property, real estate, and trust and estate planning.

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Facing the Reality of Racial Bias

Supreme Court Rewrites State’s Batson Standard

By Gene Barton

The Washington Supreme Court’s July 6 decision in City of Seattle v. Erickson will effect a sea change in the manner in which peremptory challenges will be reviewed when the result is excusing a minority member of the venire when a minority defendant is on trial. As a unanimous Court stated, “We amend our Batson framework and hold that the peremptory strike of a juror who is the only member of a cognizable racial group constitutes a prima facie showing of racial discrimination requiring a full Batson analysis by the trial court.”

The first paragraph of the Court’s ruling succinctly laid the factual framework for the opinion that followed:

In 2013, Matthew Erickson, a black man, was charged in Seattle Municipal Court with unlawful use of a weapon and resisting arrest. After voir dire, the city of Seattle (City) exercised a peremptory challenge against the only black juror on the jury panel. After the jury was empaneled and excused from the courthouse with the rest of the venire, Erickson objected to the peremptory challenge, claiming the strike was racially motivated. The court found that there was no prima facie showing of racial discrimination and overruled Erickson’s objection.

The Court, which accepted direct review after the Court of Appeals denied discretionary review, reversed. As the Court noted, Batson v. Kentucky6 “guarantees a jury selection process free from racial animus.” At the same time, the Court essentially amended our Batson framework and held that, as noted above, it was not exercised until after the rest of the venire had been dismissed, the jury sworn in and then excused for the day; and (2) if a race-neutral explanation is provided, the court must weigh all relevant circumstances and decide if the strike was motivated by racial animus.

Having established this framework, the U.S. Supreme Court “left the states to establish rules for the particular procedures to be followed upon a defendant’s timely objection to a prosecutor’s challenges.”10 However, the state Supreme Court “has great discretion to amend or replace the Batson requirements if circumstances so require.”11

As to the timeliness issue, the Court noted that in a prior case it had reviewed a Batson challenge brought after the jury was empaneled, but declined to review the timeliness issue.12 “We now choose to address it,” the Court stated.13

Initially, per the Court, “objections must generally be raised ‘at a time that will afford the [trial] court an opportunity to correct [the error]’”14 It further noted that “pleveral state and federal jurisdictions allow Batson challenges even after a jury has been selected and sworn in.”15

In finding that Erickson’s challenge was timely, the Court stated:

Read together, the state and federal decisions have adopted rules requiring that a Batson challenge be brought at the earliest reasonable time while the trial court still has the ability to remedy the wrong. These cases recognize that judges and parties do not have instantaneous reaction time, and so have given both trial courts and litigants some leeway to bring Batson challenges after the jury has been sworn. This is in line with our own jurisprudence. Objections should generally be brought when the trial court has the ability to remedy the error, and allowing some challenges after the swearing in of the jury does not offend that ability.16

Noting that the lower court had “limited … remedia
dial options,” the Supreme Court indicated that the judge “could still declare a mistrial to address any error on the prosecution’s part. … The timing was not ideal, but the challenge was raised when the trial court still had an opportunity to correct it … [T]he trial court still had adequate ability to remedy any error.”17

Moving on to the more pressing issue of “discriminatory purpose,” the Court noted that it has “the power to determine, under appropriate circumstances, whether the traditional Batson analysis should be amended or replaced to ensure the promise of equal protection.”18 In this regard, it resurrected the Court’s ongoing discussion of a “bright-line rule” since its decision in State v. Rhone,19 in which Justice Charlie Wiggins, in a dissenting opinion, stated:

I would have this court adopt a bright line rule that a defendant establishes a prima facie case of discrimination when, as here, the record shows that the State exercised a peremptory challenge against the sole remaining venire member of the defendant’s constitutionally cognizable racial group.20

From there, it was a quick and easy step for the Court to conclude: “We now follow our signal in Rhone and adopt a bright-line rule.”21 That rule provides as follows:

In the past, this court has provided great discretion to the trial court when it comes to the finding of a prima facie case pursuant to a Batson challenge. To ensure a robust equal protection guaranty, we now limit that discretion and adopt the bright-line Rhone rule. We hold that the trial court must recognize a prima facie case of discriminatory purpose when the sole member of a racially cognizable group has been struck from the jury. The trial court must then require an explanation from the striking party and analyze, based on the explanation and the totality of the circumstances, whether the strike was racially motivated.22

In a final note, the Court felt compelled to explain that adoption of the bright-line rule “does not change the basis for a Batson challenge.”

The evil of racial discrimination is still the evil this rule seeks to eradicate. Rather, this alteration provides parties and courts with a new tool, allowing them an alternate route to defend the protections espoused by Batson. A prima facie case can always be made based on overt racism or a pattern of impermissible strikes. Now, it can also be made when the sole member of a racially cognizable group is removed using a

BATSON STANDARD

continued on page 5
peremptory strike. 20

Not all of the justices were satisfied, although — as noted — none dissented. The gist of the two concurring opinions is that the bright-line rule is not a perfect solution, thereby signaling that there still may be more problems ahead.

Justice Stephens called the new rule "neither necessary nor particularly likely to transform the basic framework of Batson into a useful tool for combatting racial bias in jury selection." 21 She noted that Erickson had "made a prima facie showing of intentional discrimination under the first prong of the Batson analysis" and "further demonstrated that the trial court erred by considering his challenge in light of whether there were members of any constitutionally protected group on the jury." 22

She further contended that the rule "is also unlikely to significantly reduce racial bias in jury selection because the ultimate inquiry under Batson remains whether the peremptory strike against a sole member of a constitutionally protected group evidences intentional race discrimination." 23

Finally, Justice Stephens noted that a proposed court rule, General Rule (GR) 37, which is in the midst of the rulemaking process, is designed to "alter the method for evaluating claims of race-based peremptory challenges so that the intentional discrimination that must be proved under Batson is no longer required." 24 The comment process concluded in April and the Court "has convened a work group to carefully examine the proposed court rule with the goal of developing a meaningful, workable approach to eliminating bias in jury selection." 25

The (public) debate has been robust and informative, and has underscored two truths: (1) Batson has largely failed in its promise to eliminate bias in jury selection and (2) finding a meaningful solution goes well beyond simply tinkering with the first prong of the Batson analysis.

… It would be unfortunate if today’s decision … were perceived as somehow signaling that the court has “fixed the problem.” I hope instead that our decision sends the clear message that this court is unanimous in its commitment to eradicate racial bias from our jury system, and that we will work with all partners in the justice system to see this through. 26

In her dissent, Justice Yu said, “I applaud the adoption of a bright-line rule," but still expressed her doubts about the Court’s decision: I am concerned that our solution assumes too much and falls short on ensuring that no juror is removed solely because of race, gender, sexual orientation, or religious beliefs. I am unable to say with certainty that every peremptory challenge by the State against a person of color is motivated by racial animosity, and adopting a bright-line rule that does not extend to members of other cognizable groups does not address discrimination on any basis other than race. 27

In her view, "the basic framework of Batson does not work, and the record in this case demonstrates the awkwardness and impracticability of the so-called Batson challenge." Given her reservations, Justice Yu joined with Justice Steven Gonzalez “in calling for the complete abolition of peremptory challenges.” 28 It was in Saintcalle that Justice Gonzalez wrote: [T]he use of peremptory challenges contributes to the historical and ongoing underrepresentation of minority groups on juries, imposes substantial administrative and litigation costs, results in less effective juries, and unfairly amplifies resource disparity among litigants—all without substantiated benefits. The peremptory challenge is an antiquated procedure that should no longer be used. 29

Gene Barton is the editor of the Bar Bulletin. He is a shareholder with Karr Tuttle Campbell where he maintains a general litigation practice. He may be reached at 206-224-8030 or gbarton@karrtuttle.com.

1 Erickson, No. 93408-8 (July 6, 2017), slip op. at 2. Five justices signed the principal opinion authored by Justice Susan Owens. Justice Debra Stephens issued a separate, concurring opinion, joined by Chief Justice Mary Fairhurst. Justice Mary Yu also issued a separate, concurring opinion.
2 Id. at 1. Erickson was eventually convicted.
4 Erickson, slip op. at 1-2.
5 Id. at 4-5.
6 Id. at 5-6 (citations omitted).
7 Id. at 6 (citing Batson, 476 U.S. at 99).
8 Id. (citing State v. Saintcalle, 178 Wn.2d 34, 51, 309 P.3d 326 (2013)). Saintcalle has been considered the Washington Supreme Court’s principal Batson case.
9 Id. at 7 (citing State v. Rhone, 168 Wn.2d 645, 652 n.5, 229 P.3d 752 (2010) (plurality opinion)).
10 Id.
11 Id. (citing State v. Wicke, 91 Wn.2d 638, 642, 591 P.2d 452 (1979)).
12 Id. (citations omitted).
13 Id. at 8-9 (citing Wicke, 91 Wn.2d at 642).
14 Id. at 9.
15 Id. at 10 (citing Saintcalle, 178 Wn.2d at 51).
16 Id. at 10-12.
17 Rhone, 168 Wn.2d at 659 (Wiggins, J., dissenting).
18 Erickson, slip op. at 15.
19 Id. at 15 (citing Batson, 476 U.S. at 94; Saintcalle, 178 Wn.2d at 42).
20 Id.
21 Erickson, Stephens, J. (concurring), slip op. at 1.
22 Id. at 1-2 (emphasis in original).
23 Id. at 2 (emphasis in original).
24 Id. at 5.
25 Id. at 4-5.
26 Id.
27 Erickson, Yu, J. (concurring), slip op. at 1.
28 Id.
29 178 Wn.2d at 69-70.
Profile / Bruce Hilyer

A Man for All Seasons

By Peter Ehrlichman

Bruce Hilyer is a complex, highly intelligent man with a great sense of humor, currently serving the community as a solo mediator in Seattle. As this profile will show, Bruce is a multi-faceted man. He is a fourth-generation attorney, who has succeeded in a significant and impactful way in jobs that “benefit” from having a law degree: attorney; counsel to the mayor; King County Superior Court presiding judge; and now arbitrator and mediator. And he appears to have achieved a sense of balance in pursuit of his non-law life.

The Honorable Hilyer graduated from Mercer Island High School in 1969, where he served on the Inter-High School Council (group of eastside high schools). He attended Cornell University, receiving a B.A. in government (1973) and later his J.D. from UW Law (1979, Order of the Coif). While juggling law school (he graduated at the top of his class) and clerking for a small firm, Bruce helped organize the door-belling efforts on behalf of Charlie Royer's Seattle mayoral campaign.

He joined the King County prosecutor's office upon graduation and spent two years there. Former colleague Becky Roe recalls that Bruce and another assistant prosecutor helped convict a murderer, only to learn that the defendant's dad was a relocated mobster who did not take kindly to the conviction. A contract was put out on Bruce's life (for the insulting sum of $10,000). Bruce had to wear a bulletproof vest, live with guards and occasionally hide out. At an early stage in his career, Becky noted, Bruce showed that life would never be dull around him.

After trying felony cases for a couple years, Bruce left the prosecutor's office to become legal counsel to Mayor Royer (1982–85) — all that door-belling paid off. In the same fashion by which the current sitting Seattle mayor has proceeded, Royer came to lean on this sharp, engaging young attorney to help guide him through the multitude of legal issues facing the City of Seattle.

Following his stint in government, Bruce spent three years in a small firm where he worked alongside distinguished attorneys, including the late Susan Agid, John Keegan, and his good friend and mentor Mike Cohen (currently of counsel at Dorsey & Whitney). What Bruce recalls learning from Cohen about the legal profession is: “We are in the service business in which people are the most important assets — clients, colleagues and staff. Focusing on their unique humanity, everything else will take care of itself.”

In 1988, Bruce joined a bigger firm, Culp Guttery & Grader, which had been founded by the legendary Bill Dwyer before he left to join the federal bench. It had 45 attorneys, which in those days was a “big” firm, and it allowed Bruce to work on some large cases with some great lawyers.

That experience prepared Bruce to hit the ground running when he opened his own law office in 1994, emphasizing commercial, environmental liability and health law cases. One of his earliest passions was pilot-coast to coast for depositions and trial 18 times.

Bruce left private practice to become a King County Superior Court judge in 2000, appointed by Gov. Gary Locke. Judge Hilyer was elected presiding judge by his peers in 2008 and served in that role through 2010. Current Presiding Judge Laura C. Inveen described Judge Hilyer’s work on the bench as follows: “He excelled … he had the respect of his fellow elected officials in both the executive and legislative branches, and had an extraordinary reputation for working together with them.”

Tough budgetary times required Judge Hilyer to be the ultimate tightrope walker. “His experience with revenues and competing needs in lean times,” Judge Inveen said, “lent to the establishment of court programs in the family law area which provided services to pro se litigants, while providing a funding source as well.”

All agreed he was an extremely effective administrator, working with the county executive, council and the bench to find solutions to a severe financial crunch affecting the court. Attorney General Bob Ferguson recalls: “I’ve known Judge Hilyer for a long time. I worked closely with him when I was on the King County Council and he was the PJ. Bruce was a dedicated public servant and advocate for justice.” Judge Hilyer’s work on behalf of the bar and bench resulted in him being named “Judge of the Year” in 2010 by the KCBA.

While hearing cases, Judge Hilyer earned a reputation for being an excellent trial judge. Trial attorney Mike Wampold tells the story of trying a case to the Hilyer bench 10 years ago, which involved very technical and scientifically complex facts. It was a case that Wampold had carefully prepared for two years. At the end, Judge Hilyer prepared findings and conclusions that, according to Wampold, demonstrated that “he understood the case better than I had.” Wampold’s high assessment is echoed by others with whom we spoke, including Judge Helen Halpert of the King County bench, who called him a “great judge, very smart.”

Not everyone knew of Judge Hilyer’s sterling reputation, however. For years while serving on the King County bench, he would work out at the Washington Athletic Club in the morning. His day would begin by arriving at the WAC in his gym clothes, worn underneath his overcoat.

One day, he was stopped by a Seattle police officer as he approached the WAC. He was asked to open up his coat, which as presiding judge he was not used to doing. The officer was responding to a report that a flasher was frequenting Sixth Avenue and Union Street early in the mornings. Fortunately, that day Judge Hilyer had remembered to wear his running shorts, according to our source. No scandalous headlines about the PJ followed.

After a very close, but unsuccessful statewide primary race for state Supreme Court, it was time for Bruce to consider “what now?” As Seattle attorney Brad Keller noted: “Bruce can’t take his finger off the reset button. He’s been a lawyer with a thriving private practice, a prominent judge, a successful real estate investor, a politician and most recently, an accomplished go to mediator.”

Bruce left the bench in 2013 to begin his fourth
or fifth legal career, as mediator and arbitrator, first with JDR, then as principal of his own firm, Hilyer Dispute Resolution. Fellow mediator and friend Jim Smith, Jr., reports that when Bruce asked him about pursuing a new career as mediator and arbitrator, Smith responded: “I told him that it was a fascinating career, which, in my view, would be a natural and unique match with his own skills. That turned out to be an understatement.”

Bruce describes his current work as a mediator as challenging. “Being a mediator,” he says, “is different than being a judge and harder in some ways because it is usually easier to decide a case than it is to convince the parties that a reasonable settlement is achievable. Of course, as an effective mediator, you must read the mediation statements, digest and understand the issues, but that may not be enough to settle the case.

“The lesson I have learned above all else is the same that my mentor explained to me 35 years ago — it’s ultimately human beings to whom we provide service, whether as lawyers, judges or mediators. And to be an effective mediator, in my opinion, the indispensable quality is that you respectfully and faithfully engage with the litigants and their lawyers as human beings.

“At times that may mean getting yelled at (I have very thick skin), or ignored, or cried to, but these all reflect aspects of being human. So even though every case is different, it is that challenge to use the law, the evidence, and everything you have learned about being human that makes being a mediator such an amazing occupation. Besides, in what other profession is having gray hair more useful than such an amazing occupation. Besides, in what other profession would you enjoy spending time with a wealth of real-world experience, Bruce Hilyer is a person socially conscious, but his personal history, I believe, now informs his long-held views in a meaningful and deep way,” Colleagial, practical, humorous and with a wealth of real-world experience, Bruce Hilyer is a person you would enjoy spending time with. Hopefully you will get that chance someday.

Peter Ehrlichman is a long-time friend of Bruce Hilyer (since 1967). Ehrlichman is a senior trial partner in Dorsey & Whitney LLP’s Seattle office.

Smith reports that Bruce shines as a mediator. “It requires patience, understanding, liking people, and a fascination with the process of negotiation,” Smith says. “Bruce has all of those skills. No mediation with Bruce is rushed to conclusion. Bruce always has in mind the fact that the key hallmark of a good mediator is the ability to listen to the parties and their counsel, acknowledging the fact that a successful mediation will have to be a substitute for the parties’ day in court. He always has time to listen.”

Others have also experienced what Brad Keller has seen firsthand. “Whether with a smile or that gleam in his eye, both as a judge and now as a mediator,” Keller relates, “Bruce has that uncanny ability to, without saying a word, let you know when he thinks you are out to lunch.”

When not involved in the practice of law, judging or mediating, Bruce also has pursued many a life adventure:

• as the father of two (Brett, 32, and Brittany, 25);
• horseback rider (his recent shoulder injury from a fall is not illustrative of his usual skills);
• pilot of small planes (Mooney Rocket);
• river rafter and kayaker;
• hunter;
• 2016 Burning Man attendee (the photo, taken by a prominent colleague mentioned in this article, is worth more than a thousand words); and
• world explorer, including Machu Picchu.

Travel is a key component of Bruce’s life, per Smith. “This is a man who, unlike some of us who still practice law, understands the importance of balance,” Smith says. “In Bruce’s world there is more to life than work and we are better and more effective in our careers for understanding this.”

Experiencing the wilderness is truly a man for all seasons.

Until recently, Bruce was not aware that he is a fourth generation attorney. He always knew his father Gale P. Hilyer, Jr. was a lawyer, who practiced in Seattle from 1951 to 1979. And he knew that his grand-father Gale P. Hilyer, whom he never met, worked in a private law practice and for the U.S. government.

But he never was told that his great-grandfather Andrew Hilyer, was a distinguished lawyer in the D.C. area in the early 1900s, or that this early relative was born a slave in Georgia and became the first African-American graduate of the University of Minnesota. Turns out, Andrew Hilyer was a noted civil rights leader in the Booker T. Washington and W.E.B. Du Bois era, who became a regent of Howard University.

As Judge Halpert wrote: “Bruce, certainly, was always socially conscious, but his personal history, I believe, now informs his long-held views in a meaningful and deep way.”

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of the people who are seeking help.

For example, many CPCs get people in the door with the promise of free ultrasounds that purported to be diagnostic, but are actually performed by non-medical professionals who cannot diagnose life-threatening complications such as an ectopic pregnancy. Other CPCs claim to provide abortion services to attract clients, but manufacture delay by telling the pregnant woman that they have nine months to decide whether to terminate a pregnancy, when legally pregnant persons have only until fetal viability to exercise that choice.2

When a pregnant person decides to terminate their pregnancy, some CPCs have told the person to wait because there may be a miscarriage. This tactic could result in a later-term abortion, which would be more expensive and carries additional health risks, and ultimately prevent a person from asserting their constitutional right to seek an abortion.3

While not every CPC uses all of the above tactics, these centers do have some go-to strategies to delay and prevent their clients from seeking care. Typically, CPCs rely on three standard “alternative facts” to dissuade people from obtaining an abortion.

First, they say that abortion causes breast cancer; second, that abortion will cause infertility; and, lastly, that people who choose to terminate their pregnancies are likely to suffer from “Post Abortion Syndrome” — a concocted condition that has been disapproved by the American Psychological Association in a peer-reviewed study.4

When seen in the context of these aggressive and duplicitous recruitment methods, it becomes clear that these three main lies are more than mere opinions on abortion; they are manipulation tactics. This significant threat to reproductive health care came to the attention of the King County Board of Health earlier this year, prompting an investigation into the prevalence of CPCs in King County and their effect on people seeking reproductive health care.5

After months of testimony and research, the Board concluded its investigation with the passage of an ordinance, which takes effect September 16, to help people distinguish between fake and legitimate clinics. The ordinance requires facilities that fall into the County’s definition of a “Limited Service Pregnancy Center” to post signs stating, “This facility is not a health care facility.”6

In reaching this decision, the Board consulted public health experts, women’s rights advocates and King County residents, all of whom were overwhelmingly concerned about the vulnerability of those targeted by fake clinics. As one medical provider testified, patients are entitled to informed consent before making medical decisions. Patients who have not received all of the relevant information about their options, potential health benefits, risks and alternatives cannot give fully voluntary consent.

Even though the proposition of informing potential CPC clients about the truth of their “doctor’s office” should seem non-controversial, anti-abortion activists showed up in large numbers to the Board meeting to fiercely oppose the proposed neutral and informative signage. They raised concerns that regulating CPCs would be a violation of their constitutional freedom of speech and constitute religious discrimination.7 At the Board hearing, some CPC supporters even claimed that the provision to post the required sign would cause such organizations to shut down permanently. The balancing act of protecting people in need of medical care, without infringing on protected speech or religious freedom, is a serious and delicate one. The King County Board of Health is among many city, county and state bodies that have attempted to warn people about the misleading nature of LSPCs through lawmaking. Though the results of legal challenges to such laws have been mixed, California’s recent Reproductive Freedom, Accountability, Transparency, Preparative Care, and Transparency (“FACT”) Act, which contains a section that is nearly identical to the County’s new ordinance, has been upheld by the Ninth Circuit Court of Appeals; a petition for certiorari to the U.S. Supreme Court is pending.8

The FACT Act survived both free speech and free exercise clause challenges and is broader than the King County ordinance. The Act requires both non-licensed and licensed medical personnel to post notice to clients, whereas the County ordinance regulates LSPCs as defined by the Board.9 As for the free speech claim, the Ninth Circuit held that since the Act’s “primary purpose is to communicate information to patients about reproductive medical services,” it was “professional speech” and well within the purview of the State’s regulatory power.10

The Court reasoned that since the Act does not require the act of speech in question, it is merely about the content of speech. The Board found that the Act is not a endorsement of any particular viewpoint, but rather a requirement that CPCs disclose whether they perform or provide referrals for abortion, which could be a violation of the Free Exercise Clause.11

The San Francisco and FACT Act cases are closely together, both aimed at the same end, which is the goal of King County’s new ordinance because they suggest that laws requiring an informational notice about CPCs are likely to withstand First Amendment speech and other challenges.12

In other jurisdictions, courts have struck down local ordinances that, by different means, have sought to protect women from the very same misinformation. Compelled speech at CPCs that encourages pregnant women to seek the care of a doctor has been struck down when other alternatives, such as a city-wide advertisement campaign, exist.13

Additionally, tying the threat to shut down a CPC to compelled speech, on an issue as hotly contested as abortion, has been held to be a violation of the First Amendment.14 In two circuits, requirements that CPCs disclose whether they perform or provide referrals for abortion, emergency contraception or prenatal care have not withstood intermediate or strict scrutiny review.15

Even though the results have varied, the lawmaking bodies in all of these jurisdictions (California, San Francisco, New York City, Baltimore and King County) have made similar factual findings about CPCs and their immediate threat to individuals and public health. By posing as real health clinics, CPCs put people at risk of forgoing prenatal care, making crucial care for existing pregnancies more difficult, and being forced to go through with an unintended pregnancy.

The number of LSPCs in the United States vastly outnumber real reproductive health clinics.16 Meanwhile, actual abortion clinics are driven to close their doors due to excessive, unnecessary and targeted anti-abortion regulation, along with threats of violence.17

Hopefully, King County’s new notice requirement will help people seeking reproductive health care make medically informed decisions free from misleading and deceptive tactics designed to deny and delay timely access to a health care provider.18

Piyya Walia is a staff attorney at Legal Voice, a progressive feminist organization that uses the power of the law to advance women’s rights in the Northwest. Legal Voice uses that power structure to dismantle sexism and oppression, specifically advocating for the region’s most marginalized communities: women of color, lesbians, transgender and gender-nonconforming people, immigrants, people with disabilities, low-income people and those affected by gender oppression and injustice. Legal Voice was one of the organizations consulted by the Board of Health about the King County’s Ordinance Limited Service Pregnancy Centers.

1 A CPC supporter stated this “alternative fact” at the Board hearing.

2 RCW § 9.02.110.


5 The King County Board of Health is made up of elected officials from the King County Council, the suburban cities of King County, the Seattle City Council, and appointed public health experts and health professionals. RCW § 17.50.535.


7 King County Board of Health, BOH 17-04 (July 20, 2017), available at http://kingcounty.legistar.com/; Legislation

8 It appears that most, if not all, CPCs are religiously affiliated. See Nikki Madison, “Crisis Pregnancy Centers: What to Know;” Teen Vogue, June 2, 2017.


10 See note 7, supra.


12 Id. at 1207.

13 Id. at 1121 citing Stormans, Inc. v. Wiesman, 794 F.3d 1004, 1075–76 (9th Cir. 2015).

14 Id.

15 Evergreen As’n, Inc. v. City of New York, 740 F.3d 290, 294 (2d Cir. 2014).

16 Id.

17 Id.; Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Baltimore, 721 F.3d 264, 293 (4th Cir. 2013).


In Memoriam — Judge Joan DuBuque

A Court Leader and Champion of the Vulnerable

By Judge Deborah Fleck (ret.)

When Joan DuBuque was appointed to the King County Superior Court bench in November 1989, she already had a fine reputation as a judicial officer. In fact, practitioners held her in awe when she served as a family law commissioner from January 1984 until her judicial appointment.

With hundreds of pages to read and absorb, she gave her logically constructed oral decisions, often referring to declarations and orders filed in earlier hearings. We all wondered, how in the world does she do that? She kept notes and clearly had reviewed them when the case came before her again some months down the road. As attorneys, we knew we needed to be on our toes.

King County Superior Court Chief Administrative Officer Paul Sherfey marveled at Judge DuBuque’s 30 years of service on the King County Superior Court bench:

Judge DuBuque championed many causes, most significantly focusing on children and families, always working to improve and provide effective justice system solutions for our most vulnerable. Her keen intellect, amazing memory and her energetic passion were present in all her many leadership roles in our court. Even after leaving our bench, she remained involved and in contact, suggesting further improvements in our courts’ processes, always focused on improving services for victims and the most vulnerable in our community.

Judge DuBuque graduated from the University of Washington with a bachelor’s degree in political science in 1974. She received her Juris Doctor cum laude in 1977 from the University of Puget Sound (now the Seattle University) School of Law. She served as an assistance deputy prosecuting attorney for King County, handling interstate child support enforcement, non-support and paternity cases.

She was in private practice for five years with an emphasis on domestic relations, personal injury, real property and small-business representation. During that time, she participated in the Country Doctor Volunteer Lawyers Clinic and worked with the Northwest Women’s Law Center. Judge DuBuque was recognized in 2003 with the Judge of the Year Award by Washington Women Lawyers for her work in Unified Family Court.

In 2005, Joan was also recognized with the Washington State Bar Association’s Champion of Justice Award.

Judge DuBuque was a highly effective leader on the King County Superior Court. She served as the chief judge of the Unified Family Court and for a decade led a coalition addressing the difficult issue of domestic violence.

“Joan DuBuque worked tirelessly to improve the Superior Court’s ability to handle cases involving children and families,” recalled former Presiding Judge Michael Trickey, now serving on the Court of Appeals.

Jorene Reiber, director of Family Court Operations, remembered Judge DuBuque’s work — and her impact.

She served as the regional co-chair of the DV/CPS Child Maltreatment effort from its inception in 2004 until 2014. Under her leadership, [an interdisciplinary group] came together to create guidelines for an effective, coordinated response to DV and child abuse/neglect in our region. [Their work product], the Domestic Violence and Child Maltreatment Coordinated Response Guideline, has served as the backbone for improved and coordinated services to families.

Her years of collaboration and commitment to the families served in our court provide an impressive legacy for this strong, courageous judge.

Judge DuBuque understood that serving as a judge involved far more than sitting on the bench hearing cases.

Administering a large urban court of 53 judges and up to a dozen commissioners takes a tremendous amount of effort — by judicial officers as well as staff. Joan chaired and/or served on no less than 18 of the Court’s committees — likely an historical record. She served in all court departments and presided over high-profile cases including those involving the death penalty, giving every case, large or small, her careful attention.

She always made time to mentor new judges. “When I came to the bench, no one was more generous with their time and wisdom than Joan,” said Judge Lori-Kay Smith. Retired Judge Harry McCarthy recalls:

“I will miss her warmth, humor and her generous mentoring. She was not only an outstanding judge, but she represented the institutional memory of the court. I listened in awe at judges’ meetings to her explanations of historic policy and tales of how the court functioned in earlier times. She was a great teacher, particularly in family law, for new judges like myself who had no background in that most important part of the Court’s business. Above all, I will miss her charm and her wisdom.”

Justice Faith Ireland remembers that “Joan always went the extra mile to serve and lead.” When he was still a practicing attorney, retired Judge Michael Fox remembers watching Joan on the family law motions calendar, always dignified and decisive. “That’s the kind of judge I want to be,” he thought. “I never quite got there.” He remembers her as his friend and hard-working colleague: “She was the best among us.”

Judge DuBuque retired in May 2014 and passed away on July 24. Her only child, Tom Reanier, returned to Seattle from his home in California to be with her and at times care for her during the last four years of her life. They were able to take a number of trips together to the national parks in the west including the Grand Canyon, which they both thoroughly enjoyed. Joan loved Husky football and Irish literature, and was an avid birdwatcher, a passion she was able to pursue on her trips with her son.

“There was no stronger advocate than Joan for the Court, the people who worked there or the community we served,” recalled Court of Appeals Judge Michael Spearman. Former Presiding Judge Dick McDermott remembers that Judge DuBuque was always willing to take difficult assignments, noting that she performed superbly as a Superior Court judge. Simply put, he states, “Judge Joan DuBuque was an icon on our court.”

It was an honor and a privilege for those of us on the bench to serve with Joan and a pleasure to know her. She was also a valued friend to many in the bar and the community. Joan was an incredibly bright and logical thinker, with good judgment and a compassionate heart — just the right combination to be an excellent judge. I can think of no greater compliment to a judge — one that fits Judge Joan DuBuque to a T.

You served justice well, Your Honor. ■
repeated mistakes, and immediately being able to tout detailed knowledge about your firm’s experience with a prospective client. But, the reality is, few, if any, firms are finding they can take advantage of all that their data can offer.

You can blame the technology

One reason is the technology that's currently available in the legal sector. Managing information is not a new problem; in fact for many years, a plethora of products have promised relief.

But historically these solutions have proven to be cumbersome, time consuming and expensive to implement, so many lawyers are reluctant to try them. The data back this up. According to the ABA, as of 2016, only 56 percent of all law firms have adopted a formal document management system and that number is even less for small firms.  

But ...the enemy may be us

A second reason, however, may be us. Ironically, as we mentioned above, outside the legal profession, sophisticated technology is doing much of the work of managing information. These fresh approaches have the potential to completely change how data are handled in our law firms, but we lawyers may need to set aside some long-held assumptions about managing information to give approaches that are emerging in the legal market a chance.

The following five long-held assumptions, all rooted in the world of paper, are holding us back.

Myth #1: You have to re-save documents into a special repository to properly manage them.

Every document management system on the market today has this as its central thesis: Electronic documents are like just like paper ones — if you want to find them later, you need to organize and store them centrally.

It's easy to come to this conclusion, given that it's been true for things like books, at least since the original Library of Alexandria in the third century BCE. But it's not true anymore. Unlike paper documents, electronic files don’t need to be kept together to be searchable, as long as the system knows where they are.

It's just like the worldwide web: no one organizes it, and yet you can find almost anything because Google or Bing indexes everything for you.

Myth #2: Documents need to be manually tagged, profiled or otherwise categorized.

Besides manual uploading, the other common feature of traditional document management products is that they task users with the chore of filling out profiles for every document entered into the system. Users need to specify whether something is a contract or an agreement or pleading, not to mention the name of the client, client number and the like.

Not only is this time consuming and bothersome, it is also entirely unnecessary. Search technology is now sufficiently sophisticated that documents can be easily and quickly located with simple keyword searches.

No longer does a document need to be manually categorized and tagged to be found by the system. Systems that still require manual tagging or profiling of documents are wasting the users’ time.

Myth #3: Taxonomies are the key to organizing documents.

Everyone who has installed a document management system knows that you start by trying to figure out a taxonomy for your organization — the classification system for all your documents.

And if you've tried this, you know how challenging it can be to figure this out. Worse, whatever you figure out for your categories gets dated and inaccurate over time, which is a real problem because you can't readily change what you've done in the past. All that need happen for your taxonomy to become out of date is for a corporate client to change its name. So much for all your careful document tagging and categorization.

What's the alternative? Just like with document tagging and profiling, the newest approaches to data management don’t need taxonomies or categories to find what you’re looking for.

Myth #4: You can make people use a document management system.

This is probably the most overlooked problem with current document management systems. It is usually just assumed that when asked (or even told), users will put all their documents into the system.

But where this takes time and requires multiple manual steps, even the most well-intentioned users will fall behind on compliance. No wonder that when actually measured, organizations typically find that fewer than 50 percent of their documents ever make it into the document management system.

Myth #5: You can't just let people organize and store their documents however they please.

It sounds like chaos to let people do whatever they want when it comes to naming, storing and filing their documents. What's countercuitive, however, is that requiring users to save their documents a second time in a central document management system is what creates disorder.

Users already create, name, organize and save their documents locally on their PCs. Asking users to upload documents they’ve already named and saved into a central system with a different organizational structure is inefficient and ineffective. The best technologies today can collect that information easily.

What to do now

There is much we can learn from other industries. From our bar associations to legal technology conferences to a plethora of new legal-tech publications, resources abound. As lawyers who have long been dedicated to improving the practice of law, we encourage every attorney to explore the latest data management technologies. Most of all, we encourage keeping an open mind.

Kevin Harrang, Esq., and Marty Smith, Esq., are founders of MetaJure, Inc. (www.metajure.com), a legal tech company that is helping law firms successfully drive efficiencies by automating email and document management. For almost three decades, Harrang and Smith have been legal innovators. Harrang spent 18 years with Microsoft, most recently as deputy general counsel for legal operations. Smith established the Intellectual Property Practice Group for Preston Gates & Ellis (now K&L Gates), co-founded one of the first eDiscovery firms (AtteneX) and for 25 years advised leading-edge tech companies and organizations. Harrang and Smith can be reached at kharrang@metajure.com or marty@metajure.com.

1 See www.metajure.com/releases/IDC-states-workers-lose-a-huge-20-productivity-due-to-document and www.idc.com/infographics/knowledgeworkers. According to the International Data Corporation’s 2015 study, information workers (including lawyers and other professionals who are connected to the internet and create, edit, review and/or approve electronic documents) lose 2 hours and 16 minutes each week searching, but not finding, the right documents, and another 2 hours recreating documents that can’t be found. Time wasted in document creation and management activities cost firms $7,342 per information worker per year. For a firm with 100 lawyers, that amounts to more than $724,200 annually.


3 Based on MetaJure, Inc.’s customer data.
Divorce is not easy, but if you genuinely put your kids first, that dictates the civility you should show each other. What example are you otherwise?

— Dawn French

By Sharon Friedrich and Jennifer A. Forquer

As family law attorneys, we have all had those “high conflict” cases that are difficult. There are many reasons why a case may be high conflict and sometimes there is not much that can be done to alter that.

However, as family law attorneys and pursuant to RCW § 26.09.002, when there are children involved, we need to keep the interests of the children at the top of the list of priorities for our clients. Sometimes that calls for thinking “outside the box,” working to decrease conflict as much as possible, and educating our clients so that they can do it too.

Be honest with your clients and be prepared to talk with them about the weaknesses in the facts of their case and the limitations of the court system. Invest time in educating your clients about the process and provide information that will assist them in making decisions as the case moves forward. Help your clients consider their long-term goals and then consider those goals when making decisions about a short-term issue.

Talk to clients about the alternatives to litigation. Provide clients with information about conflict and the impact of conflict on children, not only during the pendency of their family law matter, but after it is concluded. Sometimes just this bit of advice can help clients rethink how they wish to handle their case.

Understand that it can be difficult for clients to think past the litigation and think about their future relationship with the other parent once the litigation is over. Clients are often focused on the reasons for the demise of the relationship and fearful of the unknown future. Spending some time with your client exploring how they envision their children’s future and the role of each parent in that future can sometimes help them see past their own immediate and very real pain and allow them to take action to increase the degree of civility with the other parent.

Ask your client what they want their children to experience when their parents interact at their extracurricular activities, graduation events, college visits or even during transitions between households under the parenting plan. How do they envision their child’s wedding — do they want it to be one of celebration where their parents are involved? How about the birth of a grandchild?

Spend time with your clients discussing alternatives that might help reduce conflict related to their children. Some of these other alternatives can include:

• Would the involvement of a parenting coach be beneficial?
• Would the child(ren) benefit from the parents receiving feedback from a child specialist? Child specialists meet with the children, not for the purpose of conducting an evaluation, but for the limited purpose of collecting information on what the children are experiencing and then providing feedback to the parents. Sometimes even attentive parents can miss what is really going on with their kids when they are in the midst of a divorce.
• Do the child(ren) need counseling? If the parents agree that their child(ren) can benefit from counseling, can the parents also agree that the therapist will not be involved in the litigation and that therapy notes, etc., shall remain confidential — meaning that neither parent will seek this information?
• Would the parents benefit from meeting with a child psychologist to discuss the needs of children at different ages, development levels or when children have special needs?

Be very direct with your clients about cooperation in the litigation process and what the process actually entails. There are many aspects of cooperation in the litigation process.

Additional Thoughts on the Issue of Civility:
Discovery in Family Law and the Effects of Conflict on Children

This is a quarterly column series regarding current and practical issues in the practice of family law.

Authors Sharon Friedrich (sfriedrich@integrativefamilylaw.com) and Jennifer A. Forquer (jforquer@integrativefamilylaw.com) are partners with Integrative Family Law (formerly known as Carol Bailey and Associates). They focus on complex family law cases and welcome topic suggestions or requests for future columns.

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A New Environment for Climate Change Litigation

By Marina Cassio
(First of Three Parts)

With the federal executive branch backtracking from Obama-era climate change programs, the judicial branch may be increasingly receptive to novel forms of climate change litigation. In Juliana v. United States,1 a small group of young people and a climate scientist representing future generations are suing the federal government for violating their asserted constitutional rights to a stable climate system. In November of last year, U.S. District Judge Ann Aiken denied a motion to dismiss that complaint.2

In June, Judge Aiken fully adopted the recommendation of Magistrate Judge Thomas Coffin to deny a related motion for interlocutory appeal.3 Judge Coffin had found that the merits of the Juliana plaintiffs’ admittedly ground-breaking claims were so strong that the denial of the motion to dismiss was not subject to reasonable difference of opinion.

Both the denial of the motion to dismiss and the denial of the interlocutory appeal represent an unusual judicial receptiveness to climate change litigation. The fate of Juliana and other cases like it is worth watching closely as the federal judiciary reacts to the new administration.4

I. Background

Famous climate change cases of the recent past have tended to involve statutory disputes rather than constitutional law or even common law (e.g., tort) disputes. For example, in Massachusetts v. EPA,5 the U.S. Supreme Court first held that EPA has the authority to regulate greenhouse gas (“GHG”) emissions under the Clean Air Act. The Court later narrowed that decision in Utility Air Regulatory Group v. EPA,6 holding that EPA’s regulations reaching businesses exclusively on account of their GHG emissions were not authorized by the Clean Air Act.

The pending case of West Virginia v. EPA,7 asks, among other things, whether a previously unused section of the Clean Air Act can support the Clean Power Plan’s requirement that power plants bring about external forms of energy savings, or possibly just shut down, in order to meet emissions targets. Back when EPA was eager to stretch its statutory authority to tackle the immensely complex problem of climate change, these cases were potential game changers for industry. In the present political climate, however, these cases may have short-lived effect.

Today, other forms of litigation related to climate change may have a greater likelihood of directly affecting the industry in the near future. These may range from class action tort claims to National Environmental Policy Act (NEPA) challenges against individual projects to investor securities lawsuits.8

With the full scope of these cases, basic climate change science is generally readily accepted.9

Though doubts about the fundamentals of climate science — the occurrence of climate change and its cause by human activities — may still exist in the realm of the public discourse, they are not often entertained by the courts. From NEPA documents to judicial decisions, the international scientific consensus that climate change is happening, that it is both caused by and likely preventable through human activities, and that it presents an actual perilous risk, is taken seriously. The obstacles to judicial relief are a matter of who can be held liable and who has the authority or responsibility to do something about it.

Juliana represents a new type of climate change litigation, in which the plaintiffs are bringing against the federal government grounded in constitutional rights and/or the public trust doctrine. The plaintiffs in Juliana are coordinated by a nonprofit organization called Our Children’s Trust,10 promoting a theory of the public trust doctrine most visibly advanced by Professor Mary Wood at the University of Oregon.11 Our Children’s Trust has brought a series of similar cases linked by their theory of the public trust doctrine. So far, Judge Aiken (a graduate of the University of Oregon Law School) appears to be their most receptive audience.

In November 2016, Judge Aiken denied the government and industry intervenors’ motion to dismiss the plaintiffs’ complaint.12 The question at the motion to dismiss stage is whether, assuming all of plaintiffs’ factual allegations to be true, the plaintiffs could possibly be entitled to legal relief. Judge Aiken held that neither the standing doctrine, the political question doctrine, the novelty of plaintiffs’ asserted constitutional rights, nor the novelty of applying the public trust doctrine to the federal government, should bar the plaintiffs’ claims at this early stage.

By denying the motion to dismiss, Judge Aiken allowed plaintiffs to continue the lawsuit by seeking the factual evidence to support their claims on the merits. The key allegations the plaintiffs will seek to substantiate through discovery are: (1) that the federal government, known for its role in climate change, is caused by human GHG emissions and presents serious risks to the American people; and yet (2) that it has deliberately disregarded whatever amount it would take, all else being equal, to bring expected planetary warming to 3.5°C (i.e., eliminate the country’s 25% contribution to the 2°C of extra warming).

In light of this structure, the potential effect of the Juliana litigation on industry is fairly indirect — even if the litigation were successful, there would still be a lot of flexibility in how the various parts of the federal government brought about the necessary emissions reductions. Nevertheless, if the court-ordered emissions reduction is sufficiently substantial, assuming that Congress and the federal agencies actually complied with the order, high-emission industries would expect significant economic effects whether in the form of higher taxes, stringent performance standards, prescriptive regulations, or penalties.

To understand the likelihood of success of the plaintiffs, it is necessary to consider each of the major legal issues that underlies the litigation.

II. Standing

The standing doctrine — governing whether a particular plaintiff has
“standing” to bring a particular lawsuit — was initially developed by progressive jurists in the minority during the early 20th Century “Lochner era,” in an attempt to prevent challenges to progressive legislation.10 By at least the 1980s, however, the standing doctrine has served more to bar claims brought by progressive organizations.11

The theory underlying the doctrine is that Article III of the Constitution empowers the federal courts to decide cases and controversies, not generalized grievances regarding the enforcement of the laws. Thus, the doctrine enjoys separation-of-powers significance in delineating which claims can be heard by the federal courts, and which must be left to the political process.

The standing doctrine requires that a plaintiff have: (1) a concrete and personalized injury, that is, (2) fairly traceable to the complained of conduct by the defendant, and that is; (3) redressable by the court.12 All three of these requirements have presented major hurdles for climate change litigation.

The trouble with the concrete and personalized injury requirement is that judges may feel that a particular plaintiff’s allegedly climate change-induced harm is too difficult to attribute specifically to climate change and/or too much like everyone else’s climate change-induced harm. But evolving science is chipping away at these problems, providing plaintiffs with more and more tools to trace specific injuries to climate change, from rising sea levels to drought to tropical storms to failing fish populations.13

As more particularized injuries are linked to climate change, plaintiffs can point to the specific injuries that affect them in specific ways. In Juliana, Judge Aiken accepted plaintiffs’ allegations at face value, finding that such alleged injuries as algae blooms harming the local drinking water supply, heat waves damaging a family orchard, and decreased snowpack shortening the local ski season all constituted fairly pleaded, concrete and personalized injuries resulting from climate change.14

The causation requirement presents two potential difficulties in most climate change cases. In actions against private entities, the difficulty thus far has been the idea that climate change would still be occurring on almost exactly the same scale even without the actions of any particular entity. However, recent scientific advancements seem to have made it possible to calculate a single actor’s contribution to climate change.

The new science is making it possible to say that a particular entity contributed a specific portion of the emissions leading to climate change, even at a fraction of a percent.15 While previous cases dismissed attempts to hold single corporations responsible for climate change harms, finding that the causal link between the corporation and the harm was simply too tenuous and indeterminable,16 the new science might eventually lead to liability for an entity’s fractional share of the damages.

(Editors’ Note: We will continue the standing analysis in next month’s Bar Bulletin.)


Marina Cassio is an associate attorney in Marten Law’s San Francisco office. Cassio earned her Juris Doctor, cum laude, from Harvard Law School, where she was an editor on both the Harvard Law Review and the Harvard Environmental Law Review. Her practice focuses on litigation, permitting, and compliance counseling within the areas of environmental, natural resources, land use, and product law. She helps both public and private clients successfully navigate the legal landscape surrounding environmental impact review, renewable energy development, endangered species and habitat protection, water rights disputes, environmental remediation and cost recovery, and product safety and stewardship.


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JENNIFER PAYSENO, PARTNER
Second Vice President, King County Bar Association, 2017-2018
Distinguished as a Washington Super Lawyer, 2010-2017
Treasurer, King County Bar Association, 2013-2015
Chair, King County Judicial Screening Committee, 2009-2010

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Roll Your Own Reality

By Larry G. Johnson

There was a time when "crazy" was defined as "being out of touch with reality." But in an age of "fake news," "virtual" reality and "artificial" intelligence, you may ask yourself, "What is real anymore?"

Plato and Jung thought reality was something ideal and objective outside of ourselves that guided our experiences of the world. On the other hand, postmodernists claim there is no reality other than the one each of us invents for ourselves; nobody has the authority to claim a superior version.

But physicists do the philosophers one better with the concept of a "multiverse" or "metaverse." There are, besides the universe that includes our little planet, 10 or 11 space-time dimensions besides our own. Their existence is required to fully explain all the physical laws and the constants used to describe them.1

But with all these parallel universes, do they all share a common "reality"? Or are there places where red is green and apples are oranges? Whether we will ever fully fathom any of this, one thing is certain: Mankind has proven itself enthusiastic in finding ways to escape reality to avoid its harshness or boredom.

The consequences could be dire for the survival of our civilization and for our legal system that serves as its first line of defense. Just count the ways:

Drugs

One way to avoid the rigors of the real world is to obliterate your awareness of it. During the last election cycle, many people were surprised to learn that in supposedly idyllic rural communities in places such as Vermont and New Hampshire, addiction to opioids had reached epidemic proportions. But the problem is everywhere and vast. A whopping 38 percent of U.S. adults were prescribed opioids in 2015,2 and the percentage has undoubtedly increased since then. Are all of these patients in real pain or just bored out of their minds?

Sex

Sex robots are becoming a major economic growth sector, particularly in China where the "one child" policy led to a disproportionate number of boys being born, or rather allowed to be born, over girls. Sex robots are increasingly becoming substitutes for human females there, as elsewhere, with customers paying as much as $6,000 for top-of-the-line models that "learn" what the owner likes, and the dolls can even sing to the owner.3

Feminists have long complained about males' objectification of women's bodies, but now it looks like some men are going straight for the objects. The reality of dating, marrying, raising children together, forming lasting partnerships — hey, that's just way too hard.

A subsidiary business stemming from the sex-robot trade is also on the rise: sex-doll brothels.4 But look on the bright side: with that, there is less venereal disease, less exploitation of women, less sex-trafficking slavery, and, perhaps, less rape.

Money

What is a dollar, really? It used to be backed by gold, but Nixon ended that in 1971. Now it is like all the other fiat currencies — a piece of paper or chunk of metal with art work and numbers on it. It is valuable only so long as people believe in it, very much like a shared religion.

But given the way the Fed plays with the money supply and debt, many smart people are hedging their savings with "cryptocurrencies" such as Bitcoin that are very hard, or some say, impossible, to tamper with. Bitcoin is just one of many of its kind. There are over 900 of these invented forms of money currently traded against each other and traditional national currencies.5

Where can you go to stash some of these cyber coins in your pocket? Nowhere! You can buy "physical Bitcoins," but they are simply cute, casino chip-like plastic containers within which the digital codes — the actual Bitcoins — are embedded on a computer chip.

But then again, what is your bank savings account other than some is and does live on in a certain comeuppance a few weeks ago when he had to have his company shut down two robots that began communicating to each other in a language only they understood.6 How does Zuckerberg explain that?

To all of this there may be a silver lining. If humanity comes to a point where each person can create a unique world to live in with everything he/she wants, then it may be possible to eliminate most causes for conflict. We will become too busy with ourselves, our fake friends and our fake world to care about anything else. Billions of autonomous worlds will live blissfully unaware of one another.

Maybe that will give our species another millennium or two of survival.

5. 5756a5af.d4b6-4c7c-568a-3c37
6. Larry G. Johnson is a lawyer in Newcastle and a member of the WSBA since 1974. He is a past chair of the KCBA Law and Technology Section. Besides being a litigator, for the past 20 years he has served as a consultant and expert witness in e-discovery matters.
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Bar Talk through the Years: A Peek behind the Curtain

By Karen Sutherland

As part of celebrating 60 years of the Bar Bulletin, our esteemed editor thought a story about Bar Talk would be a nice touch, so here you go (which is what I say to the editor in the email that accompanies my Bar Talk column every month).

Bar Talk's first appearance was in the September 1982 issue, although as noted elsewhere in these pages, the first issue of the Bar Bulletin contained Philip H. DeTurk's "DeTurk, On Trivia" column concerning various lawyer moves and firm news. The author of the first two columns is lost to time, but since then there have been four Bar Talk columnists that I am aware of: Bernie Friedman was the first, followed by Phil Cutler, Suzanne Barnett (before she became a King County Superior Court judge), and yours truly.1

What does it take to be a Bar Talk columnist? When I applied for the Bar Talk job, my qualifications for the position were that I liked getting mail, wanted to know what was going on in the legal community, and I was willing to write a monthly column regardless of what else was going on in my life. I suspect I was the only applicant, as I was selected without an interview. My first column was in the September 1993 issue, which means I have written 290 columns so far.

When I started writing Bar Talk, most of the information for the column arrived by letter or by phone. I would drop each item in a redwell folder when it arrived. Once a month I would dump the folder out on my dining table, sort it into piles, and dictate the column on my trusty Lanier Time Commander (harvest gold, with big, round dials) and then my secretary would type it on a typewriter.

The practice of law has changed a bit since Bar Talk started and Bar Talk has changed too. Hardly anything comes in the U.S. mail anymore. Now most of the information for the column arrives via email. I still put it in a folder and dump it out on the dining table, but I have a smaller dining table than I used to with no room for separate piles, so I developed a different system for organizing the column that takes up less room. I still dictate my column because it's what I am used to doing, but I now use a nifty electronic recorder. In addition to information people send to me, I look for news in local newspapers, newsletters, LinkedIn, Twitter, firm web pages, events I attend, and word of mouth.

When Bar Talk began, the Bar Bulletin used black and one other color for the front page and the other three pages that were printed on the same page plate (the same sheet of paper). The rest of the paper was just one color — black — unless someone bought an advertisement that had color in it. When our publisher at that time (Rotary Press) moved to a new, full-color press in 2002, we started using full-color photos and color in graphics.

To celebrate, the editor changed the masthead and updated the little graphics that ran with some of the columns. For Bar Talk, that meant a full-color photo of my smiling face and a colorful graphic of people sitting on bar stools. At some point, the people on the bar stools wandered off and have not been replaced.

As far as I know, no one misses them.

Unlike similar columns in other publications, Bar Talk does not include photos of people who are featured in the column. The decision not to include photos predates me, but I assume it is because we do not have enough space to run photos of everybody and whoever did not get to have their photo included would not be happy with us.

Speaking of photos, when people meet me in person they often comment on whether they think I look like my Bar Talk photo. I do, sort of. Sometimes I wear glasses that are not in the photo and people will comment on that, as if I was being sneaky or something.

Looking over old columns, I used to occasionally include a "Digression of the Month" section, which I have not done lately. Perhaps I'll start doing that again if I can find something to digress about that isn't related to politics or some other divisive topic. One (February 2005) was about a giant lava lamp that was going to become a featured attraction near Soap Lake, which had little to do with the law, but it was kind of interesting.

The oddest thing anyone ever said to me about Bar Talk was when a woman told me that Bar Talk was her father's favorite thing to read and that he had asked to be buried with a copy of the Bar Bulletin. I hope she was kidding, at least about the burial part.

The hardest part of Bar Talk is coming up with something to say at the beginning of each column. When I can't come up with anything else, I write about the weather. Still, I look forward to writing the column every month.

Karen Sutherland is the chair of the Employment and Labor Law Practice Group of Ogden Murphy Wallace, PLLC, chair of the King County Bar Association Bar Bulletin Committee, and Bar Talk columnist. She can be reached at ksutherland@omwlaw.com.

1 I admit to not reviewing every issue to see if there was someone I missed. If there have been others, I apologize for not naming them.
A WORD FROM THE EDITOR

We do not seek to outshout Rapp. He has his bag and we have ours. Don’t feel the urge to jump up on the same soapbox. Points are facts, as the supreme court says, and we won’t touch

Thusly we launch Vol. I No. 3 of the Seattle Bar Bulletin, with nothing painted across its forehead, but plenty across our steams by the ink. Our hope is to bring to members of the Seattle Bar all the essential business of the Seattle Bar Association. We want to read it and go to at

Presented with this issue of the Seattle Bar Bulletin, will be the policy of the Association to keep its members regularly informed on matters of interest to the Association. The Trustees expect that under the capable editorship of Betty B. Fletcher and Louis H. Piper the News will fully achieve its purpose.

A brief review of plans and events is in order.

The Committee organization of the Association has been virtually completed and announcements of appointments will be made soon. The number of committees, sub-committees and committee personnel have been increased in order to cover the interests and concerns of the members of the Association. The Trustees have also authorized the organization of eighteen sections patterned after the lines of similar sections of the American Bar Association.

A few words from our editor:

Charlie Horowitz

ABN ADVISORY BOARD

The Committee on the Legal Bar has completed its work and has submitted its report to the Trustee Committee on the Legal Bar’s proposal to the Board of Trustees for approval.

The Board of Trustees has approved the proposal and has directed the Trustee Committee on the Legal Bar to proceed with the implementation of the proposal.

LEGAL SERVICES TO LAWYERS

Support

By Esther V. Beals

By Esther V. Beals

The Legal Services to Lawyers Program is an outgrowth of the Bar Association’s Committee on Legal Services to Lawyers. The Program is designed to provide legal assistance to lawyers who are in financial difficulty or who are unable to pay for legal services.

The Program offers two types of assistance: direct legal aid and indirect legal aid. Direct legal aid is provided by lawyers who volunteer their services. Indirect legal aid is provided through the use of legal aid funds.

The Program has been successful in providing legal assistance to lawyers who are in financial difficulty or who are unable to pay for legal services. The Program has helped to ensure that lawyers who need legal assistance are able to receive it.

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Paul, Todd and Fetterman as an associate; and Leonard Schroeter had hooked up with David Weyer, David Roderick and Rickie Stern to form a new firm.

The first editors in chief were Betty B. Fletcher, whom you should remember as an icon of the bench and bar, and Louis H. Pepper, whose name still graces one of our city’s finest law firms. They greeted the membership as follows:

1963, though not exactly quarterly; were four issues published in 1962 and the format hadn’t changed. There were gaps in the publishing schedule. It was many years before the Bar Bulletin became a steady, monthly effort.

In December 1960, it was the Seattle-King County Bar Association Bar Bulletin. The editor then was Irving Clark, Jr., and the format hadn’t changed. There were four issues published in 1962 and 1963, though not exactly quarterly; three in 1964. It put the “periodic” — i.e., the “taking place now and then” definition — in “periodical.”

The Bar Bulletin got a new look in 1967, with Brian L. Comstock as editor, changing from a 4- to 6-page issue on glossy stock to a 4- to 6-page issue on blue bond, with a two-column look instead of three columns. Four to six issues a year were the norm through the ‘60s.

In the groovy ‘70s, this teenager got another makeover. Gone was the blue headlight, replaced by a lighter look, and it grew to 8 pages, yet still letter-sized. The masthead — the information box you find in this issue on page 2 — disappeared and did not return for years. September 1976 brought another format change and the young adult was sporting pale yellow bond across 8 pages of the same old, basic “club level” information and notices, i.e., very little in the way of substance unless a judicial election was at hand. But that also was the month when the blue, cursive-style nameplate was introduced across the top of the front page. It would remain in place, with nothing more than a trim of the under-swooping ‘e’ in Bulletin, until June 2002. Not even I can stick around that long.

The format changed again in January 1978 to white, glossy stock with a blue nameplate. The first 12-page issue debuted that month along with a front-page feature. In that issue, Gary Wolstone wrote about the plague of child abuse. Other articles that year featured then-City Attorney Doug Jessett and then-Superior Court Judge Barbara Rothstein, which were the forerunners of today’s monthly Profile.

Those front-page features were replaced in January 1980 in favor of articles of law-related substance. In September 1982, under editor William Weinstein, the Bar Bulletin started to evolve into what you see today. That month was the first tabloid-sized issue: 28 pages in two sections, with a cartoon by Pulitzer Prize winner David Horsey highlighting the front-page feature; he continued providing cartoons until May 1984 (probably when the SKCBA could no longer afford him). The first installment of what today is the monthly Profile featured “Buddy Actor and Virtuoso Trial Attorney” William Dwyer. The masthead also returned after a decade’s hiatus.

The Bar Bulletin switched from white stock to newsprint in September 1988. It switched format to a one-section, 32-page issue in December 1989. In April 1993, it officially became the King County Bar Association Bar Bulletin when “Seattle” was dropped from the bar’s name. It split back into two sections in June 2002.

When I started as editor in 2005, the Bar Bulletin was printed in two sections and comprised 24 pages. Seattle Times Publishing handled production duties and, as it still does today, printed the paper. In February 2006, when The Seattle Times reduced the size of its paper and, therefore, what could be handled on its press, the Bar Bulletin got “smaller” as well, shrinking from 17½ inches from top to bottom, to 15 inches. We also added a new nameplate across the top of the front page, and again returned to a single section.

Today, the Bar Bulletin is printed in one section, generally comprising 32 pages, i.e., more meaningful content. STP no longer handles production duties (but its Rotary Press wing still prints the paper), since KCBA took the BB in-house several years ago and now contracts with a Portland company to provide the professional product you receive each month. Like any media product, we have changed our look over the years, but have settled into a comfortable standard that fits like an old pair of shoes. About the only thing that differs from issue to issue, other than the content and the ads, is the color scheme on the front page.

We hope you enjoy this journey down memory lane as much as we have enjoyed paving the way for you over the decades. Here’s hoping the next 60 years are as good as the first 60!

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### Bar Bulletin Editors

1957-1959 Betty B. Fletcher & Louis H. Pepper
1960-1961 Irving Clark, Jr.
1962 Richard S. White
1963-1964 Leon L. Wolfstone
1964-1966 Richard L. Cleveland
1966-1968 Brian L. Comstock
1968-1970 John L. Weinberg
1971 Elizabeth Bracelin
1971-1973 Hugh McGough
1973-1974 Marjorie Rumley
1974-1976 Jack Burres
1976-1977 Laurie Kohli
1977-1978 Gary Wolfstone
1978-1979 Anne Northrup
1979-1981 Stew Cogan
1981-1982 Christopher Hall
1982-1983 William Weinstein
1983-1985 Cynthia Whatker
1986-1998 Caroline Davis
1988-1991 Marc Lampson
1991-1995 Carole Grayson
1995-2001 Amy Stepshon
2001-2005 Robert Anderton
2005-present Gene Barton

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A Decade of Reality Checks

By Amy Kahler

“Happy Bar Birthday! 10 years ago, you passed the bar,” was the message I received when opening my email. My first thought was, “Has it really been 10 years?”

I thought back to my time in law school. What did I think of my life as a professional attorney would look like back then? What were the lessons I learned and what is there still to learn? What were the promises I made to myself and which ones did I keep?

Other attorneys are your best resources.

When I started as a solo practitioner early in my career, I thought I could do it all on my own. I pictured myself behind a giant mahogany desk, surrounded by law books and dim lighting with little thought as to how I’d get there. The reality was, clients didn’t appear out of thin air and even if they did, I wouldn’t know where to start. I couldn’t achieve my vision without getting a foothold in the industry, and I had to start asking for help.

I learned how to network and how to ask for what I wanted. I read books, sat in courtrooms observing and taking notes, and I placed myself in a lot of awkward situations.

I didn’t expect other attorneys to be collegial, supportive or responsive, but they were. I didn’t expect invitations to coffee when I said I was new in town and needed help. I didn’t expect my fellow section members to trust me with their clients and let me help with their cases. I didn’t expect connections to other resources out of a mutual respect for building the profession.

I’m no longer a solo practitioner, but without making those difficult first steps I never would have gotten those initial boosts from my colleagues and eventually found my place.

Don’t just volunteer for the résumé, do it for the soul.

I’ve never regretted the time I’ve spent in my community donating my time. Like most go-getters, I thought volunteering was only for boosting the résumé. However, after spending time volunteering with various organizations, I’ve learned that the people who we pass on the sidewalks and view from our cars, who serve us in coffee shops and live next door are not strangers, but are part of a community in which we all have a responsibility to preserve. Volunteering is not about winning awards or accolades; it is about feeding your soul. Whether it’s meeting with a stranger about this thing called a “summons” that they received or advising them on how to make tough decisions after they’ve been dealt a health blow, it’s never time wasted. Our neighbors are asking for help and they are scared to ask, but we are privileged to know the answers.

I didn’t expect the sense of responsibility for the people in my community, but once I realized I was one of the few who could contribute, it was unexpectedly rewarding.

Old fashioned manners go a long way.

Send thank-you cards. Send flowers. Introduce yourself. It’s a small investment of money and time, but it’s worth the value that comes from validating a relationship.

Talk is cheap and sending a message to the other party demonstrates that, not only was their effort valuable to you, but it was time appreciated. It also sets a tone for the relationship going forward.

I received some valuable advice at a networking event from a fellow attorney who told me that she always picks up the phone and introduces herself when faced with an opposing counsel she’s never worked with before. At first I thought this seemed counterintuitive, but breaking the ice and setting the tone between parties can go a long way toward establishing mutual professional courtesy for the duration of the case.

One can be an aggressive litigator and yet keep things cordial; there’s not much to be gained by getting personal. It’s a habit I’ve put into practice and I’ve never regretted the time I’ve spent reaching out, even when rebuffed.

Reread the U.S. Constitution and RPCs on every bar anniversary.

This was a promise I made to myself upon the advice of my Con Law professor at graduation. He told the crowd that it reminded him why he became a lawyer and kept him in check. I promised myself that I would always do the same, but guess what... I never did.

I dusted off my little copy of the U.S. Constitution and reread the RPCs on this 10-year anniversary. “The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and the capacity through reason for enlightened self-government,” states the opening of the Fundamental Principles of Professional Conduct from the Washington Rules of Professional Conduct.

These are simple truths, rooted in respect for the law, our fellow humans and the system that we have taken an oath to uphold. Being a lawyer isn’t just a job, it is part of a critical institution in our society and form of government. And while that sounds rather academic, when you see the real consequences that can result from bad lawyering or unfair court decisions or bad laws, and you can act to correct those problems, you understand what that role actually means, and it is satisfying.

It’s the why, not the how: Inspired by vision and grounded by truth, this reality check is a good reminder of the reason we started this journey. With a simple Outlook recurring appointment, that’s one promise I will keep.

After 10 years, I’ve learned that expectation and success don’t follow the same path. Every challenge, stumble, investment and risk was worth the experience, and I hope that over the next 10 years I can appreciate wherever my path takes me.

Amy Kahler is an associate at the Law Offices of Susan Carroll, PLLC in West Seattle. Kahler is a Pacific Northwest native and attended Seattle University School of Law, Class of 2005. She will even pick up the phone and happily take an introduction, so reaching out is invited and welcomed.
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How is your summer going? My summer has been really great. Interning for Ogden Murphy Wallace has been such a pleasure so far. I am thankful to have an opportunity to work with such great people. Everyone has been so welcoming and helpful. I’ve been exposed to so much; I will not take it for granted. I’d especially like to thank Karen Sutherland, my mentor, for giving me the opportunity to take you behind the scenes of an iconic “reality” courtroom show.

Watching “Judge Judy” may be the primary — or only — experience that non-lawyers have with civil law. Lawyers who have been practicing for years may want to understand how “Judge Judy” affects a non-lawyer’s perception of the legal system. This article provides that perspective.

The Cases Are Real
I can remember watching “Judge Judy” on my local CBS channel early in the morning while I waited for the school bus. I was so intrigued. Not because of Judge Judy, herself, but the cases. Each case is so different and I would want to see how Judge Judy handled it. There are many types of cases on the show, such as torts, contracts, landlord-tenant, relationship disputes and more. Each case is submitted through the “Judge Judy” website and the producers choose the ones to present and air. If your case is chosen by the producers, you’ll receive a letter asking you to call as soon as possible for the possibility of having your case heard by Judge Judy on national television.

It’s Arbitration, Not a Judicial Proceeding
When I was younger, watching “Judge Judy,” I easily thought that was a judicial proceeding was. In actuality, it is an arbitration-based show. Judge Judy is given evidence from both the plaintiff and defendant; then has to decide who and what is right according to the law.

When the decision is made by Judge Judy, there is no choice to challenge her decision because her decision is final.

Actors
In order to guarantee a courtroom full of people, the “Judge Judy” producers hire aspiring, paid actors from an audience service. On occasion, the audience is seen laughing at Judge Judy’s remarks, but for the most part, the audience isn’t supposed to make any noise and, unlike other court shows, may not acclaim the judge or the disputants for making excellent comments.

Tickets aren’t offered for the show, but the producers can make arrangements for fans to be a part of the audience. The extras are not supposed to wear logos or brand names, and must not dress casually.

Plaintiff and Defendant
As I mentioned before, when your case is chosen, you will receive a letter from the producers informing you that your case is being heard on national television.

continued on page 23
Passing Up ‘People’s Court’

By Bill Roberts

Many years ago I took my young daughter for her first ride on her new, full-sized, 10-speed bicycle. The garage was behind the house with access to a paved alley on a slight incline, so we started by going downhill and enjoyed a great first ride, and reentered the alley on the uphill end.

Unfortunately, I hadn’t yet taught her how to jump curbs and other irregularities, and the local cable company had left a poorly patched trench across the alley where it had buried a neighbor’s new cable line. The trench caused my daughter to fall, breaking her glasses and bending the frame of her brand new bicycle. Fortunately, there was only minor bruising and bicycling has since become one of her favorite pastimes.

Having had several good, small claims court experiences under my belt, including a Realtor, a radiator repair shop, and an auto paint shop, I decided to sue the cable company in small claims court in the nearby Torrance Courthouse, part of the Los Angeles Superior Court, for the replacement costs of the bicycle and glasses. A few weeks before the trial date, I received a phone call asking if I wanted to be on “People’s Court.” This was in the days of the original “People’s Court” with retired Los Angeles County Superior Court judge and part-time boxing referee Joseph Wapner, later succeeded by (yes) Ed Koch, Jerry Sheindlin and Marilyn Milan, years before imitators such as “Judge Judy” and “Hot Bench.” It is interesting to note that Jerry Sheindlin is the husband of Judy Sheindlin, aka Judge Judy.

“People’s Court” was the first television program using real plaintiffs and defendants in a simulated courtroom setting. The “People’s Court” caller explained that funds in the amount of twice my suit would be set aside in an account. Any judgment would come from that fund and the balance would be split equally between the parties. I was interested so far. Both parties would have to agree to the terms and go to Hollywood for interviews to see if our suit would be accepted. Actual taping would be at a later date.

Having a strong engineering background, I did a quick cost-benefit analysis, weighing the expected value of the benefits of “People’s Court,” about an additional 50 percent, against the cost — taking time off work to drive the equivalent of four trips through 25 miles of downtown Seattle traffic — and declined.

In an anticlimactic ending, I won by default and received a check in the mail three weeks later. The radiator repair shop mentioned earlier wasn’t as easy though. Although it defaulted, I had to take the initial steps toward having a sheriff’s deputy hold his hand in front of the till until my judgment was satisfied.

And, coming back to “Judge Judy,” the interview process described above allows the producers to select the zaniest participants in an attempt to boost ratings.

Bill Roberts, PE, CSFA, is an occasional contributor to the Bar Bulletin. He is a Washington licensed professional engineer (18.43 RCW) doing electronic discovery, computer forensics and data recovery. His website is cleardataforensics.com. He welcomes questions at bill@cleardataforensics.com.

Courage

(‘Kór-ij) noun
Strength in the face of pain or grief.
See also Spike Kane.

Spike Kane was a marine carpenter and an avid sailor, surfer, and outdoorsman when he suffered a thoracic level spinal cord injury in a motorcycle vs. SUV collision. Spike has never let the injury stop him from enjoying a full and physical life.

The best part of our practice is that we are in the company of courage every day. We would appreciate the opportunity to help you help your client.

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1 Editor’s Note: “Judge Judy” is former Manhattan Family Court Judge Judy Sheindlin. The show is celebrating 21 years on the air this month, http://www.judgejudy.com/judge_judy
2 http://www.judgejudy.com/submit_your_case
3 http://kfor.com/2015/08/21/letter-from-letter-from-
4 http://www.judgejudy.com/subm,
5 http://www.seri

Strength in the face of pain or grief. See also Spike Kane.

Spike Kane was a marine carpenter and an avid sailor, surfer, and outdoorsman when he suffered a thoracic level spinal cord injury in a motorcycle vs. SUV collision. Spike has never let the injury stop him from enjoying a full and physical life.

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1 Editor’s Note: “Judge Judy” is former Manhattan Family Court Judge Judy Sheindlin. The show is celebrating 21 years on the air this month, http://www.judgejudy.com/judge_judy
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Escape from Reality: Hawaiian Vacation, Part 1

It is time to escape from reality and go on vacation to Hawaii, or at least to Hawaiian-themed food establishments. There are many to choose from locally without the airfare or the jet lag. There are so many we already know this article will have a sequel.

Nearby, we revisited Sansei Seafood Restaurant and Sushi Bar (815 Pine Street; 206-401-4414; http://sanseisail.com/). Sansei is a Hawaiian chain with restaurants in Kapaulua, Kihei, Waikiki, Waikaloa and Seattle — its first foray to the mainland. Sansei styles itself as a “new wave” sushi restaurant and is open for happy hour and dinner.

We visited for happy hour on a Thursday and sat in the patio area by Pine Street. The happy hour has changed since we last visited and is no longer simply half-off all food items as with the happy hour in Hawaii. Sansei Seattle has a separate happy hour menu. We ordered a variety of rolls and hot dishes, including the “Takah Sushi special roll” (shrimp, tuna, crab, avocado, cucumber, masago); Sansei “Special roll” (spicy crab, cilantro, cucumber, avocado); grilled eggplant; deep-fried tuna roll; and a shrimp cake. The Takah roll was excellent.

There was a wide variety of tiki-style cocktails on the menu sporting ingredients such as lemongrass, pineapple, passion fruit and coconut. We skipped these options, instead electing to drink beer and sake. The Island Hoppin’ IPA turned out to be from Orcas Island, not the Hawaiian Islands. Spam was absent from the menu.

Overall, the food, service and decor were all pleasant, and this is a great place to gather with the mates after work for a quick bite. The location, right across from the Paramount Theatre, also makes it convenient for a pre-show meal.

For a really authentic Hawaiian food and atmosphere, journey south to Kauai Family Restaurant (6324 Sixth Ave. S., just south of Spokane Street; 206-762-3469; https://www.facebook.com/kauaifamilyrestaurant/?fref=ts) for a friendly and fun breakfast (served all day), lunch or dinner.

We tried the “Breakfast Musubi,” which was Spam and egg (“It doesn’t have that much Spam on it.”), over rice and wrapped in nori; it can also be ordered with Portuguese sausage for those who want more spice. We also sampled the “Lau Lau” and “Kalua Pig Combo Plate” lunch with Lomi salmon, choosing the slightly less authentic, fried-rice option over traditional white rice.

As you may already know, a Hawaiian plate lunch comes with rice, macaroni salad and one or two entrees (https://en.wikipedia.org/wiki/Plate_lunch). We were cautioned by our server that the Lomi salmon was authentic and an acquired taste. It was and we liked it. We especially enjoyed the very flavorful pork and the macaroni salad, which was light, without excessive mayonnaise.

After our meal, we dropped by the adjacent Cakes of Paradise (6322 Sixth Ave. S.; http://www.cakesofparadisebakery.com/), a separate-but-related establishment, connected by an internal door, where we picked up a rainbow cake to go. It has three layers of cake — strawberry, lime and orange — and is frosted with guava, lime and passion fruit.

The bakery has recently expanded, doubling its retail space and adding a full hot-beverage line. Look for them to be offering a separate breakfast or lunch menu in the near future. There was a lot left on the menu for us to try at both establishments and we plan to make this a regular haunt when we are on the south side of town.

From Kauai, we jetted over to Kona Kitchen (8501 Fifth Ave. NE; 206-517-5662; http://konakitchen.com/), for a calorie-packed dinner in north Seattle. To start, we ordered the spring roll appetizer. Spring rolls at Kona Kitchen are extremely crunchy on the outside and soft on the inside; just how we like them. They came to our table straight from the kitchen. We recommend waiting for them to cool off a bit before you take a bite.

For our entrées, we tried the Hawaiian-style barbecue chicken and the chicken Katsu, both of which come with sides of rice and macaroni salad. The sauce was evenly and lightly spread onto the chicken, which was cooked to a moist, slightly chewy texture. The chicken Katsu featured a delicious, crunchy panko on the outside and moist chicken on the inside. The macaroni salad had a heavier-than-usual amount of sauce, but was delicious all the same.

Kona Kitchen is housed in a simple concrete building, but the inside is comfortable, well-lit and pleasant. We enjoyed listening to Hawaiian music while staring at the cake menu, wondering whether we had room for dessert. The meals were large, so this time we skipped these options, instead electing to Hawaiian-themed food establish-
Dining Out
continued from page 24

It is highly recommended to make a reservation at Ma'ono Fried Chicken and Whiskey in West Seattle (4437 California Ave. SW; www.maono.seattle.com). And not just for your table, but also your food; you will need to reserve either your half order (perfect for two) or full-bird order at least 24 hours in advance. We reserved our bird when making our online reservation. Luckily we did, because around 8 p.m. this Hawaiian-inspired restaurant sold out of chicken.

We started with “Ahi Limu Poke” and sesame-flecked carrots. The carrots were prepared with coriander, coconut chutney and goat’s milk yogurt, and featured little shards of puffed rice cake. The poke features ogo seaweed, sesame, macadamia nut, shoyu and chilies. The ahi was fresh and marinated with the perfect combination of soy and sesame.

The fried chicken is simply delicious and easily some of the best fried chicken we have ever had. It is well seasoned and perfectly cooked; the meat is tender and juicy as it is soaked in buttermilk for 24 hours; and for added crispiness, it is fried twice. The chicken comes with your choice of either chili or honey mustard sauces, sticky rice garnished with nori seaweed and some of the most delicious kimchi that we have ever had.

To finish our dinner, and after consultation with our server, we decided on the famous popcorn ice cream for dessert. The ice cream is poured over popcorn that has been strained after soaking for a day and refrozen resulting in a delicious frozen, salty, sweet treat. It is the perfect finish to one of the best fried chicken dinners in the city.

A t the end of our Hawaiian “food-yssey,” we returned to Coastal Kitchen (429 15th Ave. E.; 206-322-1145; http://coastalkitchen.seattle.com/), for its 104th rotating menu, which is “Visiting Hawaii” until November.

We tried the “Huli Pork,” a soy ginger-marinated bone-in pork loin with grilled pineapple kimchi; the “Miso-yaki Butterfish,” a black cod with a sweet marinade of miso and sake over an unusually flavorful bed of purple potatoes, pineapple and onions; and our out-of-town guest just could not resist getting the fresh local salmon (always good). We liked everything, but will definitely return to have the pork loin again, and probably to try some of the pupu appetizers like the Spam musubi and pork sliders. We also tried the touring Hawaiian-themed mixed drinks, sampling the “Lava Flow,” mai tai, “Hurricane” and hibiscus mai tai. The mai tai and “Lava Flow” do not stick to their original recipes, but a couple of the “Hurricanes” will help you forget all about that.

Hawaiian food has become a popular local theme and our escape from reality will continue with another column’s worth of Hawaiian fare soon.
I had an interesting conversation with another artist recently when we were both working at an arts event. She is curating a project that includes artists’ bucket lists and wanted me to add mine to it. She was disappointed that I don’t have one.

I was curious about how others view bucket lists, so I turned to Psychology Today for some expert insight. It seems that bucket lists can either serve as goals to help motivate people to accomplish things or imply a “check off the boxes” approach to life. One of the psychologists described a more traditional perspective on theories of happiness as a counter to life lists: “the only path to happiness is the path of developing moral character, working on making it easier to do the right thing with no resentment, but with joy.”

So much for philosophy. Now back to the reality of the task at hand.

Partner Pronouncements

Chandra Eidt has become a partner in Seed IP’s Biotechnology, Pharmaceuticals & Chemistry and IP Enforcement, Defense and Litigation groups. She was previously with Miller Nash Graham & Dunn LLP.

Inge Larish has become a partner in the Seattle office of BakerHostetler. She is part of the firm’s Intellectual Property Practice and Patent Litigation Team. Larish works with multinational technology companies in the mobile device, software, wireless, semiconductor, and computer engineering and architecture industries. She was previously with Pillsbury Winthrop Shaw Pittman in San Diego.

Maureen Mitchell has joined Fox Rothschild LLP as a partner in its Seattle office. Her practice involves environmental and Indian law, including regulatory compliance and litigation. Mitchell previously was a shareholder at Summit Law Group PLLC.

Krista Hardwick has joined Lane Powell PC as a shareholder in the firm’s Labor and Employment Practice Group. Hardwick advises employers on executives and matters such as unfair labor practice charges and collective bargaining. Hardwick previously served as in-house labor and employment counsel for Providence Health & Services.

Associate Additions

Jennifer Ashton has joined Seed IP’s Trademark and IP Enforcement, Defense and Litigation groups. Ashton’s practice includes the acquisition, maintenance and policing of trademark, copyright and domain naming rights. Ashton was previously with Bracewell LLP.

Of Counsel and Other Attorney Additions

K. Misa Bretscher has joined Hillis Clark Martin & Peterson P.S.’s Real Estate and Land Use Group. Bretscher’s practice focuses on real estate transactions, including analyzing, drafting and negotiating purchase-and-sale agreements, leases and construction-related contracts. Bretscher was previously an associate with Filko Kreitcscher Smith Dixon Ormseth P.S.

Peggy Rasmussen has joined Stokes Lawrence as of counsel. Her practice includes complex commercial litigation involving contracts, antitrust, energy, utility regulation, computers, environmental litigation, real estate, insurance coverage, and intellectual property. She was previously with Harrigan Leyh Farmer & Thomsen.

Stefan Szpajda has become of counsel with Foster Pepper, PLLC’s Intellectual Property Litigation Practice. He focuses on patent and trade secrets litigation. He was previously an associate with Fenwick & West.

Honors, Appointments and Awards

Andrew Gabel has become a new member of the board at Seattle City Club. Gabel is a shareholder at Lane Powell PC.

The following individuals were selected as officers for the KCBA Labor & Employment Law Section for 2017-18: chair — Jennifer Robbins; chair-elect/conference chair — Ariva Kamm; treasurer — Tom Holt; secretary — Gena Bonomi; and trustees — Rich Ahearn, Katie Chamberlain, Jillian Cutler, Ed Taylor and Joyce Thomas.

Anita Ramasasy, professor of law at the University of Washington School of Law, has been elected president of the Uniform Law Commission (ULC). Prof. Ramasasy is the first Washington uniform law commissioner to serve as president of the ULC, and she is the first Asian American to serve as ULC president.

P. Stephen (”Steve”) DiJulio has been elected firm-wide managing member of Foster Pepper PLLC. He replaces Jeffrey Frank, who served as the managing member since 2013. DiJulio’s practice includes litigation involving state and local governments. Frank will continue to build on his commercial, construction and real estate practice.

Jeffrey Beaver has been elected to the American Law Institute. Beaver is a partner with Miller Nash Graham & Dunn.

Obituaries

Ken Schubert, Jr. recently died at the age of 79. He was a founding member of the firm now known as Garvey Schubert Barer where he chaired the firm’s Trust and Estate Planning Group. He retired from the practice of law in 2012.

Charles “Chuck” Davis recently died unexpectedly at the age of 73. His practice focused on maritime law on the local, national and international level.

Jeffery (“Jeff”) Brotman recently died in his sleep at the age of 74. He served as an assistant attorney general and then was a founding member of Lashut, Brotman and Sweet, after which he co-founded Costo with Jim Singel. He was Costo’s executive chairman.

James “Jim” Nelson recently died at the age of 91. After practicing with the Office of the Attorney General, he joined the legal staff of the Western Office of the Milwaukee Railroad. T. Dennis George recently died at the age of 78. He was a co-founder of George Hull Porter & Kohli, where he focused on business litigation prior to his retirement.

James (“Jim”) Hardman recently died at the age of 67. He practiced law in Pioneer Square for many years with a focus on elder law and guardianship. Toward the end of his career, he became a certified professional guardian.

Karen Sutherland is the chair of the Employment and Labor Practice Group at Ogden Murphy Wallace, PLLC, and chair of the King County Bar Association Bar Bulletin Committee. Her practice focuses on employment law, workplace investigations, employee training, and various areas of the law that she finds interesting. She can be reached by email at ksutherland@omwlaw.com.

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Kelly Halvorson

Pro Bono Volunteer of the Month

By Harry Higgins

The KCBA Housing Justice Project at the Norm Maleng Regional Justice Center in Kent is proud to nominate Kelly Halvorson as the Pro Bono Services Volunteer of the Month. Halvorson has been a steady, volunteer legal assistant for several years, filling two to three shifts a week. She interacts well with our HJP clients, and is always empathetic and sincere in her desire to help them with their eviction matters.

Halvorson can be counted on to efficiently complete her tasks and is often called upon to train new legal assistants. She operates with minimal supervision and is always thinking creatively when trying to come up with solutions for our clients. She gets along well with the volunteer attorneys and is willing to share her knowledge of the eviction process with new volunteers.

HJP/Kent is happy to have Halvorson as one of its long-term volunteers.

We asked her a few questions about her volunteer experience and personal interests.

Q. How long have you been a KCBA Pro Bono Services volunteer?
A. The first time I volunteered was in January of 2012 to June 2012, and then I came back in September 2016.

Q. Who/what inspires you to volunteer?
A. I started volunteering when I was at Highline Community College in 2012, first at Seattle Community Law Center and Stewart, Bealls, MacNichols, and Harmel for 75 hours. Then I went to HJP/Seattle and while I was there I found out there was a clinic in Kent where I live.

It’s in my DNA to help others. I want to help others.

Q. Please share a brief client story.
A. An elderly Englishman comes in who is being evicted for non-payment of rent. He is retired, lives on a fixed income, and was living with his son splitting the rent. His son moved out with his girlfriend and left his dad holding the bag. He was kind and appreciative of whatever we could do, but still he had no place to go to and no one to help him. I just found this so sad that your own family would leave you in this situation. Whenever I think about this man, it makes me sad and I wonder what he is doing today.

Q. If you were not a legal assistant, what profession would you choose? Why?
A. Architect, because I love to draw, design and build. In addition to having earned degrees as a legal secretary and paralegal, I have a design drafting technologies degree.

Q. What is your most memorable volunteer experience?
A. Gosh, there are several, but I think I would have to go with the bed bug experience. So, a client came into the Seattle clinic when I was working there with Jacob W. You could actually see the bed bugs on their coat. Jacob and I sat across the table from the client praying that they would stay on the client. When we finished with the client and closed up the office, Jacob being smart went to his car and changed and bagged his clothes. I, on the other hand, got on the bus and went home with bed bugs. It took me four months to get them out of the two rooms that they parked themselves in at my house.

Q. What do you do for fun?
A. I'm working on reading "12 Monkeys." Title of the last book you read?
Q. "12 Monkeys."

Must-have office supply?
A. Computers that don’t crash.

Q. Title of the last book you read?
A. "12 Monkeys."

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The Intersection of Fake News and the Law

This Forbes headline from May of last year caught my eye, “Two-Thirds of Adults Get News from Social Media.” The article cited a Pew Research study finding that 62 percent of adult Americans get news from social media. I found that statistic hard to believe.

As a librarian and an attorney, my first instinct was to go to the source document. A closer look at the Pew Research study1 revealed that yes, 62 percent of the people surveyed (a panel of 4,654 representative participants) acknowledged that they get some news from social media. But that number was comprised of people who responded to the frequency with which they use social media as: “Often” (18%); “Sometimes” (26%); and “Hardly Ever” (18%). While it seems a bit misleading to include the “Hardly Ever” contingent in the number of people who get news from social media, it is not entirely incorrect and the 62-percent figure does make for effective-clickbait.

The real question for me is why are people using social media to get news? The answer may be that the tail is wagging the dog. Researchers at the University of Indiana, Bloomington, have released the first systematic study of how software-controlled, social media profiles (social bots) are quickly spreading large amounts of fake news via Twitter, and of how that information spreads.2

With the results of the UI study, the most concerning aspect of the Pew study’s finding that people increasingly rely on social media for their news, is that these social media news consumers are being fed a steady diet of fake news. According to the UI study, the social bots can:

- Post content and interact with each other and with legitimate users via social connections just like real people. People tend to trust social contacts and can be manipulated into believing and spreading content produced this way. To make matters worse, echo chambers make it easy to tailor misinformation and target those who are most likely to believe it. Moreover, the amplification of fake news through social bots overloads our fact-checking capacity due to our finite attention, as well as our tendencies to ... trust information in a social setting.

Whether there is a legal solution to the proliferation of fake news is a complicated question. The first challenge is defining fake news. Fake news has been around as long as people have communicated with one another. It occurs in myriad forms, including misleading claims for commercial purposes, propaganda campaigns and conspiracy theories.

As journalist Paul Chadwick of The Guardian notes, defining fake news is essential to combating it. In particular, he takes issue with conflating flawed journalism with fake news. “To equate flawed journalism with fake news,” he says, “corrodes a longstanding notion on which democracies rely: that there can be such a thing as a shared approximation of truth resting on verifiable facts and corrected or clarified incrementally.”

His definition is: “Fake news means fictions deliberately fabricated and presented as non-fiction with the intent to mislead recipients into treating fiction as fact or into doubting verifiable fact.”

In their article, “Fake News: A Legal Perspective,” attorneys David O. Klein and Joshua Wueller put forth the following definition of fake news, but concede that this definition requires case-by-case analysis, particularly for instances of satire and parody: “We define ‘fake news’ as the online publication of intentionally or knowingly false statements of fact.”

With this definitional problem in mind, Klein and Wueller discuss some of the common civil legal claims associated with fake news. Defamation appears to be the cause of action of choice for fake news litigation, and in this context the “intentionally or knowingly” language of their definition becomes essential when determining the status of the plaintiff. Harmful, false publications of fact concerning a public figure are only actionable if the publisher acted with “actual malice,” that is, with either knowledge that the statement is false or reckless disregard for its falsity. Conversely, private figures do not need to prove actual malice but rather are required only to prove that defamatory statements were published with negligence.

Klein and Wueller discuss other potential civil legal claims such as intentional infliction of emotional distress, intellectual property violations (including federal trademark infringement and state right of publicity laws), false light invasion of privacy, fraud, tortious interference, and unfair or deceptive trade practices.

Criminal laws may be applicable as well. Washington’s criminal libel statute, RCW § 9.58.010, was repealed in 2008 but 15 states currently have criminal libel statutes in force, which along with cyberbullying laws could provide avenues for criminal enforcement.3 With that said, First Amendment free speech and other procedural or statutory protections bring much complexity and uncertainty to both civil and criminal litigation of fake news cases.

There have been suggestions that government regulation and/or self-regulation by social media is the answer, but, as the news has already jumped on the meme that this cure for fake news is worse than the disease.4 Do we really want to live in a world where Congress or Mark Zuckerberg decides what constitutes real or fake news?5

While there may be no magic legal or regulatory solution to the problem of fake news, there is always self-help. We can train ourselves to go the extra step to fact-check things before sending them along, and to resist the urge to perpetuate what we are fed in our echo chambers. Most critically, we need to train the next generation to be critical thinkers and healthy skeptics of what is presented to them as “news.”


3 Id at 2.


5 Id.


7 Id at 7.

8 Id at 8–9.

9 Id at 9.


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Grant A. Gehrmann

September 2017
BAR BULLETIN
Prazuch and Maron presented the nomination of James Clark to fulfill the remaining two years of the east-side trustee position left vacant by the death of Nathaniel Wylie in January. After discussion, the Board appointed Clark to fill the position.

In her year-end recognition remarks, Battuello thanked outgoing Pro Bono Services Director Threesa Milligan for her service to the KCBA and recognized outgoing trustees Alan Funk, Nicole McGrath, Karen Orehoski, Mary Sakaguchi and Sara Wahl, and Treasurer Kinnon Williams for their service to the Association and the legal community, and presented each with a gift of appreciation. Maron thanked Battuello for her leadership over the past year and presented her with a gift from her fellow officers and trustees.

Juvenile Justice Reform Task Force Co-chairs Anne Ellington and Nicole McGrath briefed the trustees on the task force’s four priority areas: (1) evaluation of statutory changes; (2) detention services; (3) school-to-prison pipeline; and (4) model reforms and legal research. The task force leaders plan to meet with the Board later this year to discuss recommendations for legislative changes.

Battuello briefed the trustees on a recent liaison meeting with minority bar leaders; their discussions focused on areas where collaboration may be possible. In addition, she presented an overview of the recent implicit bias training that was held for bar leaders and members of the Judicial Candidate Evaluation Committee.

Williams reported that at the end of 10 months of the fiscal year, as of April 30, KCBA had revenues of $3.4 million and expenses of $3 million, for net income of $436,000. The Association had $1.6 million in cash and cash equivalents, and the reserve fund was at $946,000. Williams noted that at this point of the fiscal year overall revenue and expenses should be at roughly 83 percent of the approved budget and both were performing ahead of expectations. Further, the final quarterly installment of the grant from the King County Bar Foundation was recorded on the April statement showing $256,000 in revenue.

Williams and Prazuch directed the Board’s attention to the annual budget in the materials, which was first presented at the May meeting. After additional discussion, the Board approved the FY2018 annual budget by voice vote.

Williams also briefed the trustees on the Finance Committee’s proposed investment policy for the Association under which up to 75 percent of the operating reserve fund could be invested in longer-term financial instruments. After discussion the Board approved the policy as amended during the discussion.

LHHC Sets Annual Fundraisers for October 10

Lawyers Helping Hungry Children, a nonprofit dedicated to ending childhood hunger in Washington, will hold its 26th annual fundraiser luncheon on October 10 at the Grand Hyatt in Seattle.

The event will be emceed by Ian Lindsay and headlined by our keynote speaker, former Washington Supreme Court Justice Bobbe Bridge, and Washington Solicitor General Noah Purcell. Individual tickets are $100 or $60 for students and attorneys with government or nonprofit organizations. Online registration is available at www.lhhcwa.org.

This is the celebration of 26 years of Lawyers Helping Hungry Children’s mission of raising money and advocating on behalf of hungry children. The money raised by LHHC goes to beneficiary organizations that provide food to children of low-income families and to advocacy for childhood hunger issues. Beneficiary organizations include the City of Seattle Summer Food Program, Northwest Harvest, Emergency Feeding Program, and CARE.

The Pierce County Chapter of Lawyers Helping Hungry Children will hold its ninth annual breakfast to benefit three food banks that have backpack programs for school-age children, also on October 10 from 7:30–8:30 a.m. The event is at Bichsel Hall, St. Leo Campus (on 13th Street, between Yakima and G streets). Breakfast will be hosted by Superior Court Judge Stephanie Arend, and Tacoma Public Schools Superintendent Carla Santorno will be the guest speaker. For more information, contact Jane Melby at lhhctacoma@gmail.com.

Please join us at one or both of our events.
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\[\text{awyers in the courtroom should reflect the demographics of those in the community. But that doesn’t happen automatically. A concerted effort to cultivate the litigation practice of new lawyers will lead to a more diverse pool of litigators.}

In an August 8 New York Times op-ed, former New York District Court Judge Shira Scheindlin wrote of a phenomenon she observed in motion practice. A motion would be argued by a senior partner in a large firm. The partner would give his answer. Judge Scheindlin would ask why the younger lawyer wasn’t arguing the case, since she obviously “knew the case cold.”

This column hit home with me and some of my colleagues. I can’t tell you how many times I have observed a similar situation and wondered why the younger lawyer was not being given the opportunity to argue and get courtroom experience. Mention it might have made the argument more efficient.

It reminded me of a conversation I had some years ago with U.S. District Court Judge Marsha Pechman. She described a similar situation dealing with a lengthy, multi-party commercial litigation. Observing the room of mostly white, older men, she took the initiative to suggest to the lawyers that they make a concerted effort to have lawyers under age 40, and those who wrote the briefs, argue the motions. She offered the senior lawyers the opportunity to intervene or get extra time if they felt the argument was going awry. From there on out, she observed a dramatic difference in the demographics over the course of the litigation. In addition to more women, she observed an increased number of attorneys of color. Years after, a young man approached her at a conference, to tell her how that had “changed his life.” It allowed him to tell clients, as well as other partners in the firm, that he had argued in District Court, which led to additional responsibility in his career development.

We all have an obligation to advance the professional development of new lawyers, especially those traditionally underrepresented in the courtroom — women and attorneys of color. Judge Scheindlin noted a recent report by the New York State Bar Association’s Commercial and Federal Litigation Section, which was based on a study of women speaking in court. The study, based upon observations by judges, noted that women were the lead lawyers for private parties about 20 percent of the time across all levels of New York courts, while twice as likely to appear on behalf of public-sector clients.

There is no question that the opportunities for all lawyers to obtain courtroom experience have dwindled. The causes are many, with the escalating costs of litigation and increasing use of alternative dispute resolution as primary reasons. This is even a greater reason for lawyers and judges to make a concerted effort to ensure new lawyers have the opportunity to develop courtroom skills.

Judge Scheindlin surmises that one of the reasons there are so few women lawyers on private-sector cases is that the client controls who the lawyer is, unlike for public-sector matters. Perhaps, but that is accurate, the senior lawyers in the firm have the ability to educate the client as to the importance to the bench and jury that lawyers reflect their communities. Further, many national and regional corporate counsel are actually intentionally seeking out retained counsel panels who are diverse. And both current and new judges are not doing so, you may wish to subtly point out they are behind the curve.

Lawyers and clients should be assurance and judges will be receptive. From a judicial standpoint, I would much rather hear from the lawyer who wrote the brief. I guarantee that my colleagues and I will be welcoming to those lawyers who are arguing their first matters.

We will reflect on our own court experiences. I remember the angst I experienced leading up to my first appearance as a Rule 9 intern, preparing to petition the court for an unopposed deferred prosecution in a DUI case. The relief I felt when my client failed to appear was palpable.

To the extent it is the lawyer’s first time in court, and the judge is made aware of it, he or she will find it endearing. And, like Judge Pechman, I warrant there is unlikely to be a judge on the bench who wouldn’t give a new attorney a bit more time to compose himself or herself, or, to the extent a point may have been missed, to allow a more senior colleague to briefly confer with the lawyer before the hearing’s conclusion.

KCBA’s Young Lawyers Division gives an award annually for Mentor of the Year. Although he hasn’t said so, I warrant that one of my husband’s proudest moments was receiving that award a few years back. Even in a large law firm, where he is a partner, the opportunities for court appearances are slim. A true courtroom junkie, there isn’t anything he likes more (okay, maybe some things) than appearing in court.

But the reason he received his award was in large part for making the sacrifices to his own courtroom experience to ensure that younger lawyers were given opportunities for litigation. Taking a deposition, defending a traffic ticket, arguing a motion or picking a jury are all things he could do in his sleep. Sure, it would be quicker for him to do it himself. But he recognizes the importance to a young lawyer’s skill development and job satisfaction that he or she be given every possible opportunity.

What about those of you starting out, who haven’t been given immediate opportunities for court experience and don’t see it on the horizon? You may have to be a bit proactive, but the opportunities are there.

Start with the KCBA website. The Housing Justice Project uses volunteer attorneys (no experience necessary) to represent low-income tenants facing eviction in unlawful-detainer actions. Volunteers are provided training. In addition to being a huge benefit to the tenant, a participating lawyer gets experience in negotiation skills, and appears at hearings in the Ex Parte Department and the trial court should the case go that far.

The Family Law Mentor Program is also an excellent opportunity to provide valuable pro bono service while receiving important skills. Mentees (new or non-family law attorneys) are paired with an experienced family law mentor who provides training and assistance throughout a contested family law case. And by the way, feel free to take the opportunity when you appear in court to introduce yourself to the judge or commissioner as a volunteer lawyer. You won’t get preferential treatment, but the judicial officer will likely give you a bit more latitude and patience when presenting your matters and navigating what can seem like a procedural morass at times.

Is federal court your interest? The Western District of Washington has a Pro Bono Panel program for Seattle Civil Rights Act cases, more fully described on the court’s website. Superior Court Judge Judy Ramseyer, who spent time in federal court as a clerk and litigator, points out:

It is a great opportunity to litigate in federal court. Clients and issues can be challenging, but an effort is made to find a mentor if a newer attorney is concerned about practicing in an area in which s/he has no experience and does not have resources available through a law firm. The judges are very appreciative of attorneys who take on these assignments. If the case is a civil rights (42 USC 1983) action, attorney fees are available to a prevailing plaintiff (42 USC 1988).

There are just a few ways to ensure that we have a more diverse group of litigators in our courtrooms. But it takes a more concerted effort by all of us to make it happen.
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litigation that clients are unaware of until they find themselves in the midst of it.

Often clients are stunned to learn that personal information such as their bank statements, employment records or medical/mental health records must be produced and provided to the other party and opposing counsel as well as to the court, mediator, arbitrator or other third person such as a parenting evaluator or GAL. Make it clear to the clients that, for the most part, this information is being provided as a normal part of the case and is not intended to create conflict.

Discuss discovery with your client in advance and consider whether an informal exchange of documents and other information is an option. In some cases, informal discovery can be accomplished, which can lessen stress for the clients and move the clients toward a higher level of cooperation, hopefully, less stress for the clients will also translate to less stress when they are home with their children.

If you receive a formal discovery demand, you should be clear with your client about how important it is that they be timely and complete with their responses. This will not only assist you in your representation of the client, it will assist both parties in moving the case toward resolution. Advise the client about other legal considerations related to discovery. For example, explain the various sanctions that are possible under CR 37 if they do not comply with valid discovery requests.

If discovery involves complex matters and/or repetitive intransigence, consider talking to your client about the option of agreeing to appoint a special master or seeking an appointment if agreement isn’t possible. The special master can often address questions and conflicts about discovery more quickly than the court system.

Talk over various ideas with your client about how to reduce costs and conflict in other aspects of the litigation. Let the client know that a higher level of conflict can increase the overall cost of their matter, including paying more in attorney fees and expert costs as well as taking more of their time and emotional energy.

Some simple ways to reduce costs include agreeing to joint appraisals for real estate or hiring a joint financial expert if a business evaluation or tracing of separate property is necessary. See about agreeing that one party will provide documentation for their joint accounts. If the parties are cooperating with a joint expert, then you may be able to avoid the situation of the parties becoming immediately polarized as to his/her expert’s opinion.

Finding small areas where the parties can agree and cooperate can translate into the parties being better able to cooperate in meeting the needs of their children. Lead by example; treat the other attorney with respect and look for areas where you can cooperate or reach agreement.

Sometimes clients believe that it will be useless to make offers to the other side to reduce conflict and/or cooperate on issues, but sometimes all it takes is for one party to make the initial move and suddenly there are some minor agreements, which can lead to more substantive agreements. Talk to your clients about taking the first step in starting a conversation to work to reduce conflict and beginning the process of building a better future for their children as well as for themselves.

Family law attorneys deal with conflict every day. Take time with your client to explore the effects of conflict on children. Helping them to develop ways of reducing conflict and increasing civility with the other parent can have long lasting and positive effects for them and their children. Lastly, don’t forget to take time for yourself and step away from your clients’ conflicts so that you can maintain your perspective.