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LAW AND LOBBYING IN THE NATION'S CAPITAL

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INSIDE

Merrick's Merits

A fight still looms, but the nomination of Merrick Garland (below) to the D.C. Circuit got a



boost with a smooth hearing and some timely GOP backing. Federal Court Watch, Page 6

Inadmissible

AFL-CIO's Laurence Gold lands at Bredhoff & Kaiser; Joseph Waldholtz's defense team adds D.C. litigator. Page 3

Silicon Rally

High-tech and computer firms are lobbying against U.S. plans to limit immigration of skilled workers. Page 4

Civil Disobedience

Georgetown's Mark Tushnet argues in a law review article that Clarence Thomas should be impeached—or at least ignored. Courtside, Page 11

Torture Chamber?

David Cole argues that a bill to force a deadline on immigrants seeking asylum is mean-spirited. Strict Scrutiny, Page 20

Criminal Injustice

Stuart Taylor Jr. critiques the U.S. adversarial system and says Europe has some answers. Closing Argument, Page 21

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GW Teaches Alumni Hard Legal Lesson

BY PEDRO E. PONCE

George Washington University is giving freshly minted lawyers Stephen Garvin and John Paré an unusual hands-on course in how to respond to tough-minded litigation tactics: The school is aggressively pursuing its debt-laden alumni for attorney fees.

A few months after it handed the two their National Law Center diplomas last spring, GW slapped them with a motion to cough up more than \$11,000 in costs and fees that the university spent defending a suit the students had brought.

The students' court complaint alleged that the university was taking too much law school revenue for its general expenses and shortchanging the law school.

On Oct. 23, D.C. Superior Court Judge Frederick Dorsey dismissed the students' case outright. But GW's action to recoup the fees remains a live issue. While the school's move is not unheard of and is permitted under Superior Court rules, the unusual tactic has sparked open opposition among some law professors, who say it is wrong for GW to try to squeeze money in this fashion from former students who are already facing massive tuition debts.

SEE GW, PAGE 15

UNIVERSITY IS SEEKING LEGAL FEES FROM JOHN PARÉ (ABOVE), WHO HELPED CHALLENGE SCHOOL'S TUITION ALLOCATION

Why Lobbyists Can Live With New Disclosure

BY T.R. GOLDMAN

Wonder why lobbyists were so enthusiastic in their support of the raft of new disclosure requirements that passed the House with much fanfare last week?

Maybe it's because they know a good thing when they see it.

The public benefits of more disclosure are undeniable. By expanding and clarifying the definition of lobbying,

the new law casts a much wider net.

Thousands of previously unregistered lobbyists, including legions of lawyers who have been able to escape registration by camouflaging lobbying work as legal analysis, will now have to go public.

But for those who have played by the rules, life may actually get easier under the new bill, which, following President Bill Clinton's expected signature, will become law on Jan. 1.

"The fact that various business groups and the American League of Lobbyists supported the bill strongly suggests... that, on balance, it's an improvement for those lobbyists who comply with the current rules," says Thomas Susman, a partner in the D.C. office of Boston's Ropes & Gray and editor of a 280-page how-to tome, *The Lobbying Manual*.

Consider the following:

- Lobbyists representing foreign companies and foreign trade associations will no longer have to file the highly detailed documentation now required under the Foreign Agents Registration Act. FARA reports, which include copies of signed contracts, will be required only for lobbyists representing foreign governments. Lobbyists for foreign firms will now file under the same new guidelines as everyone else.

- Disclosure forms must be filed far less

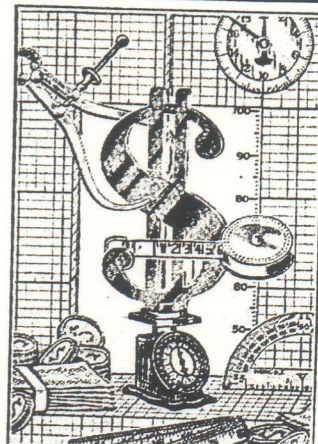
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SPECIAL REPORT

Law Firm Salaries and Billing Rates

ASSOCIATE PAY IS INCHING UP, WHILE BILLING RATES ARE HOLDING STEADY. PLUS, THE FIELDS TO CHOOSE IF YOU WANT TO BE AN ASSOCIATE IN DEMAND.

Pullout supplement begins on Page S27



Tuition and Fees Has a New Meaning for These Students

GW FROM PAGE 1

"It would be inappropriate to seek attorney fees," says GW law professor Charles Craver. "There's a feeling that it would look vindictive and mean-spirited." At a recent faculty meeting, several professors questioned the wisdom of pursuing the fees.

Rebecca Lennon, another 1995 graduate who was an original plaintiff in the suit, says it is "shameful" that the university is going after former students who were only seeking to improve their school.

"They should be embarrassed," Lennon says.

But National Law Center Dean Jack Friedenthal replies that the former students are getting exactly what they deserve.

"I don't know why law students who decide that they're going to file a lawsuit ought to be treated differently than anybody else who files a lawsuit," Friedenthal says. "From my perspective, if you go ahead and file the lawsuit, you're liable."

But Friedenthal, conceding that "there are people clearly on both sides of this issue," says he plans to hold a brown-bag meeting in a couple of weeks so that the faculty can air its concerns with Dennis Blumer, the university's general counsel.

'INSTITUTIONAL IMPERATIVE'

The \$11,215.63 that GW is seeking in a Sept. 27 motion is the amount that the university says it spent to fend off the former students' motion to certify a class of GW law students. The litigating students withdrew the motion after some of the city's leading law firms refused to take their case pro bono, and the university says it is entitled to recoup the money it spent researching a response to the motion that was eventually withdrawn.

Blumer says it's a matter of money and



Jack Friedenthal, dean of George Washington National Law Center, says law students who sue the university should expect to be treated like any other litigants.

of conserving the school's resources. The university, he says, has "an institutional imperative, which is to recover fees in situations where the law permits."

But the two plaintiffs, who graduated from GW with a combined loan debt of about \$120,000 and whose annual salaries are roughly \$30,000 each, contend that the

university's arguments for costs are unfounded and unfair.

Paré, now an assistant state attorney in Orlando, Fla., says the university's position is "pretty insubstantial."

In a response filed late last month to the university's motion for fees, the students say, "The University's request for attorney's fees is unreasonable because it is clearly advanced for the improper purpose of harassment and intimidation."

The lawsuit that Dorsey dismissed was one aspect of an ongoing battle over GW's tuition policies. In March 1994, a confidential American Bar Association review found that the university was taking more than 40 percent of the law school's revenue. There is no ABA rule on how much a university can take from its law school. But Friedenthal acknowledges that, weighed against comparable schools, the National Law Center's past revenue retention has been "at the low end."

The month after the ABA's evaluation, students held a demonstration to protest the university's excessive share of law school funds. (See "En Route to Suites, Law Students Take to the Streets," April 11, 1994, Page 2).

In the aftermath of the critical report, the university developed a five-year plan to increase the law school's funding. But student activists complained that the plan changed nothing because the larger allocation was based on tuition increases.

"A lawsuit was the only available avenue," says Lennon, who currently practices at a private firm in Colorado. "At that time, it was the right thing to do."

Garvin, Lennon, and Paré filed their suit in Superior Court on March 28. Citing the

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The Essential Source on Legal Ethics

The D.C. Rules of Professional Conduct Annual Subscription Service is the essential source on legal ethics for D.C. Bar members, containing everything needed to enable the reader to make the correct decision when questions arise on matters ranging from fees to conflicts of interest to trial publicity.

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GW FROM PAGE 15

critical ABA evaluation, they alleged fraud and breach of contract, and asked the court to require the university to take no more than 20 percent of law school revenues. They also asked for about \$16 million in restitution.

Lennon was dismissed as a plaintiff last summer after she failed to show up at a hearing. But she says she has offered to split any judgment for fees and costs with Paré and Garvin. Like Paré and Lennon, Garvin has gotten a job outside the D.C. area—he is a deputy district attorney pro tem in San Diego.

The plaintiffs originally wanted to get certified as a class so that other students could seek relief and so that they could seek pro bono representation by a law firm. But according to Paré, though many students were interested, none of the D.C. firms consulted would take the case.

"We just weren't going to have the resources to pursue the class action without having somebody on the spot in Washington," says Paré. The motion for class certification was withdrawn in June. It was this motion that eventually led to the university's request for fees.

In dismissing the suit, Judge Dorsey wrote:

Plaintiffs cite nothing that would reasonably indicate a promise to provide a law degree in exchange for tuition. . . . [P]laintiffs assert no palpable injury to themselves. They have received their degrees and have proffered no facts to indicate that the degrees received are less than that to which they are entitled.

In an affidavit attached to GW's motion for fees, Yolanda Gallegos, an associate at D.C.'s Dow, Lohnes & Albertson and the university's lead counsel in the suit, said the plaintiffs' withdrawal of their class certification motion was without justification.

"The costs incurred by GWU for work by its attorneys involved research into the legal elements required for class certification in



GW law professor Charles Craver is opposed to the university's fee motion.

the District of Columbia which was necessary to show that Plaintiffs had failed to meet such requirements," Gallegos wrote.

In their response, the students argued that GW has not adequately documented its request for costs and fees. They also argued that the motion for class certification was justified and that it was withdrawn only after extensive efforts to get pro bono representation failed.

GW plans to file a response to the students' arguments opposing fees this week.

The university supported its case in part by citing a Superior Court order that went into effect Jan. 1. The general administrative order, signed by seven judges including Dorsey, allows any party that files an opposition to a withdrawn motion to seek expenses, including legal fees, incurred in opposing the motion. Expenses are awarded unless the withdrawal was substantially justified.

Experts say it is rare for the losing side in litigation to be required to pay the winner's fees, although a judge can require the loser to pay as sanction for a frivolous suit.

Tom Rowe, a civil procedure scholar at the Duke University School of Law, says that such orders can be useful in prevent-

ing frivolous motions.

"I can see a utility to that kind of order if it's used wisely in keeping people from using motions as harassing techniques," Rowe says.

Paul Rothstein, a professor at the Georgetown University Law Center, adds that the university may feel justified in pursuing expenses against students who brought a "fairly slim" suit since university funding is generally considered the business of school administrators, not students.

But if the class-certification motion was made in good faith and the students simply were unable to get the representation that they sought, Rothstein says, "these people don't fit within the intent of the rule."

Rothstein is also troubled by the general order because, by penalizing novel legal arguments, it could discourage legitimate student grievances from being brought to court in the future.

"It is within the judge's power to do," says Rothstein. "But as social policy, it's a bad idea."

The students' efforts to find representation, described in detail in affidavits attached to their response to GW's fees motion, provide an unusual look into why and how the District's top firms choose to take—or to turn down—pro bono cases that are offered to them.

According to the affidavits, Garvin, Paré, and Lennon consulted at least a dozen D.C. attorneys from October 1994 to June 1995. The firms included D.C.'s Crowell & Moring, Williams & Connolly, and Patton Boggs. Some lawyers expressed initial interest, but none took the case.

In her affidavit, Lennon recalled meeting with Charles Camp, a partner at Patton Boggs. She noted that although Camp expressed interest, partner Joseph Brand is a member of GW's board of trustees. Then, the day after their April 12 meeting, Camp told her that he could not take the case, Lennon wrote.

Camp declines comment. But Patton Boggs managing partner Timothy May says the case represented a clear conflict of interest for the firm.

"One of our partners is on the board," May acknowledges. "That's what the conflict of interest rules are all about."

Susan Hoffman, public service counsel at D.C.'s Crowell & Moring, was also consulted. According to Lennon's affidavit, after Hoffman was sent preliminary research on the class action, she said the department could not take the case. Hoffman did not return calls.

MOOT SUIT?

According to GW Dean Friedenthal, the former students' complaints that sparked the lawsuit against their school may soon become moot.

After the ABA's critical review, Friedenthal says, the university and the law school

have implemented a plan to increase the funds going to the National Law Center, allowing the school to keep about 75 percent of its revenue by the year 2003.

The law school's funding has also been bolstered by a \$4 million contribution from the J. B. and Maurice C. Shapiro Charitable Trust. The gift, which will be matched by the university, will pay for public service and environmental law programs, as well as two endowed faculty chairs and financial aid for students.

But Paré says that the problems that provoked the litigation remain.

"The problems are systemic," he says. "It's not a matter of adjusting a budget a little bit or shuffling some funds around. The way GW does business as regards the law school is fundamentally flawed."

Still, Paré's feelings are not universal among those still studying law at GW. Kim Anglin, president of the Student Bar Association, echoes Dean Friedenthal's view of the cold realities of litigation outside the classroom.

"It was a bold step that [the students] took. I wish there had been case law supporting that action," says Anglin, adding that she "hate[s] to see any administration going after students' wallets."

On the other hand, she says, students should learn that filing suits carries potential costs. "That's a big risk that you have to think about whenever you go to court."

Editor's note: Judge Dorsey's opinion, the university's motion for fees, and the students' response and affidavits are available on Lexis Counsel Connect in the Civil Procedure section of the Library.



Yolanda Gallegos of Dow Lohnes is lead counsel for the university in this case.

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ON THE MOVE

Phyllis Borzi has joined the Center for Health Policy Research at George Washington University as a senior research staff scientist. In January, Borzi will become of counsel at D.C.'s O'Donoghue & O'Donoghue, specializing in pensions and health care work. She will continue her work at GW after she joins the firm.

Borzi was previously a private consultant in the District. From 1979 until earlier this year, she served as pension and employee benefits counsel for the former House Labor-Management Relations subcommittee.

Other D.C.-area lawyers on the move include:

Timothy Sullivan, Katherine Nucci, Martin Fischer

D.C.'s Adduci, Mastriani & Schaumburg has added partners Timothy Sullivan and Katherine Nucci, and associate Martin Fischer. All three government contracts lawyers were formerly with the D.C. office of Detroit's Dykema Gossett.

Alan D'Ambrosio

Formerly a partner resident in the D.C. and New York offices of Philadelphia's Schnader, Harrison, Segal & Lewis, Alan D'Ambrosio has become managing partner of the New York office of Pittsburgh's Reed Smith Shaw & McClay. D'Ambrosio specializes in international business transactions and handles work in the D.C. and New York offices of Reed Smith.

Peter Susser

Peter Susser has been appointed director of the Institute for a Drug-Free Workplace. Susser will continue to practice labor and employment law as a partner at the D.C. office of San Francisco's Littler, Mendelson, Fastiff, Tichy & Mathiason, where he represents trade associations and individual companies in management and labor matters.

—Pedro E. Ponce