

E-NEWSLETTER

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Education in the Rule of Law starts early

A kindergarten class from Bryant Elementary School toured City Hall last month and met with a variety of officials, including City Attorney Pete Holmes and Criminal Division Chief Craig Sims.

Holmes and Sims met with the 48-member class led by Alexander Jones in City Council Chambers after they spent time with Councilmember Mike O’Brien. After segueing that O’Brien was

one of Holmes’ clients, an introduction was given by Sims that included a game of I-spy and the SpongeBob theme song. “I am always excited when I have the opportunity to speak with children about what it’s like

to be a lawyer,” Sims said. “Growing up, I did not know any lawyers, so I feel a duty to speak with young children and hopefully inspire them to become lawyers. I was pleasantly surprised at the knowledge these kindergarten children possessed regarding law and government. This is a wonderful reflection on the amazing job teachers are doing with the students.”

One of Holmes’ main topics was explaining what a lawyer does. He also quizzed the students about the benefits to adhering to the rule of law rather than to a king or dictator. One student was thoroughly impressive with his answer that a single person was unable to do it all and that people might not agree with their decisions. Holmes agreed and spoke of the rule of law being a more fair process, a topic that Jones says is huge in kindergarten.

Few students raised their hands to Holmes’ question of who wanted to be a lawyer but they were impressive in their knowledge of basic concepts of government. “They’re not just memorizing facts; they’re grasping important concepts like the Rule of Law,” Holmes said. “I not only left feeling refreshed, admiring both the kids and their teachers, I felt lots of hope for the future.”



Verdict for the City shows value of police action team

In 2011, the responsibility of defending Seattle police officers in civil litigation was brought in-house by City Attorney Pete Holmes in an effort to cut costs and more effectively address policy issues.

Previously, the private firm of Stafford Frey Cooper had an exclusive, decades-long contract with the City to do the work. Despite a bruising legal battle with two police unions opposed to the move, Holmes hired “police action attorneys” to defend the officers and the department. Outside counsel, who were identified after an open RFP (request for proposal), are now only assigned to cases where the interests of the City and individual officer(s) conflict.

The transition has been hugely successful, as exemplified by the recent unanimous jury verdict following a seven-day trial in the case of Dedic v. City of Seattle, in which plaintiff’s attorneys sought over \$1 million.

Fatima Dedic filed a claim, followed by a lawsuit, seeking damages allegedly caused by SPD officers’ gross negligence during her arrest as a suspect in a hit-and-run incident. Dedic claimed that the officers were extremely aggressive when placing her into handcuffs, seriously injuring her bursitis-ridden right shoulder and leaving her physically and mentally debilitated.

Police action attorney Christine Olson tried the case to an 11-person King County Superior Court jury in May of this year. Although the original lawsuit only alleged negligence against the City, shortly before trial plaintiff attempted to add numerous federal claims and to name the individual officers as defendants. Olson opposed, and defeated, this attempt.

Olson spent countless hours preparing for trial, going through thousands of pages of records to find game-changing documents. She drafted numerous pre-trial documents, including jury instructions, trial briefs, the verdict form and witness and exhibit lists.

When the jury selection process began—known as *voir dire*—Olson sought to identify impartial jurors who harbored no unfair prejudices towards police officers or the SPD. A vote of 10 of the 11 jurors was required for victory.

The trial lasted seven days, which is fairly long for this type of case, and 14 witnesses testified. Eight witnesses testified for the plaintiff, including family members, three medical professionals and a police practices expert. Olson called six witnesses to the stand: the three officers present at the scene of Dedic’s arrest, the victim of the hit-and-run, a private investigator and her own police practices expert.

Perhaps the most publicized part of the trial was the video shot by the private investigator, which Olson presented to the jury. <http://www.seattletimes.com/seattle-news/video-helps-convince-jury-to-reject-womans-claim-spd-gave-her-lasting-injury>. The video showed Dedic shopping, holding large bags and opening doors with her allegedly injured arm. Olson said this is the first time she has used a private investigator; most cases do not require that resource. In this case, Olson was testing the veracity of the plaintiff’s extreme claims that she was completely debilitated due to the actions of the police.

Olson believes that while the private investigator video was helpful, other items of evidence were also instrumental in debunking plaintiff’s claims. For example, the in-car video of Dedic’s arrest suggested that Dedic was not in any pain or distress, and showed that the officers acted professionally. In addition, several state Labor and Industries claims filed by Dedic before her arrest showed that her shoulder injury occurred on the job, and before her arrest.

The City’s unanimous jury verdict in this case shows the City has high quality attorneys who can and will take cases to trial and succeed.



Assistant City Attorney
Christine Olson

Jury foreperson had more to say than “guilty”

By Danielle Malcolm

Imagine a jury foreperson standing up after a guilty verdict is read and asking the judge if she can say something to the defendant. Imagine the prosecutor looking at the foreperson, then the judge, and then the foreperson again as if watching a tennis match in that moment between the foreperson's request and the judge giving the foreperson approval to speak in open court. That prosecutor was me, the case was City v. Snell, and what the juror went on to say won't make much sense without some more background.

The case stemmed from an incident that happened in March 2014. The defendant was driving in the Capitol Hill area around 12:20 a.m. with a blood alcohol content (BAC) of .17 when he was stopped for speeding by SPD Officer Auderer. During Auderer's contact with the defendant, the defendant showed impaired coordination, both before and during the Standardized Field Sobriety Tests: He had difficulty following simple directions, his breath smelled of alcohol, and his eyes were red and watery. Though the defendant initially denied drinking, after he was arrested he admitted to drinking and described himself as a “5” on a scale of 1 to 10, with 1 being totally sober and 10 being really drunk. He also admitted that he felt “buzzed.”

When the officer and the defendant were at the police precinct post-arrest, the defendant agreed to take the official breath test. However, the defendant had a lip ring in that he couldn't remove. The presence of a lip ring would have made the breath result inadmissible because lip rings are considered a foreign object that could interfere with the test results. Because the defendant couldn't take the breath test, Auderer obtained a search warrant for the defendant's blood so that his blood alcohol content could be tested. The result of the blood test was .17 BAC. The defendant was subsequently charged with misdemeanor DUI.

During trial, the jury heard testimony concerning all the facts mentioned above...except for any reference to the defendant's blood test or the warrant. In July 2014, Division 1 of the state Court of Appeals decided State v. Martines, 182 Wn. App. 519, 331 P.3d 105, *review granted*, 339 P.3d 634 (2014). This case created an additional requirement for blood search warrants, namely that the warrant must specifically state what the blood will be tested for. Martines had the effect of rendering nearly all blood search warrants insufficient, including the warrant in City v. Snell. As a result, Snell's .17 BAC result became inadmissible. However, a sample of the defendant's blood had been preserved and could be properly retested under a new, more detailed warrant. Prior to the trial, the new warrant was approved but testing was not yet complete. The City asked for a two- to three-week continuance of the March 24, 2015, trial date in order to have the testing completed. The court denied the City's motion, reasoning that because Martines was decided in the summer the City had enough time to complete the retest process for all the cases affected by Martines. Notably, even with a two- to-three-week continuance the trial still would have occurred within the time frame that the City had to bring the defendant to trial pursuant to his speedy trial rights, which did not expire until mid-May 2015.

During trial, I elicited testimony from Officer Auderer about almost everything that occurred before he started the search warrant process. As far as the jury was concerned the incident ended after the defendant could not remove his lip ring. After testimony was finished, in accordance with the Seattle Municipal Code 11.56.020 (A), the jury was instructed that “A person is under the influence of or affected by the use of intoxicating liquor if the person's ability to drive a motor vehicle is lessened in any appreciable degree.” In my closing argument, I read this definition to the jury from the instructions and I argued that the word “appreciable” indicates that the effect is noticeable and does not require someone to be falling-down drunk in order for them to be considered under the influence.

Later that same day, the jury returned with a guilty verdict. I have never had a juror ask to address the defendant in open court and I expect it's something that I might not see again. I wasn't sure if the judge would allow it, but

she did. The foreperson, who had stood up to make her request, picked up her jury instruction packet and told the defendant that it was a tough decision for them but that the law is strict and that the law is clear. She then read the definition that I quoted above aloud to the defendant.

When she was finished reading the instruction she stated that the jury found him guilty because he was affected to an appreciable degree and then she sat down.

In a way, it seemed as though the foreperson was both apologizing to him for the verdict and chastising him. I got the impression that the jury didn't think the defendant was extremely drunk and were hesitant to convict him for that reason but that, as a matter of law, they decided that he was too drunk to drive (which he was).

Though he was so impaired that he couldn't follow simple instructions during the field tests, he didn't have difficulty walking or standing, which might lead a jury to think that his BAC was closer to .08. To a jury that doesn't know that his BAC was .17 and hasn't heard testimony about how a BAC that high indicates both impairment and a very high tolerance for alcohol, it would be understandable for the jury to assume that he wasn't as drunk as he actually was.

Based on the jurors' decision to return with a guilty verdict and the statements made by the foreperson, it is apparent that the jury took their oath to follow the law seriously. Considering all the proper and improper things a jury could theoretically base its decision on, I was certainly glad that the reason why the jury convicted the defendant was because (he was driving when) he fell under the legal definition of being under the influence.

Danielle Malcolm is an assistant City prosecutor who practices in Seattle Municipal Court.

WORRIED ABOUT QUAKES? SAVE THE DATES

WHAT: *Earthquake Home Retrofit* – Homeowners receive pre-engineered plan sets and other resources to know how to seismically secure their home to its foundation. Class is free. Registration required.

LOCATION: **Seattle Public Library Branches - TBA**

DATES: Sept. 12 and Oct. 11

TIME: 12-2 p.m., Saturday, Sept. 12; 1-3 p.m. Sunday, Oct. 11

HOW: Register by emailing: SNAP@seattle.gov

OR

LOCATION: **Phinney Neighborhood Center**

6532 Phinney Ave N., 98103

DATE: Saturday, Nov. 7, 2015

TIME: 12-2 p.m.

HOW: Registration required. Contact Phinney Center at 206-783-2244 for more info.

NOTE: You must register through Phinney Neighborhood Center for the November Earthquake Retrofit class.

New laws crack down on unlicensed marijuana dealers

City Attorney Pete Holmes applauded the new marijuana legislation signed July 17 by Mayor Ed Murray. The City Council passed the legislation, which requires that all marijuana businesses in Seattle obtain a new regulatory business license, earlier that week.

“The legislation demonstrates the City’s commitment to working with the state to establish a fair, functional, and regulated marijuana market in Seattle,” Holmes said Friday. “I-502’s goal was to replace the illegal marijuana market with a legal, taxed, and regulated system. This year, the state Legislature took critical steps to harmonize our medical and recreational marijuana markets and reform certain aspects of I-502’s regulatory system in a way that is fair to business owners and protects patients.”

To handle additional civil enforcement responsibilities, among them enforcement of these new marijuana regulations, Holmes has created a Regulatory Enforcement and Economic Justice (REEJ) Section within the office’s Civil Division.

REEJ will focus on regulatory enforcement work where the City is the plaintiff, and on enforcing its codes. The section will handle the incoming body of work created by the marijuana legislation as well as enforcement work initiated by the Department of Planning and Development, including the Rental Housing Inspection Program, and enforcement work initiated by the Office of Labor Standards and the Office of Civil Rights.



GET READY TO SIGN UP: ALERT SEATTLE COMING AUG. 1

Be in the know next time disaster strikes! The City’s new emergency notification system, AlertSeattle, goes live on Aug. 1. This free system allows you to receive real-time warning and customized alerts via text message, email, voice message and social media (Facebook, Twitter). Seattle Police Officers and Fire Fighters will have AlertSeattle information during National Night Out, Aug. 4. See story on [Seattle Channel](#) for more.

EVENTS

- 8/4** As is his custom, Pete will participate in Seattle Night Out by visiting the Cowan Park neighborhood from 6:30 to 9 p.m., Brooklyn Ave NE & NE 62nd.
- 8/18** Pete will attend the State Sunshine Committee meeting from 9 a.m. to 1 p.m. at the Cherberg Building in Olympia.
- 9/1** Pete will attend 9:30 a.m. oral arguments in the \$15 minimum wage lawsuit before the 9th Circuit U.S. Court of Appeals panel in Seattle.
- 9/17** Pete will attend the annual Real Change breakfast from 8 to 9 a.m. at the Washington State Convention Center.
- 9/29** Pete will attend Mockingbird Society annual luncheon at 11:30 a.m. at the Westin.

LINKS TO NEWS STORIES

7/20 Homeowners sue Seattle over trash inspection rules -- You probably don't care what Sally Oljar or her husband ate for dinner. And you almost certainly don't want to snoop through their trash. But they are suing the City of Seattle because they worry garbage collectors will invade their privacy while enforcing the city's new recycling rules. (KING5)

<http://www.king5.com/story/news/local/seattle/2015/07/16/homeowners-sue-seattle-trash-recycling-laws/30270325/>

7/13 Seattle council OKs plan to close medical-marijuana businesses -- Green cross signs will become more scarce in Seattle under a plan adopted by the City Council Monday. (Seattle Times)

<http://www.seattletimes.com/seattle-news/seattle-council-oks-plan-to-close-medical-marijuana-businesses/>

6/17 SPD \$1.975M use-of-force settlement thought to be city's largest -- On Tuesday, the city confirmed that it has settled [Nathaniel] Caylor's lawsuit for \$1.975 million, believed to be the largest police-abuse settlement in city history. Most of that will go to Caylor, though some will go to Wyatt, according to court records. (Seattle Times)

<http://www.seattletimes.com/seattle-news/spd-1975m-use-of-force-settlement-thought-to-be-citys-largest/>

5/27 To reduce prostitution, Seattle gets experimental -- Much attention has been given to the city's new approach of arresting and prosecuting men who buy sex, sending them to "john school" to teach them about the consequences of prostitution. But over the past four years, the Seattle Police Department and the City Attorney's Office have also been experimenting with how best to handle the women who walk Aurora Avenue, otherwise know as The Track. (Crosscut)

<http://crosscut.com/2015/05/to-reduce-prostitution-seattle-gets-experimental/>

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[http://www.seattle.gov/
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COMMENTS AND SUGGESTIONS

If you have suggestions for stories or comments on how we can make this newsletter better, please email kimberly.mills@seattle.gov.

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The Seattle City Attorney's Office is committed to providing the City of Seattle with the highest caliber legal advice to help protect the health, safety, welfare, and civil rights of all.

The City Attorney's Office has four divisions:

The Civil Division represents the City in lawsuits and advises City officials as they develop programs, projects, policies, and legislation. The sections within the Civil Division include torts (claims), governmental affairs, land use, environmental protection, labor and employment, and contracts/utilities.

The Criminal Division represents the City in prosecuting traffic infractions, misdemeanors, and gross misdemeanors in Seattle Municipal Court. The types of cases prosecuted by the Criminal Division include driving under the influence, traffic infractions, domestic violence, theft, assault, and trespassing.

The Administration Division staff provide budgeting, accounting, human resource, clerical and information technology services for the City Attorney's Office.

The Precinct Liaison Division assigns an assistant city attorney as a liaison to each of the City's five police precincts as another way of addressing public safety and neighborhood livability problems.

How to apply for an internship/externship in the Civil and Criminal Divisions: <http://www.seattle.gov/cityattorney/about-us/careers>



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