

Russian Judges Visit Wisconsin's Western District

By Tom Bertz

Under the Russian Leadership Program funded by Congress, now known as Open World, five Russian judges visited the United States to study the American judicial system. After a visit to the Administrative Office of the United States Court in Washington, D.C., the five judges spent a week in Madison, studying both the State and Federal court systems. As part of their visit, Chief Judge Barbara Crabb invited the Western District of Wisconsin Bar Association to meet with the Russian judicial delegation in an informal setting.

On Monday, November 18, 2002, the WDBA hosted a luncheon for the five judges: Svetlana Beshanova, Chairperson of the Court, Turgenevsk District, Terenga, Russia; Aleksandr Bestolkov, Deputy Chairman of Perm Regional Court, Perm, Russia; Sergey Kozlov, Chairperson, Court of Lotoshinskiy District, Lotoshino, Russia; Nikolay Lysenin, Judge, Supreme Court of Chuvashia Republic, Cheboksary, Russia; and Akhmed Makoyev, Judge, Supreme Court, Nalchik, Russia. They were accompanied by their facilitator, Igor Lukin, and two interpreters. The WDBA, represented by members of the Executive Committee, Board of Governors, and Committee Chairs held the luncheon at the Madison Club. Judge Crabb also attended the luncheon.

Attending for the WDBA were Leslie Herje, President; Todd Smith, President Elect; Tom Bertz, Past President; and Board of Governor members: Bob Shumaker, Lynn Stathas, Jennifer Sloan Lattis, Cathy Rottier and Margery Mebane Tibbetts and Committee chairs: David Harth and Ted Long.

Judge Crabb welcomed the visiting judges to the Western District and introduced them to the attending members of the WDBA. She explained the reason for the Delegation's visit to the Western District and noted that the judges had observed jury selection for a criminal trial that day in her courtroom.



From left to right are Igor Lukin, Facilitator; Judge Aleksandr Bestolkov; Judge Nikolay Lysenin; Todd Smith, WDBA President-Elect; Judge Svetlana Beshanova; Judge Sergey Kozlov; and Judge Akhmed Makoyev.

Judge Aleksandr Bestolkov explained the jury system in Russia. Some regions have jury pilot programs although the jury system has been in place for more than 10 years in some regions. The selection of jurors is similar in ways to the American system, although the criminal jury consists of two individuals for less serious crimes and for serious (five years or more) a larger jury. The visiting judges believe that jury trials are complex because of the procedures and they have problems with the jurors showing up for the legal proceedings. In addition, the jury verdict must contain all of the supporting evidence and justification for the verdict, in contrast to the American verdict form where the jury just answers the ultimate questions that decide the case.

WDBA President Leslie Herje discussed the role of the nearly 300 members of the WDBA in assisting the

(Continued on page 4)

Western District of Wisconsin Bar Association 2002-2003

Executive Committee

Leslie Herje, President

(608) 264-5158 Leslie.herje@usdoj.gov

Todd Smith, President-Elect

(608) 257-3911 Tsmith@gklaw.com

James R. Troupis, Secretary

(608) 257-3501 Jrtroupis@mbf.com

Michael J. Modl

(608) 257-5661 Mmodl@axley.com

Thomas W. Bertz, Past President

(715) 344-0890 Twb@andlaw.com

Committee Chairs

James Troupis, Alternative Dispute Resolution

(608) 257-3501 Jrtroupis@mbf.com

Thomas W. Bertz, Co-Chair Communications

(715) 344-0890 Twb@andlaw.com

Paul Barnett, Co-Chair Communications

(608) 266-5366 Barnettpl@doj.state.wi.us

David Harth, Pro Bono / Pro Se

(608) 663-7470 Dharth@hewm.com

Jeff Simmons, Membership

(608) 258-4267 Jsimmons@foleylaw.com

Stephen Ehlke, Courthouse Facilities

(608) 264-5158 steve.ehlke@usdoj.gov

Ted Long, Rules, Practice & Procedure

(608) 257-1507 tj@lathropclark.com

Brian Hodgkiss, Web Site

(715) 344-1012 bph@andlaw.com

Board of Governors

Greg Everts

2000 - 2003

Margery Mebane Tibbetts

2000 - 2003

Stephen Eisenberg

2000 - 2003

Lynn Stathas

2001 - 2004

Percy L. Julian, Jr.

2001 - 2004

Robert E. Shumaker

2001 - 2004

Jennifer Lattis

2002 - 2005

Brian Hodgkiss

2002 - 2005

J.B. Van Hollen

2002 - 2005

Joseph Skupniewitz

Permanent

Catherine M. Rottier (Ex Officio)

2002 - 2004

WDBA Announces Web Site “Open House”

Brian Hodgkiss, Chair of the WDBA Website Committee, recently announced that a mock-up of the Association’s website is now available for viewing. The website may be accessed at the following address: <http://www.wisbar.org/bars/west/>.

“[T]he site is home for basic Association information, including newsletters, bylaws and organizational rosters,” explained Hodgkiss, an associate at the Stevens Point firm Anderson, Shannon, O’Brien, Rice & Bertz. “We have linked to the 7th Circuit Bar Association and intend to add additional links to organizations of interest to our members.”

The WDBA website appears within the State Bar of Wisconsin’s website under the heading “local bars.” The WDBA website is provided and maintained without cost. Its contents are determined by the Website Committee, in consultation with the executive board and, of course, the members.

Future enhancements to the WDBA website could include adding CLE material provided at the Association’s annual meeting and CLE program, membership applications, a calendar of events, board meeting agendas and minutes and perhaps posting decisions from the United States District Court for the Western District of Wisconsin.

Comments and suggestions for improvement are welcome. Please direct them to Brian Hodgkiss, whose e-mail address is bph@andlaw.com.

Minnesota Awards Credit For Annual Meeting

On October 8, 2002, the Supreme Court of Minnesota’s Board of Continuing Legal Education announced that the Association’s April 25, 2002, Annual Meeting and CLE Program was awarded 2.75 hours of continuing legal education credit for attorneys licensed to practice in Minnesota. Claimants should refer to event code 69843.

THE PRESIDENT'S CORNER

By
Leslie K. Herje
President

This past month, Judge Crabb asked the Western District of Wisconsin Bar Association (“WDBA”) to sponsor a luncheon for a delegation of judges from Russia. We were pleased to host the luncheon and I greatly appreciate the assistance provided by President-Elect Todd Smith and Past President Tom Bertz who both helped with the arrangements and transportation. Several members of the Board of Governors and Committee Chairs also graciously took time from their full schedules to attend the luncheon on behalf of the WDBA on short notice.

Meeting with the delegation of judges in an informal setting provided each group with a chance to ask questions regarding the respective legal systems, bar memberships, and legal education. Although the time was brief, it was interesting to hear about some of the differences between our established legal system and the developing Russian judicial system.

For example, one of the Russian judges relayed that he was quite surprised at how victims were treated in legal proceedings in the United States. Apparently, victims in the Russian judicial system can participate essentially as a party in all stages of the legal proceedings, from reviewing the prosecutor’s case file, to questioning witnesses at trial, objecting to plea agreements, and even appealing a verdict. I also heard another anecdote where one of the judges found it disconcerting that the United States still condoned the practice of capital punishment, which is apparently not an option under the new Russian system.

Comparing some of the differences between our legal systems provides insights into what aspects of our system work well and, alternatively, what avenues are available to practitioners if they believe aspects of the system need improvement. One part of our system that most lawyers can agree on is that procedures and organizations exist that allow us to participate directly in the system. In addition to running for office, running or applying for a judgeship, or participating in public or private organizations involving specific issues or constituencies, lawyers can participate in general or specialty bar associations at the local, state, federal, or national level. Each of these types of bar associations affords members

of the profession an opportunity to work together to effectuate changes to the legal system that often benefit practitioners and litigants alike.

When one of the Russian judges inquired about the purpose of the Western District of Wisconsin Bar Association, I provided a summary of the association’s mission statement and recounted some of the functions the organization fulfills. This led me to appreciate truly the amazing opportunity that we have as members of the bar to associate and work together with lawyers, often with entirely different legal practices, toward a common goal of assisting other practitioners, the public, and the court to “promote the just, speedy, respectful and efficient determination of every action filed in this district.”

Chief Judge Flaum Will Speak At Annual Meeting Luncheon

WDBA Vice President Todd Smith, LaFollette, Godfrey & Kahn, recently announced that the Association’s Annual Meeting, Luncheon and CLE Program will be held on April 24, 2003. Practitioners are encouraged to calendar that date immediately.

The Honorable Joel M. Flaum, Chief Judge for the Seventh Circuit Court of Appeals, has accepted an invitation to speak at the luncheon. President Reagan nominated Chief Judge Flaum to the appellate court in 1983 after he served for nine years as district judge in the Northern District of Illinois. He received his *juris doctor* and LL.M. degrees from Northwestern University School of Law, after which he practiced in the private sector and as Assistant State’s Attorney, Assistant Illinois Attorney General and First Assistant United States Attorney. Chief Judge Flaum has also lectured at DePaul University College of Law and is an adjunct professor at Northwestern University School of Law.

Final decisions have not been made regarding the speakers and topics for the annual CLE program. Anyone who has suggestions or wishes to volunteer should contact Todd Smith at (608) 257-3911 or by e-mail at tsmith@gklaw.com.

Russian Judges

Continued from page 1

court to promote the improvement of the administration of justice by serving as a liaison between the court and the members of the bar. She also gave examples of how the WDBA assists the court with special projects and noted that the WDBA informs its membership of changes in practice before the court. Herje told the visiting judges that the membership of the WDBA is diverse, with members who practice as solo practitioners, in small and large firms, and in the public sector.



Russian Judge Sergey Kozlov describes aspects of the Russian judicial system to members of the Board of Governors of the Western District Bar Association.

The Russian judges were interested in how a person became a lawyer in Wisconsin. Members of the WDBA Board explained the educational requirements necessary to be eligible for bar membership and the process for becoming a lawyer — noting that a person either must pass the bar exam or graduate from a law school in Wisconsin. The judges were also interested in whether the membership in the WDBA was voluntary or mandatory, and asked about the dues for the organization. Judge Bestolkov stated that membership in the Russian bar associations was voluntary and that dues were very expensive. Judge Bestolkov noted that the dues amounted to one-third of the annual salary for an average rural lawyer.



Russian Judge Aleksandr Bestolkov, center, explains Russia's plan to implement jury trials. Also pictured, to Judge Bestolkov right are a translator and Judge Nikolay Lysenin, and to Judge Bestolkov's left Judge Svetlana Beshanova, and WDBA Board Member Margery Mebane Tibbetts

Judge Sergey Kozlov mentioned that in addition to observing the American court system, the visiting judges were also very interested in the American way of life. Speaking on behalf of the other judges, Judge Kozlov stated that they were very grateful to be guests in America and to be invited to visit with members of the WDBA. The judges, who stayed with Rotary host families, also attended a variety of other legal and social programs throughout their week long stay in Madison.

“We were pleased to assist the Court in its effort to provide a variety of experiences for the Russian Judicial Delegation and were honored that the WDBA could sponsor a luncheon,” said Herje.

“I’m very appreciative of the opportunity the WDBA provided for the visiting Russian judges to meet with federal court practitioners in an informal setting,” Judge Crabb added. “In planning the visit, our goal was to expose the judges to as many aspects of the legal system as possible, from courtrooms to jail cells to policy-setting meetings. Thanks to the WDBA, we were able to introduce the judges to a varied group of lawyers from whom they could hear about the work of litigators in the United States, the role and purposes of voluntary bar associations and the lawyers’ relationship to the courts. The judges were a delightful group: outgoing, game for any activity, bright and very quick on the uptake. I thoroughly enjoyed the time I spent with them and I’m glad that the bar members had the same opportunity,” Judge Crabb said.

Document Confidentiality In Civil Appeals

By Greg Everts
Quarles & Brady LLP

Businesses frequently balk at disclosing confidential information in litigation, fearing that disclosure to the public or to a competitor (often the other litigant) will do commercial or other damage. The typical solution is a protective order, entered by the district court “for good cause shown” under Fed. R. Civ. P. 26(c). Generally, such orders permit documents exchanged to be designated as “Confidential,” “Confidential—Attorneys’ Eyes Only,” etc.

A recent Seventh Circuit opinion highlights the fact that secrecy designations made in the district court will be reviewed—and will need to be independently justified—on appeal. *Baxter Int’l, Inc. v. Abbott Laboratories*, 297 F.3d 544 (7th Cir. July 16, 2002). The decision states that “[i]nformation transmitted to the court of appeals is presumptively public” and that “any claim of secrecy must be reviewed independently in this court.” *Id.* at 545-46.

The *Baxter* decision emphasizes Seventh Circuit Operating Procedure 10, which provides that a motion to seal must be filed within 14 days to protect the confidentiality of documents in the appellate record. Without court approval, the rule states, documents in the appellate record will be public *even if such the same documents are under seal in the district court*. See Seventh Circuit Operating Procedure 10 (“every document filed in or by this court (whether or not the document was sealed in the district court) is in the public record unless a judge of this court orders it to be sealed”), online at <http://www.ca7.uscourts.gov/Rules/rules.htm>.

Baxter involved a patent licensing dispute that was arbitrated, subject to confidentiality. The arbitrator’s decision was appealed to federal court, where the parties again stipulated to confidentiality. The district court entered judgment, and the matter was appealed to the Seventh Circuit.

Pursuant to Seventh Circuit Operating Procedure 10, the parties filed a joint motion requesting that documents in the appellate record be sealed. The joint motion asserted that the parties had agreed to keep the documents at issue secret and that the documents contained com-

mercially sensitive information. The motion was “so perfunctory . . . that it could have been summarily rejected,” but the motions judge, in denying it, explained some of its shortcomings and invited renewal. 297 F.3d at 545.

The parties filed a second joint motion to seal. This motion was referred to a three-judge panel (Easterbrook, Kanne, Williams) “for resolution in light of the frequency with which such motions are filed and litigants’ frequent inattention to the legal standards for closure of records.” 297 F.3d at 545. The panel found the second motion only slightly more specific than the first—and, again, overly reliant on the fact the parties had agreed to confidentiality. The second motion was also denied.

The *Baxter* decision contains a general warning to the bar, stating that Operating Procedure 10 requires a motion that is detailed and specific:

[T]he court will in the future deny outright any motion under Operating Procedure 10 that does not analyze in detail, document by document, the propriety of secrecy, providing reasons and legal citations. Motions that represent serious efforts to apply the governing rules will be entertained favorably, and counsel will be offered the opportunity to repair short comings. Motions that simply assert a conclusion without the required reasoning[] . . . have no prospect of success.

Id. at 548.

Baxter does not undermine the use of protective orders in the district court; indeed, it states that “[s]ecrecy is fine at the discovery stage, before the material enters the judicial record.” 297 F.3d at 545. Materials in the court file are presumptively open, it further states, however, “[t]he strong presumption of public disclosure applies only to the materials that formed the basis of the parties’ dispute and the district court’s resolution.” *Id.* at 548.

(Continued on page 6)

Document Confidentiality

Continued from page 5

Some lessons:

- In the district court, even on stipulation, a protective order requires a showing of “good cause.” Fed. R. Civ. P. 26(c).

- Without a protective order, statute, or other special confidentiality provision, documents filed with the district court are public. Assume otherwise at your own risk. Don’t file confidential documents with the clerk without a protective order in place. Clearly mark documents you intend to be filed under seal, subject to protective order. Be sure that depositions to be filed under seal are also expressly designated. (The fact they are filed in a sealed envelope does not ensure that they will remain sealed by the court.)

- If possible, pare down the record on appeal, and exclude confidential documents that are not necessary for a decision on the issues appealed. 297 F.3d at 548 (“Keeping the documents in the district court is an especially attractive option when they contribute little to the resolution . . . yet are too voluminous to justify detailed examination on appeal.”).

- Be aware of Operating Procedure 10. If you want to seal documents in the appellate record, file a motion that “analyze[s] in detail, document by document, the propriety of secrecy, providing reasons and legal citations.” 297 F.3d at 548.

Amendments to Federal Rules Effective December 1, 2002

Certain amendments to the Federal Rules of Civil, Appellate, Bankruptcy, and Criminal Procedure took effect on December 1, 2002. In summary, they are as follows:

Rules of Civil Procedure

Rule 7.1 was created to require a nongovernmental corporate party to file two copies of a statement that identifies any parent corporation and any publicly held cor-

poration that owns 10% or more of its stock or states that there is no such corporation. The statement must be filed with a party’s first appearance, pleading, petition, motion, response, or other request addressed to the court, and it must be promptly supplemented if the required information changes.

Rule 7.1 is similar to Rule 26.1 of the Federal Rules of Appellate Procedure. It is also substantially similar to Western District’s standing order requiring the filing of a Disclosure of Corporate Affiliation and Financial Interest. The information required by Rule 7.1(a) reflects the “financial interest” standard of Canon 3C(1)(c) of the Code of Conduct for the United States Judges. While the required statement does not deal with all circumstances that may call for disqualification, it enables judges to determine if a party is a publicly held company in which he or she has invested.

Fed R. Civ. Pro 54, Fed. R. 58 Pro, and Fed. R. App. Pro. 4 were amended to delete the requirement that a judgment on a motion for attorneys’ fees be set forth in a separate document.

Rules of Appellate Procedure

Rule 4, related to the time to file an appeal, was amended in several respects:

- an appeal from an order granting or denying an application for a writ of error *coram nobis* is an appeal in a civil case for purposes of Rule 4(a);

- regardless of whether its motion for an extension is filed before or during the 30 days after the time prescribed by Rule 4(a) expires, the district court may grant the motion if the party shows either good cause or excusable neglect;

- to resolve several circuit splits that have arisen out of uncertainties about how Rule 4(a)(7)’s definition of when a judgment or order is “entered” interacts with the requirement in Fed. R. Civ. P. 58 that, to be “effective,” a judgment must be set forth on a separate document;

- to provide that the filing of a motion under Fed-

eral Rule of Criminal Procedure 35(a) to correct and erroneous sentence does not suspend the time for filing a notice of appeal from a judgment of conviction;

Rule 25, relating to manner of service, was amended in several ways, including to permit service by electronic means with consent of the person being served.

Rule 26 was amended to provide that in computing time under the appellate rules intermediate Saturdays, Sundays, and legal holidays are exclude when the period is less than 11 days, unless stated in calendar days. Previously, Saturdays, Sundays, and legal holidays were excluded only when the period was less than 7 days. The purpose of this amendment was to make it consistent with the rules of criminal and civil procedure.

Rule 28, relating to citation of supplemental authorities after a party's brief has been filed or after oral argument but before decision, was amended to delete the requirement that the letter must state "without argument" the reasons for the supplemental citations, and instead providing that the body of the letter must not exceed 350 words. This amendment eliminates the difficulty of distinguishing "state[ment] . . . [of] the reasons for the supplemental citations," which is required, from "argument" about the supplemental citations, which is forbidden.

Form 6 was created of provide a form for a certificate of compliance with the type-volume limitation, type-face requirements, and type style requirements of Fed. R. App. P. 32(a)(7)(B).

Rule 32(d) was created to provide that every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's attorneys.

Rule 44 was amended to provide that if a party questions the constitutionality of a statute of a State in a proceeding in which that State or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the

question is raised in the court of appeals. The clerk must then certify that fact to the attorney general of the State.

Bankruptcy Rules

The Federal Rules of Bankruptcy Procedure were amended to establish procedures for cases commenced on behalf of infants or incompetent persons. Other amendments relates to postponement of entry of discharge in Chapter 7 case upon the filing of a motion to dismiss under Section 707 of the Bankruptcy Code. The provision implying that all general partners must consent to the filing of a voluntary petition of the partnership is eliminated by Rule 1004.

Criminal Rules

There were 3 "packages" of amendments to the Criminal Rules of Criminal Procedure.

The amendments include a "Style" package that represents a comprehensive "style" revision of Criminal Rules 1-60. The style revision is the second in a series of comprehensive revisions that are designed to clarify and simplify the language of the federal procedural rules.

The "Substantive" package contains "substantive" amendments to Criminal Rules 5, 5.1, 10, 12.2, 12.4, 26, 30, 35, and 43. These "substantive" amendments were under consideration before the "style" project was undertaken and were published separately from the restyled rules.

The "Rules 6 and 41" package contain amendments to Criminal Rules 6 and 41 that conform to USA Patriot Act of 2001.

Complete Amendments Available On-line

A complete set of the amendments to the Civil, Appellate, Bankruptcy, and Criminal Rules of Procedure, and the Comments thereto, are available on-line at www.uscourts.gov/rules/.

Some Things To Know If Your Client Gets Subpoenaed By A Grand Jury

By Stephen J. Eisenberg

Grand juries are used to investigate and issue indictments for simple as well as complex criminal activity. A grand jury has a great deal of power. It is unconstrained by the *Miranda* rules, the exclusionary rule or the rules of evidence, and it can subpoena witnesses and documents from anywhere in the United States, even outside the United States in some circumstances. The grand jury hears the evidence the prosecutor wants it to hear and votes, if the prosecutor so requests, on whether probable cause exists to issue an indictment. It is composed of between 16 and 23 citizens. Only 12 “yes” votes are needed for an indictment to issue. There are two types of federal grand juries, “Regular” and “Special” and they sit for different terms. Both are originally convened for 18-month terms, but a district court can extend a regular grand jury’s 18-month term for a period of up to six months and a special grand jury’s term for up to 18 months.

The prosecutor has almost total control of the process. Defense attorneys, judges and police are not allowed to be present unless they are a witness. The prosecutor is not required to produce evidence that suggests a defendant may be innocent. Many grand jury observers believe the proceedings are one-sided and claim that a grand jury would indict anyone or anything if asked to do so by the prosecution. Some evidence can be obtained in complex cases only through the use of the grand jury. It can subpoena business and bank records, tax returns, and other so-called private documents. No one can avoid a subpoena unless they go into hiding. So what do you do when your client gets one.

It is important for the attorney to determine the nature and scope of the investigation, and the status of your client, the witness. Usually a prosecutor will in-

form an attorney of the status of your client/witness. The three status classifications are (1) witness; (2) subject; and (3) target. A target is a person that is linked to an offense and who the prosecutor seeks to indict. A subject is someone who has knowledge of criminal activity and may even be involved in criminal activity but is one step away from the primary culpable party and, therefore, is not considered a target. A witness is simply a person who has information about a crime even though they, themselves, have no direct criminal liability or involvement.

After determining the status of the client, the attorney should try to arrange for the client to avoid appearing before the grand jury. Options include: (1) an interview of the witness by the agents or prosecutor, (2) informing the prosecutor that the witness intends to and will exercise his privilege against self-incrimination, and (3) judicial relief.

One cannot refuse to respond to a subpoena. However, the government’s power to compel testimony is not absolute. There are exemptions from the duty to testify, the most important of which is the Fifth Amendment privilege against self-incrimination. This privilege applies to testimony and the production of incriminating documents. *United States v. Hubbell*, 500 U.S. 27 (2000). Corporations and other artificial entities, however, have no Fifth Amendment privilege against self-incrimination. Corporations, even if there is only one shareholder, and other artificial entities have no Fifth Amendment privilege against self-incrimination. Corporate documents are fair games for subpoenas and the corporate officer who may be the target of the investigation, does not have a Fifth Amendment privilege to refuse to produce corporate documents. The Supreme Court has held that the

Fifth Amendment privilege against self-incrimination is “a personal one, applying only to natural individuals.” *Braswell v. United States*, 487 U.S. 99 (1988).

If your client is going to exercise his Fifth Amendment privilege, it is prudent to advise the U.S. Attorney that your client intends to invoke that privilege. If the government wants your client’s testimony badly enough, it will probably offer your client immunity. Usually targets are not issued subpoenas and even more rarely would a target be granted immunity. Immunity is going to be offered to a witness who has knowledge of criminal activity, but also may be subject to lesser criminal charges for peripheral criminal activity associated with the main target of the investigation. You should never let a client testify before a grand jury without immunity if any of the client’s testimony will even remotely subject him to criminal liability. If immunity is offered, your client will basically have no choice but to provide information.

When one of my clients is subpoenaed to testify before the grand jury and immunity is not provided, I advise my client to exercise his Fifth Amendment privilege to every question other than preliminary questions such as his name. I provide my client with a 3x5 index card with the following information typed on it:

I hereby exercise my Fifth Amendment privilege against self-incrimination and, therefore, respectfully refuse to answer the question.

Although it doesn’t seem much to remember, the 3x5 card is a simple reminder for the client to exercise his Fifth Amendment privilege.

In 1970, Congress enacted the so-called “use immunity” statutes. 18 U.S.C. § 6001 - § 6003. Under the law, if a witness is given immunity, no testimony or other information provided by the witness may be used

against him in any criminal case, except a prosecution for perjury, giving a false statement, or failing to comply with the order. Under “use” immunity, if the government has evidence that your client was involved in criminal activity, your client cannot be indicted with evidence derived, directly or indirectly, from your client’s testimony. For all practical purposes, immunity virtually inhibits the government from indicting your client for the behavior which is being investigated. In order to indict a witness who has been granted immunity, the government is required to show that the evidence that it intends to use did not result from the compelled testimony in any respect. See *Kastigar v. United States*, 406 U.S. 441 (1972).

Formal immunity is usually reserved for witnesses who refuse to cooperate voluntarily even when informal immunity is offered. Immunity can only be granted by a prosecutor with the consent of the Department of Justice. Once an appropriate person from the Department of Justice authorizes formal immunity, the prosecutor requests the district court where the grand jury is presiding to hold a hearing. As long as the statutes for the issuance of formal immunity have been complied with, a court “shall” issue the immunity order. If the witness still refuses to testify, he can be held in contempt.

The most common type of immunity, however, is informal immunity which is an agreement between the witness and the government as to how the testimony can be used. Attached hereto is an example of an informal immunity agreement that is used by the prosecutors in the Western District of Wisconsin. Most of the so-called “buyers” in the Jocko’s investigation were granted informal immunity pursuant to such an agreement.

Under this procedure, prosecutors give assurances to a potential grand jury witness that he will be immune from any prosecution based upon that testimony. These agreements generally occur outside the supervision of a court, but are enforceable. It is not necessary that the agreement be reduced to writing, but it is best to do so. Such an agreement applies only to federal court and my not prevent a state court from charging your client.

Once an informal immunity agreement is signed, many times the prosecutor will not even require the witness to testify before the grand jury, but will allow the witness to provide a truthful and accurate statement to police. One thing I stress to witnesses who are provided immunity, whether testifying before a grand jury or providing a statement to a police officer, is that they provide complete and truthful information. They should not “hold back” or try to protect someone. The alternative is an indictment for perjury or criminal charges to which he confessed. Look what happened to Chris Webber. All he had to do was tell the truth about receiving payments while playing basketball at Michigan, but instead denied the payments in spite of the fact that five or six of his teammates confirmed that payments were made. Webber is now indicted for perjury.

If your client actually testifies before the grand jury, you cannot accompany him into the grand jury hearing room. Nonetheless, your client/witness is allowed to consult with counsel outside the grand jury room whenever he chooses simply by telling the government attorney and the grand jury that he desires to do so before answering the question. Attorneys should make sure that this right is clearly understood by the client and acknowledged by the prosecutor. I always provide my clients with a small 3x5 index with the following information typed on it.

I would like to consult
with my attorney before
answering this question.

Although you would think the client could remember this small bit of advice, I believe it helps to have this crutch in front of them while testifying.

If the client has previously appeared before the grand jury or been interviewed by a government agent, the attorney should try to obtain a copy of any statement. A review of the prior statement can help the client prepare for his appearance. The government is sometimes

reluctant to make the prior statement available, and a witness is not automatically entitled to a transcript of testimony.

Grand juries are secret. Testimony provided by witnesses is kept secret as well as statements made to police by witnesses after a grant of informal immunity. The proceedings remain secret until and unless someone is indicted. At that point, grand jury testimony and witness statements are turned over to the attorneys for the newly indicted defendant under the discovery statutes. I represented witnesses in the Jocko’s investigation. I was routinely asked, will anybody find out that I was involved? The answer is “yes,” if an indictment is issued. Make sure you tell your clients that if an indictment comes down, their involvement, even if they are not going to be charged, will be disclosed to the attorneys for the defendants who are indicted. Further, should the case proceed to trial, they may be a witness in open court and will be fair game for press coverage.

Although some exceptions may apply, the most important rule is that any witness who has potential criminal liability should exercise their Fifth Amendment privilege against self-incrimination if subpoenaed to testify before the grand jury or asked to give a statement by police. You should always attempt to obtain immunity. If the government wants your client’s testimony, it will offer immunity. Once immunity is offered, your client basically has no choice but to provide truthful and accurate information. Trying to scam the government with false information is not recommended.

Prosecutors favor grand juries because of the power they exercise. Grand juries are not limited by *Miranda*, the exclusionary rule or the rules of evidence. Prosecutors are also attracted by other features of the grand jury, including its secrecy, lack of control by a judge, its independence, its subpoena power, and the fact that those under investigation have no right to attend the grand jury’s sessions or present evidence before it. Be sure your client/witness is protected if he or she get subpoenaed.

Date

Attorney
123 Main Street
Madison, WI 53703

Re: Immunity Agreement

Dear Attorney:

This letter is designed to set forth the agreement reached between the United States, you and your client, John Doe. A federal grand jury in the Western District of Wisconsin is investigating drug trafficking. Pursuant to this agreement, John Doe agrees to provide complete and truthful information to all questions asked regarding these matters.

The United States Attorney's Office for the Western District of Wisconsin agrees that no testimony or other information provided pursuant to this agreement, or any information directly or indirectly derived from such testimony or other information, may be used against John Doe in any criminal case, except in a prosecution for perjury or giving false statement.

If John Doe provides false material information or testimony, or intentionally withholds material information at any point in time, this conduct will completely void the agreement set out in this letter and all information and testimony provided may be used against John Doe without limitation. This provision is necessary to ensure that John Doe provides complete and truthful information at all times.

If your understanding of our agreement is in accord with mine, as set out above, would you and your client please sign and return the original letter to me.

Very truly yours,

United States Attorney

By:

Assistant U.S. Attorney

Date

John Doe
Witness

Date

Attorney for Witness

The Art of Law for Warriors - -

Things Partners Want to Say to Associates and Questions Associates Want to Ask Partners

© 2002 by Percy L. Julian, Jr.

There are questions every associate, indeed every law student, wants to ask law firm partners. Many of these questions do not occur until several years into the practice, and then may go unasked or unanswered. Fundamentally the questions are an attempt to get at what makes the practice of law such an incredible art and how to get where the partner is perceived to be. For partners there are usually many things that they want to say to associates. Some are stated badly. Others are never voiced. All have in some way or another the object and risks of fatherly (or motherly) advice: How do I help you understand how to get to where you wish, or think you wish, to go? How do I convey to you what it is like when you will walk along the path partners walk?

This article will focus on such questions and answers in the context of artistry in our profession. The thoughts offered below are designed to stimulate questions and discussion. *For partners, what are some things you would say to associates about how to create artistry in their practices? For associates and students, what are the questions you have always wanted to ask partners, but never had the chance or the guts to ask?*

At some point in all of our practices we have experienced a sense of artistry in our endeavors. The deposition is proceeding smoothly. You are tracking the discussion. You are focused on the over arching issues as well as the moment to moment exchange that is taking place. You have a heightened sense of awareness of your own place in the process and are mindful of the other counsel around the table and their interactions. Your attention is so intense that you are unaware of time passing. Your development of questions and your interpretation of the answers are effortless, yet measured and purposeful. There is a sense of progress towards your goals without an effort to make something happen. You are engaged,

pulled into the tasks of the moment but the work seems effortless and graceful. The process you have created is elegant, flowing and productive.

In working on your summary judgment motion your outline and grasp of the issues has preceded extraordinarily well. You are tracking the claims the other side has made. You are focused on the issues and the points you “know” are winners and are easily navigating potential trouble spots. You have a heightened awareness of where your arguments fit in the process and are mindful of those that may be raised against you and how they might interact. Your attention is so intense as you work on your project that you are unaware of time passing. Your preparation, your research, and your writing are effortless, yet measured and purposeful. Each time you finish a portion of the project there is a sense of progress, that seems effortless. You are so engaged and pulled into the task that the work is not difficult at all. What you prepare seems elegant and your best work. Your work on the process is flowing, productive, and makes you feel good.

This is the experience of artistry in the practice of law. We have each experienced, at one time or another in our practices, this sense of flow, of operating in a way that seemed automatic yet being totally engaged, aware of, and responsive to what was happening around us. We have had the experience of being calm, focused, and effective. It is a powerful experience. Our clients, as well, have experienced the fruits of this flow and benefitted from our ability to work gracefully and effortlessly with them.

What is it that makes this occur? If this is a hallmark of the successful lawyer, how have lawyers consistently been able to develop artistry in their practices? Is it

merely a case of time? Or is there more that is going on?

As lawyers we need to develop and explore, through group discussion, these questions and more. *What is it that makes the practice of law so immensely gratifying and satisfying to some to the point where it seems almost effortless?* Is it just that lawyers who consistently have this experience have never had bad clients or encountered unruly judges? I doubt it.

Here I can only help to begin, not complete, a dialogue about the subject of artistry and the practice of law. My goal is to pose questions and stimulate thought. It is also to ask the question of *what it is lawyers who practice together want and expect from each other as they pursue their respective careers.* It is a fitting subject as people begin to define and flush out goals for the new year.

In some sense the questions generated are more important than the answers. We have all had the experience that if we can learn to ask the right question we will almost always get the answer we need.

The Concept of Artistry

Artistry may seem an ineffable quality, one that is intangible, idiosyncratic, and difficult to capture. Nevertheless we have all experienced artistry in professional practice at some level. The experience is a genuine, meaningful, and substantial one. Some skeptics will say that artistry occurs by chance or that its presence can be acknowledged but not understood. I am not one of them. In my view artistry is not a product produced by the application and practice of a discreet set of skills or techniques. Rather it is an ongoing process of reflection, learning, understanding and exploration, but one that has been reduced to its essence. I believe that artistry can be defined in terms of behaviors, attributes and practices and that one can learn to develop the habits and practices that lead to it.

Not only have we all experienced that sense of flow or effortlessness that characterizes artistry, but we have also experienced the products of such a practice. Sometimes this experience has been reflected in events outside of our practice of law. Artistry, therefore, is not just the best expression of a particular endeavor, but the manifestation of a person using all his or her knowledge and skill

in such a way that others notice the difference not only in the product but also in the process by which the goal is accomplished.

Some of you may know that I spent some years as a professional photographer - - a photojournalist. Many amateur photographers often ask me what film or camera I used, in the belief that somehow that mattered in the results that professional photographers consistently produce. Many of you may be amateur photographers. Many of you have cameras that may be identical in terms of their lenses and features of those of the professional photographer. You may also use the same kind of film. Some of your photographs may be quite ordinary. They simply capture the subject, they are in focus and they provide a lasting memory of a moment or a scene. Yet sometimes in a role of 24 or 36 photographs, there is one, if you are fortunate, that is noticeably different and seems to have an indescribable element that distinguishes it from all the others. What makes this image extraordinary and possible is that in the photographic process what some refer to as the "photographer's eye" has melded with the outcome, giving the photograph a quality of excellence, purpose, understanding, depth, and sheer life that others can readily detect, acknowledge and understand. Professional photographers consistently are able to produce such images.

The product produced by lawyers who have developed artistry is as compelling as the product produced by the professional photographer. Edward Steichen, a famous photographer and curator, once said that "The mission of photography is to explain man to man and man to himself." Could it be that the mission of law is profoundly similar, perhaps to explain the law to man and man to himself?

The difficulty with using a term such as "artistry" is that it may connote something less capable of being defined and measured and therefore less rigorous. Some knowledge although obtained through the application of the scientific method is still thought of in this manner. Until quite recently the development of the skills of a trial lawyer was thought of in this fashion. Trial lawyers have been described as having intuition, talent and wisdom which can not be understood in conventional scientific terms and therefore are unmeasurable and less im-

portant than scientific and scholarly knowledge. I disagree. I believe that artistry is a definable, observable, and determinable quality that can be subjected to rigorous analysis. I believe that we as professionals can learn to recognize, identify and understand the elements of a practice that is artistry. If we can do this, then artistry, like the practice of being a good trial or transactional lawyer, can be developed and repeated.

What are the attributes of artistry in the practice of law? My hope is that our dialogue and thinking about the subject will not be merely a passing event but the beginning of a journey for each of us that encourages us to think about our practices and brings more joy to our every day tasks.

To begin the discussion, I would ask each of you to think of a moment in your professional practice when you experienced something quite unusual, an ability to perform in ways you could not define, that is, a “flow experience.” What you will discover, if you think about it, is that artistry is grounded in several elements: an exercise of practice skills that are competent, a thorough understanding of the foundational principles of our profession, and finally, a relevant experience.

I tried this once in another setting when I asked volunteers to present their success stories. One volunteer (a judge) responded by telling about her role in helping children who had been removed from their parents’ care because of parental neglect or abuse. A year later there was a hearing that was attended by the foster parents, the biological mother, and the children. The purpose was to consider the possibility of the children being returned to their mother. During the hearing, the children had a chance to talk with their mother and eventually told what they liked and missed most about her as their mother. They spoke lovingly about her. The interaction of the children and their mother at the time and setting of this story was a new phenomenon with which the particular court was experimenting. As a result of the conversation between the children and their mother, everyone at the hearing committed to working toward reuniting the children and their mother. When the volunteer was asked how she as a judge came to the decision to allow the experimental conversation, the judge replied, “It just seemed

like a good idea at the time.” The judge explained that the idea just came to her and that it wasn’t something she had planned in advance.

The judge indicated that at the time it had occurred she had been unable to analyze or explain her decision making process and had felt something outside her awareness had guided her decisions, something she identified as “intuition.” Because it had occurred outside of her awareness, it seemed like something outside her control and not the product of a rational, logical or analytical process. For that reason, the significance of her decisions during the process seemed to her to have little substance or scientific validity. Those of us, however, who listened to the story recognized something else. The judge had read the signals of the participants in the meeting, brought her knowledge and experience to bear, and had created a flow experience, a moment of artistry.

I asked the judge to reflect on the hearing she had described and to take another look at the events she seemed convinced were intuition. In so doing what emerged was a series of decisions grounded in her knowledge, skill and expertise. These decisions were shaped by her attention to detail and an understanding of the interaction among the participants. The judge was even able to identify the areas of knowledge, both theory and in practice, that she had acquired. She was also able to identify her experience, which had been gained from dealing with hundreds of families, and many of her cases had involved abused or neglected children. In addition, she was able to draw on her personal experience and her knowledge of children and family life as a mother.

Ultimately the judge became aware that her decisions in the hearing had been the product of her education and training and her knowledge and skills which had been refined and honed by years of experience. What she had referred to as intuition was instead a highly developed capacity to blend theory and technique into decisions and actions that were not only competent but responsive to the situation and effective. In short, underlying her decision was a rigorous and analytical process grounded in competent practice, years of experience, and a thorough understanding of theoretical principles. My point is that artistry does not come out of a vacuum but appears when

knowledge and skill converge with sensitivity to interactive experiences.

In the case of the judge, her decision making had occurred so rapidly that it was difficult for her to identify the steps taken at the precise moment, and thus her decision appeared intuitive. In fact, one researcher has suggested in a study of creativity that “[a] genuinely creative accomplishment is almost never the result of a sudden insight, a light bulb flashing on in the dark, but comes after years of hard work.” See, Csikszentmihalyi, M., *Creativity: Flow and the Psychology of Discovery and Invention*, published by Harper Collins, 1996, at 1. In the case of the judge, the power of her interventions and decision making was not measured simply by the results she had achieved but by the inventiveness creativity and artistry she had displayed. According to Csikszentmihalyi, “We must foster intuition to anticipate changes before they occur; empathy to understand that which cannot be clearly expressed; wisdom to see the connection between apparently unrelated events; and creativity to discover new ways of defining problems, new rules that will make it possible to adapt to the unexpected.” *Id.* at 27.

The Foundation of Artistry

Artistry appears to be more than an accumulation of knowledge, skill and experience. Artistry is unique. When lawyers are sufficiently grounded, skilled, and knowledgeable about what they are doing they can often bring their own unique perspective and interpretation to bear upon their practice. They have attained artistry. One scholar has suggested that “[a]rtistry is an exercise of intelligence, a kind of knowing, though different in crucial respects from our standard model of professional knowledge. It is not inherently mysterious; it is rigorous in its own terms; and we can learn a great deal about it. . . . by carefully studying the performance of unusually competent performers.” See Schön, D.A., *Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions*, published by Jossey-Bass, 1987, at 13.

Perhaps it is obvious, perhaps not, that artistry must begin with a strong foundation in the skills, techniques and strategies as well as the theories of the law. One who would aspire to artistry must also have the ability to synthesize knowledge and skills in the moment of interaction, to integrate theory and technique into a series of strategies and actions. In most law schools, students can learn the fundamental elements, or at least some of them, of the profession. As Csikszentmihalyi has indicated in another context, “Before an inventor can improve an airplane design he has to learn physics, aerodynamics and why birds don’t fall out of the sky.” *Id.* at 8. That may not make the inventor an artist, however. The artist may emerge only after the professional is sufficiently educated in history, traditions, theory, principles and practices.

Thus, not all professionals are artists. Many lawyers may be competent, effective, knowledgeable and quite accomplished. Some may even display, occasionally, a brilliance that approaches artistry. However, artistry requires more than competence in the performance of the essential skills of professional practice, and more than the capacity to apply theory in a thoughtful and analytical manner. Perhaps the distinguishing factor is how the professional responds to unique circumstances, the surprising events, that separates the artist from the competent professional.

To some extent the manifestation of artistry may be unique, reflecting one’s innate abilities and talents which have been enhanced through the acquisition of specialized knowledge and skills. Most people have some unique inborn qualities that provide the basic foundations for achievement. With sufficient motivation and discipline they may well experience artistry.

However many who attempt to mirror a practitioner they regard as an expert, but who lack the same training, experience and abilities, may often fail to achieve the artistry they have observed and admired. Experts can be useful in demonstrating the potential of artistry, and by observing them, studying their techniques, and learning from them lawyers may become competent practitioners. They may not, however, become artists.

In the mythical paper chase, a young practitioner starts his career as a beginner. Through a series of experiences, trials and tribulations, the young lawyer gains knowledge, experience, skill and the ability to innovate when faced with surprising and unique circumstances. The lawyer, typically, learns through doing and under the tutelage of someone who provides feedback and enables the lawyer to learn from his or her mistakes and to build on his or her successes, thereby becoming competent. Most lawyers, however, want more than simply the ability to practice competently. They want the experience of artistry. They want the sense of flow, the flashes of brilliance, the creative energy that characterizes artistic practice.

What is it that unlocks this experience and generates such moments?

The Dynamic Nature of Artistry

One way of getting at how lawyers can experience more inventive, fulfilling and stimulating moments in their practices that artistic practitioners seem to be able to create at will may be to think of artistry in the practice of law as a dynamic process that is both reflective and interactive. It may be in the methods of reflective practice and interactive process that lawyers can generate and experience those moments that characterize artistic practice.

Perhaps we can all agree that artistry does not happen immediately but occurs over time and may mirror a lawyer's professional development and advancement from one to stage to another. Moreover, the boundaries between one stage of development and another may not be clear or have a distinct set of markers. Nonetheless, when we think of professional development we often think in stages, and this may be useful for identifying the qualities and characteristics of the journey toward artistry.

Several stages come readily to mind. The novice may be one such stage. Perhaps this stage is identified as a senior student or law clerk. The apprentice may be a second stage. There was a time in legal education when one was "called to the bar" and literally read the law un-

der a senior practitioner for a set period of time before being allowed to begin as a practitioner. The English system to this day retains much that describes this stage of professional development. Another stage might be that of the practitioner. Skilled lawyers who are professionals operate at this stage most of the time. Their work is competent. They understand the theories of the law, that is, they have legal knowledge and they have a broad range of practice skills. They integrate their knowledge and skills with sufficient experience to be able to employ their abilities in ways to serve their clients effectively. In short, they are accomplished professionals, well regarded by their peers, and valued by their clients. Their work is purposeful and careful. During their interactive moments of practice, they are able to see nuances, to distinguish between situations that may appear similar, but require a unique response.

Such professionals continue to advance their knowledge and skills through additional training, although they may view themselves as talented and skillful. They are curious, interested in new concepts, and often invent new strategies and ways of perceiving the law. They may serve as trainers and mentors. They clearly view themselves as having the ability to transfer their wisdom, knowledge and skills they have acquired over the years. However, I have observed that practitioners who choose to remain at this stage of their professional development often experience their responses to clients becoming patterned or stiff and feel like those responses lack brilliance or creative potential. Such lawyers seldom experience the effortless flow that is characteristic of the artist. What they do experience is significant stress and burnout.

While there may be other stages, the final stage is obviously that of the artist. This is the one who works with great intention and purpose, who can call upon knowledge and skills in ways that seem intuitive or instinctive, whose accomplishments seem effortless, graceful and flowing. These individual lawyers have a heightened capacity to utilize their abilities. They are continually experimenting and pushing the envelope of their knowledge and skill. Of course they have the same knowledge and skills as practitioners but the artist is more creative, more inventive and brings his own interpretation to the dance, applying his knowledge and skills in novel and

unexpected ways. The artists of our profession are inquisitive, look for opportunities to test their knowledge and skills, are experimenters open to new ideas, and love to learn. And learn they do from their experiences. Out of each event and situation, they take morsels of meaning and understanding. Their work is both functional and creative. These are people “who express unusual thoughts, who are interesting and stimulating . . . people who experience the world in unusual ways . . . and individuals . . . who have changed our culture.” Csikszentmihalyi, *Id* at 25-26.

The Journey - - Two Steps Forward One Step Back

We have each learned that professional growth is not linear, nor is there an end to it. Artistry may not be a place or a destination. Those who experience some measure of artistry in their law practice do not cease to pursue more. We all know that learning is continuous and does not cease once a true professional obtains competence. *Could it be that artistry is actually a journey in which each new experience that manifests artistry opens the possibility for yet another such experience?*

In certain martial arts students achieve distinctions represented by colored belts or by some other method of ranking which identifies stages of competency, proficiency and skill. A student of the martial arts takes a predictable path from novice to that of a more senior student. When one attains the distinction of black belt or *shodan*, one begins again within that ranking as a novice at that level until one attains the highest distinction, tenth degree black belt. At that point after many years (or even a lifetime), in some arts the student returns to the beginning, becoming a novice yet again. Such a path demonstrates a commitment to life long learning. Revisiting the beginners mind set solidifies the idea of a new beginning, a new perspective, and a new curiosity which embraces uncertainty and a willingness to learn.

What we do know about lawyers is that their professional development is dynamic. No lawyer remains at

the same level of development continuously. Even beginning lawyers can occasionally demonstrate the grace and effortless agility that are the marks of an artist. Achieving this flow, however, may not at all prove that the lawyer has become the artist. Having such an experience may not leap frog the lawyer along the path of professional growth. In the same vein, the artist may experience, at times, the awkwardness or uncertainty evident in the novice when the artist ventures into an area of unfamiliar practice. As lawyers proceed in their journey towards artistry, they may retrace their steps along the path many times as they learn a new area of practice or learn new skills or invent and rely upon new theories. The developmental stages are dynamic, not static. To benefit from this dynamic process, however, requires a willingness to put aside old beliefs, re-examine past practices, explore new horizons, and to be curious and open minded.

Reflection and Interaction

When one thinks of artistry as the integration of reflective practice and an interactive process it becomes a search for excellence that transcends artificial boundaries that may define individual practices of law or specialties. Artistry certainly requires at least (1) practice skills, (2) theoretical knowledge, and (3) the ability to make useful and appropriate connections between theory and practice. But does it not require more? Certainly without these essential elements, the journey toward artistry would appear to be short and unsatisfying. *Does not the path to artistry also require that the true professional be able to bring a unique perspective and his or her own interpretation to the problems and situations which spontaneously arise in the practice of law?*

How does reflection play a role in this process? By reflection I simply mean the process by which lawyers think about the experiences, events, and situations of their own practices and then attempt to make sense of them in light of relevant theories. The objects of reflection may be unique or the result of a particular situation or the practice skills and relevant theories that might help explain what is going on. Lawyers may identify an opportunity for reflection in an interactive process, whether it be a trial, a meeting with a client, a deposition, a discussion with a colleague or the like by noting critical moments

and then using the skills of reflective practice to actively, at that moment, understand what is happening. In other words, reflection can occur both during the lawyer's actual performance or practice as well as after the event has occurred. When it occurs at the moment, moment to moment, during the course of an event, it may be the most powerful, for it may lead to immediate change. However, post event reflection is just as important and can be done individually or with the help of a coach, mentor or supervisor.

Interaction may be the interplay between the clients, between the client and the lawyer, between lawyer and judge or jury, client and judge or jury, or even between the adversary, whether another lawyer or another client, and the lawyer. In the interactive process, lawyers often look at how their clients have responded to techniques and strategies they have employed. Lawyers may consider how their professional decisions are affected by the way in which clients have responded to such decisions, or by the way in which adversaries have responded.

The important point is that the interactive process requires a micro-focus which attends to critical moments in the course of a lawyer's practice. Such attention allows the lawyer on the path to artistry to identify early choice points and to see small moments of interaction as related to the whole event. Becoming aware of these critical moments and making deliberate use of them while seeing their connection to the overall process is essential. It is in these critical moments, often, that reflective practitioners make choices that effect the experience of artistry.

The path to artistry first requires gaining a basic understanding of the conceptual foundations of the law and the particular emphasis of one's practice and the ability to utilize an array of practice skills.

Hallmarks of Artistry

Quite clearly there is more to artistry than mere competence as a practitioner. *Are there hallmarks which serve as attributes of artistry in the practice of law? Are they any of the following:*

- a. Attention to detail or being responsive moment to moment in one's practice.
- b. Curiosity in the sense of being open to new perspectives.
- c. Exploration and discovery, that is, not being bound by limiting assumptions.
- d. A yen for the scientific method in developing and testing one's hypotheses or theories.
- e. Flexibility and resilience in the interpretations drawn from circumstances and facts.
- f. Patience and vision that is balanced between process and outcome.

Are there other hallmarks of artistry which one could explain to an associate or someone being mentored? If so, what are they?

As an associate what questions would you ask of partners about the paths they have traveled and the journey you are on? What is it that you want to ask that you are most afraid of asking? What is it that you want most from your practice or career as a lawyer?

As a partner what is it that you most want to tell associates about your life in the law? What mistakes do you want them to avoid? What has made your practice consistently joyful? What scares you the most about your practice of law? What brings you the most joy?

Use these questions and your answers to guide your upcoming journey through the new year.

December 9, 2002
Madison, Wisconsin.

Learn @ The Law Library State Law Library Hands-On Legal Research Classes

The Wisconsin State Law Library can help you fulfill your New Year's resolution to explore and master Internet-based legal resources. Registrations are now being accepted for all classes, which are held in the Library's computer training room. Seating is limited, so act now. To register, submit a completed registration form, available at wsll.state.wi.us/forms/registration.pdf and send with payment, if applicable, to Tammy Keller, Wisconsin State Law Library, 120 Martin Luther King, Jr. Blvd., P.O. Box 7881, Madison, WI 53707-7881. Questions? Call Tammy at 608-261-7553.

Wed. Jan. 8, 2003 8:30-9:30 a.m.

WSLL Wednesday Topic: The Wisconsin Legislature Website

In this hands-on overview of the Legislature's recently re-designed site, you'll learn how to locate acts and bills, and how to search the various Folio databases. Come and see what's new as the 2003-2004 session begins. Free. Registration limited to 8.

Wed. Feb. 5, 2003 8:30-9:30 a.m.

WSLL Wednesday Topic: WSLL Web Tour

Take a guided tour of the information-packed WSLL website. Explore Wisconsin & Federal legal resources, travel around the Legal Topics page and learn to navigate our web catalog and LegalTrac. Free. Registration limited to 8.

Thursday, February 13, 8:30-10:00 a.m.

Class: Internet Tips & Tricks

As increasing amounts of information become accessible on the Internet, the legal researcher faces enormous challenges and frustrations in locating legal information efficiently. In this hands-on session you'll learn tips and tricks for using the Internet without losing your mind. Learn the difference between search engines and directories, and how to use them to locate information quickly. Discover the secrets of the "invisible web." Track Wisconsin appellate dockets. Utilize free legal research

sites. Save time and money, and let someone else do the work for you, by using resources such as the State Law Library's web site as an Internet "legal yellow pages." Cost: \$50.00. Registration limited to 8. 1.5 CLE credits applied for.

Wednesday, March 5, 8:30-9:30 a.m.

WSLL Wednesday: Tax Resources On The Web

Is tax research giving you headaches? Forget over-the-counter remedies, just take this one-hour class. Our resident tax research expert will help you unravel the maze of tax-related websites and show you where to locate free online forms and assistance from the Wisconsin Dept. of Revenue, other states' revenue agencies, and the IRS. Free. Registration limited to 8.

Wednesday, March 19, 8:30-Noon

Class: Using Federal Legal Resources on the Internet

This half-day hands-on course focuses entirely on locating and using web-based federal legal and government information. Attorneys, paralegals and legal assistants are encouraged to attend. Cost: \$125.00. Registration limited to 8. 3 CLE credits applied for.

Mark Your Calendars

Western District of Wisconsin Bar Association

Annual Meeting & CLE Program

April 24, 2003

Madison, Wisconsin



Western District Bar Association
Post Office Box 44578
Madison, WI 53744-4578

Pre-Sorted
Standard
U.S. Postage
P A I D
Permit #1
Madison, WI

Address Service Requested

MISSION STATEMENT

It is the mission of the Western District of Wisconsin Bar Association to promote the just, speedy, respectful and efficient determination of every action filed in the District Court: by acting as an effective liaison among the District Court, federal practitioners, litigants and the public; by encouraging, fostering and supporting educational opportunities that improve the practice of law in this District; and by serving the needs of the District Court, federal practitioners, litigants and the public.