

ISLAND COUNTY PROSECUTING ATTORNEY

GREGORY M. BANKS

David L. Jamieson, Jr., *Chief Civil Deputy*
Steven L. Selby, *Chief Criminal Deputy*

Caroline J. Morse, *Office Administrator*

Deputy Prosecutors
Margot L. Carter
Joshua L. Choate
Eric M. Ohme
Kyle D. Moore
Arlene K. Anderson
Ann M. Lundwall

June 6, 2005

Editor, South Whidbey Record
Box 387, 5603 S. Bayview Rd
Langley WA 98260

via email: publisher@southwhidbeyrecord.com

Dear Editor:

I was extremely disappointed to read the erroneous and irresponsible headline in your article about the Nichols Brothers lawsuits. (*South Whidbey Record*, June 1) The sub-headline said: "Court fines assistant prosecutor for lying under oath." The assertion that one of my deputies "lied" is untrue and libelous.

Webster's defines "lie" as "to make an untrue statement with intent to deceive." My deputy, Josh Choate, did no such thing, and no judge stated that he did. A tabloid-style headline may sell more newspapers, but in this case it smeared the reputation of one of the most ethical and even-handed attorneys I know. Shame on you.

The entire affair, and Judge Hancock's curious decision to punish Josh, is an example of the principle that "No Good Deed Goes Unpunished." This letter offers a condensed summary of the complicated case. A more complete explanation is on our website, at <http://www.islandcounty.net/prosecutor/index.html>.

Josh was representing the County in a lawsuit filed against the County and Nichols Brothers. Because of deadlines created by others, Josh needed to get a judge's permission to hold a hearing on very short notice. He also had to prepare a massive volume of court documents and get them delivered to all the attorneys and their clients before the hearing. He tried to do everything simultaneously to give everyone else as much time as possible to prepare.

When he asked a judge for permission to have the hearing on short notice, Josh wrote in a sworn affidavit that he had given all parties and attorneys copies of his paperwork, and told them when he wanted to hold the hearing. Unfortunately, the paperwork was not faxed to the other attorneys until after the judge had already been given that affidavit. Josh's affidavit was technically incorrect at the moment when the judge read it. This was the "false statement under oath." To be sure, Josh made a mistake in his haste. But there was no intent to deceive, and therefore, no lie.

Editor, South Whidbey Record

June 6, 2005

Page 2

To make matters murkier, Judge Hancock misunderstood which hearing Josh referred to in his affidavit. Even if Josh had written what Judge Hancock thinks he wrote, the judge punished Josh because he “*failed to make a reasonable inquiry as to whether his statement was well grounded in fact.*” The Judge *never* said that Josh “lied.” Had Josh lied, the matter would have been far more serious and Josh would be looking for a job.

Readers should know that Judge Hancock originally ruled that Josh did not deserve to be punished. He said that there was definitely a need to have the hearing on short notice. Permission to hold the hearing would have been granted regardless of when the paperwork went out. It was only after the Seattle attorneys on the other side aggressively pushed for sanctions that the judge changed his mind and penalized Josh.

The cruelest insult is not the sanctions, or your inflammatory headline, but the irony of the fact that Josh was hurrying to give everyone as much time to respond as he could. Josh even sent the rules for how the Seattle attorneys could participate in the hearing by phone. He was not required to do that, but did so as a courtesy to save them time. In hindsight, if Josh had not asked permission to hold the hearing on short notice, he would probably not have been sanctioned and painted as corrupt in your paper. As I said, Josh’s good deeds did not go unpunished.

I’ve known Josh since he first started practicing law. He has definitely earned his excellent reputation of being fair, honest, and ethical in all of his professional activities. I stand by him, and his conduct in this case.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. M. Banks', with a stylized, cursive script.

GREGORY M. BANKS
ISLAND COUNTY PROSECUTING ATTORNEY