

10/14/11

It used to be said that "ignorance is bliss," and that "what you don't know won't hurt you." Nowadays, the opposite would seem more true. Ignorance IS harmful. What one doesn't know CAN hurt one. Take, for example, the refusal, by the House Judiciary and Governmental Operations Committee - to which a bill calling for repeal of the Beneficiary Derivative Act was referred - to do anything other than sit on the bill. It would appear that the committee, in allowing the Beneficiary Derivative Act to continue in effect, has not grasped the serious effect, the dire consequences, of the Act upon the Fund, on its members, on the CNMI as a whole. In the meantime, as the papers continue to report, Retirement Fund assets - money needed to pay retirement pensions, to run the Fund - are losing money, are shrinking, with every passing day.

Admittedly, the proper management/investment of large sums of money is a complicated business. The Retirement Fund's management is further complicated by CNMI laws and regulations. Though members of the Fund's staff and the Board have repeatedly attempted to explain the current crisis to the legislature, to the administration, to the public, perhaps they have not done enough in the past to help them understand the full investment process.

Nevertheless, even though Judge Govendo has now ruled that Public Law 17-51, the Beneficiary Derivative Act, is constitutional, the JGO committee and the Legislature should not conclude that there is no need for them to act further. A careful reading of Govendo's decision shows that Govendo himself doesn't rule out a challenge to the law on other grounds than those presented by the Fund to date. His ruling states, for example, "...the Fund asks the Court to declare PL 17-51 to be unconstitutional. The Court, *at this time*, (emphasis added (by the Court)) cannot do this." Elsewhere in the ruling, he writes that Retirement Fund assertions that the Act is harmful, " may very well be true and, if proven, may warrant a finding of unconstitutionality later on in the lawsuit, or better yet, a new law replacing PL 17-51 that attempts to address the concerns of the Fund, Beneficiaries....."

But, he notes, "the Court is, and should be, hesitant about declaring PL 17-51 unconstitutional based on the testimony of one person and six documents." and, "Plaintiff's exhibits 1-6 do not provide very much detail as to why PL 17-51 is so harmful. None of the writers of these documents were present at the hearing and there was no verbal testimony."

The Fund, in other words, appears to have failed to include all the evidence it had - of which there was considerable - that the Act is indeed harmful to the Fund, and to its members. It did not submit a single statistic showing the difference in earnings that would result from the cancellation of its money managers. It did not present any figures illustrating the effect of the decline in earnings on member pensions, on the life of the Fund. It did not show that it is legally obligated to invest its monies only with the advice of investment counselors. It did not elaborate on the other shortcomings of P.L. 17-51: in addition to changing the statute of limitations from 6 to 12 years, it voids clauses in existing Fund contracts, including expansion of the universe of potential claimants; it eliminates the requirements for "standing" in order to bring a suit; it eliminates the applicability of laws requiring "privity" of contracts; and it voids arbitration clauses. In short, it did not make a persuasive case - though it had one - leaving the judge with little choice.

The legislature cannot and should not use Govendo's ruling to justify its inaction. The law is still in effect. It has already had a ruinous effect on the Fund's investments (and therefore on everyone's pensions). It must be repealed. And if the JGO committee does not act, the Speaker should pull the bill and bring it to the floor for a hearing, at the very least, and preferably, for immediate action.

At a time when it is easy to despair of anything ever getting better - prices of food, fuel, power lower; pensions assured (!); corruption punished; wars and killing ending - a Dr. Jill Bolte has written a book that is not only an inspiration, but also offers a lot of hope. Bolte is a neuro-anatomist, a brain scientist who was doing research on the anatomy of the brain when she suffered a stroke that left her unable to walk, talk or think. The book, *My Stroke of Insight*, begins with her harrowing description - as a neuro-anatomist - of what was happening to her brain as the stroke hit, and of her eight-year struggle to regain normal functionality.

Bolte's stroke affected mainly the left side of her brain, which controls motor and analytical skills. Bolte pictures it as a room full of filing folders containing facts/data. She pictures the right side of the brain as a form of "garden of eden" - romantic, emotional, creative (see < <http://www.mystrokeofinsight.com/techniques.html> >).

Bolte writes about the two sides of the brain and how they affect her and interact and counteract with each other. That may seem far-fetched, but anyone who has ever had an interior dialogue about whether to do something, go somewhere, say something, knows that there were, in effect, two voices in his/her head, pushing and pulling in one direction or another - as would the two halves of the brain. Not only does she describe them, but she communicates with them, as well - for example, to silence the left side so that the right side can bring her peace and quiet when she needs/wants it.

Bolte was fortunate - she had informed colleagues to help her from the very beginning, and during the treatment phase, and a dedicated mother who worked with her tirelessly during the recovery phase, not something many stroke victims have. Her tale holds out hope, nonetheless, particularly the proof, if you will, that stroke recovery efforts continue to be of benefit long after the first twelve months, long viewed as the limit of such efforts. It is inspiring on two levels: Bolte's determination and efforts are awesome indeed, and the thought of being able to direct and control one's brain are challenging, to say the least! The book contains a fair amount of technical discussion, but is worthwhile reading nonetheless.

A related book that also holds out hope of improving one's capabilities is *The Brain That Changes Itself*, by Norman Doidge, MD. faculty at the University of Toronto's Department of Psychiatry, and Research Faculty at Columbia University's Center for Psychoanalytic Training and Research. Doidge's book describes the many ways that the brain has helped people thought to be "brain-damaged" to regain more normal functioning. The brain adapts, Doidge writes, and

is not the fixed, hard-wired entity most people think it is. Instead, the brain can be exercised, just as one exercises a weak muscle, and trained to compensate for many disabilities in humans - Doidge's book describes, for example, a woman thought to be retarded who was helped with brain exercises, children with cerebral palsy who learned to move more gracefully, the erasure of pain from phantom amputated limbs, even improvement in IQ's.

Incognito: the Secret Lives of the Brain by David Eagleman, also describes brain workings, but on a different level. He believes that "our brains run mostly on autopilot, and the conscious mind has little access to the giant and mysterious factory that runs below it." One of the more fascinating findings is Eagleman's suggestion that brain activity over which a person has no control is often at the root of criminal behavior, and that, therefore, other solutions than incarceration should be found for dealing with those who break the law.

Speaking of rays of hope (see above), the ad requesting "Expressions of Interest" for buying or operating CUC, which appeared in Wednesday's *Saipan Tribune*, is positively dazzling! Instead of setting fixed limits to function and price, among other things, as former requests for proposal for purchase of CUC have done, this invitation to express interest is wide open. It sets no limits as to what interested parties are required to submit, allowing them to freely exercise their imagination, creativity, and resourcefulness - not to mention technical expertise - in coming up with ideas of the who, what, when, where, why and how CUC could and should function in the future.

However, that's only half of it. The almost-more-important other half is how those submittals will be judged. The decision-makers must be as open-minded as was the ad - and as free from politics, bias, discrimination, narrow-mindedness. Will it happen? We can only wait and see.

Short takes:

- The media has been full of stories of Steve Job's death, and the immense contributions he has made to the world of information technology, the enormous impact on the way individuals communicate. Yet there's not been a single mention of awards received for those achievements. Why is it that society has such difficulty recognizing outstanding accomplishments in a person's lifetime?

- Last week we noted that papers were carrying up to two full pages of employment ads. It's now grown to four pages. From a researcher's point of view, the ads would seem to constitute a rare and valuable accumulation of raw data about the CNMI's present economy: the total number of jobs offered/available, the nature of the positions listed, the pay and benefits offered. Would seem some rather significant conclusions could be reached, if one knew how to put it all together!

- From a Frank and Ernie cartoon: "I wonder what it says about our society that we consider reality shows escapist entertainment."