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The Washington Death with Dignity Act

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Steve Hayne has practiced criminal law for over 30 years and for over 20 years has limited his practice to defense of DUIs and serious traffic offenses. He offers personal attention, sincere compassion, and extraordinary experience to clients facing the devastating impact of a DUI charge.

In 2003, Mr. Hayne was awarded the highest honor accorded by the Washington Association of Criminal Defense Lawyers; The William O. Douglas Award “For extraordinary courage and dedication to the practice of criminal law.” He has been named one of “Seattle’s Best Lawyers” by Seattle Magazine, one of the state’s “Ten Best Trial Lawyers” by the Washington Law Journal, and a “Super Lawyer” every year since inception by Washington Law & Politics. His cases of significance include lead counsel/of counsel in State v. Straka, State v. Brayman, State v. Scott, State v. Ford, State v. Franco, Seattle v. Box and Seattle v. Allison.

Mr. Hayne is a past President of WACDL and has chaired the Criminal Law Sections of the WSBA, WSTLA and KCBA. He has taught trial practice at the University of Washington and Seattle University Schools of Law, the National Institute of Trial Advocacy and the Trial Masters Program. He has been a featured speaker at over 80 CLE programs in the U.S. and Canada and has published articles in the Bar News, Trial News, Defense and Overruled magazines. Mr. Hayne is also a founding member of the Washington Association of Criminal Defense Lawyers, the National College for DUI Defense, and the Washington Foundation for Criminal Justice.

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Nevada’s arbitration alternative

Judge Small’s article (February 2009 Bar News) proposes an alternative to mandatory arbitration. That alternative exists in Nevada and has been tested and refined over the past five years. The tension in Nevada, as with most states, was between the injury lawyers and the insurance industry. The insurance industry insisted on the right to a jury trial and the plaintiff bar wanted a final adjudication on smaller cases that avoided expert witness expenses.

Nevada has long had mandatory non-binding arbitration of cases worth under $50,000. The percentage appealed to the regular trial tract was significant. The solution that has dramatically reduced the backlog of jury cases is the short trial program, a parallel semi-private trial tract that seems to have satisfied both the insurance industry and the injury bar.

... It is an excellent system for smaller cases and has shortened the regular docket by well over a year. It is normally about six months from de novo to a short trial verdict. Anyone interested in more detailed information should contact ADR Commissioner Chris Beecroft, Jr., 702-671-4439; fax, 702-671-4484.

David H. Putney, Las Vegas, Nevada

Nuremberg parallels to present

Parallels between the past and the present can always be found, some more obvious than others. I refer to “The Nuremberg Trials: A Washington Connection” (January 2009 Bar News) by Chief Justice Gerry L. Alexander. It is a nice piece of history that lends sentimental. Yet it is also about accountability for actions taken. I think about accountability for the action not taken in the face of that which is known. Do we, you and I suffer from guilt as a result? Perhaps only when the mind is brought to focus on the moment we cover over with the noise of living. We are familiar with the excuse after the act that “Those were my orders.” Sometimes there exists a pervasive silent understanding and this then is how we do it here or “we have been doing it like this for years, ain’t no need to change.” Is that arrogance peeking over the fence?

Let us bring the point of those trials to the present time and apply it here and now to the pervasive crimes against our most helpless individuals, those most easily taken advantage of. It is no secret that in this culture, in this country in which we live that we allow those that have the means to take anything of value from those who lack the ability to protect themselves... .

Dean Libey, Spokane

If it isn’t breaked ...

I seed Mr. Cumbow’s statement he writed in the Bar News (February 2009) about how some folks think the past tense of plead is spelled plead. Well, I know it is not spelled plead, or pled either; it is spelled pleaded. Maybe Mr. Cumbow does not realize that times have changed. They have. Not too long ago, I picked up my newspaper and there in print was a reporter’s article with the words “pleaded guilty.” Immediately I thought, “That semi-educated fool should have written pled guilty, not pleaded guilty.” I kepted seeing the word “pleaded” in the papers. Then I also heared prime-time newscasters use “pleaded” as they readeed the news. One even corrected himself after he sayed “pled.” At first the word grated on my ears, but then the logic occurred to me: why do we need all those irregular verbs anyway? Maybe pleaded is the seed of a good, logical idea: why not just use “-ed” to designate all past tense verbs? It could be extended to other verbs, and simplify our learning by eliminating irregular forms. So the next time I heared pleaded, it maked so much more sense. Each day when I goed out and getted my newspaper, I thanked about this new concept as I readed how people pleaded. The persons who comed up with the idea to use “pleaded” instead of “pled” leaded me to a new way of thinking.

Sam Furgason, Bellevue

That, which is true

It is great to see an article like Mr. Cumbow’s in your February issue. After studying the which/that rule in modern English usage, I realized there is a simple solution for those who do not want to figure the rule out, but also don’t get it wrong: Never use “which” when you can use “that” and never use “which” without a comma. Try it.

Marc Kittner, Seattle

Expert advice on experts

For the last decade or two I’ve switched (schizophrenically at times) between being an expert (children’s accidents) and a lawyer. I would like to echo the sentiments of Mr.
Thorsted in his fine article (“Selecting Expert Witnesses,” February 2009 Bar News) and add a few of my own. First, pick an expert committed to the scientific method — someone who can entertain a number of hypotheses, then systematically use the facts in the case to evaluate these. Second, find an expert aware of their limitations. Too many experts try to please by opining on all of the issues in a case. Third, find someone who can think on their feet. Experts who have given papers at conferences, lectured or taught extensively have these skills. Fourth, find an expert who has published in referred journals. They are more cautious and avoid taking positions that jeopardize their credibility. Fifth, be sure that you have an expert appropriate for your case. The author does a great job of showing how he researched his case and recognized that he needed a human factors expert to address the full constellation of factors. Sixth, find an expert who can be a devil’s advocate, anticipating the arguments of the other side. Seventh, look for creative experts who can develop theories that have not been previously advanced. Eighth, routinely search databases such as PSYCHINFO for human factors experts, clinical psychologists and MEDLINE for medical experts.

W. Andrew Harrell, Edmonton, Alberta

Running out of banks

The proposal to require IOLTA accounts to be placed only with banks that pay “comparable” interest is misguided (“President’s Corner,” December 2008 Bar News). This proposal has been advanced by the Legal Foundation of Washington and is being examined as a possible amendment to RPC 1.15A at the Supreme Court. The selection of an IOLTA account bank turns on significant factors other than the interest rate. For me, in my tiny community, the decision turned on which bank would permit me to make an indemnification agreement, required by the WSBA, so I could issue time loss checks to injured workers on the day of deposit. Some banks do not permit this, regardless of interest rate. My former IOLTA bank stopped permitting this, so I had to change banks. I am running out of banks.

Finally, it is not easy to tell whether the account is paying “comparable” interest. Banks increasingly set interest rates based on the amount of money in the account, which is quite variable — as is their interest rate.

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Several weeks ago, a woman hospitalized in Washington with terminal cancer told her husband that Jesus asked her to join him that very night. Pursuant to her request, the husband gave her an overdose of pain medicine. Upon discovery of his actions, he was arrested and his wife was transferred to the Intensive Care Unit for treatment of the overdose.

Could this painful scenario have been prevented if the Washington Death with Dignity Act (WDDA) had been in place as an option for this couple? Perhaps. Based on reports from its clients, Compassion & Choices of Oregon credits the Oregon Death with Dignity Act, upon which the Washington Act is modeled, with preventing at least three homicides and 140 violent suicides over the last 11 years.

Implemented on March 4, there are still many questions regarding the scope of the WDDA and its legal ramifications. The following is an overview of the historical context and the basic tenets of the WDDA, and their practical application as seen in Oregon’s decade-plus of experience.

**Historical Context**

Prior to World War II, the vast majority of Americans died in their homes. Those fortunate enough to afford medical care were given opiates for pain control, usually administered by a family member or caretaker. With the rapid medical advances and proliferation of hospitals after World War II, the norm shifted to hospital deaths. The inception of Critical Care Units in the 1960s and early 1970s made prolongation of life with respirators, medications, and advanced procedures possible for even the most severely ill.

Lengthened lives, however, did not always mean quality lives. Patients existing in persistent vegetative states, defined by the National Institute of Neurological Disorders and Strokes as “[i]ndividuals who have lost their thinking abilities and awareness of their surroundings, but retain non-cognitive function and normal sleep patterns,” were kept alive for weeks, months, and even years. When the end did come, it was usually in a medical institution, battling an overwhelming infection.

These developments prompted a national dialogue on the quality of death and the rights of dying patients in the 1970s. It was the legal system, however, that provided the primary guidance regarding life-sustaining technologies. The first case involving what is now referred to as the “right to die” was the Karen Ann Quinlan case, decided by the New Jersey Supreme Court in 1976. Kept alive by a respirator and a feeding tube, 21-year-old Quinlan was in a persistent vegetative state with no reasonable medical probability of regaining consciousness. Her father, a devout Catholic, asked her physician to disconnect her respirator. When the doctors and hospital refused to honor the request, Quinlan’s father turned to the legal system.

Quinlan’s physician argued that because she was not brain-dead, both medical standards and ethics required him to continue treating her, with the respirator being part of that treatment. The government also intervened, arguing that the state’s interest in protecting the sanctity of life must be protected and that removing the respirator was tantamount to criminal homicide.

The New Jersey Supreme Court rejected both arguments, holding that refusal to withdraw life support violated Quinlan’s state-constitutional right to privacy. The court rejected the idea that the medical profession was required to use all means at its disposal to keep such patients alive. Rather, the “focal point of the decision [to terminate treatment] was whether the patient would return to a ‘cognitive and sapient life’ or remain in a ‘biological vegetative existence.’” Although the court recognized that the state had an interest in preserving life, it found that interest "weaken[ed] and the individual’s right to privacy [grew] as the..."
degree of bodily invasion increases and the prognosis dims.\textsuperscript{78}

This case prompted legislation addressing the rights of individuals to determine the circumstances surrounding their death. The Natural Death Act, passed by the Washington Legislature in 1979, enables a competent adult to sign a directive, witnessed by two disinterested parties, which requires the removal or withholding of his or her life-sustaining treatment where such treatment only serves to artificially prolong the moment of death, made imminent by an incurable injury, disease, or illness.\textsuperscript{9} This Act codified Advanced Directives and the designation of a Durable Power of Attorney for Health Care.\textsuperscript{10}

Fourteen years after Quinlan, the U.S. Supreme Court decision in \textit{Cruzan v. Director, Missouri Department of Health}, 497 US 261 (1990) found that the Fourteenth Amendment to the Constitution, which provides that persons may not be deprived of their liberty without due process of law, included a liberty interest in refusing heroic medical measures.

The Supreme Court confirmed its approval of the right to refuse life-sustaining treatment in the 1997 decisions of \textit{Washington v. Glucksberg} and \textit{Vacco v. Quill}.\textsuperscript{11} A majority of the justices clearly prohibited the states from obstructing adequate palliative care, especially for the alleviation of pain.\textsuperscript{12} Palliative care is defined as replacing curative measures as a primary goal with measures to alleviate pain. The Court’s approval of palliative care — “[t]here is no dispute that dying patients in Washington and New York can obtain palliative care, even when doing so would hasten their deaths” — also included approval of the practice of terminal sedation.\textsuperscript{13} Terminal sedation, which is administering continuous pain medicine until all indicators of pain are gone, even if it hastens death, is part of palliative care. While the actual phrase “terminal sedation” appears only in a footnote concerning sedation while withdrawing ventilator support in the \textit{Quill} majority opinion, Justice O’Connor wrote favorably of “relieving pain even to the point of unconsciousness,” and Justice Breyer noted the “need for sedation which can end in coma.”\textsuperscript{14}

That same year, the Oregon Death with Dignity Act (ODDA) (ORS 127.800, \textit{et seq.}) was implemented after surviving three years of legal challenges from private-interest groups, federal legislators, and a former U.S. attorney general. Under the ODDA, mentally competent individuals who have less than six months to live may be eligible to receive a prescription from their primary physician for self-administration of a medication to control the time, place, and manner of his or her impending death.\textsuperscript{15}

While closely watching Oregon’s results, care of terminally ill individuals became a topic of public discussion and legislative action. Congress passed the Patient Self-Determination Act (PSDA) in 1991, requiring healthcare facilities/agencies to discuss advance directives with all adult patients as they enter their systems.

To facilitate compliance with advance directives, Washington is one of the few states to implement a free online Living Will Registry (www.doh.wa.gov/livingwill). Maintained by the Department of Health, it contains advance directives, Durable Power of Attorney for Health Care forms, and Physician Orders for Life-Sustaining Treatment (POLST) forms, which are immediately available to all healthcare facilities. The POLST forms summarize the wishes of an individual regarding life-sustaining treatment as physician orders that govern care in a healthcare facility.

In Oregon, referral of patients to hospice care and physician enrollment in continuing education courses on how
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to treat pain and symptoms associated with terminal illness increased dramatically after passage of the ODDA.16 A study conducted by the Oregon Health Sciences University found that 88 percent of respondent physicians provided better comfort care to their patients as a direct result of the ODDA.17 A survey of hospice nurses and social workers in Oregon revealed that they observed an increase in physician knowledge of palliative care and willingness to refer and care for hospice patients from 1998 to 2003.18 Over the past 11 years, Oregon physicians wrote 541 prescriptions pursuant to the ODDA; 341 of them were actually used.19 The main motivating fears that prompt requests for hastened death were loss of autonomy, dignity, and the ability to engage in life.20 The patients who died from taking the medication were between 55 and 84 years of age (77 percent), white (97 percent), well-educated (79 percent had some college), and had terminal cancer (82 percent).

Last year, four major national medical and health-policy organizations adopted formal policies in support of aid in dying based on the Oregon experience.21 In this environment of increased public awareness, the success of Oregon’s experience and increased organizational support, voters in Washington adopted its Death with Dignity Act on November 4, 2008, by a margin of 59 percent to 41 percent.22

**Practical Application of the Washington Death with Dignity Act**

Stringent criteria govern the small patient population who can utilize the option offered by the WDDA:

1. Adult residents of Washington;
2. Diagnosed terminally ill with a maximum six-month prognosis; and
3. Capable and competent to make, orally and in writing, two requests.

**Adult Residents**

The non-medical criteria are in place to prevent what was feared to be a migration of persons moving into the state solely to take advantage of the Act. This fear was not realized in Oregon, as an average of 30 terminally ill adults every year have actually gone through the entire process.23 For example, in 2008, 31,000 people died in Oregon; of those, 60 people exercised their rights pursuant to the ODDA. This amounts to only 0.002 percent of the total deaths in 2008.24 Additionally, the average length of time from the actual request until utilizing the prescription was three to four months.25 Although there are mandatory waiting times within the Act — 15 days between the first oral request and writing the prescription, verification of prognosis by two physicians prior to the second oral request, and 48 hours between the written request and the writing of the prescription — the process of working through the procedural mandates of the Act, such as hospice and mental-health referrals, took much longer. For example, in 1998, 20 of the patients had been residents of Oregon for longer than six months when they received their prescriptions.26

**Terminal diagnosis with a six-month prognosis**

Under the WDDA, a physician must determine that the patient has a life expectancy of less than six months.27 Based on the Oregon experience, these physicians are usually specialists, such as oncologists.28 Terminal patients frequently ask these physicians about assistance with death; however, the majority of specialists defer this discussion to the primary-care physician.29 Family practice and internal medicine physicians make up the majority of the prescribing doctors in Oregon, while oncologists and other specialists frequently serve as a “consulting physician” as described in the Act.30 The “consulting physician” is required by...
the Act to not only confirm the prognosis but also to “verify” in writing that the patient is “competent, acting voluntarily, and has made an informed decision.”31 “Informed decision” is defined by the Act as one that is made only after “[t]he feasible alternatives including, but not limited to, comfort care, hospice care, and pain control” have been reviewed with the patient.32 The Oregon experience shows that nine out of 10 patients who decided not to obtain and/or use a prescription after qualification did so after going into hospice care.33 Of the 341 patients who died after ingesting the prescribed medication, 85.8 percent were in hospice, and 99.1 percent had insurance that covered hospice care.34

**Capable and competent to make, orally and in writing, two requests**

The WDDA requirement of competency at the time of the request effectively excludes persons with diseases such as Alzheimer’s, Parkinson’s; and chronic heart, lung, and neuromuscular diseases, as competency is usually lost long before a terminal prognosis. Competency, as with all other medical informed consent determinations, is a finding only a physician can make when discussing treatment options with a patient.

If the attending or the consulting physician has concerns that the individual seeking to exercise his or her rights under the WDDA is “suffering from a psychiatric or psychological disorder or depression causing impaired judgment,” a psychiatric consult must be obtained.35 Given the difficulty of differentiating between mourning a terminal diagnosis and depression, psychiatric evaluations are prudent. Concerns have been raised by the failure of Oregon physicians to obtain psychiatric referrals.36 Indeed, none of the 85 persons who received prescriptions in 2007 were referred for psychiatric evaluation.37

In addition to being competent, an individual must be able to make two oral and one written requests. On its face, this requirement excludes individuals who are unable to communicate through speech and writing. This exclusion was not tested in Oregon, as none of the individuals seeking to invoke the ODDA were unable to speak and write.

The first oral request must be made to the patient’s attending physician. That physician, regardless of whether or not the request is honored, must document it. At least one-third of all physicians asked in Oregon refused such a request.38 A 2000 survey of Oregon physicians found that they granted one in six requests to use the ODDA and that only one of 10 requests resulted in hastened death.39

Signature of the written request, which can only be made after concurrence by two physicians of the prognosis and competency of the individual, must be witnessed by at least two individuals. One of the witnesses must be a person who is not:

1. A relative by blood, marriage, or adoption;
2. A person entitled to any part of the patient’s estate by will or law; or
3. An owner, operator, or employee of any healthcare facility where the patient is receiving medical treatment or residing.40

Although the majority of persons invoking the ODDA died at home (93.5 percent), there is a requirement for a designated witness to be present if the death occurs in a long-term care facility.41 These witnesses must attest that the patient is competent, acting voluntarily, and not being coerced to sign.42

**Impact on Healthcare Providers**

The WDDA requires the physician honoring a request to document the elements of an informed decision in the patient’s medical chart as follows:

1. Diagnosis;
2. Prognosis;
3. Potential risks associated with taking the medication;
4. Signature of the written request, which
4. Result of taking the medication;
5. Discussion of feasible alternatives, which include but are not limited to comfort care, hospice, and symptom control.

The attending physician must recommend that the patient discuss his/her intentions with close relatives. The physician must advise the patient to take the medication with another person in attendance in a non-public site. \(^4\)

The physician must also state and document mandatory reminders to the patient of his or her “Right to Rescind” the request at any time, which are when the patient makes the first oral request, at the end of the 15-day waiting period, and immediately before writing the prescription. \(^4\)

Very few Oregon physicians actually wrote prescriptions pursuant to the ODDA. Those who did write the prescriptions, wrote between one and 10 per year. \(^4\) For example, only 45 physicians wrote the 85 prescriptions in 2007. \(^4\) These physicians have been primarily family practice doctors (57 percent), oncologists (22 percent), and internal medicine specialists (21 percent). \(^17\) Many of these physicians were present at the time of administration. \(^4\)

To facilitate compliance with the Act, standardized forms promulgated by the Department of Health will be available in the Washington Administration Code Chapter 246-978. The use of these forms also assists with the mandatory data collection and reporting required by the Department of Health. As in Oregon, the Washington Department of Health must generate an annual report that is available for public scrutiny. \(^4\) The Oregon Health Sciences University drafted a guidebook specific to the ODDA that proved to be an invaluable resource for Oregon physicians. \(^50\) Recently updated, it is available online at www.ohsu.edu/ethics/guidebook.pdf.

**Conclusion**

If the WDDA had been in place for the couple referred to in the opening paragraph, there would have been a greater probability that they would have been more aware of their choices and would not have to risk violating the law for a “humane and dignified” death. \(^51\) Because of the emotional, ethical, and religious issues attached with the WDDA, it is of vital importance that accurate language and complete information is available to Washington citizens, physicians, and their attorneys.

In 2006, the Oregon Department of Human Services rejected using the term “assisted suicide” or “physician-assisted suicide.” \(^52\) Profound psychological differences distinguish suicide from actions under WDDA. \(^53\) The American Psychological Association has recognized: “It is important to remember that the reasoning on which a
terminally ill person (whose judgments are not impaired by mental disorders) bases a decision to end his or her life is fundamentally different from the reasoning a clinically depressed person uses to justify suicide.” Medical and legal experts have recognized that the term “suicide” or “assisted suicide” is inappropriate when discussing the choice of a mentally competent, terminally ill patient to seek medications that he or she could consume to bring about a humane and dignified death.¹⁵

The eyes of the nation are watching how Washington, with its 6.5 million citizens compared with Oregon’s 3.7 million, will treat the estimated 48,000 to 50,000 persons facing death each year. The Oregon experience has shown that responsible discussions will provide improved end-of-life care for all those with terminal conditions, not only for those few who choose to exercise their choice for a “humane and dignified” death under the Act. As attorneys, it is our responsibility to remain educated regarding the choices available to our clients by the Washington Death with Dignity Act. ²⁰

After more than 15 years of critical care and emergency nursing, Pamela Hanlon changed careers by going to the University of Washington School of Law. When she graduated in 1997, she had the opportunity to join an insurance defense firm that represented, among other clients, the same hospital where she had worked as a nurse. After three years of medical malpractice defense work, Ms. Hanlon decided to broaden her experience by working with plaintiffs’ firms. After moving to Georgia in 2002, she became a certified mediator, working with county-funded dispute resolution centers. She returned to Seattle in 2007 and is presently working with the Washington Poison Center as well as owning a consulting business, PJH Litigation Services. She can be reached at hanlon.pj@gmail.com.

NOTES
2. See “President’s Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, Deciding to Forego Life-Sustaining Treatment” (1983).
3. Id. at 17–18. (80 percent of all deaths in the United States now occur in hospitals and long-term care institutions).
7. Id.
8. Id.
9. RCW 70.122.030.
10. See RCW 70.122 et seq.
11. Id.
12. See, Vacco v. Quill 521 U.S. at 903 n. 13; Glucksberg, 521 U.S. at 737.
13. Id.
14. Id.
15. Id.
18. Id.
20. Id.
21. The American College of Legal Medicine Resolution at: www.aclm.org/resources/articles/ACLM%20AID%20in%20Dying%20Policy.pdf; The American Public Health As-


23. See note 1 supra.

24. See note 1 supra.


27. Initiative 1000, Washington Death with Dignity Act § 2(1)(uncodified).


29. Id.


31. Initiative 1000, Washington Death with Dignity Act §§ 1(4); 5 (uncodified).

32. Id at §1(7).


35. Id.


38. Id.


40. Initiative 1000, Washington Death with Dignity Act § 2(1) (uncodified).

41. Initiative 1000, Washington Death with Dignity Act § 3(4) (uncodified).

42. Initiative 1000, Washington Death with Dignity Act § 2(1)(b) (uncodified).

43. Initiative 1000, Washington Death with Dignity Act § 1(4) (uncodified).


46. Id.

47. Id.

48. Id.


51. Initiative 1000, Washington Death with Dignity Act §§ 2(a);6;7;9 (uncodified).


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Smitty Myers: A Spokane Icon

by The Honorable Shelley Szambelan

should probably start off with an apology, because Smitty and Sandy Sandulo Myers may be slightly embarrassed to read some of what follows. Not because it's scandalous (though I did hear some great stories), unflattering, or untrue, but rather that proclaiming Smitty's accolades is contrary to both his and her genuine humility and self-effacing nature. Sandy would say that this article should be only about her beloved Smitty and his accomplishments. But anyone who knows them knows that an article about Smitty would be incomplete without talking about Sandy — just as he reminds you that his life would be incomplete without her. They are the beloved “First Couple” of Spokane’s legal community.

Our legal community is fortunate to have Smith Moore Myers as one of us. Smitty’s accomplishments are impressive. From modest beginnings, he worked his way from being a night operator at Sacred Heart’s switchboard to being, among other things, a federal magistrate judge, United States Attorney for Eastern Washington, and dean of Gonzaga’s Law School... not once, but twice. All along this path, Smitty embodied the epitome of what a lawyer ought to be, which is why the Spokane County Bar Association named its annual professionalism award in his honor.

Throughout his career, Smitty has had a varied experience with the law, ranging from teaching naval law, being an assistant attorney general, working in private practice in Seattle, as a law school dean and professor, as a federal magistrate judge, to being a United States attorney. Of this spectrum of work, Smitty related that he generally enjoyed trial work the most. Upon further reflection, however, he relayed the following as his favorite experience. His first active duty station in World War II was at Quonset Point Naval Air Station, Rhode Island, where he was assistant to the commanding officer of the training school. "Sounds as if I pretty well ran things, but I did not," he recalled. "I ran errands; I thought up excuses. I taught a class in military courts. And I supervised and readily confessed that she didn't bake those wonderful cookies that she'd made for Smitty's federal judge's hideout..."

While Smitty enjoyed all of that, he and the other teachers/advisors learned near the end of the session that they would have to submit performance grades on each student/advisee. The faculty protested that it was unfair, because they were not well enough acquainted. Although the faculty convinced the commanding officer to eliminate the requirement for future classes, Smitty and the others still had to give grades to the existing class:

My thought, as I reluctantly sat down to compose grades, was that, being deprived of the facts, I would give no one A+ grades and C- or lower ones. Everyone would get a pretty good grade — no one would flunk or get genius-standing. Only one student complained. He told me (in a barely polite manner) that he deserved much better than a B+ grade, and that I was obviously prejudiced. I explained my view of the problem, after which he stomped out of the office with no further conversation.

The man who stomped out was Richard M. Nixon. Ironically, their career paths would cross again. Richard Nixon’s ascension to the White House resulted in a change in administrations. Smitty, who had been appointed U.S. Attorney by President Johnson, returned to private practice.

I asked Smitty how the practice of law has changed since he graduated from Gonzaga’s law school in 1939. Smitty spoke of the complexity of cases and matters before the courts and lawyers focusing on specific areas of practice. He thought that this was probably a good thing, since they’re more highly educated in a particular area of the law, and the firms are bigger, too. While that accommodates the various practice areas, it feels large firms can also tend to be more impersonal.

I asked colleagues what they would want to know about Smitty. Aside from my husband wanting Sandy’s recipe for the chocolate chip cookies that she’d made for Smitty’s federal jurisdiction class, many wanted to know about the most interesting case or legal experience of Smitty’s career. (Author’s note: Sandy readily confessed that she didn’t bake those wonderful cookies and happily provided the name of the local bakery that did!) Smitty explained how, with his intense experience in debate since grade school, it was probably only natural that he enjoyed litigation more than any other facet of law practice. Of course, his years in the US. Attorney’s office gave him the largest volume of cases. He recalled his most memorable case:

[The case involved] prosecution of seven defendants, who were members of an anti-communist society, for conspiring to rob a bank in order to finance a secret and pretty lavish hideout for themselves. Actually, there were eight members of the society, but one went immediately to the
Spokane F.B.I. to give them all the facts. He remained a reliable informant throughout the time when the other seven conspirators assembled at the agreed time and place where they were arrested. The eighth alleged conspirator didn’t show up ... until trial, when his testimony sent the guilty seven to prison for several years.

Another case after he returned to private practice involved a client Smitty described as a hard-working, very pleasant construction man working in the Northwest. The client had built a substantial building in Washington, D.C., for the federal government. It passed inspection and he was paid. However, the federal government then filed criminal charges against him based on a then-recent law that required the builder to file explanatory materials about the construction job. Smitty cross-examined each government witness about whether they told him about the requirement; each admitted they did not, saying that he should have known based on the then-quit recent statute. Smitty argued, “The government knew this requirement. For God’s sake, why didn’t they tell him?” The jury acquitted his client in about 10 minutes. Afterwards, the jury wanted to have a drink with the client. Some of the jurors told the client that Smitty’s inquiry was the most important question in the case, and that they knew when they walked into the jury room that they would acquit. Smitty said that the client still puts up an occasional building for the government, but they’ve not prosecuted him since then.

I asked if Smitty had any advice for attorneys, especially new attorneys who are just starting out. Smitty replied that you have to really want to do it and enjoy what you do, especially given that there’s a lot of conflict. “Roll with the punches and adapt,” he added. He gave the following example of keeping everything in perspective. He had just litigated a hard-fought personal injury case and lost. As he was leaving the courthouse with opposing counsel, a juror saw them laughing together. Perplexed, the juror said, “Aren’t you mad at each other?” Smitty and his colleague responded that they weren’t mad and that they were friends. The juror asked, “What about up there?” pointing back to the courthouse. Smitty explained that they disagreed and both wanted to convince the jury, wryly noting that obviously his friend had done a better job.

Smitty has been a leader in many different organizations; he has served as student body president at Gonzaga University, student bar president, lieutenant commander in the Navy in WWII, Spokane County Bar president, and dean of Gonzaga University School of Law. I asked Smitty about his secret to success across so many varied settings. In keeping with his modesty, Smitty’s simple response was that he likes people very much. He enjoys being with people and working with them. He didn’t know of any other reason that contributed to his success.

In recent years, Smitty has been watching the practice of law from the outside, and I wondered if this change in viewpoint had led to any observations. Smitty said that he believes the law and lawyers have improved. With the bar enforcing self-discipline, he feels lawyers are more ethical — but he also thinks they have to work too hard.

Next, I asked Smitty to share something about himself that most people don’t know. Smitty explained that he was the first feminist he ever knew. He’s never differentiated between men and women — even when others tried to. One example involved ruffling a lot of feathers to convert one of the men’s restrooms at the law school into a women’s restroom for the lone female law student! He readily acknowledges that his outlook was shaped by the strong women in his life. Many people also don’t know that Smitty created the work-study program at Gonzaga’s law school.

Smitty has received many honors, including the Gonzaga University Law Medal, the WSBA Professionalism Award, and the WSBA Award of Merit — the highest award given by the WSBA. The SCBA named its professionalism award in his honor in 1994. Smitty is widely revered and admired, and so I asked who he admires and why. Always eager to recognize others, Smitty said he didn’t admire just one person. But his immediate response was to name Sandy, who has bravely fought through serious illness. While Smitty is fond of saying that he knew that he’d marry Sandy as soon as he saw her (and crashed into the counter as he saw her “vision of loveliness”) decades ago, the feeling is mutual. During the interview, she referred to Smitty as her “next breath.” More people should be so lucky as to have that kind of enduring love.

Smitty also recognized two other strong women as people he admired and who most impacted his life. His mother, Julia, “worked like a dog” to single-handedly raise Smitty and his two siblings. She endured hardship and challenges, including tragedy when Smitty’s brother, Robert, died from rheumatic fever. Her determination provided a good role model and the impetus for Smitty’s success:

In first grade, I received a D and an F for public speaking. I didn’t want to get up in front of everyone. Mom chastised me and went to the teacher, explaining that I can sure talk. Mom then went to my desk and said, “You get up, you talk.” I was a very obedient son.

And it was a good thing, because Smitty went on to be a champion debater in high school and college, as well as a skilled orator. One day, Smitty was walking with his mom and feeling guilty about his desire to go to law school. The lack of income would affect the family, but his mother said, without hesitating, “If that is what you want to do, then that is what we will do.”

His fourth-grade teacher, Mary Stewart, also had a large impact on his life. She was a young woman whose father had died shortly after bringing her over from Ireland. In addition to being smart and strong, she was a shrewd investor. She bought one share of Sears Roebuck stock and, during the Depression, kept buying stock at a discount. When Gonzaga’s president went to solicit a donation from her, she told Father Coughlin that he’d better bring Smitty.

On the legal front, Smitty told me about his admiration for two federal judges from the
Eastern District of Washington. Smitty told how impressed he was with Judge Charles Powell, who was one of the lawyers trying a lengthy (over 100 days) and hotly contested matter over which Smitty presided. Though the opponent lost his temper several times, Powell never did. “He came very close a few times, but would remain silent for a few moments and speak only after his internal battle had been won.” Later, Smitty tried cases before Judge Powell, who kept order in his courtroom without ever raising his voice or losing his temper.

Another federal judge Smitty admired was Judge J. Stanley Webster. Smitty had heard a lot about this judge and his brilliance on the bench. When the local paper announced that Judge Webster would be hearing argument and announcing his decision the following day, Smitty resolved to be there.

I was early enough to have a good seat. By the time he appeared on the bench, the courtroom was full. After the lawyers had occupied two or three minutes, and then became silent, he turned to his left and put his feet up on something like a padded table, which permitted him to lie in a position of rest. He lay in a completely horizontal position, announced the case, and began to talk, without the slightest reference to notes. It sounded like a carefully prepared, completely written decision. But he spoke extemporaneously outlining the decision and his reasons. At times he would stop and say nothing for several moments — obviously working his way through a problem. Then, he would continue the process, which seemed like reading. They tell me many of his decisions were made in this manner. A brilliant man.

For those of you who have not had the privilege of knowing Smitty, an article by John Powers1 gives more detail as to what has been an extraordinary legal career. I am grateful for the opportunity have had an enjoyable afternoon visit with Smitty and Sandy, who both give so generously to our Bar and make Spokane a better place in which to practice.

Shelley Szambelan is a judge for the Municipal Court of Spokane. She may be contacted at sszambelan@spokanecity.org.

NOTES
Information about jury verdicts, bench trial judgments, and settlements in personal injury cases is important for a variety of reasons. (For purposes of this article, the term “verdict” will include both jury verdicts and bench trial judgments.) Award or settlement amounts and the facts surrounding these cases are helpful in evaluating how a case may fare at trial and may be used as a bargaining tool in settlement negotiations.

Personal injury verdict and settlement information can be found in both print and electronic formats. Each source supplies different details about the cases; some give only the bare minimum of information, including the type of case, jurisdiction, and the award or settlement amount. Other sources may also provide citations to statutes, case name, judge’s name, docket number, statement of the facts, award or settlement amount, appellate information, and experts used. Most of these resources require either subscription or membership, but most law libraries provide access to a variety of these publications.

Almost all publishers accept verdict and settlement information submitted by the attorneys involved in the cases. In addition, many legal publishers hire individuals to go to local courthouses, retrieve court files, and read, summarize, and submit the cases. Other legal publishers gather information from reported appellate court opinions.

Jury verdicts and bench trial judgments are generally easier to locate than settlements, because the verdict or judgment amount is part of the court file. Settlements tend to be confidential in nature. Even if the settlements are not confidential, it is still difficult in many jurisdictions to find actual dollar amounts because the court files generally don’t include that information.

Listed below are some of the national and Washington-specific sources for personal injury verdicts and settlements. Some also include employment cases. If it is available online, that information is also provided.

Washington Jury Verdict and Settlement Resources

Jury Verdicts Northwest — Northwest Personal Injury Litigation Reports
Jury Verdicts Northwest is the leading publisher of verdict and settlement information for Oregon, Alaska, Idaho, and Washington. Washington cases are published in two separate monthly publications, the Northwest Personal Injury Litigation Reports and the Washington Arbitration Reports. The Northwest Personal Injury Litigation Reports contains personal injury trials and settlements from Washington and Alaska state and federal courts. The Washington Arbitration Reports contains arbitration cases from Washington. Cases reported include the type of case, docket number, facts of the case, type of injury, judge’s name, expert information, and award or settlement amount. It is also available in the Westlaw database JVNWA-JV.

Jury Verdicts Northwest offers a fee-based custom search service for Idaho, Washington, Oregon, and Alaska cases at www.juryverdictsnw.com. This site also gives subscription information for their print resources, including the Northwest Personal Injury Litigation Reports and the Washington Arbitration Reports.

JVR’s State Verdict Surveys — Washington Edition
Jury Verdict Research (JVR) is a division of LRP Publications that publishes state-specific personal injury verdicts and settlements annually for approximately 27 states, including Washington. Each state verdict survey includes award trends for significant injuries and frequently claimed liabilities, million-dollar verdict activity, statistical comparisons of state and national averages, as well as detailed summaries of recent verdicts and settlements. The most recent JVR’s State Verdict Surveys — Washington Edition is 2006. It is also available in the Westlaw database LRPWA-JV.

National Jury Verdict and Settlement Resources

JVR Personal Injury Valuation Handbook
The JVR Personal Injury Valuation Handbook is an eight-volume set published by LRP Publications. It provides a statistical analysis.
of verdicts and settlements that is helpful in preparing more effective case strategies. Some of the titles include:

- Comparing Settlements, Verdicts & Statistics in Spinal Nerve Injury Cases
- Current Award Trends in Personal Injury
- Finger and Hand Injury Claims: Getting a Grip on National Verdicts and Statistics
- From Cervical to Lumbar Strains: A Closer Look at Back Injury Litigation and Liability Studies
- Medical Malpractice: Verdicts, Settlements, and Statistical Analysis
- Nationwide Trends in Burn Injury Verdicts and Settlements
- Personal Injury and the Hospitality Industry: Verdicts, Settlements, and Statistical Analysis
- Personal Injury Case Evaluation
- Personal Injury Valuation Handbooks
- Personal Injury Verdict Reviews
- Personal Injury Verdict Finder
- Products Liability: Verdicts, Settlements, and Statistical Analysis
- Tracking the Trends: Jury Awards and Settlements in Spinal Disc Injury Cases
- Vehicular Liability: Verdicts, Settlements, and Statistical Analysis

The Personal Injury Verdict Finder allows a researcher to call LRP’s toll-free telephone number or fill out an online form and LRP will locate similar personal injury verdicts and settlements.

LRP’s publications can be found in a variety of formats, including newsletters, books, pamphlets, and online databases. Subscription and pricing information is available at www.lawyerverdictresearch.com. LRP personal injury verdicts and settlements are also available on Westlaw in the LRP-JV database.

AAJ’s Law Reporter
The Law Reporter is a newsletter published 10 times per year by the American Association for Justice (formerly the Association of Trial Lawyers of America) and covers state and federal cases throughout the nation. The Law Reporter covers all types of cases including personal injury cases. Each case reported in the Law Reporter includes the type of case, award or settlement amount, jurisdiction, attorney information, facts of the case, and access to pleadings and other court documents. It is more of a current-awareness tool, because there is no comprehensive index of verdicts and settlements.

Lawyers USA
Lawyers USA (formerly Lawyers Weekly USA) is a national legal newspaper. It has a section entitled “Verdicts & Settlements” that includes state and federal personal injury and employment verdicts and settlements. Each case reported in Lawyers USA includes the facts of the case, award or settlement amount, attorney information, and the judge’s name.

The verdicts and settlements section is available weekly in each print issue of Lawyers USA. There is no comprehensive index; however, there is a keyword-searchable database that contains all of the verdicts and settlements reported by Lawyers USA available at www.lawyersweeklyusa.com.

ALM’s VerdictSearch National
VerdictSearch National is published by ALM. This monthly newsletter was originally called the National Jury Verdict Reporter. It covers state and federal personal injury cases from across the country. Each case reported in the VerdictSearch National includes the following information: the award or settlement amount, case name, jurisdiction, docket number, attorney information, and a factual description of the case. There is no comprehensive index of verdicts and settlements for the newsletter; however, ALM maintains a keyword searchable database that contains thousands of state and federal personal injury cases. Subscription information can be obtained at the ALMs website at www. verdictsearch.com. The Westlaw database is ALMVS-JV.

ALM also publishes the National Law Journal. The National Law Journal publishes an annual issue that includes their top 100 verdicts and top 20 defense verdicts.

Stein on Personal Injury Damages 3d
This is a multi-volume set published by Thomson-West that provides information on aspects of personal injury damages for both state and federal verdicts and settlements from around the country organized by type of injury. Each verdict or settlement provides the jurisdiction, court and citation information, type of injury, award or settlement amount, attorney information, and a summary of the facts. The Westlaw database is STEIN-DIG.

Verdicts, Settlements & Tactics
This is a monthly newsletter that includes information concerning injury trends, articles on trial strategies and tactics, as well as very detailed and comprehensive verdict and settlement information from state and federal courts from around the country. It is organized into sections dealing with specific types of injuries, further divided into five subsections: damages fixed by court, excessive, not excessive, adequate, and inadequate. Each verdict or settlement report includes jurisdiction, court and citation information, type of injury, award or settlement amount, attorney information, and a summary of the facts. It is also available in the LexisNexis database as VERDCT;VERST and in the Westlaw database as VST.

Dollar Verdicts: Personal Injury
Only reported cases which have generated a published opinion are included. It is organized into sections dealing with specific types of injuries, further divided into five subsections: damages fixed by court, excessive, not exces-
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Lane Medical Litigation Guide
This multi-volume set includes “Specimen Awards” related to injuries to various parts of the body. Each verdict or settlement provides case name, citation, jurisdiction, type of injury, and award or settlement amount. Cases are supplied from West reporters and other sources. It is updated annually and includes both state and federal cases from around the country.

Damages in Tort Actions
Volume 7 of this multi-volume set includes “Illustrative Awards and Settlements.” In addition to providing access to all aspects of medical malpractice law, it supplies a list of “Illustrative Awards.” Verdicts and settlements are organized by type of injury and report court and docket information, facts of the case, award or settlement amount, specific type of injury, and other relevant data. Cases are supplied from AAJ (formerly ATLA) and LexisNexis. It is updated annually and includes cases from both the state and federal level. The LexisNexis database is MATBEN;DAMTOR.

Medical Malpractice
Volume 5 of this multi-volume set supplies a list of “Illustrative Awards.” Verdicts and settlements are organized by area of medicine. Each verdict or settlement provides court and docket information, award or settlement amount, facts of the case, specific type of injury, and other relevant data. Cases are supplied from AAJ (formerly ATLA) and LexisNexis. It is updated annually and includes both state and federal cases from around the country. The LexisNexis database is MATBEN;MEDMAL.

Premises Liability
Volume 4 of this multi-volume set supplies a list of “Illustrative Awards.” Verdicts and settlements are organized by type of injury. Each verdict or settlement provides court and docket information, award or settlement amount, facts of the case, specific type of injury, and other relevant data. Cases are supplied from AAJ (formerly ATLA) and LexisNexis. It is updated annually and includes both state and federal cases from around the country. The LexisNexis database is 2NDARY;PPLLAP.

Product Liability Advisory
This monthly newsletter reports on recent case developments in the area of product liability law, as well as surveys verdicts and settlements. Each verdict or settlement includes a narrative of the case, award or settlement amount, court information, experts used, attorney information, and the docket number. It is part of the multi-volume treatise American Law of Products Liability 3d, and can also be subscribed to separately. It includes both state and federal cases from around the country. The Westlaw database is PLLADVISORY.
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Linda Kawaguchi is the director of the Chastek Library and assistant professor of law at Gonzaga University School of Law. Prior to becoming the director of the Chastek Library, she was the collection development librarian and head of acquisitions at the University of California, Berkeley, Boalt Hall School of Law Library. She previously worked at the Gallagher Law Library at the University of Washington and the University of Michigan Law Library. Patrick J. Charles is the Chastek Library associate director and assistant professor of law at Gonzaga University School of Law. Prior to joining Gonzaga, he was a reference librarian and legal research instructor at Creighton University School of Law in Omaha, Nebraska. He previously worked as the circulation/reference librarian at Widener University School of Law in Wilmington, Delaware. He is a member of the Oregon State Bar.
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- Visa/Mastercard accepted
Strategic Financial Goal
The WSBA’s strategic financial goal is to be fiscally responsible; to operate a well-managed and financially sound association, to be accountable to our members and the public, and to use our resources wisely in ways that accomplish our mission.

Fund Categories
The WSBA accounts for revenues and expenses in four categories: General Fund, Continuing Legal Education (CLE), Sections, and Lawyers’ Fund for Client Protection (LFCP).

General Fund
The general fund consists of our regulatory functions and most services to members and the public. It is funded by member license fees and revenues from services. For FY 2008, the general fund had expenses in excess of revenues of $182,443. As of September 30, 2008, the general fund balance was $5,240,955, of which $1,500,000 is designated as an operating reserve. $2,500,000 is designated as a facilities reserve, $500,000 is designated as a capital reserve, and $175,000 is designated as a board program reserve. The remaining $565,955 is unrestricted.

Continuing Legal Education (CLE) Fund
CLE programs and products are entirely self-funded by seminar registration fees and sales of deskbooks and other publications. The CLE fund budgeted for expenses over revenues of $73,997. Actual results were that expenses exceeded revenues by $43,951, bringing CLE’s fund balance as of September 30, 2008, to $1,947,887.

Sections Fund
The WSBA’s 27 sections are a voluntary activity for WSBA members and are supported through section dues and fees for section products and services. All net income from sections is carried forward in each section’s net assets for use by that section in future years. The sections budgeted for expenses over revenues of $223,992 (in order to use past accumulated reserves to benefit their members). Actual results for the sections were that expenses exceeded revenues by $91,829. The sections fund balance at September 30, 2008, was $805,101.

Lawyers’ Fund for Client Protection (LFCP)
The LFCP may be used for relieving a loss sustained by a person due to the dishonesty of, or failure to account for money entrusted to, a member of the WSBA in connection with the member’s practice of law. It is funded by an annual assessment on all active WSBA members. The LFCP fund budgeted for revenues over expenses of $103,250. Actual results were expenses over revenues of $467,435. Close to $700,000 in claims were paid as a result of one lawyer’s dishonest acts. The LFCP’s fund balance as of September 30, 2008, was $231,804.

FY09 General Fund Expenses
Functions Supported by License Fees and Other Net Revenue
## Statements of Activities

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Judge William Downing
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Shakespeare’s *The Merchant of Venice* has a courtroom scene in which mercy, in the context of justice, is discussed:

The quality of mercy is not strained. It droppeth as the gentle rain from heaven upon the place beneath. It is twice blessed; it blesseth him that gives and him that takes.

Shakespeare actually considers a merciful justice system to be godlike:

And earthly power then doth show likest God’s, when mercy seasons justice.¹

**The Reality.** Hundreds of thousands of jobs are vanishing every month. Evictions are epidemic, cars are becoming homes, and families are dissolving. More people are indigent, and more indigent people need the assistance of lawyers on issues of housing and personal safety. In addition, IOLTA revenues have been halved and the Federal Reserve has cut interest rates on IOLTA accounts (and others) to essentially zero. As a result of substantially increased need and significantly diminishing revenues, the ability of the civil legal aid system to deliver services has been decimated at the worst possible time.

**The Need.** In 2003, the Task Force on Civil Equal Justice Funding, created by our Supreme Court, published the Washington State Civil Legal Needs Study, the results of a research project which was intended to identify the nature and extent of unmet civil legal needs in Washington. The study found that more than 75 percent of low-income households in Washington face at least one civil legal problem annually and the problem often involved an issue of “basic need,” including housing and personal safety. The study also found that 85 percent of the problems were faced without assistance, that women and children were disproportionately impacted, and that the need was most acute in rural areas.

**The System.** Our civil legal aid system consists of statewide service providers such as Northwest Justice Project, Northwest Immigrant Rights Project, TeamChild, and Columbia Legal Services, and more than 20 county bar-sponsored voluntary legal aid programs. The Access to Justice (ATJ) Board, together with the Office of Civil Legal Aid and the Legal Foundation of Washington, are working to implement strategies to provide services to those with the most critical needs. The ATJ Board was created by the Supreme Court and is funded by the WSBA pursuant to the Court’s directive. The ATJ Board budget does not include funds to directly provide legal services. Pro bono legal services, including those provided by WSBA members holding Emeritus licenses, are also an integral part of the civil legal aid system. To date for the calendar year 2008, 3,017 lawyers, or about nine percent of our members, reported pro bono hours of direct services to low-income clients or organizations that serve low-income clients.

**The Funding.** The federal Legal Services Corporation, which provides one source of funding for the Northwest Justice Project, has not increased its contribution appreciably since 2003.² The Legal Foundation of Washington (LFW), a nonprofit corporation created at the direction of the Supreme Court, is responsible for administering IOLTA revenues. Grants from the LFW provide direct support to 32 county and community pro bono and legal services clinics. Because of the petrified real estate market, IOLTA revenues were demolished last year. The tough facts: IOLTA revenues in 2007 were $9,179,877; in 2008, they were $4,691,500. In addition, LFW’s Campaign for Equal Justice raised $439,000 less in 2008 than in 2007. Understandably, a $5 million reduction in funds for an organization that distributed $8.3 million in civil legal aid grants in 2007 is devastating, and the LFW recently made the difficult decision to reduce grants for 2009 by 18 percent. According to Caitlin Davis Carlson, executive director of LFW,
the lawyer donation rate to the Campaign for Equal Justice varies from 5 to 20 percent per county.

Washington state also provides funds for civil legal aid. The civil legal aid money provided by the state is administered by the Office of Civil Legal Aid (OCLA). OCLA has a biennial budget of $22.5 million and is headed by legal aid stalwart Jim Bamberger. The Northwest Justice Project (NJP) essentially gets the entirety of the OCLA budget, save administrative expenses. NJP, in turn, subcontracts approximately $1.9 million of its budget annually to other legal service providers.

Given Washington state’s enormous budget deficit, predicted to be $8.3 billion at the time this article was submitted for publication, it is highly unlikely that the Legislature will increase funding this year and, in fact, it is more likely that funding will be cut. In addition, our county bars pursue fundraising activities (the King County Bar has a foundation) for their pro bono clinics, usually at their bar dinners or at special fundraising events.

At the time this article went to press, one of the budget proposals circulating in Olympia was a 20 percent across-the-board funding cut. According to Northwest Justice Project’s service reduction scenarios, if the OCLA budget were to be cut 20 percent, the results would be, inter alia: (1) the Northwest Justice Project would need to close four rural offices — three of which just opened in 2007–2008; (2) “between 5,800 and 6,000 families facing domestic violence threats and threats to the safety of children” would not receive any legal assistance from NJP; (3) “between 2,500 and 3,000 families facing eviction” would not receive any help from NJP; and (4) “between 12,000 and 15,000 families” would not receive “limited assistance from volunteer attorneys and/or representation by specialty providers” such as TeamChild to help meet basic human needs.3

Our Regulated Monopoly and Access to Justice. With a few exceptions, our licenses to practice law give us a representation monopoly on access to the courts.

Lawyers do not have the resources to personally fund the justice system, but for less than $6 per month, we can make a significant difference in civil legal aid and show the Court and the Legislature that we are committed to assisting in solving the problem. The current economic situation, while difficult for us, has been devastating for the poor, and their legal problems are multiplying as a result.

The policy basis of the monopoly, which is intended to benefit the public, is that, given the expanse and complexity of the law and legal problems, well-educated, rigorously examined, and highly regulated lawyers are the best way to protect the public and ensure competent, effective representation. The most effective argument against maintaining the legal profession’s regulated monopoly is that justice is available only to those who can pay — an argument that is reinforced when people are unable to get the services of a lawyer, even when the matter involves personal safety or other basic need.

The Supreme Court is currently considering the Family Law Legal Technician Program (FLLTP) proposed by the Practice of Law Board. I am opposed to the FLLTP and I am solidly in support of maintaining the current legal structure, but that will not occur if we do not step forward to take leadership on, and ownership of, this issue now and show the court that we are serious about solving the problem.

The Washington Lawyers’ Fund for Civil Justice. At the Board of Governors Meeting in Richland on April 24 and 25, I intend to ask the Board to support, and to submit to our Supreme Court for its approval, a proposal creating the Washington Lawyers’ Fund for Civil Justice and to require every lawyer with an active license to practice law in Washington State to support civil legal aid by paying an additional $70 per year ($5.84 per month), beginning with the 2010–2011 licensing cycle. I know this will make many of you very unhappy.

If the proposal is enacted, Washington will join the Bars of Illinois, Minnesota, Missouri, Ohio, Texas, West Virginia, and Wisconsin in using licensing fees to fund legal services.4

If the Fund for Civil Justice were approved and assuming that the Supreme Court approves the proposed $450 active license fee for the 2009–2010 and 2010–2011 fiscal years for lawyers in practice three years and longer (50 percent of that for lawyers in practice up to three years) and the proposed Lawyers’ Fund for Client Protection assessment of $30 per lawyer per year, the total financial contribution of each active license lawyer in practice 3 years or more would be $550. (Approximately 20 percent, or $90, of the proposed annual licensing fee of $450 is attributable to costs related to lawyer discipline — a mandatory function delegated to the WSBA by the Supreme Court). Given current membership numbers, the Washington Lawyers’ Fund for Civil Justice would raise slightly over $2 million annually for indigent civil legal aid.

WSBA Donation to the Campaign for Equal Justice. In addition, the WSBA has several segregated funds, one of which is the CLE reserve fund. Due to prudent business practices and accounting decisions whereby the CLE Department was not fully charged for “indirect costs” (in particular, staff time paid by general fund revenue), the fund has a balance of approximately $2 million. The CLE Department needs a significant portion of that money for retooling for online CLEs and other technical improvements, but, in my opinion, the fund is too large, so I intend to propose to the Board that it authorize a substantial one-time donation to the LAW Fund’s Campaign for Equal Justice.

The Path Forward. The current crisis will not resolve soon and we need to think creatively. I have asked King County Superior Court Judge Steve González and Seattle University law professor and former U.S. Attorney John McKay to serve as honorary co-chairs of this effort on finding solutions to the crisis, and they have kindly consented to do so. Judge González and Professor McKay’s formidable task will begin on April 17, when the WSBA will host a civil legal aid crisis summit at Seattle University School of Law.

Conclusion: Justice Seasoned with Mercy. Civil legal aid for the indigent is not the only crisis that the justice system is facing; our courts and the public defense system are woefully underfunded. The Justice in Jeopardy Coalition (JJJC), led by the Board for Judicial Administration, is continuing to work for increased state
funding for public defense, court funding, and civil legal aid, and in 2005 and 2007, the JIJC was successful in obtaining increases from the Legislature for all three. Washington state still ranks last, however, in funding provided by the state to the counties for court funding; our counties fund approximately 80 percent of the budget of the trial courts. Ideally, our trial courts, criminal public defense system, and civil indigent legal aid should be fully and adequately funded by the state as a societal obligation of a democracy. That is not going to happen in the near term — the money is not there. If OCLA suffers a 20 percent budget cut, the gains made since in extending civil legal aid to the indigent will essentially be undone. Lawyers do not have the resources to personally fund the justice system, but for less than $6 per month, we can make a significant difference in civil legal aid and show the Court and the Legislature that we are committed to assisting in solving the problem. The current economic situation, while difficult for us, has been devastating for the poor, and their legal problems are multiplying as a result. We know, although some may think otherwise, that lawyers are generous, kind, and genuinely concerned for the welfare of others. We work very hard at creating justice and it is time for us to seize this moment to show others that we can season our justice with mercy.

WSBA President Mark Johnson can be reached at 206-386-5566 or mark@johnsonflora.com.

NOTES
1. The Merchant of Venice also contains, unfortunately, Shakespeare’s highly anti-Semitic character, Shylock, an undeniable blot on the Bard’s work.
4. Illinois, Minnesota, and Ohio are voluntary bars; Missouri, Texas, West Virginia, and Wisconsin are unified (mandatory) bars. West Virginia’s contribution is small — $150,000; Illinois contributes about 2.6 million a year. Source: ABA Resource Center for Access to Justice Initiatives — “Using Attorney Registration Fees or Bar Dues to Fund Legal Services” — Updated February 19, 2009, by Meredith McBurney, ABA resource development consultant.
Legal Spring Training

BY JEFF TOLMAN

Spring training is one of my favorite times of year. Watching the ballplayers work into shape, playing in the spring sun before the games have importance. Just having fun, preparing for the long stressful season ahead. A nice new beginning for the national pastime after a winter sabbatical. Starting once again with a fresh attitude and renewed optimism. During spring training, every team is in the pennant race, every fan full of hope.

The problem with legal work is that there are no such breaks. We just go to the office day after day, doing our best, fighting exhaustion and middle age, and an attitude of been there, heard that.

There should be spring training in the law. I can see it now — Legal Spring Training.

The usual media are there, ready to write about the upcoming legal season for the interested population. The fans are present en masse, watching the training of the men and women who will affect their legal rights for the next year. Small children are hoping they might get an autograph of Paul Luvera or Justice Chambers.

Rumors abound. Will Anne Brenner hold out for more money? How many of the young lawyers will change teams before the season begins, or ends? Can Starbucks hold Paula Boggs from the inevitable suitors? What imaginative defenses has Steve Fitzer created over the winter? Will Judge Bob Bryan make a surprise appearance to fire up the troops?

The first event of spring training is all-ways the news conference by Chief Justice Alexander, the “Skipper.” The crowd of reporters quiets as he speaks.

“Ladies and gentlemen, thank you for coming back to Spokane again for our annual spring training. We are looking forward to a good season this year. We are deep at many positions, deeper than in years past. Along with veterans, we have some outstanding young kids joining the organization.”

Skipper, what do you feel are the strengths of Washington lawyers and judges this season?

“We have some excellent veterans returning. Brian Moran in the Attorney General’s Office had a wonderful season last year. Battling weekly with strong defense lawyers really honed his skills. No doubt he has superstar potential. And the public defenders. Our state is very lucky. They are excellent advocates. We had a tough, rocky, murder-trial-driven year last season. We’re hoping for a little less pressure on those folks this time around.

“On the civil side, we have some great veterans in our state back again. Jenny Durkan and Paul Stritmatter, we assume, will have their usual excellent seasons. In domestics, no doubt there will be blood ‘in the paint’ as DeBuys and Pritchard and Moschetto fight it out as usual. Steve Fury and Ralph Brindley had a fine season in injury cases, and we expect Gus Cifelli to continue his vigorous and expert insurance defense.

“We have lots of good lawyers this season. The citizens of our state can expect to be well represented in ’09.”

How about the judges, the managers in this system? What do you see there?

“We have a veteran group of judges at every level. In the District Court, we have decades of experience. Judges Jim Riehl, Janis Whitener-Moberg, and Dave Edwards are fine teachers for the up-and-coming judges, particularly now that they are getting more civil cases. Commissioner Rockwood in Spokane is also impressive. Jerry Roach is solid in Franklin County. Pierce County is in good shape with Maggie Ross’s and Jack Nevin’s extensive experience.

“On the Superior Court level, we are optimistic that we will do more than our share of justice this season. Judge Jay Roof has accomplished extraordinary results in Kitsap County Drug Court. Chuck Snyder keeps Whatcom County running smoothly. Laura Inveen and Lisa Worswick had strong 2008 seasons. Commissioner Thurman “The Thurminator” Lowans will continue to keep the Kitsap domestic show cause calendar running smoothly.”

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How are the injuries shaping up, Skipper?

"After a couple of injury-prone seasons, Richard Fitterer’s hip is much better and we expect him to be an impact player both on and off the bench."

What about retirements?

"Paula Crane retired from her impressive domestic relations practice. We all wish her well."

Any new kids you’re impressed with this year, Skipper?

"This Berwind kid in Bremerton has lots of potential. Does a mean deposition, really has a way about him at ex parte. No mistakes that I’ve seen so far."

What is your program today?

"We’ll break into groups this morning and begin working on individual skills. As you can see, on field one are the Superior Court judges. You can hear them chanting: ‘SUSTAINED,’ ‘OVERRULED,’ and ‘GIVE ME THE CITE FOR THAT, COUNSEL!’

‘On field two we have the District and Municipal Court judges. There’s Judge Ray Lutes instructing his crew on how to say: ‘You are lucky there is no room in the jail or you’d be there’ 40 different ways. The judge with his hand up is James Docter. With his extensive experience as a public defender, James isn’t coming to camp as a rookie. We expect him to contribute immediately."

‘There on field three is a criminal instruction class. We have an exceptional group of instructors this season. Prosecutor Hauge on ‘The Fourth Amendment — adding charges if the defendant doesn’t plead by the Omnibus.’ After Russ concludes, Julie Dalzell will be addressing ‘Philosophy in the legal system: Does it really make sense that the limited jurisdiction court judges have more discretion than the Superior Court?’ The day will conclude with a discussion about appeals by Catherine Smith and Charlie Wiggins."

‘On field four is the ex parte group. These young men and women will learn the pitfalls and joys of that calendar. How to get agreed orders entered almost every time. What to put on the record, and not. How to take defeat when you are unopposed."

Skipper, what are those lawyers doing over there?

“Those are the tort lawyers. The relaxed ones with the smiles are the defense lawyers. The haggard group is the plaintiffs’ lawyers. That is one of the biggest changes in spring training over the past few years. The plaintiffs’ lawyers used to come in with new clothes and money in their pockets. No more. Instead, they’ll listen intently to the classes on ‘Why the jury will distrust your client because a lady in the Southwest spilled a cup of coffee in her lap and got rich’ and ‘Show me a broken bone or I’ll show you no money. It’s a rebuilding year for the tort plaintiffs. If there is a group we expect to struggle this season, it’s them."

‘On this field we’re having a split squad game. As you can see, the prosecutors are warming up by saying ‘Officer, what happened next?’ The defense attorneys are yelling ‘Object, hearsay.’ George Bianchi is leading the young defense lawyers on creative ways to continue cases until a pre-trial diversion agreement makes sense. We expect a rough-and-tumble season between these groups this season, as always."

‘Finally, we have the court administrators on field five. Bainbridge Island Municipal Court’s Telma Hauth is learning..."
to juggle. She’ll need this as she wrestles with the city council and judge. Valda Johnson, the Kitsap Court scheduler, is the person tied down, being pecked by all of those ducks. Valda needs to get used to this before she starts putting lawyers who are paying experts a jillion dollars an hour on standby. 

"Folks, I have to go now. I’m in charge of the scrimmage on field seven between the young lawyers who want to be a judge. There are lots of them, as you can see. Thanks for your interest in the year ahead in the Washington legal scene. We are eager to get the season started. After our winter break, it’s time to do justice again."

And we would all start anew. Refreshed. Optimistic. With the same enthusiasm as we began this journey right out of law school. Spring training for lawyers and judges. We would all gain by it. ☀️

Jeff Tolman is a partner with Tolman, Kirk & Franz in Poulsbo. He can be reached at 360-779-5561 or jefft851@aol.com.
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The WSBA Board of Governors invites applications for appointments to WSBA committees, boards, and panels. Appointments are limited, and only active WSBA members may be appointed. However, committee meetings are open to the public and may be attended by any member. For brief descriptions of the various committees, boards, and panels, see page 43. More information is on the WSBA website at www.wsba.org/lawyers/groups/committees.htm. Appointment letters will be sent in September.

**How to Apply**

**Deadline:** All completed applications and materials must be received at the WSBA office by *April 13, 2009.*

**Apply online:** You can also apply online at http://pro.wsba.org/forms/committeepref.asp.

1. You can indicate up to three choices. See page 43 for available committees, boards, and panels.
2. Tell us why you would like to serve, and describe all relevant skills or experience.
3. Attach a résumé or C.V. (strongly encouraged but not required, except for the Hearing Officer Panel). Also, you may, but are not required to, submit up to three letters of recommendation to support your application.
4. Sign the waiver.
5. You are encouraged to provide optional demographic information.
6. Submit materials by the April 13, 2009, deadline.

**Step 1. Indicate your choice(s)**

1st choice ____________________________________________
☐ Check here if you have served on this committee previously and state approximate years of service: _________

2nd choice ____________________________________________
☐ Check here if you have served on this committee previously and state approximate years of service: _________

3rd choice ____________________________________________
☐ Check here if you have served on this committee previously and state approximate years of service: _________

☐ Check here if you would like to be considered for other committee service opportunities that may become available during the year.

**Step 2. Tell us your reasons and relevant skills/experience**

Why would you like to serve on a particular committee, board, or panel?
_______________________________________________________________________________________________________
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_______________________________________________________________________________________________________

Describe your relevant skills and experience.
_______________________________________________________________________________________________________
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Your name (please print) ___________________________ WSBA number ____________
Step 3. Attach a résumé or C.V. and/or letters of recommendation (optional)

Note: This is optional except for applicants for the Hearing Officer Panel, who are required to submit a résumé or C.V. and a letter of interest.

Step 4. Sign the waiver

I understand and agree that as part of the application process, the WSBA routinely checks the grievance and discipline files for any records related to applicants. Thus, I waive confidentiality of these materials to WSBA staff and the Board of Governors.

Signature ___________________________ Print name _______________________________

E-mail _______________________________ Daytime phone __________________________

Step 5. Provide demographic information (optional)

The WSBA promotes diversity, equality, and cultural competence in the courts, legal profession, and the bar. In so doing, the WSBA is committed to ensuring that its committees, boards, and panels reflect the diversity of its membership. Please check all boxes that apply.

Ethnicity
☐ American Indian/Native American/Alaskan Native
☐ Asian
☐ Black/African descent
☐ Caucasian/White
☐ Pacific Islander
☐ Spanish/Hispanic/Latina/o
☐ Multi-racial
☐ Other _______________

Gender
☐ Male ☐ Female

Disability
☐ Yes ☐ No

Sexual orientation
Do you openly identify as a sexual minority, to include the following: gay, lesbian, bisexual, transgender?
☐ Yes ☐ No

Number of years in practice ___________ Employer ___________________________________

Area(s) of law practice ______________________________________________________________

Number of lawyers in law firm ☐ solo ☐ 2–5 ☐ 6–10 ☐ 11–20 ☐ 21–35 ☐ 36–50 ☐ 51–100 ☐ 101+

Please mail, fax, or e-mail (PDF or Word document) to:

Washington State Bar Association
Bar Leaders Division
1325 Fourth Ave., Ste. 600
Seattle, WA 98101
Fax: 206-727-8319 • E-mail: barleaders@wsba.org

You may also apply online at: http://pro.wsba.org/forms/committeepref.asp.

Please note the application deadline of April 13, 2009.

Thank you for your interest in serving!
COMMITTEES

Amicus Brief Committee: Reviews all requests for amicus curiae positions which in any way are identified as connected to the WSBA. The committee does not prepare amicus curiae briefs. It administers standards and makes recommendations to the Board of Governors.

Continuing Legal Education (CLE) Committee: Provides policy guidance for the WSBA CLE Department in fulfilling its mission of serving the ongoing education needs of Washington lawyers. Has four subcommittees: quality control, technology, section relations, and programming.

Court Rules and Procedures Committee: Studies and develops suggested amendments to designated sets of court rules on a regular cycle of review. Performs the rules study function outlined in GR 9 and reports its recommendations to the Board of Governors. The Criminal Rules for Superior Courts and Criminal Rules for Courts of Limited Jurisdiction will be reviewed in 2009–2010. Lawyers with experience or interest in these areas are encouraged to apply.

Committee for Diversity: Works to increase diversity within the membership and leadership of the WSBA; promote opportunities for appointment or election of members to the bench; support and encourage opportunities for minority attorneys; aggressively pursue employment opportunities for minorities; and raise awareness of the benefits of diversity.

Editorial Advisory Committee: Acts mainly in an advisory capacity, supervising the editing of the Bar News, including the recommendation of finalists for the editor position for selection by the Board of Governors, and the establishment of guidelines for format, content, and editorial policy.

Judicial Recommendation Committee: Screens and interviews candidates for state appellate court positions and makes recommendations thereon to the Board of Governors.

Legislative Committee: Reviews proposals from WSBA sections for state legislation which relate to the practice of law and the administration of justice, and makes recommendations to the BOG for a position thereon.

Pro Bono and Legal Aid Committee: Deals with questions in the fields of pro bono and legal aid, with respect to: (1) supporting activities that assist volunteer attorney legal services programs and organizations, and encouraging pro bono participation to meet the aspirational goals in RPC 6.1, Pro Bono Publico Service; (2) addressing the administration of justice as it affects indigent persons; and (3) cooperating with other agencies interested in these objectives.

Professionalism Committee: Recommends programs to increase professionalism by assisting attorneys in fostering better client relations; improving civility among attorneys; and creating and promoting educational opportunities focusing on issues related to professionalism, ethics, and civility.

Rules of Professional Conduct Committee: Considers and responds to inquiries arising under the Rules of Professional Conduct (RPCs) and may, upon request, express its opinion to the Board of Governors concerning proper professional conduct.

BOARDS

Board of Bar Examiners: Prepares the questions and grades the papers for the bar examinations under the direction of the Board of Governors, in accordance with the Admission to Practice rules as approved by the Supreme Court.

Character and Fitness Board: Deals with matters of character and fitness bearing on qualifications of applicants for admission to practice law in Washington; conducts hearings on the admission of any applicant; makes recommendations to the Board of Governors and Supreme Court; and considers petitions for reinstatement after disbarment. Five positions are available, which must be filled by members from Districts 1, 3, 4, 5, and 6.

Disciplinary Board: Carries out the functions and duties assigned to it according to the Rules for Enforcement of Lawyer Conduct adopted by the Supreme Court. The full board meets at least six times a year, reviewing hearing officer decisions and stipulations. Three-member review committees meet at least an additional three times a year and review disciplinary investigation reports and dismissals. Considerable reading and meeting preparation is required. Three positions are available, one which must be filled by a member from District 6, one by a member from District 8, and one by a member from any district.

Lawyers’ Fund for Client Protection Board: Pursuant to APR 15, reviews claims for reimbursement of financial loss sustained by reason of an attorney’s dishonest actions; decides claims up to $25,000; and makes recommendations to the Board of Governors on claims for greater amounts. Meets four times a year. Two positions are available, and candidates from Districts 4, 6, and 9 are especially encouraged to apply.

PANELS

Adjunct Investigative Counsel (AIC) Panel: Assists the Office of Disciplinary Counsel as needed pursuant to Rule for Enforcement of Lawyer Conduct 2.9. AIC volunteers may be asked to investigate a grievance against a lawyer; assist staff disciplinary counsel with a portion of an investigation; serve as special disciplinary counsel and represent the Association in the prosecution of a disciplinary case; provide staff disciplinary counsel with an outside opinion on an area of law; serve as a probation monitor following imposition of a disciplinary sanction; serve as a file custodian when a lawyer dies, disappears, or otherwise becomes incapable of protecting clients’ interests; or serve as a limited guardian or guardian ad litem for an incapacitated lawyer. Members must have been an active or judicial member of the WSBA for at least seven years with no record of disciplinary misconduct. Appointment is for a five-year term.

Hearing Officer Panel: Panel members serve as trial judges for lawyer disciplinary hearings and are expected to make evidentiary rulings, rule on motions, and prepare written findings of fact, conclusions of law, and (as necessary) sanction recommendations according to strict deadlines. Attendance at an annual training session is required. Hearing officers may not serve as expert witnesses on professional-conduct issues, represent respondents in disciplinary matters, or serve as special disciplinary counsel or adjunct investigative counsel. Please review the Rules for Enforcement of Lawyer Conduct, particularly ELC 2.5 to 2.6, prior to applying. A hearing officer must be an active member of the WSBA, have been an active or judicial member of the WSBA for at least seven years, have no record of public discipline, and have experience as an adjudicator or advocate in contested adjudicative hearings. The Hearing Officer Selection Panel reviews applications and makes recommendations to the Board of Governors for appointments to the panel. In addition to the application form, first-time applicants are required to submit a letter of interest (highlighting relevant skills and experience) and resume to the Hearing Officer Selection Panel, WSBA, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539 or elizabeth@wsba.org. Initial appointment is for one year commencing October 1, 2009, and may be followed by reappointment for five-year terms. All application materials and requested information must be submitted in order to be considered for appointment, and the Selection Panel may request additional information during the evaluation process.
Opportunities for Service

WSBA Presidential Search
Application deadline: May 1

The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2010–2011. Pursuant to Article IV (A)(2) of the WSBA Bylaws, the primary place of business of candidates for president for 2010–2011 must be King County. The WSBA member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2010–2011 WSBA president will be accepted through May 1, 2009, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no fewer than five or more than 10 references. The Board of Governors will consider endorsement letters received by May 15, 2009. Applications and endorsement letters should be sent to the WSBA Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101.

Direct contact with the Board of Governors is encouraged. All candidates will have an interview with the full Board of Governors in open session at the May 29, 2009, Board of Governors meeting in Yakima. Following the interviews, the Board will select the president.

Although prior experience on the WSBA’s Board of Governors may be helpful, there is no requirement that one must have been a member of the Board of Governors or had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being a positive representative for the legal profession. The position is unpaid. Some expenses, such as WSBA-related travel, are reimbursed.

The commitment begins in June 2009, following selection. A one-year term as president-elect will begin at the Annual Business Meeting in September 2009. The president-elect is expected to attend the two-day board meetings held approximately every five to six weeks, as well as numerous subcommittee, section, regional, national, and local meetings. In September 2010, at the WSBA Annual Business Meeting, the president-elect will assume the position of president. During his or her service, the president-elect and president will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar’s legislative activities. Appropriate time will need to be devoted to communication by letter, e-mail, and telephone in connection with these responsibilities. The duties and responsibilities of the president are set forth in the WSBA Bylaws. The Bylaws can be found at www.wsba.org/info/bylaws.

Statute Law Committee
Application deadline: April 6, 2009

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a two-year term on the Statute Law Committee, commencing upon appointment and expiring March 31, 2011. The incumbent is eligible to apply. This 12-member committee seeks to foster accurate publication of laws and agency rules services in a professional and strictly nonpartisan and cost-effective manner. The primary responsibilities are to periodically codify, index, and publish the Revised Code of Washington; and to revise, correct, and harmonize the statutes of administrative or suggested legislative action as may be appropriate. The committee meets at least twice a year. Please submit a letter of interest and résumé to WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101; or e-mail barleaders@wsba.org.

American Bar Association (ABA) House of Delegates
Application deadline: May 11, 2009

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the ABA House of Delegates representing the WSBA. Three delegate positions, one of which is for a member under 35 years of age, and one alternate position will be available in August 2009. A written expression of interest and résumé are required for any incumbents seeking reappointment.

The control and administration of the ABA are vested in the House of Delegates, the policy-making body of the ABA. The House, composed of 555 delegates, elects the ABA officers and board, and meets out of state twice a year. Delegate attendance is required. The alternate would participate in the House of Delegates if one of the WSBA delegates were unable to attend a meeting, so full voting capacity can exist at all times. Preferably, the alternate should be someone who usually attends the ABA Midyear and Annual Meetings, since the substitution may need to be made on fairly short notice.

The WSBA’s allowance is $800 per year per delegate. Terms for both the member and alternate positions are two years, and members may serve a maximum of three consecutive terms. Those serving on the ABA House of Delegates must be ABA members in good standing throughout their terms. Please submit a letter of interest and résumé to WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or e-mail barleaders@wsba.org.

Seeking Questionnaires from Candidates for Judicial Appointments
Deadline: April 30 for June 11 interview

The WSBA Judicial Recommendation Committee (JRC) is accepting questionnaires from attorneys and judges seeking consideration for appointment to fill potential Washington State Supreme Court and Court of Appeals vacancies. Interested individuals will be interviewed by the Committee on the date listed above. The JRC’s recommendations are reviewed by the WSBA Board of Governors and referred to the Governor for consideration when making judicial appointments. Materials must be received at the WSBA office by the deadline listed above. To obtain a questionnaire, please visit the WSBA website at www.wsba.org/lawyers/groups/judicialrecommendation or contact the WSBA at 206-727-8212 or 800-945-9722, ext. 8212, or barleaders@wsba.org.

Students and Amateurs Encouraged to Enter “Justice For All” Video Contest

Help spread the word about the WSBA’s YouTube contest! All Washington residents are invited to create a short video that captures their vision of “justice for all” and post it to the YouTube website. Amateur filmmakers and students of all ages are especially encouraged to enter, either individually or as a class project. Two prizes
of $1,000 each will be awarded to the best contest entries — one selected by a panel of judges, and one selected by popular vote. The judges include Washington State Supreme Court Chief Justice Gerry Alexander, musician and media columnist Krist Novoselic, Yakima Herald-Republic Managing Editor Barbara Serrano, and Northwest Film Forum Director of Children’s Programming Elizabeth Shepherd. Deadline for entries is June 15. For further information, see www.wsba.org/justiceforall.htm.

Gifted High School Interns Available to Law-Related Organizations

Are you the right person to guide a highly capable, motivated, passionate student exploring a career in law or a related field? Bellevue School District is seeking eight-hour-per-week, one-semester internship situations for seniors in the Gifted High School Program at Interlake for the 2009–2010 school year. These students think critically, embrace responsibility and challenge, work independently (with moderate supervision/direction), and thrive on learning. If you can provide a window to life in the real world that includes specific assignments in your work environment, please contact Arlene Scott at scottar@bsd405.org. The internship may be in a law firm, court, or other law-related organization, and located in the greater Seattle area.

Conference Will Help Communities Start New Youth Courts

Communities interested in establishing a youth court are invited to attend a one-day conference on May 16, 2009, at Seattle University School of Law. The purpose of this event is to increase understanding of youth courts (also known as teen courts, peer courts, and student courts), and how to create one. In youth courts, young people sentence their peers, using peer pressure to correct youth offenses and other problem behavior. In Washington, youth courts address juvenile offenses and truancy cases diverted from juvenile court, traffic and other infractions diverted from municipal and district courts, and school rule violations diverted from school administrators. There is no charge for the program and lunch will be provided. Communities are encouraged to bring a team of interested stakeholders, such as judicial officers, probation officers, school administrators, youth, community organization members, prosecutors, defense attorneys, and law enforcement.

The conference is co-sponsored by the Administrative Office of the Courts, the Washington Judges Foundation, and the WSBA’s Council on Public Legal Education. For more information, please contact Margaret Fisher, Administrative Office for the Courts, 206-501-7963 or margaret.fisher@courts.wa.gov.

2009 WSBA Awards Nominations Sought

Each year, WSBA members are asked to identify those who deserve the legal profession’s recognition and appreciation. Nominations are sought for the following awards:

Award of Merit. First given in 1957, this is the WSBA’s highest honor. The Award of Merit is most often given for long-term service to the Bar and/or the public, although it has also been presented in recognition of a single, extraordinary contribution or project. It is awarded to individuals only — both lawyers and nonlawyers.

Professionalism Award. This honor is awarded to a WSBA member who exemplifies the spirit of professionalism in the practice of law. “Professionalism” is defined as the pursuit of a learned profession in the spirit of service to the public and in the sharing of values with other members of the profession.

Angelo Petruzzi Award for Lawyers in Public Service. Named in honor of the late Angelo R. Petruzzi, a senior assistant attorney general who passed away during his term of service on the WSBA Board of

Electronic Voting Coming on April 15

On April 15, all WSBA active members in the First, Fifth, and Seventh-West Board of Governor districts will have the opportunity to once again help determine the WSBA’s future direction and leadership. (The election for the Fourth District was uncontested this year — congratulations to Governor-elect Leland B. Kerr.) And for the first time, voting members will have the opportunity to cast their votes online, rather than through the traditional paper ballot process.

In January, the WSBA Board of Governors voted to incorporate electronic or online voting in the 2009 Board of Governors election. Electronic voting is secure, confidential, and convenient. WSBA active members in the First, Fifth, and Seventh-West districts with working e-mail addresses on file with the WSBA will receive an e-mail on April 15th from www.electionsonline.us. The e-mail will contain login identification, password information, and instructions on how to cast votes in the respective contested races. While the WSBA will be sending out e-mails in April reminding members about the election and electronic voting method, do not disregard the April 15 e-mail from www.electionsonline.us.

Members should also check their e-mail spam filters on April 15th if they do not receive the www.electionsonline.us e-mail, as the electronic message will not be coming from the WSBA.

While the WSBA is encouraging members with e-mails on file with WSBA to cast votes online, they may request a paper ballot if that is more convenient. The WSBA will send eligible members without e-mail addresses on file traditional paper ballots. Instructions on how to access the online voting site will also be included so those members can vote online if they wish.

Members may cast votes either online or by paper ballot, but they may only vote once. The WSBA has implemented safeguards to prevent a member from casting multiple votes.

Members may vote online at any time between April 15 and 5:00 p.m. PDT on May 15, but once a member casts a vote, he or she may not log back in to change it. An online vote is final just as if the member dropped a paper ballot into the mailbox. Members submitting paper ballots must make certain to print and sign their name and indicate their address on the return envelope, and ensure delivery to the WSBA offices by 5:00 p.m. PDT on May 15.

The WSBA hopes members will find online, or electronic, voting more convenient than filling out and returning paper ballots. Minimizing paper use will also help the WSBA conserve natural resources and go green. Please feel free to contact Emily Robinson at emilyr@wsba.org or 206-239-2125 if you have any questions.
Governors, this award is given to a lawyer in government service who has made a significant contribution to the legal profession, the justice system, and the public.

Outstanding Judge Award. This award is presented for outstanding service to the bench and for special contribution to the legal profession at any level of the court.

Courageous Award. This award is presented to a lawyer who has displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession.

Excellence in Diversity Award. This award is made to a lawyer, law firm, or law-related group that has made a significant contribution to diversity in the legal profession’s employment of ethnic minorities, women, persons with disabilities, and other persons of diversity.

Outstanding Elected Official Award. This award is presented to an elected official for outstanding service, with special contributions to the legal profession. It is awarded to an individual who has demonstrated a commitment to justice beyond the usual call of duty.

Excellence in Legal Journalism Award. This award recognizes that describing the context, facts, and players involved in the legal system with fairness and sensitivity requires intelligence, knowledge, dedication, and skill. This award is given to the journalist and his/her organization that has set the standard for relevance, clarity, accuracy, and understanding in reporting.

Lifetime Service Award. This is a special award given for a lifetime of service to the WSBA and the public. It is given only when there is someone especially deserving of this recognition.

President’s Award. The President’s Award is given annually in recognition of special accomplishment or service to the WSBA during the term of the current president.

Community Service Award. Lawyers are known for giving generously of their time and talents in service to their communities. This award recognizes exceptional non-law-related volunteer work and community service.

Award presentation. It is important to note that presentation of any WSBA award is made only when there is a truly deserving recipient. Some years, no award is given in some categories. Awards are limited to one recipient per category, except when a group of individuals earned the award together.

Nomination submissions. If you know an individual who fits the criteria set forth above, please visit www.wsba.org/2009wsbaawardsinfo.htm, download, complete, and submit the nomination form. Self-nominations will not be accepted. Please note that the completed nomination form must accompany each nomination in order to be considered. The deadline for nominations is April 30, 2009. Please send nominations to: WSBA, Attn: Annual Awards, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; fax: 206-727-8310; e-mail: emilyr@wsba.org. Please contact Emily Robinson at 206-239-2125 for more information.

The awards will be presented at the WSBA Annual Awards Dinner in Seattle on September 24, 2009, with the following exceptions: the Pro Bono and Norm Maleng Leadership awards will be presented at the Access to Justice/Bar Leaders Conference in Yakima, May 29–31.

New WSBA Civil Rights Law Section
At their meeting on December 5, 2008, the WSBA Board of Governors approved the formation of a new section to be known as the Civil Rights Law Section. The section’s interim leadership includes Tracy Flood, chair; Sharon Payant, vice chair; Mary Englund, secretary; and Patricia Paul, treasurer.

The Civil Rights Law Section will be concerned with all aspects of law and policy related to the improvement of the legal practice in the substantive area of civil rights law. This includes, but is not limited to, violations of rights provided under the constitutions of the United States and Washington state, federal and state statutes, local laws and regulations; criminal harassment and hate crimes; and immigration matters. Among other priorities benefiting its members, the section will sponsor continuing legal education on civil rights law and provide a network for communications with civil rights organizations throughout the state.

The new section is an offshoot of the WSBA Civil Rights Committee (CRC), which has been the main WSBA entity whose primary focus is on civil rights law. An active subcommittee of the CRC, chaired by Patricia Paul, completed the various requirements for the Board of Governors’ approval of the new section. Other CRC subcommittee members included Wilberforce Agyekum, Tracy Flood, Molly Maloney, and Sharon Payant.

2009 Licensing Information and Changes
WSBA Bylaws require a 50 percent late-payment fee if the annual license fee remains unpaid after April 1, 2009. If any portion of your license fee or late fee remains unpaid, or if you are on Active status and haven’t paid your Lawyers’ Fund for Client Protection assessment or filed your AI Licensing Form after two months’ written notice of your delinquency, a recommendation for suspension will be submitted to the Supreme Court. Instructions are available online at www.wsba.org/licensing.

License forms changes. In an effort to control costs and simplify renewal, the 2009 licensing forms were condensed into one double-sided form or two forms for those reporting MCLE credits this year. The form(s) were mailed the first week of December in a standard-size envelope.

Verify your address in the online lawyer directory (http://pro.wsba.org). You are required to keep your contact information current; see Admission to Practice Rule 13. If you have not received the 2009 licensing forms, you may print them online or call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

MCLE Certification for Group 2 (2006–2008)
If you are an active WSBA member in MCLE Reporting Group 2 (2006–2008), you should have received your Continuing Legal Education Certification (C2/C3) forms in the license packet that was mailed in early December. The deadline for returning the C2/C3 form to the WSBA was February 2, 2009. Any C2/C3 forms delivered to the WSBA or postmarked after March 2, 2009, will be assessed a late fee.

Members in Group 2 include active members who were admitted to the WSBA in 1976–1983, 1992, 1995, 1998, 2001, or 2004. Members admitted in 2007 are also in Group 2 but are not due to report until the end of 2011. Their first reporting period will be 2009–2011; however, any credits earned on or after the day of admittance to the WSBA may be counted for compliance.

The C2/C3 form that you received in your license packet is a declaration that lists all the MCLE Board-approved courses that were in your MCLE online profile for the 2006–2008 reporting period as of mid-October 2008. If you took other courses after mid-October, you can add these to the
back of the C2/C3 form when you receive it. As an alternative, you may print your online roster and attach it to the C2/C3 form; indicate that it is a correct listing of the courses you took for compliance.

The C2/C3 form, not your online profile, is the official record of MCLE compliance. The original copy of the C2/C3 form must be returned to the WSBA to meet compliance requirements.

All courses that you list on your C2/C3 form must be Washington MCLE-Board approved and have an Activity ID number. This number is listed in your online MCLE profile and is assigned at the time that the Form 1 for each course is input to the MCLE system. A “Certificate of Attendance” or other sponsor-provided certification is not sufficient to receive course credit.

If you have taken courses that have not yet been approved by the MCLE Board, submit Form 1s for these courses immediately to ensure that they are approved before your C2/C3 is due. Each Form 1 application must include a full agenda for the course in order to receive credit. The agenda must have the start and end times for each session and each break. Because of high volumes from October through February, Form 1s submitted electronically (at http://pro.wsba.org) could take up to four weeks or more to process. Paper Form 1s may take up to six weeks or more to process. If you submit a paper Form 1, you will be notified by mail of its Activity ID number.

If you were not able to meet the credit requirement by December 31, 2008, and need more time to complete your credits, you must submit a petition to the MCLE Board to request more time. There is no longer an automatic extension until May 1. You must give a complete explanation on the petition of the reason that you need an extension.

A late fee will be assessed if you took any courses after December 31 that are needed for compliance or if your C2/C3 form is submitted late. If this is the first reporting period in which you will not meet MCLE compliance requirements, the late fee is $150. The late fee increases by $300 for each consecutive reporting period you are late in meeting MCLE requirements.

If you have questions about the Form 1 process or MCLE compliance, please contact the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org.

**MCLE Certification Information for Active Members**

**Due date for MCLE reporting.** WSBA members are divided into three MCLE reporting groups based on year of admission. (Newly admitted members are exempt. See “Newly Admitted Members” below.)


**New MCLE rules and regulations.** New MCLE rule and regulation amendments went into effect on January 1, 2009. The amendments changed some of the credit requirements for 2007–2009 and later reporting periods. Please see www.wsba.org/lawyers/groups/mcle/apr11review07.htm for more information.

**Credit requirements for 2007–2009 and later reporting periods.** The following credit requirements must be met by December 31 of the last year of an active member’s reporting period:

- At least 45 total credits of MCLE Board-approved CLE activities must be taken, which need to include a minimum of 22.5 live credits and six ethics credits. The courses must meet the requirements of APR 11, but they do not need to be taken in Washington state. Many courses are offered around the world which meet the requirements of APR 11.
- “Live” courses include classroom instruction, live webcasts (not pre-recorded webcasts), and teleconferences.
- “Ethics” courses, and segments of larger courses, must meet the requirements of APR 11.

**MCLE Certification Information for Active Members**

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<th>File C2/C3 Form by</th>
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• If you are an active member, you may carry over a maximum combined 45 CLE credits total exceeds 45, the current reporting period. If your current reporting period carries over CLE credits may be carried over.

C2/C3 reporting requirement. All active members due to report are required to file a Continuing Legal Education Certification (C2/C3) form listing all CLE courses taken for credit compliance. The deadline for filing your C2/C3 form is February 1 (or the next business day, if February 1 is on a weekend) of the year following the end of your reporting period. Note:

• Your online roster is not a substitute for filing the C2/C3 form (APR 11.6(b)).
• The C2/C3 form is a declaration and must be signed and dated, and the city and state where signed must be identified.
• C2/C3 forms are included in the license packets sent in early December to all members due to report (which will be Group 2 members this year).

• All CLE courses listed on member rosters as of October 2008 are printed on the back of the C2/C3 form. If you took more CLE courses after your form was printed, and if they currently appear on your online roster and you do not want to handwrite them on the back of the C2 form, you may print a copy of your roster and attach it to your C2/C3 form. State on your C2/C3 form that the attached online roster printout is a true and correct statement of the CLE courses taken for credit compliance.
• You must verify that the credit hours listed on the C2/C3 and on your online profile correctly reflect the hours actually attended for each CLE. Online credits may be edited by clicking on the “edit” link next to each course. Credits on the C2/C3 may be corrected manually.

• The C2/C3 form should be filed by February 1 even if all the credits needed for compliance have not been completed.

MCLE late fees. All active members who have not completed their credits by December 31 of the last year of their reporting period, or who submit their C2/C3 reporting forms after March 1 of the following year (the end of the grace period after the February 1 deadline), must pay a late fee. The late fee for the first reporting period of non-compliance is $150 and increases by $300 for each consecutive three-year reporting period of noncompliance.

Newly admitted members. If you are a newly admitted member, you are exempt from reporting CLE credits for the year of your admission and the following calendar year. If you were admitted in 2007, you will not report for this reporting period (2006–2008) even though you are in Group 2. You will first report at the end of the 2009–2011 reporting period. Members admitted in 2008 will not report until the end of the 2010–2012 reporting period. When you report at the end of your first reporting period, you may claim all CLE credits earned on or after your date of admission to the WSBA.

MCLE comity. If you are an active member of the WSBA and your primary office for the practice of law is outside of Washington and if you are a member of the Oregon, Idaho, or Utah state bars (“comity” states), you may meet your Washington mandatory CLE requirements by providing proof of current MCLE compliance from your comity state bar. Only a Certificate of MCLE Compliance from your comity state bar (not a “Certificate of Good Standing”), sent with your WSBA C2/C3 form, will satisfy your MCLE requirements in Washington.

MCLE system — course listing and member profiles. Members may use the online MCLE system to:

• Review courses taken and credits earned.
• Apply for course approval.
• Apply for writing credit, pro bono credit, or prep-time credit.
• Search for approved courses being offered.

To access the MCLE online system and

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your member home page, go to the WSBA website home page at www.wsba.org. Click on the blue and black “Online MCLE System” box in the right column. Follow the instructions on the screen to reach your MCLE home page. If this is your first time logging on to the MCLE system, be sure to change your password after you log in to maximize security of your online MCLE information. Online help is available. If you have any questions about using the MCLE system or about the MCLE compliance requirements, see the online FAQs at www.wsba.org/lawyers/licensing/faq-mcle.htm, or contact the WSBA Service Center at 800-945-WSBA (9722), 206-443-WSBA (9722), or questions@wsba.org.

In-house CLEs for 2007–2009 and later reporting periods. Starting with the 2007–2009 reporting period, there is no restriction on the number of in-house credits that a member may take. However, a lawyer who is associated with or employed by a private law firm or corporate legal department that maintains an office within Washington state may not apply to receive credit for a continuing legal education course sponsored by that private law firm or corporate legal department for which the sponsor did not submit a completed Form 1 (APR 11 Regulation 104(b)(2)).

Monthly Lawyer Discussion Roundtable
Hosted by the WSBA Law Office Management Assistance Program (LOMAP), this roundtable is useful for meeting other members and WSBA Lawyer Services Department staff who will answer questions on ethics, practice, and substantive law. We meet the second Tuesday of the month from noon to 1:30 p.m. April 14 is the next scheduled meeting date. Walk-ins are welcome! The roundtable is held at the WSBA office.

Computer Clinic
The WSBA offers a hands-on computer clinic for members. Learn what programs such as Outlook, PowerPoint, Excel, Word, and Adobe Acrobat can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no CLE credits are offered. The April 13 clinic will be held from 10:00 a.m. to noon at the WSBA office and will focus on using Casemaker and other online research resources. The April 16 clinic will meet from 2:00 to 4:00 p.m. and will focus on using a Mac in the law office. For more information or to RSVP, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

“Foundations of American Democracy” Civics Pamphlet Available
The WSBA offers a pamphlet for the public called “Foundations of American Democracy” that describes the basics of American government: the rule of law, the separation of powers, checks and balances, and a fair and impartial judiciary. It also includes a short quiz and a list of useful websites. Lawyers and judges are encouraged to bring the pamphlet with them when they speak to students or the public in schools, courtrooms, and the community. Teachers may also request the pamphlet for classroom use. The WSBA can provide reasonable numbers of copies at no charge, or the pamphlet may be downloaded from the WSBA website at www.wsba.org/foad.htm. Requests for copies should be directed to Pam Inglesby, WSBA public legal education manager, at pami@wsba.org.

Casemaker Online Research
Casemaker is a powerful online research library provided free to WSBA members. To access Casemaker, go to the WSBA website at www.wsba.org and click on the Casemaker logo on the right sidebar.

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The focus of this group is on setting goals, accountability, and maintaining motivation. This is an opportunity to trade job-search advice and offer each other support in this difficult transition. The group meets on Monday or Tuesday mornings from 10:30 to 11:45. Contact Dan Crystal, Psy.D., at 206-727-8267, 800-945-9722, ext. 8267, or danc@wsba.org if you are interested in this group or in other groups forming for senior lawyers and lawyers in transition.

**Job Seekers Monthly Discussion Group**
Looking for a job or making a transition? Join us at this informational group that meets the second Wednesday of each month from noon to 1:30 p.m. The next meeting is April 8 at the WSBA office; John Clynch will be sharing best practices around informational interviewing. Exchange information and ideas with other lawyers looking to make a change. Come as you are — no need to RSVP. Bring your business cards and practice networking skills. For more information, call 206-727-8269, 800-945-9722, ext. 8269, or e-mail rebeccan@wsba.org. If you would like to attend the meeting by telephone, please RSVP by April 7.

**Facing an Ethical Dilemma?**
The WSBA Ethics Line can help members analyze a situation involving their own prospective conduct, apply the proper rules, and reach an ethically sound decision. Calls made to the Ethics Line are confidential, and most calls are returned within one business day. Any advice given is intended for the education of the inquirer and does not represent an official position of the WSBA. Call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

**Learn More About Case-Management Software**
The WSBA Law Office Management Assistance Program (LOMAP) maintains a computer for members to review software tools designed to maximize office efficiency. The LOMAP staff is available to provide materials, answer questions, and make recommendations. To make an appointment, contact Julie Salmon at 206-733-5914, 800-945-9722, ext. 5914, or juliesa@wsba.org.

**Upcoming Board of Governors Meetings**
*April 24–25, Richland • May 29, Yakima • July 24–25, Tulalip*
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Margaret Shane at 206-727-8244, 800-945-9722, ext. 8244, or margarets@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/schedule.htm.

**Usury Rate**
The average coupon equivalent yield from the first auction of 26-week treasury bills in March 2009 was 0.447 percent. Therefore, the maximum allowable usury rate for April is 12 percent. Information from January 1987 to date can be found at www.wsba.org/media/publications/barnews/usury.htm.

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**Circle of Professionalism**
The WSBA Random Acts of Professionalism Award is given from lawyers to lawyers to recognize and encourage professionalism among the members of the bar. The acts recognized, large and small, are as varied as the profession, but are always in keeping with the tenets enunciated in the Creed of Professionalism. Those nominated for the award receive a certificate, a copy of the Creed, and a letter from the chair of the Professionalism Committee. Neither the Committee nor the WSBA Board of Governors explicitly endorses a selection; the award is simply from one professional to another. The Committee encourages you to look for the best among your peers and nominate them at www.wsba.org.

**Kenneth F. Bromet**
Seattle attorney Kenneth F. Bromet (pictured with his great-nephew Jacob) was nominated by his colleague Juliana Wong for the Random Acts of Professionalism Award. Ken served as Juliana’s mentor for many years, allowing her a close-up look at Ken’s dedication to his clients. He not only taught her the craft of the law, but the ever-important professional aspects of the practice. Whether it is a colleague experiencing personal tragedy or a teenage client in need of help, Ken’s door is always open. “Throughout his own practice, Ken shows compassions for the underprivileged and is always more than willing to help anyone who walks through his office door, no matter what their status,” said Wong. Ken’s devotion to teens and young adults makes a concrete difference in their lives and inspires greatness in all around him.
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Congratulates

Katherine Felton

on her appointment as

Chair of the

KCBA Environmental Law Section.

Kate Felton represents businesses and individual clients in a wide range of environmental disputes from voluntary remediations, to complex, multi-party contamination cases under CERCLA and MTCA, NRD, cost-recovery and contribution actions.

Kate has been involved with the KCBA Environmental Law Section since 2005 and has served in several positions.

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REID, PEDERSEN, McCARTHY & BALLEW, LLP.
Arners at Law

is pleased to announce that

Thomas A. Leahy

has become a partner of the firm.

Mr. Leahy has represented labor unions since 1997 and will continue in the firm’s practice representing labor unions and employee benefit trust funds.

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For more than 45 years, the lawyers at Reid, Pedersen, McCarthy & Ballew, LLP, have proudly represented labor unions, their members, and families.

GORDON, THOMAS, HONEYWELL LLP

takes pleasure in announcing that

Andrea H. McNeely

James E. Horne

and

Michael E. Ricketts

are now partners of the firm.

As a member of our Tacoma office, Ms. McNeely will continue to practice commercial, employment, and complex litigation.

Mr. Horne practices product liability, complex, commercial, and insurance coverage litigation from our Seattle office.

A Seattle office member as well, Mr. Ricketts focuses his practice on commercial and insurance coverage litigation, in addition to property insurance law and products liability.

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is pleased to announce that

Richard L. Furman, Jr.

and

Corey T. Denevan

have become Shareholders of the firm.

Mr. Furman’s practice will continue to focus in the areas of trust and estate administration and litigation, including guardianships, probates, trust matters, powers of attorney, vulnerable adult proceedings, and appeals, and will also include business litigation.

Mr. Denevan will continue to practice in the areas of trust and estate administration, litigation and appeals, and civil and business litigation, as well as bankruptcy.

Davies Pearson, P.C.

Attorneys at Law

is pleased to announce that

Susan L. Caulkins

has become an associate of the firm practicing in family law, construction law, real estate, and estates.

Tel: 253-238-5116
scaulkins@dpearson.com

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These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington State Supreme Court Rules for Enforcement of Lawyer Conduct, and pursuant to the February 18, 1995, policy statement of the WSBA Board of Governors. For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206-733-5926, leaving the case name, and your name and address.

Note: Approximately 30,000 persons are eligible to practice law in Washington state. Some of them share the same or similar names. Bar News strives to include a clarification whenever an attorney listed in the Disciplinary Notices has the same name as another WSBA member; however, all discipline reports should be read carefully for names, cities, and bar numbers.

**Disbarred**

**James K. Naito** (WSBA No. 33636, admitted 2003), of Clallam Bay, was disbarred, effective January 20, 2009, by order of the Washington State Supreme Court following approval of a stipulation. This discipline is based on conduct involving the commission of a criminal act.

On or about March 25, 2008, Mr. Naito hit his wife on the back of the head with a five-pound barbell weight, fracturing her skull. On July 8, 2008, the Thurston County Prosecutor filed an Amended Information charging Mr. Naito with violating RCW 9A.36.011(1)(a)/RCW 10.99.020 (first-degree assault/domestic violence) based on the incident described above. This offense is a Class A felony. On the same day, he pleaded guilty to the Amended Information. The court sentenced Mr. Naito to a term of 93 months in prison, followed by 36 to 43 months in community custody.

Mr. Naito's conduct violated RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; and RPC 8.4(i), prohibiting a lawyer from committing any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony, misdemeanor or not.


**Christopher P. Raymond** (WSBA No. 25131, admitted 1995), of Everett, was disbarred, effective January 15, 2009, by order of the Washington State Supreme Court following approval of a stipulation. Mr. Raymond affirmatively admitted that the WSBA could prove by a clear preponderance of the evidence sufficient violations of the Rules of Professional Conduct supporting disbarment, but did not affirmatively admit all the facts and misconduct herein. This discipline is based on his conduct in two matters involving failure to act diligently and to reasonably expedite litigation, failure to communicate, trust-fund irregularities, conduct involving dishonesty, conduct prejudicial to the administration of justice, and violations of duties during a disciplinary investigation.

**Matter No. 1:** In 1999, Client A was involved in an automobile accident. Client A hired Lawyer D to represent him in a claim for uninsured motorist (UIM) coverage arising out of the accident. In June 2005, Client A hired Mr. Raymond to represent him in a Chapter 7 bankruptcy proceeding. Lawyer D settled the UIM claim on behalf of Client A, who received his share of the settlement proceeds in August 2005. In September 2005, Mr. Raymond filed a Chapter 7 bankruptcy petition on Client A's behalf and claimed an exemption for the UIM settlement proceeds. In October 2005, the bankruptcy trustee filed an objection to the claimed exemption. In November 2005, the trustee's attorney filed a supplemental objection to the claimed exemption. On December 7, 2005, the trustee's attorney sent an e-mail message to Mr. Raymond offering to settle the exemption dispute. Mr. Raymond replied on the same date that he was leaving for a vacation and would deal with the settlement proposal when he returned on December 19, 2005. Over the next six months, the trustee's attorney sent at least two more e-mail messages to Mr. Raymond in an attempt to settle the exemption dispute. Mr. Raymond received those e-mail messages, but did not reply to them. On June 9, 2006, the trustee's attorney sent an e-mail to Lawyer D explaining that he had tried to resolve the exemption dispute with Mr. Raymond, but that Mr. Raymond would not reply. Lawyer D passed on that information to Client A. For the next several weeks, Lawyer D and Client A left multiple telephone messages for Mr. Raymond, who did not reply. Finally, in late July 2006, Client A was able to speak with Mr. Raymond, who told him that he would contact Lawyer D and the trustee's attorney and that he would take action to resolve the exemption dispute. Mr. Raymond did not contact Lawyer D or the trustee's attorney, and he did not take action to resolve the exemption dispute. In October 2006, Lawyer D and the trustee's attorney negotiated a settlement of the exemption dispute that was subsequently approved by the bankruptcy court. Lawyer D, who is not a bankruptcy lawyer, negotiated the settlement because neither he, nor the client, nor the trustee's attorney could elicit any action from Mr. Raymond.

Client A filed a grievance against Mr. Raymond. On November 22, 2006, disciplinary counsel sent a copy of the grievance to Mr. Raymond and requested a written response by December 6, 2006, which Mr. Raymond failed to do. On December 28, 2006, disciplinary counsel sent Mr. Raymond a notice by certified mail informing him that he would be subject to discipline and liable for the costs of a deposition if he failed to provide a written response to the grievance by January 10, 2007. On January 10, 2007, Mr. Raymond sent two letters to the Office of Disciplinary Counsel. One letter, dated January 10, 2007, stated: "Contained with this letter is the response originally prepared to this grievance in December, 2006." The other letter, dated December 4, 2006, was Mr. Raymond’s response to the grievance. Forensic analysis revealed that both letters were created on January 9, 2007, and modified on January 10, 2007. In the response, Mr. Raymond stated that no action was taken in Client A's bankruptcy case for several months because the bankruptcy trustee was too busy. Mr. Raymond also stated that, in the summer of 2006, he requested more information about the UIM settlement from Lawyer D, but Lawyer D did not reply and that Mr. Raymond sent Lawyer D a letter in September 2006 “outlining the options” and suggesting “alternative strategies for resolution.” At disciplinary counsel's request, Mr. Raymond provided a copy of his client file, which included a letter dated September 6, 2006, addressed to Lawyer D. Mr. Raymond knew he had never sent that letter or any other letter to Lawyer D. In the letter dated September 6, 2006, Mr. Raymond stated, "To date, our efforts to reach each other by phone have not been successful..." and that he and Client A had agreed on "a strategy of waiting out the trustee." Mr. Raymond's deposition was taken, during which he testified under penalty of perjury that he created the letter dated December 4, 2006, on or before December 4, 2006, which he thought he had sent to the Association at that time, and that he created the letter dated September 6, 2006, on or before September 6, 2006, which he sent the letter to Lawyer D at that time. Mr. Raymond did not admit to the conduct described in Matter No. 1, that the statements were false and misleading, or that he knew them to be false and misleading, but did admit that there was a substantial likelihood the Association would be able to prove the allegations by a clear preponderance of the evidence.

**Matter No. 2:** In December 2004, Mr. Raymond filed a Chapter 13 bankruptcy petition on behalf of Client B. At that time, a mortgage corporation (Mortgage, Inc.) held a security interest in real property that Client B owned. The filing of the bankruptcy petition...
under the terms of the stipulated order, and Lawyer C filed a Certificate of Noncompliance and Notice of Termination of Stay.

On November 1, 2006, an Order Terminating Stay was entered. Mortgage, Inc. sent Client B a notice of default, informing her of its intent to accelerate her loan and foreclose on her property unless the entire unpaid balance, along with an additional $364.68 in late charges and $424 in delinquency-related expenses, was paid by December 3, 2006. After she received the notice of default, Client B requested information from Mr. Raymond, but he did not return her calls. Client B then contacted her bank and learned that the checks she had given to Mr. Raymond in August 2006 had been deposited at his bank, that the checks she had given to Mr. Raymond in October 2006 had never been negotiated, and that none of the funds had been delivered to Lawyer C’s firm.

On November 27, 2006, Client B was finally able to speak with Mr. Raymond, who told her for the first time that the $1,984 she had brought to him in August 2006 was in his trust account. Mr. Raymond also told her that the checks she had brought to him on October 31, 2006, had been picked up by his courier service for delivery to Lawyer C’s firm, and he would verify that his courier service had delivered them. Mr. Raymond knew those statements were false and misleading. He gave Client B a money order in the amount to $1,984 drawn on his trust account. On November 28, 2007, Client B asked Mr. Raymond whether he had verified that his courier service had delivered the checks to Lawyer C’s firm. Mr. Raymond told Client B that he would refund the $364.68 from his courier service due to its failure to deliver the checks on time. Mr. Raymond knew that statements were false and misleading. He wrote a check to Client B in the amount of $364.68. The check was drawn on his trust account. At that time, Client B had no funds in Mr. Raymond’s lawyer trust account, since he had just refunded the $1,984 he had deposited in August 2006. Mr. Raymond had retained at least $364.68 of his own funds in his lawyer trust account together with his clients’ funds.

Mr. Raymond’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; former RPC 1.4(a), requiring a lawyer to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; RPC 1.15(c), requiring a lawyer to hold property of clients and third persons separate from the lawyer’s own property; RPC 1.15(a)(1), prohibiting funds belonging to a lawyer to be deposited or retained in a trust account, except funds to pay bank charges, funds belonging in part to a client or third person and in part or potentially to the lawyer, and funds necessary to restore appropriate balances; RPC 1.15(h)(8), prohibiting the disbursements on behalf of a client or third person from exceeding the funds of that person on deposit; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client; RPC 8.4(b), prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; RPC 8.4(d), prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice; and RPC 8.4(f), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter (here ELC 5.3(e) and ELC 5.5(c)).

Scott G. Busby represented the Bar Association. Leland G. Ripley represented Mr. Raymond. Joseph Nappi Jr. was the hearing officer.

Suspended

Bradley G. Behrman (WSBA No. 13420, admitted 1983), of Seattle, was suspended for nine months, effective December 24, 2008, by order of the Washington State Supreme Court following an appeal. This discipline is based on conduct involving failure to act diligently, failure to communicate, trust-account irregularities, withdrawing funds from a trust account when the right of the lawyer to receive those funds is in dispute, and lack of cooperation in a disciplinary investigation. Conditions were imposed on reinstatement. For further information, see In re Disciplinary Proceeding Against Behrman, ___ Wn.2d ___, 197 P.3d 1177 (2008).

Mr. Behrman represented a client in business dealings related to a failed business (GTL) beginning in the summer of 2000. One of the legal matters Mr. Behrman handled was the assignment of GTL’s lease to a new tenant (PPL). Mr. Behrman completed most of the work associated with GTL by November 2002.

In November 2002, funds from the lease assignment were disbursed, leading to a billing dispute. Mr. Behrman asked for $2,500 to be retained from the disbursement for paying his fees. The parties dispute whether Mr. Behrman stated that his actual fees were higher or that $2,500 was the final payment. The client told Mr. Behrman that she did not want to release the $2,500 to him without a complete billing statement. They agreed to put the $2,500 in a trust account and release the remaining funds. Shortly thereafter, Mr. Behrman withdrew $500 from the trust account without notifying the client or obtain-
Mr. Behrman's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; former RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; former RPC 1.5(b), requiring a lawyer who has not regularly represented the client, or if the fee agreement is substantially different from that previously used by parties, to communicate to the client the basis or rate of the fee or factors involved in determining the charges for legal services and the lawyer's billing practices, preferably in writing, before or within a reasonable time after commencing the representation; former RPC 1.14 (current RPC 1.15A), prohibiting funds deposited in a trust account from being withdrawn when the right of the lawyer or law firm to receive them is in dispute, and requiring a lawyer to maintain complete records of all funds, securities, and other properties coming into the possession of the lawyer and render appropriate accounts to his or her client regarding them; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client; and RPC 8.4(l), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct (here, ELC 5.3(f)) in connection with a disciplinary matter.

Sachia Stonefeld Powell represented the Bar Association. Bradley G. Behrman represented himself. Gregory J. Wall was the hearing officer.

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### Animal Law

**Animal Law**

April 17 — Seattle. 6.5 CLE credits, including .5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

### Criminal Law

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May 1 — Seattle. 6.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

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May 27 — Olympia. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

### Environmental Law

**2009 ELUL Midyear Sustainability: Solving the Challenges Ahead**

April 23–25 — Chelan. 12.5 CLE credits, including 1 ethics pending. By the WSBA Environmental and Land Use Law Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

**Three Degrees: A Conference Examining the Law of Climate Change and Human Rights**

May 28–29 — Seattle. CLE credits pending.

### Estate Planning

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**Estate Planning for Small- to Medium-Sized Estates**

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### Ethics

**Lincoln on Professionalism**

April 2 — Olympia. 2.75 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

**The New Washington Death with Dignity Act**

April 3 — Tele-CLE. 1.5 CLE credits pending, including .5 ethics. By Rubric CLE; www.rubriccle.com; 206-714-3178.

**Lincoln on Professionalism**

April 15 — Spokane. 2.75 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

**Ethics in Civil Litigation Institute**

April 22 — Seattle/live webcast. 6.25 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

**WSBA Committee for Diversity Mini-CLE**

April 24 — Seattle. Contact Christine J. Kilduff at chrisk1@atg.wa.gov.

**Legal Ethics Deskbook Live: New Rules, New Resources**

May 13 — Seattle/live webcast. 3 ethics credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

### General

**Lincoln on Professionalism**

April 2 — Olympia. 2.75 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

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**Nonprofits**

April 29 — Seattle. 6.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

**The Business of Sports**


### Guardianship

**Guardian Ad Litem Training — Initial Certification**

April 23–24 — Seattle. By King County Bar Association CLE; www.kcba.org; 206-267-7004.

**Guardian Ad Litem Training**

April 24 — Seattle. By King County Bar Association CLE; www.kcba.org or call 206-267-7004.

### Immigration Law

**Annual Insurance Law Update**

April 8 — Seattle. 6.25 CLE credits, including 1 ethics. By WDTL; www.wdtl.org; 206-749-0319.

**Bridging the Gap**

April 10 — Seattle. 7.5 CLE credits pending, including 1 ethics. By WSBA WYLD; www.wsba.org/lawyers/groups/wyld.

**Trial by Fire: Infamous Cases that Define America, Part I**

April 10 — Seattle. 3.5 CLE credits pending. By Rubric CLE; www.rubriccle.com; 206-714-3178.

**Lincoln on Professionalism**

April 15 — Spokane. 2.75 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

**Trial by Fire: Infamous Cases that Define America, Part II**

April 17 — Seattle. 3.5 CLE credits pending. By Rubric CLE; www.rubriccle.com; 206-714-3178.

**Nonprofits**

April 29 — Seattle. 6.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

**The Business of Sports**


**Truth or Consequences: The Bush Administration and the Rule of Law**

May 1 — Seattle. CLE credits pending. By Rubric CLE; www.rubriccle.com; 206-714-3178.

**Lincoln on Professionalism**

May 19 — Vancouver. 2.75 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

**Lincoln on Professionalism**

May 19 — Vancouver. 2.75 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacl.org.

**Immigration Institute: Immigration-Related Issues for the Non-Immigrant**

May 29 — Seattle. 6.5 CLE credits pending. By WSBA WYLD; www.wsba.org/lawyers/groups/wyld/expresslyregform.pdf.

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21st Annual Indian Law Conference
May 8 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Juvenile Law
WSBA Juvenile Law Section Mini-CLE
April 21 — Seattle. By WSBA Juvenile Law Section. Katie Hurley at khurstey@defender.org.

Labor and Employment Law
Workers’ Compensation
May 15 — Seattle. 6 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Law Practice Management
Final Friday Brown-Bag Lunch Series: How to Get Paid — A Primer on Effective Client Communications Featuring Thomas A. Lerner
May 29 — Tele-CLE. 1 CLE credit pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Litigation
Breakfast at the Bar (Appellate)
April 7 — Seattle. 1.5 CLE credits, including .5 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Annual Trust and Estate Litigation Seminar: Handling the Challenges
April 16 — Spokane. 6.5 CLE credits, including .75 ethics. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Ethics in Civil Litigation Institute
April 22 — Seattle/live webcast. 6.25 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Advanced E-Discovery Conference
May 7 — Seattle. 7.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Mediation
16th Annual NW Dispute Resolution Conference
May 1–2 — Seattle. 9.5 CLE credits, including 1.75 ethics. By UW School of Law; www.uwcle.org; 206-543-0059

Four-Day Intensive Mediator Training Program
May 5–8 — Seattle. 37 CLE credits, including 7.5 ethics. By Alhadeff & Forbes Mediation Services; www.mediationservices.net; 206-281-9950.

Two-Day Advanced Mediator Training Program
May 27–28 — Seattle. 17 CLE credits, including 1.5 ethics. By Alhadeff & Forbes Mediation Services; 206-281-9950.

Nonprofit
Nonprofits
April 29 — Seattle. 6.5 general CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Professionalism
Lincoln on Professionalism
April 2 — Olympia. 2.75 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

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May 19 — Vancouver. 2.75 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Real Property, Probate, and Trust
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Water, Water Everywhere: Water Topics for the Real Estate Practitioner
April 17 — Seattle. 6 CLE credits pending. By the WSBA Real Property, Probate and Trust Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Final Friday Brown-Bag Lunch Series: Hot Topics in Probate with C. Trent Kunz
April 24 — Tele-CLE. 1 CLE credit pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

School Law
School Law 101: An Introduction to the Legal Framework Affecting Public Schools
May 8 — Seattle. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Senior Lawyers
2009 Annual Senior Lawyers Conference: The Past, Present, and Future of Law
May 8 — SeaTac. 6.25 CLE credits, including .5 ethics pending. By the WSBA Senior Lawyers Section and WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Technology
Playing Your Cards Wisely: Managing Risks Associated With Open Source Software
April 23 — Seattle. 5.5 CLE credits pending. mritter@woodcock.com.

Tele-CLEs
The New Washington Death with Dignity Act
April 3 — Tele-CLE. 1.5 CLE credits pending, including .5 ethics. By Rubric CLE; www. rubriccle.com; 206-714-3178.

Final Friday Brown-Bag Lunch Series: Hot Topics in Probate with C. Trent Kunz
April 24 — Tele-CLE. 1 CLE credit pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

Final Friday Brown-Bag Lunch Series: How to Get Paid — A Primer on Effective Client Communications Featuring Thomas A. Lerner
May 29 — Tele-CLE. 1 CLE credit pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA; www.wsbacle.org.

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tumor, etc. — it’s the same kind of person who writes this column. Watching this stuff is a bad idea for me, given that I’m a lifelong hypochondriac who already believes every headache is a brain tumor, every twitchy eyelid the start of Lou Gehrig’s disease. But logic is insufficient to overcome my fascination with medical curiosities.

Watching such programs, I cannot help but remember my personal brush with an extraordinary medical oddity. The episode began with one of the more banal of medical conditions: my own case of tonsillitis. One day, when I was about 10, I mentioned to my mom that my throat hurt. Back then — the mid-1960s — any kid who had a sore throat for more than 15 minutes was whisked to the nearest doctor, who would order the immediate removal of the tonsils and “adenoids” (a Latin word meaning “nonexistent anatomical structures, the imaginary excision of which has proven effective for increasing hospital revenues”).

Thanks to modern techniques, tonsillectomies today are performed painlessly in five minutes at participating Rite-Aid stores. In the ‘60s, though, they required 36 hours of imprisonment in a hospital with nurses who wore half-inch-thick white stockings and comical starched hats. I was admitted to such a facility and settled into my bed, where I comfortably contemplated my impending premature death.

Eventually, I was wheeled into an operating room that looked suitable for Civil War amputations, had it been in the South. I remember nothing of the surgery, performed under general anesthesia.

Judging by the post-operative condition of my throat, however, I assume my diseased organs were excised with toenail clippers and rusty salad tongs. After an overnight ordeal I have failed to block from memory, the sun rose and I began pleading in croaks and sign language to go home. I was approved for discharge, but my mom and the nurse asked me to do one thing before I left.

Down the hall, they explained, was a boy about my age who had been sick a long time. He had lived much of his life in the hospital and rarely saw other kids. He would be thrilled, they said, if I would visit for a few minutes. I immediately agreed, not from a precocious sense of altruism but because I would have walked over hot coals to get out of that hospital.

The nurse led me to the boy’s room, where I beheld the most disconcerting thing I have ever seen. In a crib lay a child whose body appeared to be that of about a one-year-old. His face, though, resembled that of an elderly man, but miniaturized. When he greeted me with the voice of someone my age, I would have been far less shocked if a Gila monster had jumped through the window and recited the Gettysburg Address.

Had I not been rendered speechless by the tonsillectomy, I might have blurted out the first thought that leapt to mind: Oh my God, a 90-year-old baby is talking to me. My next thought was a 10-year-old’s version of this: What line of reasoning could lead a normally level-headed mother and a presumably rational nurse to conclude that it would be a good idea to introduce a kid who had just endured a night of projectile blood vomiting to a kid suffering one of the most bizarre conditions in medicine?

In retrospect, I realize this boy, whose name I don’t recall but whom I affectionately remember as Mini-Kid, must have been afflicted with progeria or some other rare genetic condition causing premature aging. At the time, I was too flabbergasted to think beyond my own selfish concerns: Why did you drag me in here? Is this contagious? Can I go home now? A year or so later, my mom showed me a newspaper article saying the boy had died. It carried his picture and listed the names of his family members. That was the first time it struck me that Mini-Kid was more than a medical abnormality. There he had been, trapped in a baby’s body, when he should have been out with the rest of us riding bikes, playing catch, and chasing girls around the playground.

Lesson learned: Life is unfair, which is why so many people believe in an afterlife that is better. What happened to Mini-Kid could have happened to anyone. He must have wondered why he was the one in millions to suffer this fate. I have no answer for that, but I like to imagine Mini-Kid in heaven riding bikes, playing catch, and chasing girls around the playground forever.

Bar News Editor Michael Heatherly practices in Bellingham. He can be reached at 360-312-5156 or barnewseditor@wsba.org.
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