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How to get the M.D./J.D. talk started

In the January Bar News (“An Open Letter to Physicians — We Need to Talk”), President Taylor urged doctors and lawyers to bury the hatchet and begin to talk once again about the need to reform the medical malpractice system, in light of the failure of both I-330 and I-336, and the bruising (to lawyers at least) advertising campaign that preceded those defeats. As a practicing lawyer, and as a member of the Board of Trustees of Group Health Cooperative, I couldn’t agree more. However, that conversation needs to be grounded on very different assumptions than those which guided the initiatives the voters so wisely rejected, or which guided the conversations that have occurred over the past years.

Simply put, whatever system we build needs to be premised on two things: greatly improving patient safety and providing fair compensation to injured persons. Everything else should take, at best, a remote back seat. The need for these particular foundations is overwhelming. Countless authoritative studies repeatedly confirm that the United States’ medical liability system inhibits, rather than supports, what should be the paramount goals of reducing medical error and providing predictable, fair compensation for injured persons.

Once the foundations are agreed upon, the route to a resolution will be easier to find. Instead of arguing endlessly about who is more at fault for creating the current system, ideas can be classified in terms of whether they appear designed to improve the safety of the care that patients in our state receive and whether they will ensure fair compensation to those who are injured. We should reject out of hand any ideas that have only a tenuous connection to these goals. (I will avoid taking this opportunity to point out which portions of the two initiatives failed to have either of these goals in mind — suffice it to say there were many in each.) To the extent there is verifiable evidence that particular ideas may support these goals, and there is some, though concededly, not a lot, those ideas should receive the most intense consideration.

I suspect that some of the ideas presented in the initiatives may survive this inquiry. But I also anticipate that most of the ideas that will be part of the solution were never even mentioned during the initiative fight. It’s time to put our best minds to this, and doctors and lawyers should be among those at the table. Working together on something positive, like improving outcomes and safety for Washington’s citizens, and quickly and reliably compensating the injured, is the best way to heal the wounds.
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Rosemary Daszkiewicz, Seattle

Are we part of the problem, or the solution?

I am jumping into the fray with regard to I-330 and I-336. Although neither initiative passed, the issue of tort reform will not go away and perhaps it is time for everyone to stop the rhetoric and start some hard thinking. As a land use lawyer, I neither sue nor defend doctors, but I am married to an ER doctor and know firsthand the effect of steadily increasing malpractice insurance premiums on many specialties. The more critical issue, however, is the negative effect and high cost of the constant, overhanging threat of malpractice suits. These are complicated, multi-dimensional issues that affect many fine and committed doctors, and can sour the practice of medicine and the doctor/patient relationship.

I am concerned by the Board of Governors’ stance and the article by the State Bar President ("Initiative 330 — The Medical Malpractice Initiative," August 2005 Bar News), trying to sway all us dues-paying members on how to vote by presenting one side of the story, a side that often seems biased. I was recently home on a weekday, and saw an ad that spoke volumes. A convincing female attorney started by saying that if your child had a bad or catastrophic outcome at birth, you may be entitled to economic reimbursement throughout the life of the child and to call them to speak “mother to mother, dad to dad.” Sappy, but effective; unfortunately, it said nothing about whether a health care professional actually committed malpractice or even made a mistake. And surely more attorneys than me are embarrassed at watching lawyers sink to this level of publicly pandering for business, even to the extent of selling their parenthood.

Bad things happen to the human body for a myriad of reasons, and even the best doctors cannot stop that fact. A very few incompetent or inattentive doctors make more than their share of mistakes. The fact that good doctors must make judgment calls daily under conditions most of us can only imagine is not an excuse; it is simply the reality of practicing medicine. The line between medical malpractice and a bad outcome or even an error in judgment can become blurred, and the scrutiny of the courtroom is not necessarily the best way to sort it out. We are not all entitled to money because something bad happened, and lawyers should not imply otherwise. Lawyers should not be seen as seeking out the “good” cases — i.e., those with a tragic outcome. It is no wonder that doctors and many citizens distrust the motives of the Trial Lawyers Association and the State Bar. The legal profession is not “clean” in this whole debate and to frame it as if we are the white knights simply trying to protect a citizen’s constitutional right to a civil justice system in the face of greedy, incompetent doctors is ludicrous. The issues are far more complex, and the civil justice system needs an intelligent overhaul, as do medical quality assurance...
programs and licensing procedures for physicians.

The fact that both initiatives failed shows that doctors and lawyers are not succeeding in getting their messages across, but it doesn’t make the problems go away. The State Bar is not representing all of us in this debate by taking political and seemingly self-serving positions.

Actually trying to work to solve the problem as the representative of all attorneys would have been a better approach, and one that I hope is advanced in the future. I have grown weary of defending the legal profession to medical professionals and regular folks. In looking out for our own interests of contingency fees and the potential for high awards, we might get a few bad doctors in the process but we harm the many good doctors and the future of medicine. The truth is that the issues of negligence, high insurance rates, the practice of expensive CYA medicine, skyrocketing costs, and doctors leaving or avoiding high risk sub-specialties defy a simplistic approach. Why do we then continue to be part of the problem, not the solution? It is indefensible.

Mary A. Winters, Port Townsend

A cautionary note

The December 2005 Bar News printed a letter from Daniel Radin, an Assistant Attorney General. He makes statements which are simply not accurate.

Mr. Radin writes, “Practitioners should first know that they can contact the Division of Child Support (DCS) to obtain accurate information about their client’s child support case …” Excuse me, but “accurate” is not a word I would use to describe any activity of DCS, let alone financial records. In essence, Mr. Radin is saying that an attorney should ignore the Evidence Rules and treat DCS hearsay records as if they were first person testimonial quality.

Not only am I shocked that an attorney would deliberately endanger his brethren with such a risky statement but I submit that it is the opposite which is more likely to be true: that DCS financial records are inaccurate far too often to be deemed even *prima facie* accurate. I have seen deposition transcripts where DCS employees admitted that the figures they use are frequently inaccurate.

Mr. Radin also writes, “The newly amended §362(b) of the Bankruptcy Code exempts the following DCS actions from the automatic stay: the collection of support by wage withholding, license suspension, credit bureau reporting, and the interception of tax refunds.”

In regard to driver licenses, 11 U.S.C. §362(b) states that the automatic stay does not apply to “…(D) of the withholding, suspension, or restriction of a driver’s license, a professional or occupational license, or a recreational license, under State law, as specified in section 666(a)(16) of the Social Security Act; …”

Subsection 666(a)(16) states: “authority to withhold or suspend licenses.

- Procedures under which the State has (and uses in appropriate cases) authority to withhold or suspend, or to restrict the use of driver’s licenses, professional and occupational licenses, and recreational and sporting licenses of individuals
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owing overdue support of failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.”

It is clear that this federal statute merely requires that a State have authority in place (statutory law) and that it use that authority in appropriate cases. It does not in any way pre-empt or even compliment the license suspension scheme — in fact, it appears to acknowledge the exclusive authority of the State in licensing matters.

Mr. Radin likely has not ascertained what “uses in appropriate cases” means within the above statute. Since the entire chapter of the Social Security Act where this subject matter is located relates to Temporary Assistance to Needy Families (TANF), “appropriate cases” might well mean only those cases where a debt is owed to the State of where the State is party in a paternity proceeding.

For Mr. Radin to take the time to write to the Bar News and tell fellow attorneys exactly how DCS wants them to practice law while representing their clients in bankruptcy matters is simply stunning in its audacity. While I am appreciative for the advance notice of DCS litigation strategy in this area, some newly admitted practitioners might assume that an attorney representing the State would have to be correct. After all, it is published in the Bar News and he does work for the Attorney General’s Office, right?

DCS, in administrate hearings to determine if a person’s licenses should be certified to Department of Licensing for suspension, routinely presents its unependable financial records as conclusive proof to be rebutted. This is a total shift of the standard burden of proof, at the very least, but it also eliminates any meaningful challenge to the quality of admissibility of the evidence to be rebutted.

It seems that an attorney representing a client in a personal bankruptcy where child support issues are present would be well-advised to explore the use of an application for a stay to the bankruptcy court. The reality that this might not be the streamlined procedure that DCS and Mr. Radin desire should not dissuade practitioners from strongly advocating for the client’s interests.

In any event, DCS procedures and the enabling statutes for the license suspension program are constitutionally suspect. A case challenging the law is pending before the state Supreme Court.

Most importantly, if the figures presented in a license suspension hearing are suspect, then so are those same figures if they are being used in bankruptcy cases.

Additionally, Mr. Radin’s comments refer specifically to Chapter 13, the reorganization statute. It stands to reason that if the purpose of Chapter 13 is to get the debtor back in control of his finances, the last thing that the bankruptcy court (and the creditors) should want is to cripple or substantially impair the debtor’s ability to adhere to the payment plan.

Yet this is exactly what Mr. Radin plans to do — make the other creditors wait to get paid while DCS takes actions that deliberately increase the likelihood that those creditors will never get paid.

Something is wrong with this picture.

Lawrence Hutt, Parkland
I spend a lot of time in taxicabs these days. It started with the commencement of my year as president-elect in September of 2004, and then increased dramatically with the commencement of my year as president in September of 2005. I live in Port Angeles, the county seat of Clallam County, on the North Olympic Peninsula. Seattle is the venue for the WSBA office, as well as most meetings, receptions, banquets, and other law-related events. The logistical challenges which this presents provided the motivation for the airplane on the cover of the October issue of Bar News, since even by then I had become a frequent flyer on Kenmore Air Express.

Kenmore provides seven daily roundtrips from Fairchild International Airport in Port Angeles to Boeing Field in south Seattle. The flight takes 35 minutes, is reasonably priced, and is usually on time. To make the trip by car involves 75 miles of difficult driving, sandwiched around a 30-minute ferry ride across Puget Sound, which takes two hours each way on a perfect day, and two-and-a-half hours or more on a normal day, not to mention the joys of driving and parking in downtown Seattle. If you consider the price of gasoline and ferry fares, the wear and tear on me and my automobile, and the perhaps questionable assumption that my time is worth something, flying is really a no-brainer.

The only problem arises from the lack of public transportation from Boeing Field to downtown Seattle, making a private cab the only option. Typically, after a full flight, eight passengers climb into the Kenmore van and speed off to Sea-Tac to catch connecting flights, while I catch a cab into downtown, which normally takes about 15 minutes. At the end of a day of WSBA activities, or the following day if I am staying over, I will reverse the process, taking another cab ride from my hotel back out to Boeing Field. This presents its own challenges, since most drivers have never heard of Boeing Field (or King County Airport either) and need directions.

I have made it a point to talk to my cab drivers, and have gotten quite an education. Out of dozens of rides, I have had only one driver who was born in North America. The vast majority are recent immigrants from the poverty-ridden and strife-torn countries of Somalia and Ethiopia, with a few from Algeria, Morocco, and India, and a few from eastern European countries. Most of them have come to this country within the last decade and have wives and children here, as well as other younger members of their extended family. Elders usually elect to stay in their home country, where the language and culture are familiar. Many of the drivers own their own cabs, and many own their own homes. One driver from Somalia told me proudly about the 4,000-square-foot home he and other family members were building in Shoreline, next to the existing home that he and his wife own. I asked him if he anticipated any problems selling his existing home, and he seemed perplexed by the question: He didn’t need to sell his existing home to finance a new home, and he was going to keep them both. These are industrious, frugal people.

The cab drivers have a great deal in common, particularly those from North African countries. Most of them left their homeland at a young age to escape poverty and oppression. One has been on his own since age seven, was forced at age 14 into civil war in Ethiopia as a “soldier,” and armed with an AK-47, had been wounded twice in combat. He fled the country by walking 500 miles in 17
days to Nairobi, Kenya, a country where many North African immigrants have launched their trips to America. When asked why they left their homeland and came to this country, the answer is a quick and almost universal single word: freedom. Freedom means more to them than protected rights. Freedom also means opportunity, and all have embraced wholeheartedly the opportunities available to them in this country. One driver from Morocco, after telling me that freedom was his reason for coming to America, went on to explain: “In this country, you can be anything you want to be” — and after a thoughtful pause — “if you are willing to work.”

Many of the drivers have gone to college while driving a cab, or have helped siblings go to college. I rode with one driver from Ethiopia whose three brothers had all graduated from the University of Washington with his financial assistance. He was proud of them, but equally proud of the fact that he himself had never taken a dime from anyone. Another proudly told me that he sent money to his parents in Somalia every month, to keep them out of poverty, and when I asked him if he felt obligated to do that, he said: “Is not obligation. Is privilege. I can do this because I live in America. God bless America!”

I have not had much opportunity to discuss my theme of restoring public trust and faith in the judiciary with these cab drivers. The language barrier makes it awkward. I am not always sure they understand me, and I am not always sure that I understand them. English is a very challenging language to learn, and I am always amazed at how well these men do after only a few years in this country, without any formal training. And I do not want them to feel like they are being interrogated. It is difficult to put a Muslim cab driver from Somalia at ease as a total stranger sitting in the back of his cab with a black suit, tie, and briefcase, asking him what he thinks about our government. So I usually try to limit my questions to simple topics like their country of origin, their family, traffic conditions, whether their wives work (most do), whether their kids are doing well in school (most are), and similarly benign subjects.

I did have one fascinating conversation with an eastern European immigrant who literally escaped from communist Bulgaria during the days of the Iron Curtain. He has been in this country for more than two decades, speaks fluent English, and is a news junkie. I climbed into his cab on the morning that John Roberts had been announced as the president’s appointee to the U.S. Supreme Court, and he was absorbed in the coverage on public radio. This opened the door for a discussion of our system of government, particularly the judicial branch. He pointed out that judges in this country are very strong and very independent, and I asked him if he thought that was a good idea. His response was immediate. “Is good. In America, if necessary, judge can put president of United States in jail. Is very important thing.” I asked him if the same were not true in his home country and he just laughed. I asked him what was so funny, and he replied: “In my country, if judge have big decision, judge make phone call!”

What would be anathema to our judicial system is commonplace around the world. For us who are spoiled by our system of justice, the “crown jewel of our democracy,” it is difficult to even imagine such a system, where the big cases of the day are decided by a phone call to political bosses.

I have come to admire and respect these men who work tirelessly at this most dangerous occupation, save money, build houses, support families here and abroad, value education, and above all, truly appreciate what they have in the Land of the Free. They represent yet another wave of immigrants who, like those before them, bring energy, diversity, productivity, and richness to our culture, and never take freedom and opportunity for granted. We can learn a lot from them. 

Brooke Taylor may be reached at 360-457-3327 or sbtaylor@plattirwintaylor.com. If you would like to write a letter to the editor on this topic, please e-mail it to letterstotheaditor@wsba.org or mail it to WSBA Bar News, Attn: Letters to the Editor, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.
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Findings From the University of Washington School of Law Gender Study

by Deborah Maranville and the University of Washington School of Law Gender Study Committee

If you are a typical reader of this journal, you attended law school, whether last year or half a century ago. As a result of that experience, you probably retain a certain, sometimes “morbid,” fascination with legal education. You may also be interested in legal education because you hire and work with, or against, new law-school graduates. You may have very definite ideas about what law schools should be doing. You have no doubt noticed that many more women are graduating from law schools now than even 10 years ago.

Readers who closely follow the entry of women into legal education will have encountered the burgeoning literature on women’s law-school experiences. Most prominently, in their book *Becoming Gentlemen*, Lani Guinier, Michele Fine, and Jane Balin showed that women at the University of Pennsylvania Law School performed worse than predicted, and they argued that a primary cause was the Socratic method. Fortunately, Penn appears to be an exception and “gender studies” at several other schools have shown that women perform just as well as men on traditional measures of success. Nonetheless, in a variety of ways, women as a group experience law school differently than men.

In early 2001, members of the Law Women’s Caucus at the UW School of Law asked then-Dean Roland Hjorth to authorize a gender study of the law school, because they were concerned about the tangible progress and subjective experiences of women at the law school. Both Dean Hjorth and his successor, W.H. “Joe” Knight, agreed, and the Gender Study Committee was duly authorized. We proceeded by gathering statistical information on measures of student performance and hiring of faculty, and surveying the classes of 2002, 2003, and 2004. In this article, we share some of what was learned.

Female Students Perform Well and Participate Actively

The first task of the Gender Study Committee was to gather statistical information about students and faculty. We wondered whether female and male students at our law school perform equivalently as measured by academic honors, participation in law reviews and moot court membership. The news on that front was good. The UW School of Law has a reputation as a positive place for female students, and that reputation is warranted. Women at the UW School of Law do well on measures of student performance such as election to Order of the Coif and participation on journals. Our finding that UW women perform as well as men on traditional measures of law-school performance is consistent with the results of studies at the Brooklyn, Chapman, and Iowa law schools. The UW study confirms that women’s lesser success on the traditional measures described in *Becoming Gentlemen* is limited to certain schools. The study also reinforces the lessons that all law schools are not alike and that drawing broad conclusions from a study of a single institution can be misleading.

Slow but Steady Progress

One reason female law students do well at the UW may be that the School of Law has a history of providing more opportunities for women than some other law schools. Three women were among the 12 members of the first law-school class that entered in 1899, and the School of Law continued to admit women throughout its history, though in small numbers. Marjorie Rombauer, the first full-time tenure-track female faculty member who was
not a librarian, was hired in 1960, making the UW School of Law a leader among American law schools in hiring women. Linda Hume, the School of Law’s second tenure-track female faculty member was hired in 1972.\(^\text{13}\) When we started the study, we determined that since the School of Law’s initial hiring of Prof. Rombauer, women have been relatively well represented in the faculty overall, fluctuating between 20 percent in 1987 and 45.8 percent in 2001. Predictably, they were found in much lower numbers among tenured faculty — nine percent in 1987 rising to 23.8 percent in 2001. During much of this period, women were well represented among not-yet-tenured tenure-track faculty — rising from 25 percent in 1987 to 50 percent in 2001, with a peak of 75 percent in 1998. As at many schools, the legal writing and clinical faculties at the UW were heavily female and, during most of this period, primarily non-tenure track.

We updated our faculty numbers as the study ended and found that the numbers have continued to improve, though parity has not been achieved and the picture has become more complex due to the expansion of job categories that now include research professors and professors without tenure by reason of funding. The UW School of Law has continued to hire women in tenure-track positions, though half of our female assistant professors were initially hired in untenured legal-writing or clinical positions, and the bulk of our newly hired assistant professors are men. Women are also included in the ranks of deans and faculty with honorary “professorships,” though again in smaller numbers than the men.

Problems With Moot Court?
We did discover that in 2000 to 2003 women were significantly underrepresented on the Moot Court Honor Board. This may result from self-selection linked to differences between men and women as they enter law school — though we rather doubt it — as from 1996 to 1999 we found no such difference in moot court participation. Based on anecdotal reports, the disparity may be related to a sexist environment that pervaded the Moot Court Honor Board during part of that period. We have invited further discussion within the law-school community, not only out of an obligation to be fair to our female students, but also because we do not believe that we serve our male students well if we do not equip them to create environments that are positive for both men and women.

Surveying the Student Body
As we pursued the study, we decided to survey our students about their subjective experiences. The Committee wanted both to learn about the School of Law and to perform a study that would provide a useful contribution to the literature on legal education generally. So, we consciously built on two lines of research. First, gender studies have looked at a range of issues, from whether women participate as much in class as men to the presence of sexual harassment. Second, research on law-student mental health shows that law students enter law school just as healthy (or unhealthy) as the general population, but that quickly changes for the worse and stays bad throughout law school. (This trend continues into the legal profession, as those familiar with the WSBA’s Lawyers’ Assistance Program know.) We also followed another thread concerning the effect of law school on public-interest orientation.

To build on the research on law-student mental health, we surveyed first-year students twice, first administering a shorter survey at orientation in September 2002, obtaining almost 100 percent participation, and administering a longer survey in property classes to a large proportion of the first-year class after winter-quarter grades came out in April 2003. This allowed us to confirm that the mental health of entering students is comparable to the broader population and that it declines substantially before the end of the first year. During the 2002-2003 academic year, we also surveyed approximately half of the 2Ls and 3Ls in courses that are required or taken by a large, representative number of students. The surveys covered a wide range of topics: demographic background, satisfaction with law school, reaction to different teaching methods, class participation, experience of harassment or unfair treatment, mentoring, career interests, depression as measured by the Beck Depression Inventory, and internal versus external motivation. (What are internal and external motivation and why would we measure it? Internal motivation refers to doing things because we enjoy them for their intrinsic value. External motivation refers to doing things for external rewards such as grades, money, and prestige. Some researchers have hypothesized that law students become more depressed because they shift from internal motivation to grade-, money-, and prestige-driven external motivation.)\(^\text{14}\)

In important respects, the UW Gender Study replicates and extends the results of other studies from both the gender-study and mental-health lines of research. Three findings may be particularly interesting to members of the legal profession.

Levels of Unfair Treatment and Sexual Harassment
The levels of unfair treatment and sexual harassment at the UW School of Law appear to be relatively low compared to other institutions studied,\(^\text{15}\) though few discussions of this issue are based on methodologically sound surveys. Four percent of UW students reported that they had “personally experienced sexual harassment or inappropriate sexual behavior” at the School of Law. We don’t have a good baseline comparison from other schools, but anecdotal reports suggest that these levels are relatively low. Because we think that any amount of sexual harassment is too much, we hope to reduce this level through education and discussion.

More striking was the finding that by the third year, a fifth of students, both women and men, report experiencing unfair treatment on the basis of gender. The three major problem areas cited by students that require attention and improvement are: moot court, on-campus interviewing, and the classroom. We suspect that to some extent these results reflect a lack of consensus in our broader culture about what treatment is considered fair or unfair. Some members of the UW School of Law community are uncomfortable acknowledging the different experiences of women, as though to acknowledge gender differences undermines equal treatment of our law students. This group includes faculty with a long-standing commitment to “equal treatment,” female students who bristle at the well-meaning efforts of members of the profession to address personal issues such as suitable dress or style for moot court competitions or interviews, and white male students who
do not perceive themselves as privileged and resent intimations that they are. In addition, faculty efforts in the classroom to address controversial or difficult issues, such as rape or forensic investigation of sensational crimes against women, continue to provoke controversies with gendered dimensions.

Nonetheless, the Committee believes that we should address perceived unfair treatment within the on-campus interviewing process, moot court, and classroom environments. Both moot court and on-campus interviewing bring large numbers of non-law-school visitors to campus. The School of Law should begin conversations with these visitors about students’ law-school expectations. These conversations may help smooth the path between law school and the profession. In addition, we should provide public and private forums in which to discuss these issues with students.

Classroom experiences are in some respects more difficult to address, because faculty traditionally have a great deal of independence at the UW. In the early 1990s, a group of female students from Law Women’s Caucus met with faculty to offer suggestions on how to improve the classroom climate for women. Many faculty members responded well to this effort, and incorporated suggestions into their teaching. Some observers commented, however, that the faculty who could benefit most from this effort did not attend. The Committee hopes that presentation of its report will provide an opportunity to revisit these issues.

Differences in Subjective Experience: The Socratic Method, Class Participation, Careers, Depression

Subjectively, UW female law students do seem to have a less positive experience than men in several respects: women respond less favorably to the Socratic method, they ask fewer questions in and outside of class and seek less advice from faculty, law school is less supportive of women’s career goals, and women are more likely to become depressed during law school.

Our finding that women are less comfortable than men with the Socratic method is consistent with the findings of gender studies at seven Ohio law schools and at the University of Pennsylvania. Our perception is that UW faculty are familiar with the long-standing objections to the Socratic method, including the findings of Becoming Gentlemen that the method — when practiced in a way designed to humiliate — adversely affects women, and have modified their teaching styles accordingly. That these efforts are widespread is evidenced by our finding that current UW students are more likely to think that the Socratic method is used too little, rather than too much. Faculties are experimenting with a range of alternatives to the Socratic method. These include mastery learning, in which students are not bound by a curve but can achieve a particular grade by completing a range of assignments at a designated level of competence; the “expert system,” in which students are told in advance what day they will be called on; online case questions and problem sets that provide feedback to students throughout the course; and simulation exercises in which students engage in lawyering tasks such as drafting complaints, answers, and summary-judgment motions, and orally arguing motions or appeals.

Our finding that UW women respond less favorably to the Socratic method is not “hot-off-the-presses” news. Nonetheless, we hope that the UW faculty will continue to experiment with a range of teaching styles that address the learning styles among both women and men, and promote active learning and develop our students’ oral skills and ability to think on their feet.

Our data on class participation show that by self-report UW women volunteer in class as often as men, but they are significantly less likely to ask questions in or outside the classroom. They respond more favorably, however, to advice and encouragement from faculty than do the men. Our results also show that women are significantly more likely to participate in class when they have a “high level of comfort with classmates” and when the “professor is female.” The finding that women are more likely to participate in a classroom with a female professor replicates the findings of a study at Berkeley.

The finding that female students’ class participation is higher with a female professor suggests to us that the School of Law must maintain its effort to hire female faculty. Likewise, the administration should continue to work to ensure that all students are exposed to female faculty in the first year. In addition, because a “high level of comfort with classmates” is a strong factor in encouraging class participation for all students, but especially for women, faculty should consider ways to encourage informal interaction among students in a class early in each academic term. The administration should encourage and support such efforts, and the Student Bar Association should continue its efforts to develop a high level of camaraderie among students. Our student members of the Committee cite lunch invitations, potlucks, and similar social activities initiated by faculty, as well as faculty acceptance of student invitations to activities such as birthday parties or baby showers for students, as useful steps toward this goal. Many law firms have discovered the importance of social events in promoting office morale — the same is true in school.

Our data show that women enter law school with a greater interest in working in public-sector and public-service jobs. Although this interest declines for both men and women during law school, a significant and disproportionately greater
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number of our female students continue to seek public-interest jobs. The School of Law already has a strong Public Interest Law Association and the School of Law’s Career Services office is working to serve these students more effectively. That effort should continue and be supported by the administration.

Law Students, Gender, and Mental Health

Our survey results confirm the findings of other studies that law school significantly increases levels of depression among law students and that it does so by the time the first round of grades comes out. Before law school, significantly fewer of our prospective students (five percent) than the general population (nine percent) suffer from depression, as measured by the Beck Depression Inventory. By spring term of the first year of law school, 15 percent of the students suffer from depression. That level continues among second and third-year law students. However, 85 percent of our students remain unaffected by depression.

We found that women are more likely to become depressed than men, again a finding that is consistent with previous research at other schools.

One new and interesting aspect of our data is that, at the UW School of Law, women who are single and not dating are significantly more likely to become depressed during law school. Student members of the committee hypothesized that women may be more affected by their single status than men, because the larger culture and the mass media communicate stronger expectations for women than for men that being partnered is the norm. This is probably the area in which the School of Law can have the least effect, but we suspect that generalized law-school efforts to build community might mitigate this effect.

Because this was a gender study with a focus on the experience of women, our recommendations address measures likely to improve the law-school environment for women. We believe that many of these recommendations, such as attention to the range of learning styles, and increasing levels of comfort with classmates, will help men as well as women and support our increasingly diverse student body.

Implications for Legal Education and the Profession

We recognize, however, that in some areas what works best for most women may not work best for some men. This raises three important questions. First, are there ways to channel the energy of students who thrive under the traditional Socratic teaching method and prefer a more aggressive, competitive atmosphere, while still creating a learning environment that supports students with other preferences? Second, to what extent are competition and aggression central to or necessary for excellent performance by lawyers? Finally, can we guide aggression and competition in ways that do not undermine efforts in the profession to avoid destructively unbridled adversarial behavior in the litigation process? We do not claim to have answers to these questions, but we hope that posing them can move us toward solutions.

With the entry of women into the legal profession in large numbers, observers interested in the progress of women in the profession began evaluating both law schools and legal employers. Studies of women in the profession show that women have made significant strides in entering the judiciary (especially in Washington state), the public sector, and private practice. Women have encountered more difficulty gaining entry into elite corporate
law firms, especially into partnerships and positions of power, though we see signs of progress in that area. For women of color, these difficulties are exacerbated. The resistance of many law firms and other institutions to accommodate women’s traditionally greater family responsibilities appears to be a major factor in these difficulties.21

In both law schools and the broader profession, we can identify a common predicate for creating environments in which women will succeed. We must abandon the long-standing feminist debate between “equal treatment,” under which women are treated identically to men, and “special treatment,” under which women’s biological differences from men are acknowledged and women’s ability to become pregnant and bear children “accommodated.” Instead, we must recognize that our existing institutions were created to accommodate the lives and needs of the men who established and attended them. Thus, they often incorporate a “male norm,” an assumption that the lives of men from certain backgrounds define what is expected and possible. Different groups and individuals now inhabit these institutions — women as well as men, men and women of color as well as white men, members of the working class as well as the wealthy, men and women returning to school after raising a family or pursuing another career, as well as students fresh out of college. To create institutions that respond to the needs of all these groups requires us to recognize their needs, and to recognize that their needs will vary. To do so will displace the historical male norm, but it is a necessary form of equal treatment.

Deborah Maranville is professor of law and director of the Unemployment Compensation Clinic at the UW School of Law. Over six years of work, the Gender Study Committee included student (and later alumnae) members Winnie Cai, Katie Colendich, Emily Cordo, Michele Jensen, Kelsey Nicos, Haley Olsen, Grace Pastine, Megan Pedersen, Kristen Peterson, AJ Rei-Perrine, Kate Sadlon, Kathryn Shuster; alumnae Arlene Ragozin and Constance Proctor; faculty and staff Helen Anderson, G.H. Andrew Benjamin, Karen Box, Julia Gold, Paula Littlewood, Millicent Newhouse, and Mary Whisner. Student research assistance was provided by Barbara Vallarino and Rebecca Botright, and expert statistical analysis by Christopher Heaps and Kennon Sheldon.

NOTES
1. The UW School of Law’s entering class for 2005-2006 is 57 percent women. The entering class of 1995-1996 was 48 percent women.
5. I had the privilege of chairing that committee and, consequently, of learning more than I ever wanted to know about empirical research and Human Subjects Review committees.
6. Readers who want to dig deeper into our results can consult our forthcoming article, “The Law School Experience: Gender, Connectedness, And Mental Health.”
8. During the period of our study, the UW School of Law was not computing grade point averages, so we could not compare performance across the class.
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12. Yoshiko Saheki provided this information based on review of a class photo and alumni list compiled in the 1960s by former Associate Dean John Huston and former Registrar Huldah Swinehart. Two of the women in the entering class graduated in 1901, the third in 1903.

13. That was the year that Congress prohibited sex discrimination in the hiring practices of educational institutions pursuant to amendments to Title VII of the Civil Rights Act of 1964.


20. Id.


Plaintiffs’ lawyers aren’t very popular in Washington these days (witness the enactment of the recent class action legislation). While that phenomenon may be new, one thing that isn’t new are boom and bust years. Plaintiffs’ lawyers have long enjoyed the peaks — and suffered through the valleys — of fluctuating income. In the current climate, plaintiffs’ lawyers may be surprised to learn that they can ameliorate these peaks and valleys. Although our tax system is rigidly annual, and income averaging was eliminated many years ago, there are other ways of spreading out payments.

For plaintiffs’ lawyers litigating increasingly big and complex cases, resolving a multi-year case can generate a huge tax bill for the lawyer. Plus, the lawyer’s after-tax proceeds will go into taxable investments that will throw off additional taxable income. In contrast, a lawyer who structures his fees is effectively able to invest pre-tax, locking his share of the settlement proceeds into a high-yield obligation (typically an annuity).

According to Dan McCarthy, a lawyer and principal with Bradford Settlement Company in Chicago: “We place many of our attorney clients into deferred fee structures in order to create future income streams to offset the peaks and valleys of the litigation world, as well as retirement and personal planning. I liken this to a 401(k) plan, but without the investment caps normally associated with such plans.” The periodic payments are taxed as received.

Fee Bonanza?
A plaintiffs’ lawyer can not only defer receipt of (and tax on) his fees until he receives them, but he can have all of that money invested, and have the income produced from it also taxable over time. Although such structures have been around for years, they are becoming increasingly prominent, and with good reason. Lawyers may want to structure their fees as part of their own tax, financial, estate, and succession planning.

Plus, lawyers structuring their fees can actually help their clients avoid tax problems. The U.S. Supreme Court recently decided Banks v. Commissioner, holding that plaintiffs have gross income even on the contingent legal fees paid directly to their lawyers. This was a blow to plaintiffs, who often have no way to deduct lawyers’ fees. Yet, stretching out fee payments can ameliorate this tax result. Even if your clients choose to take all of their money in cash, the plaintiffs’ attorney can still accept all or a portion of the attorneys’ fees in the form of periodic payments.

There are some technical requirements that must be met for an attorney’s fee structure to be successful. “Success” here simply means having the income taxed only as it is disbursed to the lawyer. The good news is that this takes only a few simple steps. One leader in the field is Allstate Life Insurance Company, which writes attorneys’ fee structures with NABCO, an assignment company backed by an Allstate guaranty.

Childs — The Mother of All Cases
It’s impossible to discuss the structuring of attorneys’ fees without mentioning the Childs case. In Childs v. Commissioner, the IRS unsuccessfully challenged a transaction that paid three attorneys fees on a periodic basis. The IRS argued that the attorneys were entitled to all the fees at settlement, so had “constructively” received the whole stream of fees. The tax court rejected the IRS’s argument, as did the 11th Circuit Court of Appeals, holding that the value of the attorneys’ rights to receive deferred fees were not includable in gross income in the year of the settlement.

The structured-settlement broker in Childs was Charles Bradford of Bradford Settlement Company, a good choice for advice on structuring attorneys’ fees. Bradford Settlement Company was a pioneer in structuring attorneys’ fees, and continues to be a “go to” broker for implement-
attorney-fee-structured settlements. Mr. Bradford calls this option for plaintiff attorneys “a gift from Washington.” The three Childs lawyers were quite careful. They would not accept a promise from the defendant (or from their own client) to pay their fees in installments. They wanted an annuity that provided a guaranteed stream of payments issued by a top-rated life insurance company. Though the settlement agreement provided for the purchase of annuities to satisfy the future installment payments of the attorneys’ fees, the settlement agreement stipulated that the attorneys’ rights under the annuity policies were no greater than those of a general creditor. Before settlement documents were signed, the parties agreed that all the legal fees would be paid in the form of structured payments.

The defendant insurers purchased an annuity to fund the future payments due each plaintiffs’ attorney. The attorneys were each named payees under the annuity contracts, and their estates were designated as the primary beneficiaries. However, the defendant insurers guaranteed to pay the annuity payments if the life insurance company ever failed to make the payments.

The Childs attorneys had no right to accelerate the payments or reduce them to their present value. In fact, once the attorneys agreed to structure their fees, the attorneys were bound to the installment schedule. The tax court and the 11th Circuit held that the attorneys did not constructively receive the fees in the year the settlement documents were signed. Of course, some precautions are necessary. The attorneys are subject to the same rules as the plaintiff. Like the plaintiff, the attorneys must be specifically precluded from withdrawing their attorneys’ fees earlier than the scheduled payment dates. Wording which prevents the attorneys (or their beneficiaries) from accelerating, deferring, increasing, or decreasing their scheduled payments must be inserted into the relevant settlement documents. The attorneys should have no right or power to receive any payment before the scheduled payments are made.

But, that doesn’t mean one can’t structure the arrangement to provide security. In fact, the security can be ironclad without running afoul of the tax doctrine of constructive receipt. The annuity contract cannot be owned or controlled by the attorney. Instead, the annuity must be owned by a third-party assignment company. This prevents the IRS from arguing that the annuity contract is somehow “set aside for” or “otherwise made available to” the attorney, which would be detrimental from a tax perspective.

**Childs’s Continuing Relevance**
The IRS lost Childs v. Commissioner, both in tax court and on appeal. No one has yet to fight a Childs-like battle elsewhere in the country, but there seems little danger. The tax court itself typically follows published authority from other circuits. Moreover, the IRS has even begun citing Childs as authority. This suggests that the IRS has seen the writing on the wall and that properly implemented attorneys’ fees structures are unassailable.

**Proper Structures Avoid Worries**
To properly implement an attorney’s fees structure, it’s useful to see what does not work, and where lawyers might misstep. You can’t have the annuity contract name the attorney as the irrevocable payee. Also, as previously stated, the attorney cannot be the owner of the annuity contract. The owner must be the third-party assignment company.

The assignment company purchases the annuity to fund its obligation, and the attorney is solely the payee, not the applicant, and not the owner of the annuity contract. The life insurance company issuing the annuity can guarantee payment of the attorneys’ fees should the assignment company ever fail to do so. That guarantee does not trigger any taxes.

Indeed, the Childs court stated: “It is well settled that a simple guarantee does not make a promise secured, since by definition a guarantee is merely itself a promise to pay.” The Childs court was satisfied that the owner of the annuity was the third-party assignment company, not the attorneys. The assignment company retained all rights incident to ownership. Also, as previously stated, the attorneys could not accelerate, defer, increase, or decrease their attorneys’ fees (once structured) during the term of the payment period.

**Conclusion**
Attorneys’ fee structured settlements are clearly here to stay. Not only do they serve many tax and financial goals, they offer the beauty of tax-deferred investing, the tax and nontax benefits of income averaging, and even serve asset-protection goals.
Most plaintiffs’ lawyers understand the dynamics of a structured personal physical injury settlement for a client. It’s not a big leap from this kind of structure to an attorneys’ fee structure.

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More Information
If you would like more information on attorney structures, contact Dan McCarthy at dmccarthy@bradfordsettlement.com (312-781-9343), Charles Bradford at cbradford@bradfordsettlement.com (866-851-1772), or Rob Wood at wood@rwwpc.com.


NOTES
5. 103 T.C. 634 (1994); aff’d without op., 89 F.3d 856 (11th Cir. 1996).
6. See Treas. Reg. §§ 1.451-1(a) and 2(a).
7. 103 T.C. 634 (1994); aff’d without op., 89 F.3d 856 (11th Cir. 1996).
9. See Brodkey v. Commissioner, 1 T.C. 275 (1942); Oberwinder v. Commissioner, 35 T.C. 429 (1960), aff’d, 304 F.2d 16 (8th Cir. 1962).
Informal Opinion Roundup 2005

BY CHRIS SUTTON

The Rules of Professional Conduct (RPC) Committee receives, researches, and prepares responses to written ethical inquiries submitted by Bar members. Upon receipt, each written inquiry is assigned to two Committee members for research. If the response to an inquiry could have wide impact, additional information from knowledgeable experts may be sought. Those assigned to the inquiry present a response memo to the entire RPC Committee for discussion. Specific language is proposed and voted on by the Committee, and a response letter is directed to the inquirer. The response letter is redacted to remove identifying information and is designated an informal opinion. If the inquirer acts in accordance with the response letter, a rebuttal presumption arises that the action is ethical. Informal opinions are based on the specific facts of the inquiry and reflect only the opinion of the RPC Committee and not the official opinion of the WSBA.

While informal opinions are generally concerned with situations specific to the inquiry, many of the recently issued informal opinions may be of interest to Bar members. Below are summaries of some informal opinions of interest.

**Informal Opinion 1970:** The inquiry concerns whether a lawyer may set up a booth at a street fair using a sign that reads “legal questions answered or referrals given.” The Committee opined that RPC 7.3 does not prohibit a lawyer from setting up a booth at a public event. Informal Opinion 914 states that a lawyer may set up a booth at a county fair. The answer is also in line with the commentaries on 7.3 that state the rule is designed to prohibit solicitation by a lawyer to prospective clients outside of a previously established professional or personal relationship. Opening a booth is not direct solicitation, since — as with opening an office — the lawyer waits for the client to approach him/her.

**Informal Opinion 1975:** This opinion deals with whether a lawyer has an ethical duty to convey a creditor’s offer of reaffirmation of a bankruptcy client’s debt. The committee stated that RPC 1.4, delineating a lawyer’s duty of communication, does not contain a requirement to transmit all correspondence to a client or discuss it with the client. Rather, RPC 1.4 provides that a lawyer has an ethical obligation to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information and shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. The substantive law and the facts of individual cases will dictate whether particular items of correspondence should be transmitted to, or discussed with, a client in order to comply with a lawyer’s duty under RPC 1.4(a) to “... keep a client reasonably informed.” Authorities beyond the text of RPC 1.4 also suggest that a lawyer’s duty to keep a client reasonably informed includes an obligation to inform the client of the substance of any offer of settlement (RPC 1.2(a)), unless prior discussions with the client have made clear that the proposal is unacceptable. Whether the reaffirmation offer involved in the inquiry constitutes such a settlement offer or is otherwise material to your representation of your client appears to be a matter of substantive bankruptcy law beyond the purview of the committee. If the letter from the creditor also has been sent to the client, RPC 1.4(b) would also be implicated, thereby requiring the lawyer to explain the matter to the extent reasonably necessary to allow the client to make an informed decision.

**Informal Opinion 1975:** This opinion offers guidance in a situation where a lawyer is representing a client in a lawsuit and learns that the other party’s lawyer dies and no substitute counsel has appeared. The Committee opined that the relevant rule is RPC 4.3 because the inquirer has a reasonable basis for believing that, after the death of the other lawyer, the other party is no longer represented. The lawyer may directly contact the other party to ask if they are currently represented. If the response is yes, the lawyer may ask the identity and means of contacting the new lawyer, and all further communication with the other party must cease. If the response is no, the lawyer may communicate with the other party to discuss the merits of the dispute. Alternatively, the lawyer may move the court in which the matter is pending for supervisory direction.

**Informal Opinion 1990:** A clause in the employment agreement of the inquiring lawyer’s firm provides that partners/shareholders of the firm will not solicit, hire, or recruit lawyers at the firm for a period of years after termination of employment. Is such a provision ethical? The committee states that an employment agreement that prevents a partner/shareholder who is leaving the firm from soliciting, hiring, or recruiting other lawyers in the firm appears to violate RPC 5.6(a). It constitutes a restriction on the right to practice of the partner/shareholder who is leaving and the right to practice of the other lawyers of the firm. The provision also impacts consumers of legal services, because it can prevent formation of teams of lawyers that might best represent those consumers.

**Informal Opinion 2013:** The inquirer formerly practiced law with other lawyers
in a professional limited-liability company named “The Smith Law Group” (a hypothetical name). Smith left the firm and formed a separate limited-liability company under the name “The Family Law Group” (a hypothetical name). Smith requested the lawyers in the old firm to cease using his name after his departure, but they contended that the name “The Smith Law Group” has been trademarked and, thus, may be used by the remaining lawyers in the old firm. May lawyers practice under a trade name that includes the name of a former member of the firm who has left the firm and who continues to practice law within the same community? The Committee opined that a firm may not continue to use a former member’s name as a trade name under these circumstances.

Informal Opinion 2025: This opinion deals with whether a particular disclosure and authorization form to be used when referring clients to a real-estate office with which a lawyer is associated satisfies the RPCs relating to conflicts of interest. The Committee concluded that it would not. The inquiring lawyer also asked several questions concerning ethical constraints in serving clients as a lawyer and a real-estate agent. For details, please see the full opinion at www.wsba.org/io/search.asp.

Informal Opinion 2023: This inquiry concerns whether a lawyer may take a security interest in real property in a divorce proceeding where a prenuptial agreement provides that the property is separate. Specifically, the inquirer asks if an attorney may take a security interest in the separate real property of the client in a divorce proceeding where the client and spouse have signed a prenuptial agreement (each having independent counsel for the agreement), which agreement provides that the identified separate property of each party shall remain the separate property, and that neither spouse shall later claim an interest in such property in the event of a divorce proceeding. The Committee states that a lawyer may not acquire a proprietary interest in the subject matter of litigation the lawyer is conducting for the client. Property of both spouses, whether community or separate, is subject to the jurisdiction of the court in all dissolution actions. Since a security interest is a proprietary interest and separate property is subject to the jurisdiction of the court, an attorney who is representing a party in a dissolution action is prohibited from taking a security interest in the property described.

Under Washington law, all property owned by either party to a marriage is subject to the jurisdiction of the court in a dissolution action, regardless of its character as community or separate. A judge always has the power to award any property to either spouse if the award is necessary for an equitable distribution of the property. Therefore all property owned by either spouse is the “subject matter of the litigation” and thus subject to the strictures of RPC 1.8(j). Since a security interest is a “proprietary interest,” a lawyer representing a party is prohibited from acquiring a security interest unless it falls within the exception contained in RPC 1.8(j)(1) for “a lien granted by law.” The only lien granted by law to attorneys in Washington is the attorney’s lien provided in RCW 60.40.010. That statute limits the subject matter of an attorney’s lien to papers of the client, money of the client in the lawyer’s hands, money in the hands of an adversary party, and a judgment. Thus, real property cannot be the subject of an attorney’s lien. Since no exception applies, RPC 1.8(j) prohibits the course of action the inquirer proposes.

Chris Sutton is a graduate of the College of William & Mary and the Marshall-Wythe School of Law. He has been practicing law for over 30 years in many areas including domestic relations, trusts and wills, and business transactions. Chris worked as a WSBA disciplinary counsel for two years. Presently, he is the WSBA professional responsibility counsel and professional responsibility program manager. He operates the Ethics Line and supervises the WSBA ADR Program. Chris can be reached at chriss@wsba.org.
Passing along a bit of news from the Stritmatter Kessler law firm ... Reed Schifferman has been appointed to a three-year term as a member of the Board of Regents at Gonzaga University. Reed earned his bachelor’s degree at Gonzaga and played on the school’s basketball team. The law firm Foster Pepper & Shefman PLLC has announced that effective January 1, 2006, its name legally changed to Foster Pepper PLLC. The shorter name is more conventional in today’s business and professional environment, a publicist says ... Greg Guedel, a member of the firm’s Litigation and Construction practice groups, has been named to the Board of Directors for AIDS Housing of Washington (AHW). According to the Seattle Post-Intelligencer, former Senator Slade Gorton and former Attorney General Ken Eikenberry are among the founders of The Constitutional Law Political Action Committee, a PAC aiming to contribute to candidates for Washington appellate courts. The PAC says it “exists to support candidates who believe in judicial restraint, and deference to the state Constitution as written.” ... One likely beneficiary of the PAC’s largesse will be State Senator Stephen Johnson, who has announced he will not seek a fourth term in 2006 and is thinking about seeking a seat on the court. If successful in such a race, Johnson would join Justice Charles Johnson and Justice James Johnson, creating a situation reminiscent of the town meeting of Red Rock in the film Blazing Saddles. ... Seattle Weekly says attorney Anne Brenner, whose fabulousness got a big boost with her freelance commenting on the Michael Jackson trial, has sold a TV pilot to Hollywood mogul Aaron Spelling. Tentatively titled High Profile, the series “will be based loosely on some of my cases,” Brenner told reporter Nina Shapiro. Brenner also talks about stuff on CNN and Fox News Channel, the latter also counting WSBAer Lis Wiehl among its talking heads. Washington has launched its own, homegrown TV chatfest, The Docket — a monthly half-hour magazine-style program covering the law and the courts — premiered on Sunday, January 1 on TVW, Washington’s public-affairs network. Hosted by University of Washington School of Law Dean Joe Knight, episodes feature interviews with members of Washington’s legal community, a wrap-up of recent state Supreme Court decisions, and an educational segment. A new episode will be broadcast the first Sunday of every month. There will also be frequent repeat showings, and streaming video will be available on TVW’s website at www.tvw.org. WSBA, along with the Family Law; Labor and Employment Law; Real Property, Probate and Trust; and Senior Lawyers sections is underwriting the show.

News Coups

Tribal Attorneys Support Northwest-Native Law Students

The Northwest Indian Bar Association (NIBA) recently awarded $13,500 in scholarships to 11 Northwest-Native law students as part of an ongoing effort to support Native-American students seeking a legal education. NIBA also donated $1,500 to the United Indians of All Tribes Foundation to help brighten the holidays for low-income urban Native-American families in Seattle. In only three years, NIBA — in conjunction with the WSBA Indian Law Section — has raised nearly $70,000 in scholarships to aspiring Northwest-Native lawyers from Washington, Oregon, Idaho, and Alaska through the Indian Legal Scholars Program.

Writing Competition for Lawyers

SEAK, Inc. — a provider of training, seminars, and publications for attorneys, physicians, and other professionals — is sponsoring its fifth annual legal-fiction writing competition for lawyers.

The purpose of the competition is to encourage lawyers to become more interested in and adept at writing legal fiction. The first prize is $1,000. Submit entries by June 30, 2006, to: SEAK, Inc. Legal Fiction Competition, Attn: Steven Babitsky, PO Box 729, Falmouth, MA 02541. For more information, contact Kevin J. Driscoll at 508-548-4542 or e-mail kevin.driscoll@verizon.net.

John F. Mitchell Receives WSBA Local Hero Award

Bremerton attorney John F. Mitchell has received the WSBA’s Local Hero Award, presented to lawyers who have made noteworthy contributions to their communities. Mr. Mitchell was honored for his distinguished 29-year career as an attorney and his two decades’ service as a judge pro tempore of the Kitsap County Superior Court and District Court, and for his substantial community service. Mr. Mitchell is a long-time member of the Bremerton Elks Lodge and a director of the Admiral Theater Foundation, the Bremerton Historic Ships Foundation, and the Harrison Hospital Foundation, a nonprofit organization that raises and manages charitable gifts for the benefit of the hospital. In 1988, he served as the president of the Kitsap County Bar Association. A member of the WSBA since 1976, Mr. Mitchell served on the WSBA Board of Governors Professional Development Committee from 2002-2003 and on the WSBA Adjunct Investigative Counsel Panel from 2003-2004. A partner with the Bremerton law firm of Sanchez, Paulson, Mitchell & Schock, Mr. Mitchell’s areas of practice include personal-injury matters, insurance-coverage cases, and estate planning, as well as a general civil-trial practice. It is in recognition of his dedication to the legal profession and commitment to community service that the WSBA is proud to call Mr. Mitchell a local hero.

Washington Association of Prosecuting Attorneys Elects President

Lincoln County Prosecuting Attorney Ronald B. Shepherd has been elected president of the Washington Association of Prosecuting Attorneys. Other newly elected officers are: San Juan County Prosecuting Attorney Randall K. Gaylord, vice president; Garfield County Prosecuting Attorney John R. Henry, secretary; and Lewis County Prosecuting Attorney Jeremy R. Randolph, treasurer. Their terms began on January 1, 2006.
Doctors or Lawyers: Who Really Has It Better?

BY JEFF TOLMAN

T he often hostile debates about initiatives 330 and 336 got me thinking about the real differences between doctors and lawyers. Arguably, we have more similarities than differences. To become members of either profession you must be well educated, motivated, and interested in working with the public. Both professions have to deal with underbellies. Lawyers, the underbelly of society; doctors, actual underbellies.

So why all the potshots, misleading advertising, and good-versus-evil characterizations of our jobs?

I called my pal Dr. Cureusall for an analysis over a couple of libations. Our discussion led to a breakdown of individual categories, attempting to determine which profession really had it better.

1. Who is more interesting away from work?

Lawyers talk about clients, cases, and social justice. Doctors talk about how their 401(k)s are performing, which of the new car models they and their spouses will purchase, and the disturbing cost of private jet fuel. Advantage: Lawyers.

2. Who are your worst clients/patients?

Dr. Cureusall: My worst patient is the 550-pound man who drinks a gallon or two of gin a day, wouldn’t recognize a vegetable if you handed him one, has bill collectors calling every three minutes, can’t recall the last shower he took, and has a substance covering his unbrushed teeth that makes Spam look healthy. He isn’t feeling well (what a surprise) and wants a pill to take care of all his problems. Now.

Me: My worst client is the Internet junkie who hangs around with people who are constantly in legal trouble. Before I introduce myself, he has unrolled the Internet printouts from hundreds of unrelated cases and law review articles. He next gives me his bar pals’ analysis of his legal problem, one by one, in a diatribe that, not surprisingly, takes exactly the same amount of time as the average happy hour. Before I get to speak, he mentions that he owes a lot of people money, but is well aware of every lawyer’s duty to provide pro bono service. He is a nightmare in a greasy tee shirt. Unrealistic expectations. Enough knowledge (mostly inaccurate) to challenge every word I say. No money. Advantage: No one.

3. Who solves problems?

Doctors have the greatest prop in the world: the virus. All of us have heard the I-can’t-do-anything-for-you-but-that’s-OK words: “Jeff, you have a virus. In three or four days you’ll feel better. If not, take two aspirin and in the morning — let’s see, that would be Saturday — call Urgent Care.” Lawyers would love to be able to say: “Mrs. Smith, there is an adverse possession virus going around. You’ll get over hating your neighbors in two or three days. Let’s just give it some time for the virus to run its course. If not, take your neighbors out to dinner and call me on Monday.” Advantage: Doctors.

4. Who has the less likelihood of a malpractice finding?

Medical malpractice is often committed with the patient under anesthesia. The best witnesses are members of the same profession who probably like and respect the offending physician. The public knows doctors are doing their best to help the patient, and that medicine is an art and not a science. Finding witnesses and juries to support a negligence finding is tough.

On the other hand, the public is generally wary of lawyers. After all, haven’t they all heard that if the probate ever does end the lawyer will likely be living in their mom’s family home? Advantage: Doctors.

5. Who does the most free work for the public?

Washington lawyers do thousands of hours of pro bono work annually. No, a doctor getting a reduced, negotiated rate of pay from insurance companies is not the same. Advantage: Lawyers.

6. Who is more likely to retire?

Reduced, negotiated payments from an insurance company are still negotiable. Accounts receivable aren’t. Advantage: Doctors.

7. Which group would more likely do something else if they could?

Dr. Cureusall: Working with ill people day in and day out is stressful and takes its toll on physicians. Most are anxious for retirement.

Me: Most lawyers find their work interesting and challenging. Yeah, sometimes a pain, often stressful, but there is no millennium clock above lawyers’ desks counting down the time until Medicare (and, unfortunately in some cases, Medicaid) kicks in. Advantage: Lawyers.

8. Does the money-grubbing lawyer shoving wads of money in his cheap suit pockets and the doctor who gets sued for malpractice every time she diagnoses a cold really exist?

We agreed these characters exist only in the mind of some wretched advertising representative stuffing money in her own pocket from such ads. Advantage: No one.

9. Is some overhaul of the tort system needed?

Dr. Cureusall: Yes.

Me: Probably. But how about limiting awards against lawyers and accountants, too? Advantage: No one.

My friend and I, after some potshots and good-versus-evil characterizations, agreed that our professions have more in common than not. Members of each profession just need to sit down, without prejudices or chips on our shoulders, and try to come together in compromise. If we don’t, an initiative or two may take such decisions away from both professions. 

Poulsho lawyer Jeff Tolman has agreed to contribute several “Zeitgeist Postcard”s a year. Bar News welcomes him back. © Copyright Jeff Tolman 2005. All rights reserved.
Improving Public Defense — Working Together to Fulfill Gideon’s Promise

BY MARY JANE FERGUSON

The WSBA’s Committee on Public Defense (CPD) is continuing its efforts to improve public defense in Washington state with renewed support for state funding for public defense in the 2006 legislative session. “House Bill 1542 was passed last session with overwhelming bipartisan support, and it was a major step forward,” noted CPD Co-chair Jon Ostlund. Ostlund is director of the Whatcom County Office of Public Defense. Under the provisions of the bill, counties either meeting, or working toward meeting, the public defense standards endorsed by the WSBA would qualify to receive partial state funding for public defense. However, the Legislature failed to fund the bill.

“The 2006 legislative session is our opportunity to make substantial progress to improve public defense by urging the Legislature to fund 1542,” Ostlund said. The Washington State Office of Public Defense (OPD) has asked the Legislature for nearly $16 million to implement the bill. Joanne Moore, OPD director, noted, “State funding under 1542 would assist cash-strapped counties, as well as build standards into the public defense services which the counties are providing.”

Moore noted that the Legislature provided important funding in last year’s budget to enable the OPD to start several new programs, including the creation of two new positions for public-defense services managers to serve as liaisons to counties and provide information on contracting for public-defense services. “We’re delighted to have Terry Mulligan and George Yeannakis, both long-time public defenders in Washington state, serving as our new public defense services managers,” Moore said. “They’ve already been able to meet with county officials who are making decisions about public defense services in their counties.”

Also funded by the Legislature last session were new pilot programs, training, and resources for trial-level public defenders. Working closely with local officials, OPD has established pilot programs in Bellingham Municipal Court, Thurston County District Court, and Grant County Juvenile Court. Based on data and information that will be gathered during these programs, OPD will make recommendations to the Legislature regarding the improvement of public defense in Washington state. In addition to the pilot programs, OPD will be conducting a series of regional trainings for public defenders in the next year and a half. OPD has also contracted with the Washington Defender Association to provide a half-time felony resource attorney and a half-time misdemeanor resource attorney to answer questions and develop materials for public defenders.

“This new funding is an important first step in state participation in trial-level public defense,” Moore said. “The Washington State Courts Board for Judicial Administration named the improvement of indigent defense services as one of its highest priorities. Now the Legislature needs to recognize that state funding is needed to support public defense in Washington state. Study after study in Washington state has found that the public defense provided by many counties is inadequate. A 2002 national study ranked Washington 44th in state funding for public defense.”

Other recent studies by the ACLU (“The Unfulfilled Promise of Gideon”) and the WSBA’s Blue Ribbon Panel Report published in 2004 pointed to the serious inadequacies of public defense in some counties in the state. The Blue Ribbon Panel noted that the quality of public defense varies widely across the state. While some indigent defendants receive high-quality representation, others “are poorly served, even victimized, by those entrusted with protecting their civil rights.” A series of articles published by the Seattle Times highlighted cases of innocent individuals who were convicted and spent years in state prison after their public-defense attorney failed to effectively represent them.

In November 2005, an ACLU lawsuit against Grant County was settled after the court found that it was "virtually
uncontested” that the public defense system there “suffered from systemic deficiencies” and that defendants had a “well-grounded fear of immediate invasion of the right to effective assistance of counsel.”

“The lawsuit settlement sends a clear message to all the counties in Washington state that inadequate public defense will no longer be tolerated as business as usual,” Ostlund noted. In addition to the funding for indigent representation in criminal cases, OPD is also seeking $11 million to fund statewide coverage of OPD’s parents’ attorneys program for child-welfare cases. The program, which was tested in Pierce and Benton-Franklin juvenile courts, was expanded to about one-third of the counties by the Legislature last year. It provides improved representation to parents whose parental rights are at stake in child-welfare actions. “This program has been shown to allow more parents to access services to rehabilitate their lives, succeed in their cases, and safely raise their children,” Moore said. “More Washington children can safely grow up at home, instead of in paid care.”

The Legislature first provided additional funding for parents’ representation after a 1999 investigative report by OPD found that almost all parents in child-welfare cases were indigent, and many of them were inadequately represented by underpaid attorneys supplied by the counties. The report found that the state’s attorneys in these cases were funded at a level three times higher than the average level of funding for parents’ representation.

Moore noted, “Washington state prides itself on having a just legal system and one that protects innocence. It’s time for us to make sure our legal system upholds our values and respects our constitutional mandate for fair representation.”

Mary Jane Ferguson is deputy director of the Washington State Office of Public Defense and was formerly legal-services manager at the Washington State Lottery and an appellate defender.
Mom Pays for Son’s Dissolution — Now What?
Any Ethical Problems?  

BY NANCY BICKFORD MILLER

M a Joad never liked her daughter-in-law Daisy Mae, and leaped at the chance to pay for Billy Bob Joad’s dissolution — though she called it a divorce. She expected to sit in on attorney meetings and receive copies of court documents and letters. But straight-arrow lawyer Tommy Swift had a problem. What about Rule of Professional Conduct (RPC) 1.8(f)? That rule provides that a lawyer who is representing a client in a matter: 

(f) Shall not accept compensation for representing a client from one other than the client unless:
(1) The client consents after consultation;  
(2) There is no interference with the lawyer’s independence of professional judgment or with the client-lawyer relationship; and
(3) Information relating to representation of a client is protected as required by rule 1.6.

Ma was suspicious about the idea that Tommy wanted to meet privately with Billy Bob. She was even more upset after this private meeting when Billy Bob admitted that he loved Daisy Mae and that he actually wanted a “divorce” from his mother.  

In the real world, fee-paying by friends, relatives, or employers is not uncommon. But the paying party is often surprised that no rights are being purchased and that decisions regarding the representation must be made by the client. A related rule to RPC 1.8(f) is RPC 5.4(c), which provides:  

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.

It is incumbent on the lawyer to make the relationship clear at the beginning of the representation, preferably in writing, perhaps including a warning of the pressures on the client that may occur from accepting another’s payment of the fee and of issues that may arise, depending on the type of representation. If the fee-payer and the client are asked to sign the attorney’s standard, unmodified fee agreement, without specific language addressing decision-making and confidentiality issues, the result may be ambiguity at best.

One question in the fee-paying relationship is how fees and billing will be handled. The attorney cannot provide detailed, narrative billing statements to the fee payer that disclose client confidences and secrets through the description of the professional services being rendered, unless the client consents.  

The client may want the fee-paying friend or other party to participate in attorney-client communication — for moral support or to give advice. But the client must make the decision, without duress, whether to allow the fee-payer to participate in meetings with counsel, or to receive copies of documents. (And the lawyer should consider the possibility of inadvertent waiver of attorney-client privilege.)

If an advance fee payment is made, an issue may arise as to who may make the decision to terminate the representation and who has the right to receive any fee refunds. WSBA Informal Opinion 1863 (1999) is illustrative of this type of problem, where a wife paid a flat legal fee and a cost deposit to her husband’s immigration lawyer and later asked to withdraw her sponsorship for the husband’s citizenship petition and for a fee refund. An important point for a written representation agreement is to address who will receive any refunds, e.g., from overpayments or advance fee deposits.  

If the client and the fee-payer are co-clients, issues may arise as to decision-making regarding conduct of litigation or upon discovery of misconduct, e.g., by an employee who is a codefendant with his employer, who is paying all legal fees. Will the employer pay legal fees for the duration of the litigation even if separate counsel becomes necessary because of a conflict? And will the employee’s new counsel be able to represent the employee without the possibility of interference from the fee-paying employer?

It is tempting to accept fees unquestioningly from a solvent payer on behalf of a client who may have financial problems — Ma Joad said she would pay lawyer Tommy Swift all cash, with revenues from a small retail distillery she owned. But carefully defining the relationship, including consideration of any pitfalls, will avoid future ethical problems.

Nancy Bickford Miller is a lawyer with the WSBA Office of Disciplinary Counsel. In private practice as a law-firm partner and corporate counsel, her practice emphasized commercial real estate and banking. She is a graduate of Stanford University and the University of Washington School of Law. She was recently appointed to the City of Seattle Ethics and Elections Commission. She has written and lectured on various topics, including real estate and ethics.

NOTES
1. This article does not address possible conflicts in insurance-funded representations or other types of indemnity defenses. It also does not discuss payment of criminal defense fees by one other than the defendant, although RPC 1.8(f) does apply to such payments.
2. “Consult” or “consultation” denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question. (RPC Terminology section.)
3. See 1 Geoffrey C. Hazard Jr. and W. William Hodes, The Law of Lawyering § 12.13, for a discussion and illustrative examples of
situations where the parent pays the legal fees for a child and how the analysis differs with adult and minor children.

4. See WSBA Formal Op. 195 (1999), (Disclosure of Client Confidences or Secrets in Detailed Billing Statements to Persons Other Than the Client; Consent of the Client to Insurer’s Review of Billing Statements by Outside Auditor; Ethical Compliance with “Billing Guidelines” of a Person Other than the Client).

5. Informal opinions are issued in response to specific inquiries, and reflect the opinion of the Rules of Professional Conduct Committee only. They are not individually approved by the Board of Governors and do not reflect the official opinion of the WSBA. Informal opinions can be accessed on the WSBA’s website at pro.wsba.org/io/search.asp.

6. The RPC Committee declined to address most questions posed by the inquiring lawyer, because of an absence of specific facts.

7. See also WSBA Informal Opinions 1014 (1987), 1925 (2000), 1978 (2002), and 2085 (2004), which cite RPC 1.8(f) but are based on somewhat specialized facts.

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Committee Reports

Bar Examiners Committee
The Bar Examiners Committee administered the 2005 winter and summer bar exams. Membership on the Committee is demanding, as members must successfully complete a mandatory, day-long training session on question creation and grading, as well as successful submission of a question to the Question Bank. Members of the Committee attended the National Conference of Bar Examiners annual meeting in Seattle and its three-day training session at the University of Wisconsin. The Committee has also been involved in the development and implementation of laptop-computer testing for the bar exam. The laptop exam will be available at the 2006 winter exam to interested individuals for a fee. The Committee is also involved in studying the feasibility of administering the exam in more than one location. Since the Board of Governors’ vote to include Indian law as part of the exam no later than 2007, the Committee has been developing questions for that area of law.

Civil Rights Committee
The Civil Rights Committee continued to support a resolution to include sexual orientation in the state’s civil rights laws. Several subcommittees continued their work on various issues including the diversity subcommittee. The Committee renewed its support of the Board of Governors’ effort to appoint members with diverse backgrounds and an interest in civil rights issues.

Committee for Diversity
In October 2004, the Committee for Diversity again jointly hosted panel discussions and mock interviews with Seattle University, Gonzaga University, and the University of Washington. The Committee hosted a well-attended reception for minority students and law associations’ leadership. In addition to the opportunity for students and Bar leaders to meet informally, attendees learned more about the organizational structure of the WSBA through a guided tour of the offices.

Electronic Communications Committee
To assist with the rollout of Casemaker as a new benefit to members, the Electronic Communications Committee provided Casemaker testing and validation in order to provide the most robust product. The Committee sponsored a presentation for members on electronic case filing from Roger Winters, the electronic court records program manager for the King County Clerk’s Office. The Committee also continued its mission to inform and assist members on the use of technology.

Judicial Recommendation Committee
The Judicial Recommendation Committee conducted a mandatory orientation to provide guidance and training for new members. Many returning members also attended this session. The Committee interviewed nine judicial candidates and continued to fine-tune the interview process including pre-interview reference checking and

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Williams Love O’Leary Craine & Powers, P.C.
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Leslie W. O’Leary, Esq.
9755 SW Barnes Road, Suite 450
Portland, OR 97225
Telephone: (503) 295-2924
www.wdolaw.com

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Pro Bono and Legal Aid Committee
The Pro Bono and Legal Aid Committee promoted and publicized amendments to RPC 6.1 and revised the 2004 voluntary reporting form to address questions and concerns, and monitored and analyzed data compiled from 2004 reporting forms. The Committee initiated discussions with Judge Karen Overstreet about unbundling legal services in bankruptcy cases, and priority for volunteer attorneys on motions calendars and telephonic appearances. These ideas were circulated at the spring bankruptcy judicial conference and Ninth District Court Conference. The Committee met with Justice Mary Fairhurst and Justice Bobbe Bridge to discuss ways for the Washington State Supreme Court to encourage pro bono service, drafted two articles to be used for this purpose, and is developing an “honor roll” to recognize attorneys who provide an extraordinary number of pro bono hours. The Committee met with the MCLE Board to oppose its proposal to revise APR 8(e) to mandate CLE compliance for Emeritus attorneys and agreed to participate on a subcommittee to review and draft a compromise that would only affect Emeritus attorneys when and if they return to active status.

Professionalism Committee
The Professionalism Committee continued to promote the Random Acts of Professionalism Program, and in September, 2004-2005 Committee Chair Peg Callaway made a presentation about the program at the Fall Judicial Conference. The Committee is happy to report that use of the program has increased among both lawyers and judges, and those using it are pleased there is a program to recognize others for their professionalism. The Committee made progress on working with the county bar associations to have WSBA Creed of Professionalism plaques in courtrooms throughout the state. The Committee also made contacts with the law schools to help foster professionalism early on. Additionally, brown-bag CLEs were presented at several law firms.

Public Information and Media Relations Committee
The Public Information and Media Relations Committee hosted a public forum at the Seattle Central Library titled “What Was the Judge Thinking? The Duty to Decide.” The goal of the program was to enlighten the public about the role of judges, and to foster appreciation and understanding of their role in our justice system. The panel was outstanding: Supreme Court Justice Barbara Madsen, King County Superior Court Judge William Downing, former King County Su-
Section Reports

Administrative Law
The Washington Administrative Procedure Act was the focus of a well-attended annual meeting and CLE held in September. During the meeting, the first annual Frank Homan Award was given to C. Robert Wallis, administrative law division director of the Washington State Utilities and Transportation Commission. Among other seminars, the Section hosted a public records luncheon CLE in Spokane as part of its priority to provide local seminars in Eastern Washington. The Board of Trustees created a Diversity and Young Lawyers Committee with immediate plans to sponsor a practice tips seminar for new lawyers.

Kitsap Legal Services received a $1,500 contribution through the Section’s annual grant program.

Animal Law
The Section newsletter, complete with summaries of recent animal law cases submitted by practitioners, legislative updates, and other animal law resources, is considered to be one of the most valuable benefits by the membership. In April, the Section cosponsored the third annual Animal Law Conference, highlighting animal law legislation issues from the national, state, and local perspective. Earlier in the year, the Section sponsored a well-attended seminar in Spokane on the standards of care in regard to veterinary malpractice, animal abuse, and dangerous dogs. The Section leadership reviewed animal law-related bills throughout the 2005 legislative year.

Antitrust, Consumer Protection and Unfair Business Practices
The annual meeting and CLE held in November highlighted trends in antitrust policy from a state, national, and international perspective. This year’s seminar continued the reputation of being a well-attended and highly acclaimed event, with members valuing the substantive material and complimentary copy of the Section’s third edition of the Washington Antitrust and Consumer Protection Handbook. Last published in 2001, work has begun on a handbook supplement slated to be completed in time for the 2006 annual meeting and CLE.

Business Law
A valuable benefit to members this past year was receipt of the Washington Business Corporations Act (RCW 23B) Sourcebook produced by the Section’s Corporate Act Revision Committee. In addition to the midyear meeting and a successful annual Northwest Securities Institute cosponsored with the CLE Society of British Columbia, the Section sponsored other CLE offerings, including cosponsoring a licensing seminar with the Intellectual Property Section, continued work on legislative issues, and contributed an additional $10,000...
to Washington Attorneys Assisting Community Organizations (WAACO), a statewide organization providing free legal assistance to nonprofits on business-related matters. A highlight of the midyear meeting held in May was Washington State Attorney General Rob McKenna as the Kevin McMahon Speaker.

**Construction Law**
In June 2005, the Section sponsored a profitable midyear CLE titled "Big Projects, Big Problems." One of the topical-issues forums held throughout the year was an October 2004 presentation on developing a regional transportation investment plan which had a follow-up session in the spring. Priorities for the coming year include planning the next annual midyear meeting and forum series, providing local events for members in Eastern Washington, and monitoring proposed legislation.

**Corporate Law Department**
The Section continued its successful quarterly dinner and CLE program featuring topics for in-house counsel. Special guest presenters over the last several months included Washington State Attorney General Rob McKenna and former Governor Gary Locke. Every other year, the Section sponsors the Corporate Counsel Institute with the next event scheduled this fall.

**Creditor-Debtor**
A successful seminar held in September at Gonzaga University highlighted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. As part of its annual activities, the Section cosponsored the 2005 annual Northwest Bankruptcy Institute CLE and held an annual skills-development and hot-topics seminar in December 2004. In its first year of implementing an annual grants program to support the work of nonprofit organizations providing creditor-debtor legal services, the Section contributed a total of $15,000 to five service providers in four counties. The Section also provided comment on various bills during the 2005 legislative session.

**Criminal Law**
The Section cosponsored the 12th annual Criminal Justice Institute held in September 2005. In addition to low-cost full-day seminars on criminal law, free ethics CLEs were held during the past year at both Gonzaga and Seattle university law schools. Beginning in the fall of 2005, hosted meetings will be held with students at the state's three law schools. The Section began to publish a newsletter again and the leadership reviewed criminal-law-related bills throughout the 2005 legislative year.

**Dispute Resolution**
A major Section accomplishment was helping to steer the Uniform Mediation Act and the Revised Uniform Arbitration Act to enactment during the 2005 legislative session. The annual meeting in September 2005 featured a CLE introducing these two acts, and the Section was one of the cosponsors of the 13th annual Northwest Dispute Resolution Conference held earlier in the year.

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<td>Drug Litigation</td>
<td>Product Liability</td>
<td>Social Security</td>
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The Section awarded a $2,000 dispute resolution summer clerkship to a Seattle University School of Law student who had the opportunity to work at a county dispute resolution center. Monthly member meetings often include educational programs such as an interactive session on ethics issues in mediation.

**Elder Law**

In addition to other CLEs sponsored by the Section during the past year, a highlight of the 2005 annual fall Elder Law Conference was featured speaker William Colby, lawyer for the family of Nancy Cruzan. The Section remained active in legislative issues: in addition to advocating for an increase in the Medicaid Medically Needy Income Level, a Public Guardianship Task Force was formed. Following an August 2005 report citing needs, costs, benefits, and recommendations, the Executive Committee adopted a resolution of support, including moving forward on steps for implementation. As part of its annual grant program, the Section awarded a total of $10,000 to three agencies providing legal services to seniors. An additional $20,000 contribution was made to LAW Fund.

**Environmental and Land Use Law**

The Section sponsored a quarterly CLE and reception, and the midyear meeting held at Lake Chelan in May provided a comprehensive review of current environmental and land use law issues. The Section’s new law-related curriculum for secondary education was also highlighted. The quarterly newsletter continues to be a significant member benefit, providing a wide variety of articles, updates, and reports. The Section contributed to the student environmental law groups at Gonzaga and Seattle universities with plans to sponsor internships at all three law schools in the next year.

**Family Law**

The Section’s midyear meeting held in June at Ocean Shores featured a nationally recognized keynote speaker focusing on how attorneys can help address the impact of divorce on the children of their clients. The annual skills-training seminar for lawyers new to family law was held in the spring. Expending significant effort in reviewing, analyzing, and responding to bills and legislation that may affect family law, the Section published status reports for its members during the legislative session. In tandem with a member of the executive committee serving on a workgroup charged by the governor to review the state’s child support statute and report to the Legislature, the Section conducted a questionnaire and hosted a stakeholder symposium in August.

With the inception of a grants program in 2004, the Section contributed over $5,000 toward volunteer legal service programs throughout the state and the Washington State Bar Foundation’s Student Loan Repayment Assistance Program (LRAP).

**Health Law**

In order to determine member interests, a brief written survey was conducted in the fall of 2004. In November, the Section sponsored a CLE addressing the healthcare agenda for the upcoming 2005 legislative session, and in September, a CLE titled “Hot Button Issues in Pesticide Regulation” was cosponsored with the Environmental and Land Use Law Section. The Section webpages on the WSBA website continue to be expanded, particularly with links to local and national resources.

**Indian Law**

A major accomplishment for the Section, in partnership with the Northwest Indian Bar Association, was unanimous approval by the WSBA Board of Governors to include federal Indian jurisdictional principles on the Washington State Bar Exam, effective the summer of 2007. The annual meeting and CLE held in April featured Prof. Charles Wilkinson, leading Indian-rights scholar and author. As part of its annual student scholarship program, the Section awarded a total of $3,000 to six Northwest Native law students.

**Intellectual Property**

Outreach to the membership throughout the state as well as the three law schools was a major focus for the year. Successful CLEs included the 10th annual Intellectual Property Institute and a licensing seminar jointly sponsored with the WSBA Business Law Section. The Section sponsored a joint CLE for intellectual property practitioners with the Gonzaga University School of Law. “Meet-and-greet” events were organized at all three law schools, during which a $1,000 intellectual property law student scholarship was awarded to each institution. A significant redesign of the Section’s website was initiated with plans to launch in 2006.
International Practice
With networking as an important factor for Section members, the year kicked off with the annual Foreign Lawyers Reception. The Section continues to coordinate events, including CLEs and brown-bag forums, with other sections and organizations related to the international law field. Among other topics, brown-bag forums addressed international dispute resolution and Russian civil codes. Members were invited to a meeting of the Consular Association of Washington, which highlighted the Section and addressed ways for the two entities to collaborate. The Section's newsletter is now published electronically rather than in hard copy.

Labor and Employment Law
The Section held its fourth annual Labor and Employment Law Conference featuring a keynote address by the Hon. Robert S. Lasnik. An online survey was conducted to structure programs that meet member needs and interests throughout the state. As part of expanding relationships with the law schools, the Section established an annual labor and employment law summer internship program and provided a $2,500 grant to students attending Seattle University School of Law and Gonzaga University School of Law. The Section plans to support an internship at all three law schools in the next year. Contributions were also made to the Unemployment Law Project in Seattle and the Washington State Bar Foundation's Student Loan Repayment Assistance Program.

Legal Services to the Armed Forces
The Board of Governors approved the creation of this WSBA section in April 2004, with activation in October 2004. Prior to becoming a section, it had served as a standing committee since 1996. The first year focused on establishing the leadership and assessing member benefits, including the development of a lawyer referral resource for the armed forces on the WSBA website.

Litigation
The Section's midyear CLE, held at Lake Chelan in June, continued the tradition of providing the highest quality litigation-skills seminar featuring national lecturer and author David Gross on the power-trial method approach. A Section representative attended all Board of Governors meetings, providing a voice for the membership and trial lawyers. The Executive Committee hosted its annual meeting with the Washington State Supreme Court and was active in responding to numerous litigation-related legislative issues during the 2005 session. With a new format, the newsletter is now published three times a year.

Real Property, Probate and Trust
Based on ratings from attendees, the Section's 2005 midyear meeting, held in Spokane, met established expectations for outstanding presentations. In other CLEs sponsored by the Section, the annual Real Estate Conference and a trust and estate litigation seminar were both well-attended. Providing novel ways to
As in recent years, the attendance for information and numerous resources. Members have quick access to current information and numerous resources.

**Senior Lawyers**
As in recent years, the attendance for the annual meeting and seminar, held at the SeaTac Marriott in April 2005, was high. The Executive Committee worked as a team to select the full-day program, resulting in well-received presentations, which included conflicts of interest, the state estate tax, vulnerable adults, current developments in elder law, and other topics. A valued member resource, the Section's quarterly newsletter, *Life Begins*, often includes articles from the WSBA's other practice sections.

**Solo and Small Practice (formerly Law Practice Management and Technology)**
As a significant move for the Section, in July 2005, the Board of Governors approved changing the name to Solo and Small Practice to more clearly identify its focus. Among other CLEs held during the year, members benefited from the annual Northwest Law Office Management Institute and Expo, the popular Winning Strategies for New Attorneys, and a practical business management seminar held in May cosponsored with the Puget Sound Chapter of the Association of Legal Administrators.

**Taxation Law**
In January, the Section hosted its first reception for the tax-court judge presiding over the year’s Seattle trial session. The Section was pleased to have Robert D. Comfort, tax and tax policy vice president of Amazon.com, as its guest speaker for the 2005 annual tax law luncheon. Prof. Roland Hjorth, dean emeritus of the University of Washington School of Law, was the recipient of the Section’s Stouder Award. In addition to the membership, 30 students from the University of Washington graduate program in taxation attended the luncheon, where an annual $5,000 scholarship was awarded to one individual. Numerous tax-related bills were monitored during the 2005 legislative year.

**World Peace Through Law**
A major benefit for Section members is the monthly speaker meeting and free CLE on human-rights law issues. Given the diversity of issues and outstanding presenters, the sessions have had high attendance. Presentations in the past year reflect the wealth of international human-rights law information provided, including Iraq’s new constitution, judicial reform in Russia, the international criminal tribunal in Rwanda, defending the rights of environmentalists, the Alien Tort Claims Act, global health and human rights, human trafficking, and forensic investigations and human rights.
The Lawyers’ Fund for Client Protection wishes to give notice that an item concerning Anna-Mari Sarkanen, WSBA No. 8984, published in February 2004 in the Washington State Bar News and on the WSBA website, has been withdrawn in its entirety.

The Committee and the Bar Association apologize to Ms. Sarkanen for its publication and regret any resulting damage it has caused her.

Lawyers’ Fund for Client Protection

By Robert Welden

NOTE: This is part two of a two-part report. Part one appeared in January’s Bar News.

The Lawyers’ Fund for Client Protection Committee meets quarterly to review applications for gifts from the Fund. The Committee is authorized to make gifts of up to $25,000 to eligible applicants. On applications for more than $25,000, the Committee makes recommendations to the Board of Governors who are the Fund’s trustees. At their meeting on November 18, 2005 the Committee took the following actions:

Donna J. Light (WSBA No. 22465; suspended pending discipline; disbarment recommended) — Light was suspended from practice pending the outcome of disciplinary proceedings. The petition for interim suspension states that she posed a threat to the public because, among other things, she engaged in a pattern of charging clients flat fees for legal work, failed to perform the work, and failed to return unearned fees.

Applicant I: Applicants paid Light $500 regarding a dispute in the purchase of a boat. Subsequently, Light advised the Applicants to file a Chapter 13 bankruptcy petition. In the disciplinary proceeding, the hearing officer found that this was incompetent advice because Light “knew or should have known that the Applicants would lose the boat if they filed a bankruptcy.” A fee agreement was signed providing for a fee of $1,500 of which Applicants paid $1,400. The total fees paid to Light, including the original $500, were $2,150. Applicants signed the bankruptcy petition but Light did not file it. She set a meeting with Applicants, but failed to appear. The next day, Applicants’ car was repossessed. Applicants hired a new lawyer, who filed a bankruptcy petition, that same day. At a meeting of creditors, Applicants learned that a few days previous, Light filed a bankruptcy petition on behalf of the Applicants without advising them. She was notified by the court clerk that the petition had been filed without the required filing fee, and without required Social Security numbers. The notice advised that if the fee and information was not supplied, the case would be referred to the judge for dismissal. She received a second notice that the trustee would move for dismissal unless she filed missing schedules, statement of financial affairs, and Chapter 13 plan. Light did not comply with the notices. The trustee moved to dismiss, which was granted. Applicants were required to sell the boat they had originally hired Light to protect. The hearing officer ordered restitution and the Committee approved payment of $2,150.

Applicant J: Applicant paid Light $700 to represent him in a Chapter 7 bankruptcy that he had filed pro se. A creditor was trying to execute against his father’s savings account at a credit union on which Applicant was listed as joint owner. The credit union filed a Motion for Relief from Stay. Light advised Applicant that he did not need to attend, and Light failed to appear. The credit union’s motion was granted and Applicant’s petition for bankruptcy was dismissed for failure to appear at the meeting of creditors. The hearing officer found that Light received notice of the dismissal but did not advise Applicant. She took no further action, and the creditor executed on the credit union account. The hearing officer found that Light intentionally failed to return any fees to Applicant. He ordered restitution of $700, and the Committee approved payment in that amount.

Applicant K: Applicant paid Light $900 to represent her in a child custody proceeding that Applicant had filed pro se. Applicant told Light that the father of her child was willing to stipulate to allow Applicant to have full custody of their child. She gave Light all of her paperwork relating to the custody issues. Light said she would draft the necessary papers in 48 hours. After their initial meeting, Applicant could not reach Light, who performed no services for Applicant. The hearing officer found that Light obtained “funds from [Applicant] through fraud and theft by deception and by engaging in deceitful conduct.” He ordered restitution of $900 and the Committee approved payment in that amount.

Applicant L: Applicant’s boyfriend had been involved in an accident and an insurance company was seeking to recover $67,000 from him. Applicant, her boyfriend, and Applicant’s mother met with Light who arrived with no briefcase, notepaper, or business cards. Applicant’s mother lent Light her notepad to make notes. Her mother noticed that when Light returned her notepad to her, Light’s notes were still in it. They later learned that Light paid $10 to use the office of another lawyer to meet with them. They agreed on a fee of $1,500. Applicant paid Light $100 in cash (for which she was given no receipt) and $400 by check. She also gave Light a post-dated check for $250. They agreed to pay an additional $750 in the following week. Later, Applicant told Light that she had stopped payment on the post-dated check and would not write another one unless Light returned their original documents and provided a receipt for the $100 cash payment. Light said she would mail them that day. Later that day, Applicant got a call from her bank that Light was trying to cash the stop-payment check. The bank confiscated it from Light, and Applicant picked it up. When she got home, there were two messages from
Light on the answering machine saying Applicant owed her $3,500 and threatening to sue. Applicant discharged Light and requested a receipt for the $100 and return of Smith’s original documents. Light never responded. The Committee approved payment of $500.

**Applicant M:** Applicants paid Light $450 to represent them in a stepfather adoption. They told Light that the father had agreed to terminate his parental rights in exchange for a waiver of back child support. Light drafted a document titled “Father’s Consent to Adoption, Consent to Termination of Parent-Child Relationship and Waiver of Right to Receive Notice of Proceedings.” The hearing officer found that Light “performed minimal and/or reasonable research,” she would have known that this was inadequate to effectuate an adoption. He found that “at the time [Light] drafted the Consent to Adopt, [she] knew that she did not know the procedures for effectuating an adoption by consent.” After the document was signed, Light tried to file it but the court clerk refused to accept it because it did not comply with the court rules. Light refused to return Applicants’ fees. The hearing officer ordered restitution of $450 and the Committee approved payment of that amount.

**Applicant N:** Applicant hired Light to represent her boyfriend, who was in jail on criminal-assault charges and a child-custody matter. Light agreed to represent him in both matters for $1,500. Light told Applicant she would appear at the arraignment, and that Applicant should have a cashier’s check for $1,100 at that time. Light arrived after the arraignment was over and the boyfriend had been returned to jail. Applicant gave Light the check for $1,100. Light told her she would file for temporary custody of the boyfriend’s child. Light told her that this could be done even though he was in jail, because she knew a commissioner who would sign the papers without asking any questions. She indicated that she was then going to the jail to meet with him. However, she did not meet with him until one week later. Applicant became concerned when Light failed to visit her boyfriend in jail, and decided to hire another lawyer. Applicant told Light she wanted her money back, but Light told her she had done too much work on the case and could not give her a refund, and that the boyfriend was her client and that only he could fire her. As of that time, Light had never spoken with him.

The new lawyer entered a notice of appearance and request for discovery (Light had not done so). On that day a hearing was held, the boyfriend’s bail was reduced, and he was released from jail. Applicant and her boyfriend discovered that Light had told each of them that she had been hired by the other. Applicant and her boyfriend sent a letter telling Light she was terminated, and requesting a refund. The hearing officer ordered restitution to Applicant of $1,100 and the Committee approved payment in that amount.

**Applicant O:** Applicant paid Light $500 to write a demand letter after her boyfriend signed a lease and then failed to pay rent. Applicant left messages but Light did not return her calls and then her phone was disconnected. The hearing officer found that Light had no intention of providing legal services to Applicant, and intended to obtain funds by fraud and/or theft by deception. He ordered restoration of $500 and the Committee approved payment in that amount.

**R. Stuart Phillips** (WSBA No. 29701; disbarred) — Phillips represented Applicant’s mother, for whom Applicant was trustee, on a one-third contingent-fee basis in a claim against a hospital. Mediation resulted in a settlement of $150,000. Payment was made to Phillips. Applicant received a check from Phillips for $75,000. In an accompanying letter Phillips wrote that he had to make sure there was no subrogation claim to be satisfied, and “I can distribute the remainder in ten days (after their notice period runs).” Applicant did not hear from Phillips again until he reached him in December 2004. Phillips told him he would send the money by Christmas. Applicant heard nothing more from Phillips and the following February he was disbarred. Applicant sent an e-mail to Phillips, which read: “What do I do now, Sir. My mother is coming home today after 6 days in the hospital and 6 weeks in a nursing center. She needs 24 hour care. You sat in her front room and lied to her. I thought you were an honest man. How could you do this to my mom? Would you do this to your mother? I await your response.”

Phillips never paid the balance of funds to Applicant nor rendered any accounting for them. The Committee approved payment of $25,000.

**Charles E. Robbins** (WSBA No. 3976; disbarred) — Robbins and Applicant entered into a one-third contingent-fee

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agreement with regard to an automobile accident. Robbins settled Applicant’s claim against the other driver’s insurer for $47,500. Robbins was entitled to a one-third contingent fee of $15,833.33 plus costs totaling $1,012.40. Because the settlement was deemed inadequate, Robbins advised Applicant to file an uninsured motorist (UIM) claim with the insurer of the vehicle he was in. Robbins paid the balance from the settlement to Applicant, but said that he was keeping $8,551.43 “as attorney fees and costs in the pending UIM action.” Applicant never agreed to any fees to be paid to Robbins other than the one-third contingent fee as provided for in the written fee agreement. Robbins filed a UIM claim, but it was never settled, and it is currently in arbitration. The Committee agreed with Applicant’s position that all work in connection with the automobile accident was to be done pursuant to the written one-third contingent-fee agreement, and that Robbins had no right to pay himself $8,551.43 when he never settled the claim. The Committee approved payment in that amount.

Other Business: The Committee reviewed 10 additional applications that were denied for lack of evidence of dishonest conduct, or as fee disputes or claims for malpractice. Three applications were dismissed, as restitution had been made.

Restitution: Before payment is made to an Applicant, the Applicant must sign a subrogation agreement with the Fund, and the Fund seeks restitution from the lawyers. Because in most cases those lawyers have no assets, the chief avenue of restitution is through court-ordered restitution in criminal cases. Prosecuting attorneys cooperate with the Fund in getting the Fund listed in restitution orders. As of November 2005, seven lawyers were making regular restitution payments to the Fund.

The Committee chair is Tacoma attorney Sarah Richardson. WSBA General Counsel Robert Welden is staff liaison to the Committee.
Board of Governors Seeks Applications for Young Lawyer Seat

Application deadline: February 28, 2006

The WSBA Board of Governors is seeking letters of application for its At-Large Young Lawyer seat. To be eligible, a candidate must be a member of the Washington Young Lawyers Division (WYLD) through April 2006. Any active member of the WSBA is automatically a member of the WYLD until the 31st day of December of the year in which such member reaches the age of 36 or until the 31st day of December of the fifth year in which any such member has been admitted to practice in any state, whichever is later. The elected governor will serve a three-year term commencing on October 1, 2006. For application and election details, visit www.wsba.org/lawyers/groups/wyld/default.htm. Please submit a letter of interest and résumé to: WYLD, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330, or e-mail amyo@wsba.org.

American Bar Association (ABA) House of Delegates

Application Deadline: March 31, 2006

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the ABA House of Delegates representing Washington state. There are four positions available (three incumbents are eligible for reappointment) commencing in August 2006. A written expression of interest and a résumé is required for incumbents seeking reappointment.

The control and administration of the ABA is vested in the House of Delegates, the policymaking body of the ABA. The House, composed of approximately 500 delegates, elects the ABA officers and board and meets out of state twice a year. Delegate attendance is required. The WSBA’s allowance is $800 per year per delegate. Members appointed to the House of Delegates serve a two-year term, with the opportunity to reapply to serve a maximum of three consecutive terms. Please submit a letter of interest and résumé to: WSBA Bar Leaders Division, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330, or e-mail barleaders@wsba.org.

Board of Governors Election

Three positions on the WSBA Board of Governors will be up for election in 2006: governors representing the 1st, 5th, and 7th-West Congressional Districts. These positions are currently held by Kristin G. Olson (1st District), Michael J. Pontarolo (5th District), and Mark A. Johnson (7th-West District).

The WSBA Bylaws provide that any member in good standing, except a member previously elected to the Board of Governors, may be nominated for the office of governor from the congressional district (or geographical region within the 7th District**) in which such member is entitled to vote. Nominations are made by filing a statement of interest and a biographical statement of 100 words or less.

Generally, members are entitled to vote in the congressional district in which the member resides. All out-of-state active WSBA members are eligible to vote in the district of the address of their agent within Washington for the purpose of receiving service of process as required by APR 5(e), or, if specifically designated to the executive director, within the district of their primary Washington practice.

Nomination forms are available from the Office of the Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330, or by calling 206-727-8244, or at www.wsba.org. The WSBA executive director must receive nomination forms by 5 p.m. on Wednesday, March 1, 2006. The Board of Governors determines the official dates of the election. Ballots will be mailed on or about April 15.

*Biographical statements of nominated candidates will be published in the May issue of Bar News.

**The 7th Congressional District is divided into three sub-districts: East, Central, and West. These sub-districts are distinguished by zip codes, and each has one elected governor. For 2006, the West Sub-district (zip codes: 98013, 98070, 98106, 98107, 98116, 98117, 98119, 98121, 98126, 98133, 98136, 98146, 98160, 98177, 98190, 98195, 98199) will elect a new governor.

Casemaker Free Training Session

The WSBA is offering a free Casemaker training session on Thursday, February 23, from noon to 1 p.m. at the WSBA office. To register for the training session call Barbara Konior, J.D., Casemaker coordinator, at 206-733-5983, or e-mail Casemaker@wsba.org. Casemaker is a powerful online legal-research library provided at no additional cost to WSBA members. To check out Casemaker, go to the WSBA website at www.wsba.org and click on the Casemaker logo on the right sidebar.

New MCLE Compliance Report

All active members who were not due to report MCLE compliance at the end of 2005, including new admittees, received a new report — the C4/C5 form — in their 2006 license packets. APR 11.6(a)(3) requires that the WSBA provide an annual report to all active members regarding the credits and courses posted to their MCLE online rosters. This new report will help non-reporting active members to better track their credits, ensuring correct reporting and compliance at the end of their reporting period. If you received the new C4/C5 form in your 2006 license packet, it is for your information only. No action needs to be taken. To make corrections to your MCLE roster, go to pro.wsba.org. Click on the "Member" tab, and then on "Member Login." The online instructions will lead you through the process of creating a password and using the system. Online help is available. For additional help using the MCLE system, or to request an instruction booklet, contact the WSBA Service Center at 800-945-WSBA, 206-443-WSBA, or e-mail questions@wsba.org.
MCLE Certification for Group 2 (2003-2005) Due February 1

Active WSBA members in MCLE Reporting Group 2 (2003-2005) should have received their Continuing Legal Education Certification (C2) forms in the license packets mailed in early December. The deadline for returning the C2 form to the WSBA was February 1. Any C2 forms delivered to the WSBA or postmarked after February 1 will be assessed a late fee. If you did not receive your packet or the C2 form, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA or e-mail questions@wsba.org.

Members in Group 2 include active members who were admitted to the WSBA in 1976-1983 or in 1992, 1995, 1998, or 2001. Members admitted in 2004 are also in Group 2 but are not due to report until the end of 2008. Their first reporting period will be 2006-2008, but any credits earned or on after the day of admittance to the WSBA may be counted for compliance.

The Continuing Legal Education Certification (C2/C3) form in your license packet is an affidavit that lists all the WSBA-approved courses that were listed in your MCLE online profile for the 2003-2005 reporting period as of October. The C2 form, not your online profile, is the official record of MCLE compliance. If you have taken other courses since the C2 was printed, and they are all listed in your online profile, you may print and attach a copy of the online profile to the C2 form. Indicate on your C2 form that the attached profile is the true and correct record of the courses taken for the reporting period. Alternatively, you may simply write in the additional WSBA-approved courses you took on the back of the C2 form (the C3 form).

All WSBA-approved courses you list on your C2 form must have an Activity ID number. This number is listed on your online MCLE profile and is assigned at the time that the Form 1 for each course is reviewed. If you have taken courses that have not yet been approved by the WSBA, please submit Form 1s for these courses immediately to ensure that they are approved before your C2 is due. Due to high volumes, Form 1s submitted electronically (at pro.wsba.org) could take up to four weeks or more to process if they are submitted in October through February. Paper Form 1s may take up to six weeks or more to process during the same period. If you submit a paper Form 1, you will be notified by mail of its Activity ID number.

The deadline for completing the C2/C3 form and returning it to the WSBA was February 1, 2006. All active members in Group 2 (except those admitted in 2004) must send in a completed C2/C3 form.

If you were not able to meet the credit requirement by December 31, 2005, and need more time to complete your credits, an automatic extension will be granted until May 1, 2006. There is no need to apply for it. However, a late fee will be imposed if you took any courses after December 31 that were needed for compliance or if your C2 form is submitted late. If this is the first reporting period in which you have not met 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 or 206-443-WSBA, or e-mail questions@wsba.org.

MCLE Certification for Active Members — General Information

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


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<th>Reporting Group</th>
<th>Next Reporting Period</th>
<th>Complete Credits by</th>
<th>File C2 Form by</th>
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<tr>
<td>Group 2</td>
<td>2003-2005</td>
<td>December 31, 2005</td>
<td>February 1, 2006</td>
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Credit Requirements. 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 WSBA-approved continuing legal education (CLE) activities must be taken, including a minimum of 30 live credits and six ethics credits.
- A/V courses cannot be more than five years old, except approved “skills based” courses.
- Six pro bono credits can be earned per year. Two of these credits are for approved annual training, which must be taken before being able to earn credit for the pro bono work. Four pro bono credits may be earned each year if at least four hours of pro bono work was provided through a qualified legal services provider.

Carry-over CLE Credits. Carry-over credits from the previous reporting period may be used to meet the requirements of the current reporting period. If your current reporting period credits exceed 45, you can carry over a maximum combined total of 15 credits to your next reporting period. Only two ethics credits and five A/V credits may be carried over.

C2 Reporting Requirement. All active members due to report are required to file a Continuing Legal Education Certification (C2) form with all CLE courses taken for credit compliance. The deadline for filing your C2 form is February 1 of the year following the end of your reporting period. Note:

- Your online roster is not a substitute for filing the C2 form.
- The C2 form is an affidavit and must be signed and dated, and the city and state where signed must be identified.
- C2 forms are included in the license packets sent in early December to all members due to report (Group 2 members this year).
- All CLE courses listed on member rosters as of October 2005 are printed on the back of the C2 form. If you took additional CLE courses after October 1, 2005, and they appear on your online roster, you may print a copy of your roster and attach it to your C2 form.
State on your C2 form that the attached online roster printout is a true and correct statement of the CLE courses taken for credit compliance.

**MCLE Late Fees/Noncompliance.** 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 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 of $150. The late fee 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 2004, you will not report for this reporting period (2003-2005) even though you are in Group 2. You will first report at the end of the 2006-2008 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 in Oregon, Idaho, or Utah, you may meet your mandatory CLE requirements by providing proof of current MCLE compliance. Only a Certificate of MCLE Compliance from your primary state bar (not a Certificate of Good Standing), sent with your Washington Continuing Legal Education Certification (C2) form, will satisfy your MCLE requirements in Washington.

**MCLE System — Course Listing and Member Profiles.** Members can use the online MCLE system at pro.wsba.org 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 use the MCLE system, go to pro.wsba.org, click on the “Member” tab, then select “Member Login.” The online instructions will lead you through the process of creating a password and using the system. Online help is available. If you have any questions, see the online FAQs at www.wsba.org/lawyers/licensing/faq-mcle.htm, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail questions@wsba.org.

**2006 License Fee Packets**
License fee packets were mailed in early December. The packet includes your license fee invoice, trust account declaration form, and if applicable, the MCLE certification form. If you have not received your license fee packet, please call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail questions@wsba.org to request a duplicate. It is your responsibility to pay your annual license fee regardless of whether you receive the license packet.

**Mailing Your Forms and Payment.** The return envelopes for your forms and payments have instructions on the reverse side. Review them carefully before mailing them in.

**Paying Your Fee Online.** To pay your fee online, go to pro.wsba.org, click on the “For Lawyers” tab, and see “Pay License Fee Online.” Log in with your WSBA number and password. Prompts will lead you through the process of paying your 2006 license fee by MasterCard or Visa. The system allows payments only for the full amount billed (no Keller deductions or status changes). You do not need to return the A2 form if you pay online. Active members have other forms in their packets that must be postmarked or delivered to the WSBA office by the due date. There may be other voluntary forms in the packet that you may want to complete and return to the WSBA.

**Payment Deadline.** 2006 license fees were due February 1. If your payment is postmarked or delivered to the WSBA office after March 1, WSBA Bylaws require that a 20 percent penalty be assessed and a pre-suspension notice mailed. A 50 percent penalty will be assessed if your payment has not been postmarked or delivered to the WSBA office by April 4.

**Paying Your Fees.** If your license fee, late fee, or the Lawyers’ Fund for Client Protection assessment (for active members) remains unpaid two months after the mailing of the pre-suspension notice, the delinquency will be certified to the Supreme Court, which will enter an Order of Suspension from the practice of law.

**Washington Attorneys Assisting Community Organizations (WAACO)**
WAACO is a statewide organization that matches volunteer attorneys with charitable and community-based nonprofit organizations in need of business-related pro bono legal services. Volunteer lawyers are needed. Those interested in volunteering are encouraged to attend a training seminar on February 13 in Spokane. For more information, e-mail contact@waaco.org or call 866-288-9695.

**YMCA Mock Trial Program Seeks Volunteers**
The YMCA Youth and Government Mock Trial Program allows high-school students to participate in a “true-to-life” courtroom drama. Each team of attorneys and witnesses prepares the case for trial before a real judge in an actual courtroom. A “jury” of attorneys rates teams on their presentations, while the presiding judge rules on the motions, objections, and ultimately the merits. Participants develop critical-thinking and analytical skills, learn the art of oral advocacy, and gain a respect for the law and the judiciary. The state championship competitions will be held Friday, March 24 through Sunday, March 26, 2006, at the Thurston County Courthouse in Olympia. Volunteer attorney raters and judges are needed. To volunteer, please contact Janelle Nesbit at 360-357-3475 or e-mail youthandgovexec@qwest.net. For details, visit www.youthandgovernment.org.

**Minority Law Student Networking Reception**
The WSBA Committee for Diversity is pleased to sponsor the annual Minority Law Student Networking Reception,
welcoming students from Washington’s three law schools. The reception will be held February 23 in the WSBA Conference Center in Seattle. For more information, contact WSBA Diversity Advocate Joslyn K.N. Donlin at joslynd@wsba.org or 206-727-8216.

Celebrating Diversity

The WSBA Board of Governors and WSBA Committee for Diversity are pleased to announce the annual “Celebrating Diversity” meeting and reception to be held March 2 in Seattle. For more information, contact WSBA Diversity Advocate Joslyn K.N. Donlin at joslynd@wsba.org or 206-727-8216.

WSBA Arbitration Program

The WSBA offers arbitration of lawyer-client fee disputes and mediation services to help resolve disputes between lawyers, a lawyer and client, or a lawyer and other professionals. The programs are voluntary and confidential. For more information, visit the WSBA website at www.wsba.org/lawyers/services/adr.htm or call 206-733-5923.

Notice of Intent to Form Juvenile Law Section

Petitions are now being circulated to form a new WSBA Juvenile Law Section pursuant to Section IX of the WSBA Bylaws. There is no current section or other WSBA entity whose primary focus is juvenile law, which falls within the purposes of the WSBA as outlined in General Rule 12. Both the Washington Juvenile Justice Assessment Project Report and the WSBA Blue Ribbon Panel on Criminal Defense have recommended that a juvenile-oriented WSBA entity be established. A study group chaired by Justice Bobbe Bridge — and including Kim Ambrose, Liza Burke, Lisa Kelly, Anne Lee, Mary Li, Casey Trupin, Page Ulrey, and George Yeannakis — recommends the new section. After the required six-month waiting period, the Board of Governors will consider whether to form a Juvenile Law Section at their June 2006 meeting.

Contemplated Jurisdiction. The creation of a Juvenile Law Section is proposed to address concerns with juvenile law and policy, including dependency, offender, status offenses (Child in Need of Services, Youth at Risk and Truancy), and the civil legal needs of children and youth.

Section Purpose. The Juvenile Law Section will provide a forum for juvenile-law issues and improve the law and practice related to civil and criminal matters involving children and youth in Washington. The section will welcome advocates from all disciplines and fields of law, including juvenile justice, child welfare, and those who represent youth in civil legal practice. For more information, contact Kim Ambrose at kambrose@u.washington.edu.

Books for Belarus

WSBA members can once again help law students and faculty in Belarus by donating your books. We are collecting new and old legal texts, journals, and dictionaries from Washington attorneys for donation to Belarusian law-school libraries through March 31, 2006. Although all areas of practice are welcome, resources in trade law, business, taxation, international public law, trust and estates, and property law are especially needed. Due to shipping costs and regulations, no sets or series can be accepted. The WSBA will accept donations during regular business hours. Include your name and address with all donations so we can acknowledge your contribution. Materials will be shipped and distributed with help from the U.S. Embassy in Minsk. Donations can be delivered to: WSBA, Member and Community Relations Dept., 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

Seeking Applications From Judicial Candidates

Application Deadline: February 28, 2006

The WSBA Judicial Recommendation Committee is accepting applications from attorneys and judges seeking consideration for appointment to fill potential vacancies on the Washington State Supreme Court and Court of Appeals. Candidates will be interviewed by the Committee in March 2006. Applications must be received at the WSBA office by 5 p.m., February 28, 2006. The Committee’s recommendations are reviewed by the WSBA Board of Governors and then referred to the state governor, who then reviews the recommendations when making judicial appointments. If you are interested in scheduling an interview, please contact the WSBA at 206-727-8239, or e-mail barleaders@wsba.org for an application. Please specify whether you need an application for a judge or an attorney.

Casemaker Available

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 to access the Casemaker homepage. Click on the Casemaker button to begin. For help using Casemaker, call Barbara Konior at the WSBA Casemaker help desk at 206-733-5983 between 10 a.m. and 2 p.m. (PST), or e-mail barbarak@wsba.org. You can also contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail questions@wsba.org.

PILA Benefit Auction

The Public Interest Law Association (PILA), a nonprofit organization run by University of Washington law students, is hosting a benefit auction to help fund a loan repayment assistance program and a summer grant program for law students who accept unpaid legal internships. Since 1995, PILA has awarded over $320,000 in grants supporting work at a wide range of public-interest organizations, including the Northwest Justice Project, the Unemployment Law Project, and Columbia Legal Services. The benefit will be held on February 10, from 5 to 10 p.m. at the W Hotel in downtown Seattle. For more information, contact Katie Meyer at 206-543-8899 or katie@uwpila.org.

Watch The Docket on TVW

The Docket is a monthly half-hour magazine-style program covering the law and the courts produced by TVW (channel 23 on Comcast), Washington’s public-affairs network. Hosted by University of Washington Law Dean Joe Knight, each episode features an interview with a member of Washington’s legal community, a wrap-up of recent Washington State Supreme Court decisions, and an educational segment. A new episode will be broadcast the first Sunday of every
month at 8 p.m., with frequent repeat broadcasts. Streaming video will also be available on TVW’s website at www.tvw.org/TheDocket/index.cfm. WSBA President S. Brooke Taylor will be featured on the February 5 broadcast. The WSBA, along with the Family Law; Labor and Employment Law; Real Property, Probate and Trust; and Senior Lawyers sections is pleased to underwrite this program.

WSBA Court Rules and Procedures Committee to Review General Rules
The WSBA Board of Governors has authorized the Court Rules and Procedures Committee to undertake a comprehensive evaluation of the General Rules (GR) in 2005-2006. This will be the first time the General Rules have been included in the Committee’s quadrennial cycle of review of the Washington Court Rules. The Committee invites interested persons to submit suggestions for adoption, amendment, or repeal of a General Rule. Please address suggestions to Douglas Ende, staff liaison to the Committee, at 206-733-5917 or WSBACourtRules@wsba.org. More information about the Committee is available at www.wsba.org/lawyers/groups/courtrules.

Facing an Ethical Dilemma?
The WSBA Ethics Line can help members analyze a situation, apply the proper rules, and make 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 800-945-9722, ext. 8284, or 206-727-8284.

WSBA Ethics Opinions Now Searchable Online
The WSBA announces the availability of a new online search tool for Washington ethics opinions. Lawyers can now search both formal and informal WSBA ethics opinions at www.pro.wsba.org/io/search.asp. Opinions can be searched by number, year issued, ethical rule, subject matter, or keyword. Ethics opinions are issued by the WSBA to assist members in interpreting their ethical obligations in specific circumstances. The opinions are the result of study and analysis in response to requests from WSBA members. For assistance, call the Ethics Line at 800-945-9722, ext. 8284, or 206-727-8284.

WSBA Members on Active Military Duty
WSBA members whose membership status is active and who are on active military duty can apply for a waiver of WSBA license fees. (WSBA members on active duty whose WSBA membership status is inactive or emeritus must still pay the annual WSBA license fee.) If you are currently an active member on active military duty, or need application information, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail questions@wsba.org; or contact Kevin McKee at 206-727-8243 or kevinn@wsba.org.

Full explanations of license fees, forms, policies, and deadlines are on the WSBA website at www.wsba.org/lawyers/licensing/annuallicensing.htm.

Job Seekers Discussion Group
Looking for a job or making a transition? Join us at the Job Seekers Discussion Group the second Wednesday of each month from noon to 1:30 p.m. The group discusses where to look for jobs, how to use your network of contacts, strategies for résumés and cover letters, and how to keep yourself organized and motivated. Exchange information and ideas with other lawyers looking to make a change. Come as you are — no need to RSVP. For more information contact Rebecca Nerison, Ph.D. at 206-727-8269 or rebeccan@wsba.org.

Estate Planning and Probate Titles Coming From WSBA-CLE Publications
WSBA-CLE is releasing three new titles providing definitive coverage of estate planning, probate, and wills in Washington. These are the Washington Estate Planning Deskbook and Washington Probate Deskbook, and a new revised edition of Professor Reutlinger’s popular Washington Law of Wills and Intestate Succession. To view complete tables of contents or to order online, go to store.yahoo.com/wsbastore. To order by phone, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

New Sexual Orientation and Gender Identity Section Considered
This notice is posted pursuant to Article IX of the WSBA Bylaws regarding a six-month prior notification of intent to establish a new Sexual Orientation and Gender Identity Legal Issues Section. For more information, please contact Rachel da Silva at 360-943-6260, ext. 203, or e-mail rachel.dasilva@columbialegal.org.

Assistance for Law Students
The WSBA Lawyers’ Assistance Program (LAP) offers long- and short-term psychotherapy to third-year law students attending the University of Washington and Seattle University. Treatment is offered for depression, addiction, family and relationship issues, health issues, and other mental and emotional problems. The fee is based on a sliding scale ranging from no-cost to $30 and is determined by a student’s ability to pay. For more information about the LAP, call 206-727-8268 or visit www.wsba.org/lawyers/services/lap.htm.

Learn More About Case-Management Software
The WSBA’s Law Office Management Assistance Program (LOMAP) office 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 to make recommendations. To make an appointment, contact Julie Salmon at 206-733-5914 or juliesa@wsba.org.

Upcoming Board of Governors Meetings
March 3-4 — Seattle, April 21-22 — Walla Walla, June 9 — Yakima.

With the exception of a one-hour executive session the morning of the first day, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Please contact Donna Sato at 206-727-8244 or e-mail donnas@wsba.org. The complete Board of Governors
meeting schedule is available on the WSBA website at www.wsba.org/info/bog/schedule.htm.

Statewide Diversity Conference to Be Held in June
Washington state’s first diversity conference for the legal community will be held on June 1-2. With the theme “Getting Ahead and Giving Back,” the conference will begin Thursday evening with a reception and feature a variety of sessions all day Friday. Col. William Gunn (Ret.), president and CEO of the Greater Washington, D.C., Boys and Girls Club, will be the featured speaker at the luncheon on Friday. The conference location will be announced soon.

The conference is sponsored by the Asian Bar Association of Washington, Korean American Bar Association of Washington, Latina/o Bar Association of Washington, Loren Miller Bar Association, Northwest Indian Bar Association, Pierce County Minority Bar Association, QLaw: the GLBT Bar Association of Washington, South Asian Bar Association, and Vietnamese American Bar Association, in cooperation with the King County Bar Association, Seattle University School of Law, and Washington State Bar Association.

For more information, contact Conference Co-chair Kim Tran at 206-623-9900 or ktran@staffordfrye.com, Conference Co-chair Mike Heath at 206-587-0700 or mheath@cairncross.com, or WSBA Diversity Advocate Joslyn Donlin at 206-727-8216 or joslynd@wsba.org.

LAP Solution of the Month: Stress Reduction
Sometimes it’s tempting to reduce stress by overdoing alcohol, prescription drugs, food, gambling — even work. These methods usually provide short-term relief but long-term pain, effectively giving you another problem to cope with down the road. Learn to reduce your stress safely. If you need a hand, call the Lawyers’ Assistance Program at 206-727-8268.

20th Annual Goldmark Award Luncheon
The Legal Foundation of Washington (LFW) will present the 2006 Charles A. Goldmark Distinguished Service Award to the Washington State Supreme Court at the 20th Annual Goldmark Award Luncheon. The luncheon will be held February 17 at the Washington State Convention & Trade Center in Seattle from noon to 1:30 p.m. The Goldmark Award honors the memory of attorney Charles A. Goldmark — a community leader and ardent supporter of access to justice. The program will include remarks from Goldmark’s brother and cousin to commemorate the 20th anniversary of this award. The public is invited to attend the luncheon, where tribute will be paid to all the volunteer lawyers and legal-aid providers in Washington. Visit www.legalfoundation.org for more information.

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in January 2006 was 4.42 percent. Therefore, the maximum allowable usury rate for February is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.
The Board’s Work

BY LINDSAY THOMPSON

Bremerton, December 9-10, 2005

With what seem to be streamlined agendas this year, the BOG moved a good bit of work in a day and a bit at the Kitsap Conference Center right off the ferry terminal. They made appointments to the Lawyers’ Fund for Client Protection Committee; representatives to the Northwest Justice Project Board; to the Rules of Professional Conduct Committee; and the Committee for Diversity. They named a new chair for the Electronic Communications Committee.

Treasurer Mark Johnson told the Board its Budget and Audit Committee was reviewing a possible change to WSBA investment policies so the Bar can make more money. More to come.

President-elect Ellen Conedera Dial, who chairs the Facilities Committee, updated the Board on its work with staff, an architect, and a project manager to complete designs of tenant improvements to the Puget Sound Plaza space WSBA will move to at year-end. There’ll be an Art Committee, too, to avoid the Institutional Office Art Plague, with selections representative of the various parts of Washington.

Jon Ostlund, a former gov who co-chairs the Committee on Public Defense, briefed Board members on the Committee’s work plan for this year and its budget requests to the Legislature. He also updated members on the pending settlement of litigation against Grant County over its public defender program troubles.

A draft opinion on retainers and advance payments was offered by Discipline Director Joy McLean, intended to replace Ethics Opinion 186.

McLean explained the old opinion has proved vague and almost misleading in places as it has aged. The issue is what to do when a client gives a lawyer money to do work and whether the lawyer can spend any of the money before doing the work. There’s case law that inclines to a “no” answer, requiring all funds to be deposited in trust accounts until earned.

A variety of liaisons made presentations. Some were concerned about the need to protect the public interest vs. lawyers’ ability to meet their overhead; whether the most effective guidance on this issue would be in the form of an ethics opinion, a court rule, or a law; definitional issues about defining advance payments (such as the long-standing “non-refundable retainer”; whether a different rule should govern criminal vs. civil work; and hourly vs. flat fee considerations.

Governor Eron Berg moved to create a task force to address these things, but also to withdraw current opinion 186. Governor Mark Johnson moved to sever the two issues; that passed.

The motion to withdraw Ethics Opinion 186 passed, 7-5-1. The task force motion passed 13-0. Governor Johnson will chair the task force, and a public-interest member will also be appointed.

Governor Lonnie Davis liked the new proposed opinion well enough to move that the Board go ahead and adopt it. That one failed, 3-10.

An interesting issue first raised at the previous meeting came back in the form of a discussion on whether WSBA should offer an amicus brief in State vs. Athan. At issue is whether the police can pretend to be a law firm and send a letter to a suspect telling him he could be a party in a class-action suit if he returned an opt-in card. From the return envelope the police got some DNA and arrested the guy.

The Amicus Brief Committee’s Lisa Stone told the Board that sort of plot, however, effective in a law-enforcement way, worked to the detriment of the integrity of the legal profession and the administration of justice. The Committee felt an amicus brief should stress that the law firm ruse should not be permitted, but not address what sort of remedy might be appropriate.

John Muenster, a defense lawyer, agreed with that scope. On the other hand, King County Prosecuting Attorney Norm Malleng told the Board the case really didn’t touch the issues the Amicus Committee was concerned about, and that the Practice of Law Board could deal with the attorney-client concerns. He felt the amicus brief would be read as one advocating a position favoring the defendant.

After further animated discussion, a motion by Governor Sal Mungia to file an amicus but take no position on remedies passed, 12-1.

Roger Wynne and Douglas Ende briefed the BOG on proposed changes to CrR 4.11 and a related rule, 4.6. These deal with whether victim and witness depositions should be allowed and accessible to defendants, out of fear for the safety of victims and the protection of witnesses.

This issue has been bouncing back and forth between the Court Rules Committee and the Board of Governors for a couple of years. It’s what I’ve dubbed a Cat vs. Dog Issue: one where the differences between opposing sides are so fundamental they almost seem genetic. Criminal lawyers say ease up, victims’ groups say never. The Committee reps argued the latest iterations struck a reasonable balance between protection vs. disclosure of the facts. A vigorous discussion followed. Governor Mungia moved to approve the rules for recommendation to the Supreme Court. It passed, 11-2.

Diversity Committee Co-chair Joaquin Hernandez updated the Board on the Committee’s work over the last year, noting a number of successful efforts. He covered plans for 2006 and the value of the discussion held with BOG members at a diversity retreat in October.

In other appointment matters, Michele Radosевич and Judge Michael Schwab were appointed to the Legal Foundation of Washington’s board. Charisee Adams and Robert Stevens were nominated for appointment by the Supreme Court to second terms on the Limited Practice Officers Board.

Jean McElroy, who leads WSBA Regulatory Services, gave the Board a report on improvements and projects relating to admissions, licensing, CLE, and member data maintenance.

Gail Stone, WSBA’s legislative director, and Pete Karademos, who chairs the Legislative Committee, told the Board what WSBA had on its agenda for the 60-day legislative session starting in January. It includes cleanup amendments to probate law; harmonizing and conforming the state’s two corporation acts; a uniform securities law bill that includes Washington law; and a bill to further the incorporation of civics education in the public schools.

All were approved unanimously. After reports by the president, president-elect, and executive director on their work since the last meeting, the Board rose at 9:15 a.m. Saturday, December 10.
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has become a non-equity shareholder of the firm.

Ms. Davies continues to practice in the Seattle
office, representing employers in workers’
compensation matters.

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is pleased to announce that

Mark B. Anderson

has joined the firm “of counsel.”

Mr. Anderson earned his B.S. in Operations Research
from the U.S. Naval Academy (1977) and his J.D. from
Seattle University School of Law (cum laude 1995).
Before becoming an attorney, Mr. Anderson was a career
submarine officer in the U.S. Navy, qualifying and serving
as a nuclear engineer on Los Angeles and Trident class
submarines. His primary areas of practice include real
estate, contract, general business transactions and
litigation, as well as plaintiffs’ personal injury.

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For more information, contact Advertising Manager Jack Young at 206-727-8260, or e-mail jacky@wsba.org.

2101 Fourth Ave., Ste. 400, Seattle, WA 98121
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: More than 29,000 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.

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**Disbarred**

F. Daniel Graf (WSBA No. 18294, admitted 1988), of Olympia, was disbarred, effective July 8, 2005, by order of the Washington State Supreme Court following a hearing. This discipline was based on his conduct involving multiple episodes of sexual relations with current clients, and his conduct in permitting false information to be submitted to a tribunal in connection with the disciplinary proceeding.

Commencing in the early 1990s and continuing through 2003, Mr. Graf had sexual relations with five current clients. Mr. Graf did not adequately disclose to the clients information about how such a relationship could affect their interests or obtain written consent from the clients as to any conflicts of interest.

Prior to his disciplinary hearing, Mr. Graf assisted disciplinary counsel in obtaining a signed declaration from one of the clients with whom Mr. Graf had had sexual relations. The declaration falsely stated that the relationship between the client and Mr. Graf had been professional, not personal. Although Mr. Graf knew the statement was false and knew that the information was expected to be admitted into evidence at the disciplinary hearing, Mr. Graf delivered the declaration to disciplinary counsel and took no steps to correct the information.

Mr. Graf’s conduct violated RPC 1.4(b), requiring a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.7(b), prohibiting a lawyer from representing a client if the representation of that client may be materially limited by the lawyer’s own interests unless the lawyer reasonably believes the representation will not be adversely affected and the client consents in writing after a full disclosure of material facts; RPC 1.8(k), prohibiting a lawyer from having sexual relations with a client; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, deceit, fraud, or misrepresentation.

Jonathan H. Burke represented the Bar Association. Mr. Graf represented himself. Andrekita Silva was the hearing officer.

**Resigned in Lieu of Disbarment**

Barry A. Hammer (WSBA No. 6444, admitted 1975), of Everett, resigned in lieu of disbarment, effective June 20, 2005. This resignation was based on his conduct in entering into business transactions with multiple clients and making misrepresentations to the clients about the risks of investing in his business.

Mr. Hammer was the sole owner and operator of a corporation known as Able Mortgage. In six instances, between 1992 and 2004, Mr. Hammer persuaded clients to invest their money in Able Mortgage. Most of the investments were documented in promissory notes but were not secured. Mr. Hammer did not inform the clients that Able Mortgage had substantial debts; rather, he told clients that the investments would be perfectly safe and that the business did not have any problems. Mr. Hammer did not inform the clients of the risks involved in the investments, nor did he suggest that the clients seek the advice of independent counsel before investing the money. The terms of the investment transactions were not fair and reasonable to the clients in that the clients were not adequately apprised of the risks involved.

On September 17, 2004, Mr. Hammer filed for bankruptcy. His debts to the six clients at that time amounted to more than $1,375,000.

Mr. Hammer’s conduct violated RPC 1.8(a), prohibiting a lawyer from entering into a business transaction with a client or knowingly acquiring an ownership, possession, security, or other pecuniary interest adverse to a client unless the transaction and its terms are fair and reasonable and fully disclosed and transmitted in writing to the client, the client is given opportunity to seek the advice of independent counsel, and the client consents; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Christine Gray represented the Bar Association. John A. Holmes represented Mr. Hammer.

**Suspended**

Kim Wallace Comfort (WSBA No. 16645, admitted 1987), of University Place, was suspended for 18 months, effective August 17, 2005, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on his conduct between 1999 and 2003 involving lack of diligence, failure to communicate with a client, and providing false documents and false information to a client.

In 1999, Mr. Comfort represented a client in a personal injury claim. The client and Mr. Comfort entered into a contingent-fee agreement. From August 1999 through November 2002, Mr. Comfort told the client that he was diligently handling her claim when, in fact, he was not. In July 2002, one day before the expiration of the applicable statute of limitations, Mr. Comfort filed a complaint in the matter in Pierce County Superior Court. In October 2002, Mr. Comfort discovered that the
summons and complaint had never been served on the defendants and that his client’s lawsuit would be dismissed for failure to effect timely service of process. Mr. Comfort knew that the lawsuit’s dismissal would preclude any recovery by his client, because the statute of limitations had expired. In order to conceal his error in failing to effect timely service, Mr. Comfort did not inform the client of the situation. In November 2002, Mr. Comfort contacted his client and falsely told her that he had settled the case for $14,750. Mr. Comfort fabricated the settlement to avoid telling his partners about the potential malpractice claim. Mr. Comfort then fabricated settlement documents and paid the client $7,343.32, which he falsely stated was the client’s share of the settlement proceeds. The settlement statement inaccurately reflected that Mr. Comfort had received $4,000 as his contingent fee.

In April 2002, the lawyer for the defendant filed a motion to dismiss the lawsuit for failure to effect service. Without his client’s knowledge or authorization, Mr. Comfort signed and agreed to entry of a stipulation and order of dismissal. In March 2004, the client contacted Mr. Comfort inquiring about the unpaid PIP claim relating to her personal injury claim. Mr. Comfort falsely stated that the claim had been paid and apparently misapplied to the wrong account. After discovering that there was no settlement from her PIP carrier, the client confronted Mr. Comfort, who apologized and admitted there was no settlement.

Mr. Comfort’s conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4(a), requiring a lawyer keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; and RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Jonathan H. Burke represented the Bar Association. Mr. Comfort represented himself.

**Suspended**

F. Daniel Graf (WSBA No. 18294, admitted 1988), of Olympia, was suspended for one year, effective July 8, 2005, by order of the Washington State Supreme Court following a hearing. This discipline was based on his conduct in 2003 in two matters involving failure to comply with duties on suspension, failure to cooperate with a disciplinary investigation, collection of an advance fee while suspended from the practice of law, practicing law while suspended, and failure to refund the unearned portion of a fee.

On June 26, 2003, Mr. Graf was suspended from the practice of law on an interim basis by order of the Supreme Court. During the period of his suspension, Mr. Graf engaged in the following conduct that established grounds for discipline:

- In two instances, failing to notify clients and others of his inability to act as required by Rule for Enforcement of Lawyer Conduct 14.1.
- Destroying documents contained in a client file after having been directed by the Bar Association to retain all records, files, and accounts relating to the matter.
- Accepting payment of $500 in fees from a client knowing that he could not represent the client owing to the interim suspension.
- Preparing a bankruptcy petition.
- Failing to return the unearned portion of a fee to a client whom Mr. Graf could not continue to represent owing to the suspension.

Mr. Graf’s conduct violated RPC 1.15(d), requiring that a lawyer take steps to the extent reasonably practicable to protect a client’s interests upon termination of representation, including refunding any advance fee payment that has not been earned; RPC 5.5(e), prohibiting lawyer from engaging in the practice of law while on inactive status or while suspended from the practice of law; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, deceit, fraud, or misrepresentation; 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 (here, ELC 5.3(f) and ELC 14.1).

Jonathan H. Burke represented the Bar Association. Mr. Graf represented himself. Vicki Lee Anne Parker was the hearing officer.

**Suspended**

Larry W. Hopt (WSBA No. 12351, admitted 1982), of Seattle, was suspended for three years, effective August 17, 2005, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on his conduct in 2002, 2003, and 2004 involving failure to act with diligence and promptness, failure to respond to client requests for information, failure to place client funds into his trust account, failure to explain the basis for his fee, failure to refund unearned fees, and failure to cooperate with a disciplinary investigation.

In July 2002, Mr. Hopt agreed to complete a living trust for a husband and wife, who paid Mr. Hopt half of the total agreed fee of $1,500. There was no written fee agreement, and Mr. Hopt did not place the sum in his trust account. In October 2002, Mr. Hopt told the clients that he would forward to them a draft of the trust document for review. The clients never received the draft. Mr. Hopt neither responded to an e-mail request from the clients in December 2002 asking that he complete the work, nor to a certified letter from them in January 2003. Mr. Hopt did not respond to the couple’s other additional efforts to reach him. The clients eventually consulted another lawyer who provided their estate planning services and documents.

The clients filed a grievance with the Washington State Bar Association in 2004. During the course of the disciplinary investigation, Mr. Hopt failed to promptly respond to inquiries and requests for information submitted by disciplinary counsel.

Prior to entry into the disciplinary stipulation, Mr. Hopt paid the clients $750 (without interest) as restitution.

Mr. Hopt’s conduct violated RPC 1.3, requiring that a lawyer act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring that a
lawyer 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; RPC 1.5(a), requiring that a lawyer's fees be reasonable; RPC 1.5(b) requiring that a lawyer who has not regularly represented a client 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; RPC 1.14(a) requiring all funds of clients paid to a lawyer be deposited into a trust account; RPC 1.15(d), requiring that a lawyer take steps to the extent reasonably practicable to protect a client's interests, including refunding any advance fee payment that has not been earned; and RPC 8.4(1), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct (here, ELC 5.3(e)).

Nancy Bickford Miller represented the Bar Association. Rita L. Bender represented Mr. Hopt.

Suspended

Uche Humphrey Umuolo (WSBA No. 24762, admitted 1995), of Phoenix, Arizona, was suspended for two years, effective December 23, 2004, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on his conduct in 2002 involving failure to maintain client funds in a trust account, failure to maintain complete records of all funds coming into the possession of the lawyer and to render appropriate accounts to the client regarding them.

On June 5, 2002, anticipating the receipt of the checks, Mr. Umuolo advanced to the client $950 in cash from Mr. Umuolo’s own funds. On June 6, 2002, Mr. Umuolo received three checks from opposing counsel in payment of the ordered sums. Mr. Umuolo immediately gave the $1,100 check to the client; he deposited the remaining checks into his trust account.

At the time, Mr. Umuolo did not maintain any personal bank account; he used his trust account for all of his business and personal transactions, commingling his own funds with client funds. Mr. Umuolo maintained no check register for his trust account, nor did he maintain any client ledgers, nor did he prepare reconciliations of the bank statements. Mr. Umuolo relied on his memory to keep track of client funds in the account. At the time of the June 6, 2002, transactions, Mr. Umuolo knew that $550 of the $1,500 check he had deposited into his trust account belonged to the client.

On June 16, 2002, the client died. Mr. Umuolo did not disburse the $550 in his trust account to the client or to anyone else on the client’s behalf. Mr. Umuolo failed thereafter to maintain the $550 in his trust account, which, in August 2002, had a negative balance.

In September 2002, opposing counsel requested an accounting of the $1,500 that had earlier been paid for anticipated future moving expenses. Mr. Umuolo responded that the amount that had been released to the client was privileged information and could not be revealed. Mr. Umuolo failed at that point to review his trust account and ascertain whether the former client’s $550 was being maintained in his trust account.

In July 2003, following a deposition of Mr. Umuolo taken in connection with the disciplinary investigation, Mr. Umuolo paid to the former client’s spouse the $550 that should have been maintained in Mr. Umuolo’s trust account.

Mr. Umuolo’s conduct violated RPC 1.14(a), requiring all funds of clients paid to a lawyer to be deposited in an interest-bearing trust account, and prohibiting funds belonging solely to the lawyer from being deposited therein; and RPC 1.14(b)(3), requiring a lawyer to maintain complete records of all funds coming into the possession of the lawyer and to render appropriate accounts to the client regarding them.

Lane J. Wolfley (WSBA No. 9609, admitted 1979), of Port Angeles, was suspended for three years, effective June 9, 2005, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on his conduct involving advancing financial assistance to two clients, making sexual advances to a current client, and providing false and misleading information to the Bar Association during its disciplinary investigation.

Mr. Wolfley represented two clients in separate personal-injury actions. While representing Client A, Mr. Wolfley made a payment on Client A’s truck for him and paid $300 to Client A’s lender to avoid repossession of the truck.

While representing Client B, Mr. Wolfley advanced approximately $1,200 to Client B for food, rent, furniture, and car insurance.

In late 2002, Mr. Wolfley made sexual advances toward Client B; he kissed her, fondled her, and intentionally touched her clothed sexual/intimate parts. In 2003, Client B discharged Mr. Wolfley and hired another lawyer to handle her case.

During the ensuing disciplinary investigation, Mr. Wolfley asserted in writing and testified in a deposition that he had not kissed or had other intimate physical contact with Client B. A videotape taken while Mr. Wolfley visited Client B’s home and provided to the Bar Association by Client B contradicted Mr. Wolfley’s assertions about his contacts with Client B.

Mr. Wolfley’s conduct violated RPC 1.8(e), prohibiting a lawyer from advancing or guaranteeing financial assistance to a client in connection with contem-
plated or pending litigation, except for the expenses of litigation; RPC 1.8(k), prohibiting a lawyer from having sexual relations with a current client unless a consensual sexual relationship existed between them at the commencement of the client-lawyer relationship; RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, deceit, fraud, or misrepresentation; and RPC 8.4(1), prohibiting a lawyer from violating a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct (here, ELC 5.3(e)).

Marsha A. Matsumoto represented the Bar Association. Leland G. Ripley represented Mr. Wolfley.

**Reprimanded**

_**Bob Casey** (WSBA No. 16527, admitted 1986), of Portland, Oregon, was ordered to receive a reprimand, effective July 1, 2005, by order of the Washington State Supreme Court imposing reciprocal discipline based on an order of the Supreme Court of the State of Oregon approving a stipulation for discipline. This discipline was based on his conduct in 2004 involving the practice of law while suspended from active membership in the Oregon State Bar.

In 2004, Mr. Casey failed to pay his membership fees to the Oregon State Bar and, after proper notice, was suspended from active membership on July 2, 2004. Between July 2, 2004, and August 11, 2004, Mr. Casey practiced law in Oregon while he was not an active member of the Oregon State Bar.

Mr. Casey’s conduct violated Oregon DR 3-101(B), prohibiting a lawyer from practicing law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

Felice P. Congalton represented the Bar Association. Mr. Casey did not appear in the proceeding either personally or through counsel.

**Admonished**

_**F. Lawrence Taylor Jr.** (WSBA No. 3329, admitted 1972), of Renton, was admonished by a review committee of the Disciplinary Board. The admonition was based on his conduct in 2004 involving conflicts of interest. Mr. Taylor is to be distinguished from Lawrence E. Taylor of Long Beach, California and Lawrence L. Taylor of Portland, Oregon.

In June or July of 2004, Mr. Taylor agreed to represent a driver and two passengers in an automobile accident matter. All three clients met with Mr. Taylor’s employees to discuss how the accident happened, and all three clients signed contingent-fee agreements. None of the clients signed a written conflict waiver. In July 2004, Mr. Taylor learned from the accident report that the driver was likely responsible for the accident. Mr. Taylor discontinued his representation of the driver. Without obtaining a written conflict waiver from the driver, Mr. Taylor continued to represent the two passengers until August 2004, when they retained substitute counsel.

Mr. Taylor’s conduct violated RPC 1.7(b), prohibiting a lawyer from representing a client if the representation of that client may be materially limited by the lawyer’s responsibilities to another client, unless the lawyer reasonably believes the representation will not be adversely affected and the client consents in writing after a full disclosure of material facts; and RPC 1.9(a), prohibiting a lawyer who has formerly represented a client in a matter from representing another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of a former client unless the former client consents in writing after consultation and a full disclosure of the material facts.

Kevin M. Bank represented the Bar Association. Mr. Taylor represented himself.

**Non-disciplinary Notices**

**Suspended Pending Outcome of Disciplinary Proceedings**

_**Virginia S. Lauver** (WSBA No. 33377, admitted 2003), of Spokane Valley, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.1, effective August 26, 2005, by an order of the Washington State Supreme Court. This is not a disciplinary action.
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Information must be received by the first day of the month for placement in the following month's calendar.

### Calendar

#### Business Law

**The 26th Annual Northwest Securities Institute**
February 17 and 18 — Seattle. 9 CLE credits; application is being made for CLE credit for Oregon attorneys. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Handling Complex Business Disputes**
March 30 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

#### Construction Law

**Annual Construction Law Update**
February 24 — Seattle. 6 CLE credits, including 1.5 ethics. By WDTL; 206-749-0319.

**WDTL's First Annual Construction Law Update — Southwest Washington**
March 31 — Vancouver, WA. 6 CLE credits, including 1.5 ethics. By WDTL; 206-749-0319 or info@wdtl.org.

#### Employment Law

**The 13th Annual Employment Law Institute**
March 31 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

#### Estate Planning

**Estate Planning for the Small to Medium-Sized Estate**
February 3 — Seattle. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**New Strategies for Retirement Planning: Effective Techniques and Important Updates — with Gair B. Petrie**
February 15 — Seattle. 5.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**The Third Annual Trust and Estate Litigation Conference**
March 16 — Seattle; March 21 — Spokane. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

#### Family Law

**Child/Family Mediation Featuring Joan Kelly**
March 3 — Seattle. CLE credits pending. By UW School of Law; 800-CLE-UNIV or 206-543-0059.

#### General

**Introductory Collaborative Law for Lawyers**
February 10 and 11 — Edmonds, WA. 12 CLE credits. By UW School of Law; 800-CLE-UNIV or 206-749-0319.

#### Investment Law

**The 11th Annual Intellectual Property Institute**
March 24 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

#### Real Property

**Advanced Real Estate Purchases and Sales**
March 6 and 7 — Seattle. 13 CLE credits, including 1 ethics. By Law Seminars International; 206-567-4490 or www.lawseminars.com.

**Real Estate Development: Condominiums**
March 9 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

#### Mediation

**Child/Family Mediation Featuring Joan Kelly**
March 3 — Seattle. CLE credits pending. By UW School of Law; 800-CLE-UNIV or 206-543-0059.

#### Tax Law

**Circular 230 — Featuring Cono R. Namorato**
February 9 — Seattle. 2 ethics credits; 2 CPE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.
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Rates: WSBA members: $40/first 25 words; $0.50 each additional word. Nonmembers: $50/first 25 words; $1 each additional word. Blind-box number service: $12 (responses will be forwarded). Advance payment required; we regret that we are unable to bill for classified ads. Payment may be made by check (payable to WSBA), MasterCard, or Visa.

Deadline: Text and payment must be received (not postmarked) by the first day of each month for the issue following, e.g., March 1 for the April issue. No cancellations after the deadline. Mail to:

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We are a 17-attorney law firm with a substantial land use practice. We are seeking an attorney with four-plus years of experience in land use. The applicant should have a good working knowledge of GMA, SEPA, the subdivision process, and zoning issues. The applicant must have excellent writing skills, and have experience handling land use hearings. Additional experience in the areas of ESA, shorelines, wetlands, wildlife habitat, and transportation would be beneficial. Located in Vancouver, Washington, we are the largest law firm in Southwest Washington, an area that offers a superior quality of life, excellent schools, affordable housing, and numerous opportunities for community involvement. Vancouver is the fastest-growing city in the state and is part of the fastest-growing county in the Northwest. With that growth, there are excellent opportunities for intellectual, financial, and organizational advancement. Résumés should be sent to rhonda.kates@landerholm.com, or to Director of Operations, Landerholm, Memovich, et al, 805 Broadway St., Ste. 1000, Vancouver, WA 98660.

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a little touch of Harry in the night

by Lindsay Thompson

If this is dying, then I don’t think much of it.
— Lytton Strachey, 1932

Harry’s watch says 11:40 p.m.

It was a termly dinner/party for Cherwell, the university weekly, in 1979. We were both editors. We shared a surname; a tendency to say what we thought; an appreciation of eccentricity; and a rattling-sticks-in-cages, cringe-inducing sense of humor (though he spelled it with a “u”). I wrote silly articles about things like American fraternity initiations. Harry illustrated them.

Harry’s other passion was cricket. He led the Captain Scott XI. The week before finals they played eight matches in 11 days. It showed.”Everyone got a Third, except for one man sent down before the exams for not paying his bar bill,” Harry recalled.

I came home to be a lawyer. Harry joined the BBC. He produced The News Quiz on radio; it flourishes to this day. Later he took it to TV as Have I Got News For You. It was a big hit. When Labour Party MP Roy Hattersley canceled his appearance at the last minute — for the third time — Harry found a substitute, and revenge. “We were looking for someone with the same wit, sparkle, and influence as Hattersley,” Harry said. “The tub of lard was a natural choice.”

His mordant wit made for a remarkable career, but a shambolic personal and business life. Harry got crosswise with everyone sooner or later, it seemed. When his first wife discovered an affair, she settled accounts in a nationally published series of articles. “As a person, he was rather louche,” one colleague wrote, “and wouldn’t have struck you as especially organized” (but he still wanted Harry to produce his next show).

His perverse streak extended to holidays. Harry consulted the Foreign Office List of Places You Might Not Want To Visit, and vacationed there. He won a travel-writing award for those tales. All of Harry’s TV shows made the top five in UK ratings. One even made the jump to American screens: he thought up, and wrote, Da Ali G Show.

He had biographies of Richard Ingrams, Peter Cook, and Hergé (creator of the French comic book character Tintin) to his name. Last year his first novel, an account of Darwin’s voyage called This Thing of Darkness, was listed for the Booker Prize.

Then, having never smoked, Harry got inoperable lung cancer. He said it was “like a really big hard bastard has invited me outside the pub and when I get there I find he’s brought along two of his mates who want a fight as well.” But he enjoyed imagining the rage of the other Booker nominees at the publicity his illness got his book.

Harry died last November. In his last half year, he finished another book, completed a sitcom set in a brothel, and traveled to six more countries with his girlfriend. His health suddenly failed. They married the day he died. Harry left her, his two children, and millions of fans and friends who adored his brilliance, his wit, his sardonic smile, and how he always carried a brolly on sunny days. He’d have turned 46 this month.

“He did things entirely his own way,” a friend told The Guardian. “It was as if he had formed his world view at an early age and was damned if he was going to make any revisions.”

What joy it was, being present at the creation.

For personal correspondence, Lindsay Thompson can be reached at tradelaw@hotmail.com. E-mail letters to the editor to letterstotheeditor@wsba.org or mail to WSBA, Attn: Letters to the Editor, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.
Good counsel is key to keeping these keys.

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