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Stephen Hayne has been named one of Seattle’s Best Lawyers by Seattle Magazine, one of Washington’s Top Ten Trial Lawyers by the Washington Law Journal, and a Super Lawyer every year since inception by Washington Law & Politics. He is a past president of the Washington Association of Criminal Defense Lawyers, and has chaired the Criminal Law Sections of the WSBA, WSTLA and the KCBA. In 2003, the Washington Association of Criminal Defense Lawyers awarded him its highest honor; the William O. Douglas Award ‘For extraordinary courage and dedication to the practice of criminal law’.

Steve has taught trial practice at the UW and Seattle U Schools of Law, the National Institute of Trial Advocacy, and the Trial Masters Program, and has been a featured speaker at over 90 continuing legal education programs in the U.S. and Canada. He has published numerous articles in the Bar News, Trial News, Defense, Champion and Overruled magazines. He was lead counsel/co-counsel in State v. Straka, State v. Brayman, Seattle v. Allison, State v. Scott, State v. Ford, and Seattle v. Box. He has tried hundreds of cases from capital murder to reckless driving and currently limits his practice to DUI and serious traffic offenses.

Aaron J. Wolff graduated with honors from the Seattle University School of Law before becoming a DUI prosecutor for the cities of Kirkland and Tukwila. In 2003, Aaron joined the Law Firm of Stephen Hayne where he has limited his practice to defense of DUI’s and other serious traffic offenses. He is a graduate of the National College of DUI Defense, the DRE Drug Evaluation classification overview program and is a NHTSA qualified administrator of the Standardized Field Sobriety Tests. In 2004, Aaron completed the factory training program on the BAC Datamaster breath testing machine.

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Immigration — The Inconvenient Truth?

Henry Cruz is probably right (“What Are They So Afraid Of? Facts and Myths About Immigration,” Diversity and the Law, December 2006 Bar News) that undocumented immigrants shouldn’t be labeled “illegal,” that immigrants do not cause an increase in crime, that immigrants do pay taxes, that they don’t take jobs from most Americans, and that they are not a threat to national security.

The objection that I — and others: this was the brouhaha roiling the Sierra Club’s board election in ’04 — have to undocumented immigration is merely (“merely”?) environmental, related to our ecological footprint. In February of 2003 a “Governor’s Sustainable Washington Advisory Panel” (“A New Path Forward: Action Plan for a Sustainable Washington”) revealed that increasing consumption and population is putting our health at risk, that social inequities are on the rise, that almost all natural systems in the state are in decline, that we are generating increasing waste, and that “if our present behavior continues unabated we — and our children and grandchildren who come after us — will live in a state that is likely to offer little of the quality of life that has made Washington so attractive.”

These problems are caused by or are exacerbated by population growth. The natural population increase in Washington is nearly zero; growth is mostly from in-migration.

A country should be able to control the influx of people from outside its borders. If we can’t do that we are going to have further difficulties preserving our quality of life simply because of population increase. We’ll be like southern California.

At some juncture, of course, the population of Washington will stabilize. That will happen because the natural resources to sustain population growth collapse, or because we take responsible steps to control our population, or because it gets so bad here that even out-of-state immigrants find the place undesirable. Which is the best method?

Maybe some people concerned about undocumented and pretty much uncontrolled immigration are — as Mr. Cruz implies — racist. But you don’t have to be racist to think uncontrolled immigration is a bad idea because it is a significant factor exacerbating ruinous population growth.

Dan Warner, Bellingham

Mexicans First in Line?

I was left shaking my head after reading the recent “diversity” article, “What Are They So Afraid Of? Facts and Myths About Immigration.” Just a few points in response:

1. There is nothing “diverse” in promoting the interests of Mexican immigrants to the detriment of all others. Hundreds of millions around the world would join us tomorrow, if allowed. Why are they any less deserving? I’m open to tweaking immigration numbers, but the underlying principle must be one of fairness to all. Worse yet, would be to undermine the hopes of legal applicants by allowing those who have a geographical border advantage to “cut in line” without penalty.

2. According to the U.S. Office of Immigration Statistics, the total number of naturalized immigrants to this country in 2005 was 1,122,373. Of those, 161,445 were from Mexico (the next closest country of origin was India with 84,681). By a margin of almost 2 to 1, Mexico had the highest number of legal immigrants in 2005. If that is unfair to the authors, then they should propose different numbers, but let’s stop the name calling and recognize that reasonable people may disagree; And,

3. Unlawful = illegal; Therefore, an unlawful presence is an illegal presence. More interesting, is the assertion by the authors that something is not “illegal” if the term, itself, does not appear in the violated statute. If correct, murder is not “illegal” (at least as defined in WA Code); Criminal defense attorneys rejoice!

Mike O’Neill, Minneapolis, MN

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Don’t Leave It Up to Judges

Your recent article regarding bestiality legislation ("Substantive Due Process and the Problem of Horse Sex," November 2006 Bar News) was quite troubling. The article notes that majority rule can result in oppression. Yet it equates legislative decisions of elected representatives with majority rule, while failing to acknowledge this is a critical element of our republican form of government. Judges, not just legislators, have wrong decisions to their credit (e.g., Dred Scott v. Sanford). Rather than following the current trend toward activism, our judicial branch should fulfill its constitutionally limited role in balancing the legislative branch.

In addition, while cultural views of morality can and do change, this does not establish that morality is not an absolute truth. Instead, this strongly suggests a culture can view morality rightly or wrongly. Our entire society will be impacted by the consequences of the moral choices we are now making, and it is appropriate that those choices involve as many members of society as possible (legislatively), rather than being dictated by an activist judiciary.

Lastly, state interests in the regulation of bestiality are actually quite compelling. It is unreasonable to assume that someone willing to risk a perforated colon will reliably practice "safe sex." Furthermore, prohibiting bestiality is hardly analogous to prohibiting ranching or pet ownership. Mankind has been ranching for thousands of years, and the risks and benefits are fairly well known. Do we really appreciate the risks of making animals sexual partners? Is the judiciary, limited to the record before it, the best governmental body to make such a decision? I think not.

Corrie Burwell, Covington

Au Revoir, Bar News

Happily receiving my monthly WSBA Bar News, now that I live in Paris, I cannot tell you how surprised or embarrassed I was as a Washington lawyer that the WSBA chose to publish a "legal analysis" concerning "substantive due process" issues around "morals legislation" that would ban bestiality as a result of the fact it was not a crime for humans to have so-called "sex" with horses or other animals. The "article" raises the question in analyzing a ban on bestiality in these terms: such legislation represents a "desire to persecute a politically unpopular group — the animal lover." (Emphasis added.)

The notion that persons who purportedly "love" animals in this way is so wild and lude [sic] — as if animals have any capacity to consent to such acts of abuse — is simply unworthy of any article to question the legal grounds for outlawing such acts. Of course, any person can entertain such fanciful thoughts — dressed up under the fiction of a "legal article" or otherwise — but the notion that such legislation is a form of "persecution" is no more valid than questioning the legitimacy of laws that prohibit child pornography or child rape. The real crime here is that the WSBA actually would legitimize this utterly absurd and depraved advocacy for bestiality, which is itself a terrible form of animal abuse.

The WSBA's decision to print this filth under the guise of "scholarship" is so plainly shameful and embarrassing I would welcome an investigation of the Bar News editorial board for the decision-making processes in accepting an article like this for publication. First Amendment here is not the issue. The appropriate exercise of good judgment in publishing articles that offer serious scholarship is what is demonstrably lacking, and must be corrected.

Thanks for reminding me to throw my Bar News in the trash, where it belongs. Better yet, save the postage and don’t send it at all.

Dave Dadoun, Paris, France

EDITOR RESPONDS: I am sorry the reader found the article offensive and my motives in publishing it questionable. I did not choose it for any prurient value readers might see in it. I chose it because it presented a legal analysis of a law that was passed amid international headlines, lots of jokes around water coolers, and almost no legislative debate. There seemed to be such unanimity that something must be done by the Legislature, and so quickly. I thought it would be interesting to consider a law that was passed largely because of public noise and pressure.

I will be pleased to take up the reader’s concerns with Bar News’ Editorial Advisory Board.
Our Constitutional Commitment to Justice

Ellen Conedera Dial, WSBA President

This issue of Bar News is devoted to a discussion of the State of Washington’s public-defense system. Several years ago, our system for providing indigent public defense was diagnosed as woefully inadequate — a signal that we are not fully meeting our constitutional commitment to equal justice, and equal access to justice. Despite the best efforts of committed judges, lawyers, and other professionals, careful studies conducted by the Washington State Supreme Court, the WSBA, and others made it clear that inadequate funding and lack of effective coordination had led to gaps in service, inconsistency, and, in some cases, lack of effective assistance of counsel.

Chief Justice Alexander’s introduction to this special issue of Bar News gives us an excellent overview of the persistent challenges faced by our public-defense system. It also describes how a coalition of organizations brought together by the Board of Judicial Administration (BJA), under the umbrella of the Justice in Jeopardy Initiative, is taking up those challenges in collaboration with the legislative branch.

You will find in this issue not only a primer on how we are going about the task of providing public defense to those who cannot afford it, but also what our failures have been, how we are correcting those failures, and what remains to be done. It is a report card of sorts, showing sustained effort and great promise, but describing a system that still needs a lot of attention and improvement.

The WSBA has been a proud partner with the BJA in the Justice in Jeopardy Initiative — one among many. The list of partners in the Justice in Jeopardy effort is stunning. At the BJA’s request, virtually every stakeholder in the justice system came to the table and began to change the landscape for the better. Former WSBA presidents Wayne Blair, Ron Ward, and Brooke Taylor; former Governor Jon Ostlund; Kirk Johns; former King County Bar President and former WSBA Legislative Committee Chair John Cary; WSBA Executive Director Jan Michels; and WSBA Director of Legislative Affairs Gail Stone have played leading roles for the WSBA in the work of the Initiative, as that historic partnership has forged with the Legislature new approaches to funding and sustaining court operations, indigent criminal defense, civil legal aid, and representation of parents in dependency and termination cases. In the last two legislative sessions, the Justice in Jeopardy Initiative has been one of the highest priorities of the WSBA, and it will be again this year as the Initiative takes the next logical step in improving funding for the courts and for legal services to those who need them but can’t afford them.

The focus of this year’s Initiative is a budget request for the biennium of $62.7 million, allocated to trial court operations (including money for court interpreters, court-appointed special advocates, and continuation of a juror-pay pilot program), criminal indigent defense, parents’ representation in dependency and termination cases, and civil legal aid. We look forward to working with the Initiative partners and the Legislature again this year. The Board of Governors supports the request, and the WSBA will be active in Olympia in support of the package.

Despite the best efforts of committed judges, lawyers, and other professionals, careful studies conducted by the Washington State Supreme Court, the WSBA, and others made it clear that inadequate funding and lack of effective coordination had led to gaps in service, inconsistency, and, in some cases, lack of effective assistance of counsel.

There is another way in which justice is in jeopardy that is not discussed in the articles in this issue of Bar News, but it has made its way into the public consciousness in recent years. I refer to the emerging pattern of attacks on the independence of the judiciary, and the seeming lack of understanding by our citizens about the role of the judiciary in our system of government and the importance of a fair and impartial judiciary.

About two years ago, the ABA commissioned a poll to determine the level of understanding in the electorate of the system of checks and balances that is the genius of our constitutional form of government. The ABA poll showed that only 40 percent of the respondents could identify the three branches of government. Almost 50 percent did...
not know what “separation of powers” means, and 29 percent did not know the definition of “checks and balances.” In early 2006, a poll of registered voters in Washington showed that our citizens are more knowledgeable; 55 percent of Washington’s voters could correctly identify the meaning of “separation of powers,” but 31 percent do not know the meaning of the term “independent judiciary.” I believe that so long as our citizens do not understand and appreciate the role that the judiciary plays as a co-equal branch of government, and the role that a fair and impartial judiciary plays in our system of government, justice is in jeopardy.

Last fall’s appellate court elections presented Washington’s citizens with the question of the meaning of an independent judiciary in a different way. Appellate judicial races attracted unprecedented levels of contributions from advocacy groups. Here are some of the questions that we citizens face. Will the election of judges in Washington become increasingly politicized, as in some other states? Whatever the reality, will the public come to believe that judges decide cases based on political expediency? How would that perception affect public support of the concept of a co-equal branch of government, constitutionally committed to deciding cases impartially, by interpreting and applying the law?

These questions hit home with many in the judiciary and the Legislature. There will be multiple bills introduced in this year’s legislative session that would provide a public finance alternative for candidates for appellate judicial seats. The WSBA Board of Governors has voted to support the concept of public financing as one approach to assuring a fair and impartial judiciary. In a statement of principles adopted at its December meeting and emphasizing the importance of a fair and impartial judiciary, the Board supports public financing in concept, and also states that it will be open to considering other ways in which Washington state can act to assure a fair and impartial judiciary.

During the legislative session, Gail Stone, WSBA’s director of legislative affairs, is very active in Olympia, sup-
porting bills that are sponsored or supported by the WSBA pursuant to Board of Governors’ action, or by sections that have taken action in accordance with WSBA policies to support or oppose a bill. By court rule, the WSBA and its sections may take positions on legislation only if the legislation relates to the practice of law or the administration of justice. During the session, representatives of the Board and of the sections frequently testify in support of or in opposition to pending legislation. The WSBA’s standing Legislative Committee has already presented to the Board of Governors a number of bills written or supported by sections, and at its December meeting, the Board of Governors voted to take the action (“sponsor” or “support”) recommended by that Committee. During the session, the Board of Governors’ own Legislative Committee meets weekly to consider bills falling within the WSBA’s purview, and to decide whether to support, oppose, or remain neutral on those bills. Those weekly meetings allow the Board’s Committee to stay current on the Justice in Jeopardy Initiative, bills to provide public funding of judicial races, and other bills on which the WSBA has taken action. If needed, special meetings of the Board will be called so that the full Board can consider important bills.

This important legislation that will be acted on in this session is a reminder of the role that we as lawyers play in educating the public on important issues concerning the legal system. We are the best spokespersons for increased funding for court operations, public defense, and civil legal services. We are the best spokespersons for the importance of a fair and impartial judiciary to the functioning of our system of government. We are the best spokespersons for everything that we must do as a society to assure the promise of equal justice. If not we, then who?

The Bar’s legislative policies and procedures are described on the Bar’s website at www.wsba.org. You can get more information about the Justice in Jeopardy Initiative by asking for the Board of Judicial Administration’s Information and Advocacy Guide for the 2007/2009 Biennium (dated September 2006), a copy of which is also posted on the Washington Courts’ website at www.courts.wa.gov/programs_orgs/pos_bja/cfft/JinJAdvocacy_Guide.pdf. Information about the ABA and WSBA polls on the three branches of government is available on the ABA and WSBA websites, respectively.

Ellen Conedera Dial can be reached at 206-359-8025 or edcial@gmail.com. If you would like to write a letter to the editor on this topic, please e-mail it to letters@wsba.org or mail it to WSBA Bar News, Attn: Letters to the Editor, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539.

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Executive’s report

Justice in Jeopardy: Where We Started and Where We Have Yet to Go!

M. Janice Michels, WSBA Executive Director

In late 2004, a group of judge and lawyer leaders, concerned citizens, and state and local government principals under the able leadership of past WSBA President Wayne Blair issued a seminal report about the status of funding of Washington's trial courts. The report began by defining the problems in delivering justice in Washington, documenting what adequate funding meant, examining funding alternatives to the current local funding structure in Washington, and explicitly stating the principles on which future funding recommendations were based. The report concluded that the current funding structure and level of funding was fatally flawed to the point that putting "Justice" in Washington "in Jeopardy."

There were several documented problems with trial court operations. There were far too few judges to manage the cases filed. Local government-funding constraints have forced courts to choose between critical courtroom staffing, or seeking solutions for families in crisis or those who are chemically dependent. An assessment of the legal service needs of the indigent demonstrated that more than 90 percent of persons with legal problems which threatened housing, health, and/or custody were deserted by a justice system they could not access. Another study of public criminal defense found that Gideon's promise of the right to counsel for persons charged with criminal acts was a broken trust. The public criminal-defense system in Washington was inadequately funded by nearly 50 percent, suffering convoluted accountability, constrained local revenues, and uninformed contracting provisions.

The moniker "Justice in Jeopardy" became the banner of the judiciary, the WSBA, Access to Justice/Equal Justice Coalition, and the public-defense community to call on the state to assume a fair share of funding for the trial courts and the operations of the courts, defense, and civil access for all. The 2005 passage of the filing-fee increase infused some new revenue into the courts for these critical needs. The state Office of Public Defense has begun to demonstrate the overall system improvements resulting from adequate defense services in their pilots. The Office of Civil Legal Aid agency has become a focal point for civil legal-service needs in the trial courts, and the Trial Court Improvement Account created by revenue from the filing-fee increase has allowed local courts to identify and fund their most crucial improvement needs.

The courts cannot be expected to support themselves through fees and fines; local government cannot bear the total burden of providing state-mandated defense, interpreters, civil commitment representation, and juror and criminal witness costs. The steps taken in the 2005 and 2006 legislative sessions are commendable, but the new state contributions represent only a small portion of the documented need.

Defense, which had been coordinating appellate defense, arose to the need for a state agency to assess, improve, and conduct pilot tests about the benefits to the courts of adequately funded criminal-defense services. The Legislature also created a judicial branch state agency to oversee state funding for civil legal services — the Office of Civil Legal Aid (OCLA). In 2006, the state added general-fund dollars to criminal defense, parent representation in dependencies, and civil legal services.

As those concerned with the adequate funding of the trial courts congratulated the Legislature for the steps taken in 2005 and 2006, the Office of Public Defense has begun to recognize its fair-share obligation to help fund the trial courts.

The steps are laudatory and significant, and the progress cannot be allowed to stagnate. In 2007, the Legislature may focus on state salaries, education, and transportation — clearly among their obligations — but such systems become less meaningful if the justice system remains in jeopardy. The enormity of the funding need may have been approached with 2005 funding-fee increase and some General Fund contributions in 2006, but we still have very serious jeopardy. Many dependents are without advocates; persons charged with crimes...
are still represented by overburdened public defenders with caseloads that allow less than 45 minutes per case start to finish; civil cases give up on public courts when the time to trial is extended unreasonably by the demands of criminal time-to-trial requirements; and 90 percent of the civil legal needs of low-income people still go unmet.

Clichés abound about the principles of “equal justice for all,” “equal protection under the law,” the constitutional right to counsel, and the importance of the rule of law. But these principles remain threatened. The courts cannot be expected to support themselves through fees and fines; local government cannot bear the total burden of providing state-mandated defense, interpreters, civil commitment representation, and juror- and criminal-witness costs. The steps taken in the 2005 and 2006 legislative sessions are commendable, but the new state contributions represent only a small portion of the documented need.

In 2007, a budget year and a long session, we must keep our fervor high. The combined group requests for court operations, public defense, and civil legal needs are admittedly mighty, but when government does not adequately fund the judicial branch, the risk of increasing erosion to the promises of our Constitution is heightened. Trial courts must be funded adequately to guarantee that all civil matters have access, due process is respected, case law develops in the public arena, and a fair and impartial judiciary is maintained. Only then can we assure our family, friends, and children that the rule of law will govern their interactions with strangers in predictable and proportionate ways.

Budget choices aren’t easy, and carrying the banner of adequate funding of the trial courts is not for the easily discouraged. Every person familiar with the pivotal importance of our justice system needs to take his or her turn as a champion of adequate funding of the trial courts. The jeopardy of our future justice system is simply too great to risk. ☭

WSBA Executive Director Jan Michels can be reached at janm@wsba.org.
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Public Defense
Guaranteeing Justice for All

by Chief Justice Gerry L. Alexander

In 1963, the United States Supreme Court issued its decision in the famous case of *Gideon v. Wainwright*. In that opinion, the court declared that indigent persons accused of a crime possess a constitutional right to be effectively represented by an attorney. More than 40 years after *Gideon*, Washington is making a substantial effort to firm up existing structures and obtain the funding necessary to fully meet the promise of that landmark decision.

This issue of *Bar News* focuses on the present status of our state’s public-defense system. In 2004, the inadequacies of the system were revealed on four different fronts. That year, the Supreme Court’s Justice in Jeopardy Task Force indicated that funding for indigent-defense representation, which had previously been the responsibility of local government, was inadequate. At about the same time, the Washington State Bar Association’s Blue Ribbon Task Force on Indigent Defense reported on problems it found with public-defense representation throughout the state. The state’s largest newspaper, the *Seattle Times*, also weighed in with a series of articles on the inadequacies of public-defender systems that it observed in several counties of the state. Finally, a lawsuit was filed against an eastern Washington county in which there were allegations that the county’s criminal-justice system was infected with many instances of ineffective assistance of counsel for indigent defendants.

Since 2004, much progress has been made to improve our state defender systems. Senate Bill 5454, which passed in 2005 at the request of the Justice in Jeopardy Initiative, provided additional funds for the state’s trial courts as well as for parental representation in termination and dependency cases, indigent-defense consultation and training, and civil legal aid. In that same year, the Revised Code of Washington was amended to establish a structure for state funding for counties that committed to improving their public-defense systems. A year later, the Legislature provided, for the first time in this state’s history, funding for trial-level criminal public defense. Finally, the WSBA continues to maintain its Committee on Public Defense, a committee that is busily engaged in examining a myriad of critical issues relating to the proviso of public defense. Despite these significant improvements, however, much remains to be done.

This edition of *Bar News* includes articles about public defense from a variety of presenters. Rob McKenna, the attorney general, addresses Washington’s participation in the *Gideon case amicus* brief. Don Scaramastra, of Garvey Schubert, and Dave Taylor, of Perkins Coie, write about the Grant County lawsuit. Joanne Moore, director of the Washington State Office of Public Defense (OPD), tells us about lawyers who have, in the past, volunteered to serve as counsel for indigent defendants facing murder charges. Bob Boruchowitz, recently the director of The Defender Association, describes a new ABA ethics opinion pertaining to excessive caseloads. Rafael Gonzalez, of OPD, describes new state-funded public-defense programs. Tom McBride, executive director of the Washington Association of Prosecuting Attorneys, writes about why prosecutors support state funding for indigent criminal defense. Mary Jane Ferguson, of OPD, describes cost savings available through the provision of adequate public defense.

The Board for Judicial Administration’s Justice in Jeopardy Initiative is committed to continuing efforts to improve public defense until such time as we can say that adequate representation is available and accessible in the state of Washington to all who qualify for such legal assistance. This effort accompanies an overarching campaign for adequate state funding for our trial courts, the providers of civil legal services for the poor, as well as for our public-defender systems. In a nation that exalts the concept of justice for all, this must be a priority.

Gerry L. Alexander is chief justice of the Washington State Supreme Court.
County governments in Washington state should shoulder most of the responsibility for creating, funding, and operating public-defense systems. As a result, counties share the constitutional obligation to ensure that public-defense systems provide effective legal representation. A recent Washington court decision in *Best v. Grant County* highlights the constitutional duties of Washington counties and provides guidance to county governments and others who are interested in understanding — or enforcing — a county’s constitutional and statutory obligations to provide effective public defense. This article summarizes the *Best* lawsuit, the court’s decision, and the resulting settlement, and outlines the top 10 ways in which a county can fail to meet its constitutional obligations and open its public-defense system to legal challenge.

*A recent Washington court decision in *Best v. Grant County* highlights the constitutional duties of Washington counties and provides guidance to county governments and others who are interested in understanding — or enforcing — a county’s constitutional and statutory obligations to provide effective public defense.*

**Best v. Grant County**

*Best v. Grant County* arose from widespread and serious deficiencies in the felony public-defense system in Grant County, Washington. Those deficiencies resulted in some notable failures. Among other things, two Grant County public-defense attorneys — including the County’s lead public-defense attorney — were disbarred in the year before the lawsuit began, and state and federal courts reversed convictions because Grant County public defenders failed to provide effective assistance of counsel.

In April 2004, four plaintiffs, including three individuals who had been represented by Grant County public defenders and a taxpayer plaintiff, sued Grant County over its felony public-defense system. The plaintiffs alleged that the county had systematically deprived indigent felony defendants of effective assistance of counsel in violation of both the United States and Washington State Constitutions. The plaintiffs asked the court to certify a class of current and future indigent defendants under CR 23(b)(2) and sought injunctive and declaratory relief reforming the Grant County public-defense system.

The superior court certified the proposed class in September 2004. It did so after permitting the county to conduct discovery into class-certification issues and over the county’s objections. Especially noteworthy was the court’s recognition, consistent with decisions from other jurisdictions, that the specific circumstances surrounding each individual felony prosecution and each public defender’s performance did not pose a serious hurdle to class certification. Nor did the court accept the county’s argument that problems with its system were solely the responsibility of a few bad (and now disbarred) lawyers.

After more than a year of discovery regarding the merits, the court granted partial summary judgment in favor of the plaintiffs in October 2005 (and denied the county’s cross-motion). In its summary judgment ruling, the court first acknowledged that poor people...
charged with felonies have a “clear legal and equitable right to effective assistance of counsel” under both the United States and Washington State Constitutions. The court then noted that almost all of the material facts concerning deficiencies in the design and operation of Grant County’s public-defense system were uncontested. The court ruled that these deficiencies gave someone represented by a Grant County public defender “a well-grounded fear of immediate invasion of the right to effective assistance of counsel.” The court concluded that changes the county had made in response to the lawsuit — changes the county claimed were significant improvements — were insufficient to dispel that fear.

This was enough, the court agreed, to justify injunctive relief. Following decisions from a number of other jurisdictions, the court held that it was unnecessary for the plaintiffs to prove that the defense of specific individuals was prejudiced by ineffective assistance, as Strickland v. Washington would require to vacate a conviction. Plaintiffs seeking systemic reform of a public-defense system need only show a well-grounded fear that deficiencies in the system will deprive them of effective assistance of counsel.

The import of this decision is clear: County governments have an obligation to see that their public-defense systems deliver effective assistance of counsel. Anything less can give rise to a well-grounded fear that the constitutional rights of indigent defendants will be violated, warranting injunctive relief.

The Settlement
Based on its ruling, the court ordered a trial focused on devising a system that would protect the rights of class members and “meet the constitutional obligation to provide effective assistance of counsel.” Within a few weeks of the ruling and shortly before trial, the parties announced a settlement in which Grant County agreed to maintain and operate a public-defense system that provides effective assistance of counsel. The settlement allowed Grant County to continue to operate a contract public-defense system or to adopt a new form of system. Either way, Grant County was required to comply with important safeguards and requirements derived from standards adopted or endorsed by the Washington State Legislature, the Washington State Bar Association, the American Bar Association, and other organizations devoted to the cause of public defense, such as the National Legal Aid and Defender Association. Most significantly, the county agreed to:

- Limit public-defender caseloads to 150 felony cases or less (a limit derived from State Bar-endorsed standards), with some felony cases accorded extra weight to reflect the time typically needed to handle them and some other matters (such as probation-violation proceedings) also credited against the caseload limits;
- Assign cases only to lawyers qualified to handle them under objective standards endorsed by the State Bar;
- Pay compensation that more closely correlates to salaries paid to prosecuting attorneys and that rewards tenure and experience;
- Pay additional fees for cases that are taken to trial so as to remove financial disincentives to trial (the settlement initially imposes a $350 fee for each full or partial day of trial);
- Require one full-time investigator for every four defenders, as State Bar-endorsed standards contemplate;
- Provide funding for experts outside the budget for attorneys, and allow defenders to hire experts without notice to the prosecution;
- Require each public defender to retain an objectively measurable minimum amount of staff support that corresponds to standards endorsed by the State Bar;
- Hire a full-time lawyer whose sole responsibility is to supervise the other defenders, one who is qualified under standards endorsed by the State Bar;
- Hire interpreters who don’t work for the court or other county departments;
- Establish an “800” number that indigent defendants can call to report problems and complaints;
- Require defenders to attend each defendant’s initial court appearance (something that wasn’t done until after Best was filed);
- Require each defender to satisfy training standards promulgated by the National Legal Aid and Defender Association;
- Require adequate conflicts check processes approved by an outside monitor;
- Build an adequate supply of qualified and adequately paid counsel to handle cases when the regular public defenders are conflicted out; and
- Completely remove the prosecuting attorney’s office from all matters pertaining to the operation of the county’s public-defense system, including compensation, funding, and contract issues.

The settlement presumptively runs for six years. To ensure that the county meets its obligations, the parties selected defense attorney Jeffery Robinson to serve as the court-appointed monitor. Mr. Robinson has wide-ranging powers to investigate, oversee, and direct county compliance with the settlement agreement. The settlement also requires the county to pay $1,100,000 in attorneys’ fees and court costs to the plaintiffs. As an incentive to compliance, $100,000 of this fee award to plaintiffs will be forgiven for each of the six years that the county fully complies with the settlement.

The Top 10 Ways in Which a County Can Fail to Meet Its Constitutional Obligations
Since the settlement was announced, we have frequently fielded questions about the potential exposure of other counties to similar claims. In the spirit of helping to identify some of the areas where counties may be at risk (and with apologies to David Letterman), we present our list of the top 10 ways to ensure that a county’s public-defense system can be effectively challenged.

1. Don’t Have (or Enforce) Standards for Public Defense
The Washington State Legislature requires every county to adopt standards for the operation of its public-defense system. In doing so, the Legislature has instructed counties to use as guidelines the standards for public defense issued by the Washington Defender Association and endorsed by the Washington State Bar Association. Although the State Bar-endorsed standards are not mandatory,
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they provide a recognized and legislatively sanctioned way for courts, counties, and litigants to evaluate a public-defense system.

The court did exactly that in *Best*, ruling that the standards endorsed by the WSBA and by the ABA should form the basis for reforming the Grant County system so as to protect class members’ rights to effective assistance of counsel. As the court’s ruling suggests, county governments that fail to adopt standards consistent with these standards — or that fail to live up to those standards — do so at their own risk.

2. Dispense With Caseload Limits

Overloading public-defense attorneys with too many cases is one way to reduce the costs of public defense. It is also a near-certain way to ensure that poor defendants are denied effective legal assistance. Indeed, saddling public defenders with too many cases can lead a court to presume that the public defenders are providing ineffective assistance. Enforcing appropriate caseload limits is critical to ensuring effective public defense.

Grant County public defenders often exceeded the caseload limits endorsed by the WSBA. In 2003, for instance, the lead public defender informed the County that he had handled more than 500 felony assignments. The year before he had reported "only" 313 assignments. This did not escape the attention of the court in *Best*, which found it uncontested that "the caseloads of the Grant County public defenders were excessively high and exceeded any advisory guideline for caseload limits." Counties that fail to adopt and enforce the State Bar-endorsed caseload limits place indigent defendants at significant risk and expose their public-defense systems to challenge.

3. Disregard Qualification Standards

Like caseload limits, hiring public defenders with adequate qualifications seems intuitive. Even the most diligent lawyer may be ineffective if he or she lacks experience. The State Bar-endorsed standards require public defenders to meet certain objective requirements before they may be assigned cases of a given seriousness or complexity. In *Best*, the county made virtually no effort to determine whether public-defense attorneys were qualified to handle the cases they would be assigned. Some of those attorneys did, in fact, lack the experience required by the State Bar-endorsed standards. Assigning too many cases to lawyers without sufficient experience is an especially effective way to ensure that defendants are deprived of effective assistance of counsel.

4. Create Financial Disincentives to the Proper Handling of Cases

Financial disincentives can and do hamper effective representation. Grant County incorporated a number of such disincentives into the various iterations of its public-defense system. Under one iteration, the county simply paid a flat fee to a single lawyer and delegated to him the responsibility for defending (personally or by way of subcontract) all felony prosecutions in a given year. Subject only to exceptions that never seemed to apply, that fee was supposed to cover all costs associated with the representation, including expert and investigator fees. In other words, the lawyer was expected to fund experts, investigators, and other expenses out of his or her own salary. This created a conflict of interest between lawyer and client. A review of all felony case files for 2003 indicated that lawyers almost invariably succumbed to the conflict. Of the roughly 1,000 felony prosecutions that year, defenders hired experts in only a handful of cases.

In 2004, the county changed its manner of compensating public-defense attorneys. Rather than pay an annual flat fee to a single defender, the county began paying each defender a flat fee of $550 per case. This was intended to reimburse the lawyer for all costs of doing business. But the effect of the county’s flat-fee system was to discourage trials and other time-intensive defense activities. A lawyer who made the “mistake” of properly preparing and trying a reasonably complex felony case could find his or her take-home pay approaching the state’s minimum wage. These disincentives were especially dangerous given the county’s failure to supervise the public-defense system. Not surprisingly, trial rates in Grant County were low.

In assessing a county’s public-defense system, the manner of compensating public defenders is important. A system that enlists the invisible hand of the market against effective representation will be open to question.

5. Discourage the Use of Investigators and Experts

Investigators and experts are essential to effective public defense. Most lawyers are too busy to do the investigative legwork for all their cases. Without investigators, witnesses are not found and interviewed, crime scenes are not inspected, leads are not pursued, and documents or other
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A county must ensure that its public-defense system passes muster. A straightforward duty does not render a duty less onerous. Nor do judges have any real control over public-defense funding. It is fair to expect an independent judiciary to do its best to foster effective defense and eliminate the most egregious abuses, but the judiciary is merely public defense’s first bulwark, not its final redoubt.

County government is ultimately responsible for ensuring effective public defense. This duty may not be off-loaded on private lawyers, judges, or anyone else. In the end, county officials must ensure that the public-defense system actually provides what the Constitution guarantees: effective legal representation. This requires a supervisor who can ensure that public defenders actively and appropriately communicate with and represent their clients. Complaints in the Best litigation included that public representations were not being rendered. In reality, public-defense lawyers rarely employed investigators or experts.

6. Fail to Supervise the System

Adequate supervision and monitoring are essential to any properly functioning public-defense system. Without supervision, there is simply no effective way for a county to make sure that its public-defense system passes muster.

In Best, the court found it undisputed that Grant County failed to supervise its public-defender system. For years, the County had simply outsourced public defense to a single attorney. During that time, the county did not require meaningful reports from the attorney, failed to monitor the attorney’s compliance with the county’s standards, and assigned no one within county government the responsibility for supervising the public-defense system. The Best court put it best: “Grant County failed to provide meaningful supervision over the public defender system.”

Another way to ensure inadequate supervision is to look to the superior court judges to supervise the public-defense system. Supervising a public-defense system, however, is both inconsistent with judicial duties and beyond the authority of most judges. Judges cannot and should not monitor the private and privileged operations of counsel, and there is only so much they can infer from the conduct of the parties in open court. Nor do judges have any real control over public-defense funding. It is fair to expect an independent judiciary to do its best to foster effective defense and eliminate the most egregious abuses, but the judiciary is merely public defense’s first bulwark, not its final redoubt.

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defenders rarely visited clients in jail (and often didn’t visit until after the client had been incarcerated for weeks), refused to answer telephone calls, failed to use certified interpreters (sometimes using bilingual inmates for this purpose), did not adequately inform clients about the facts or legal aspects of their cases, or did not understand these facts themselves. To effectively identify and fix these types of problems, supervision must be centralized in the hands of a lawyer with sufficient expertise and qualifications. State Bar-endorsed standards require a supervisor who is qualified to try Class A felonies.

7. **Allow the Prosecutor a Voice in Public Defense**

Few people would argue that the prosecutor should have a role in the design or operation of the public-defense system, yet it is easy for a prosecutor who serves as counsel to county government to overstep appropriate bounds. This is precisely what happened in Grant County. There, prosecutors drafted public-defense contracts and public-defense standards, advised County commissioners on public-defense matters, helped select public defenders, and resisted the hiring of investigators and experts by public defenders. The Best court specifically pointed to the prosecuting attorney’s interference with the hiring of investigators and expert witnesses to support the summary judgment ruling.

The decision thus confirms that counties must be diligent in keeping prosecuting attorneys out of the public-defense process. This isn’t just a good idea; to some extent, it is required by statute.

8. **Under-Fund Public Defense**

This one should go without saying and is implicit in everything else that we have discussed so far. An under-funded public-defense system will be less likely to deliver effective representation. But, some may protest, how does one determine whether a public-defense system is under-funded? After all, costs vary from place to place and comparisons are difficult to make. Prosecuting attorneys’ offices, for example, have different and more varied duties than a public-defense attorney.

In fact, there are some relatively simple ways to evaluate whether there is rough parity between spending for criminal prosecution and spending for criminal defense. Look, for example, at salaries and benefits or other compensation. Do public defenders and prosecuting attorneys take home comparable paychecks? Do they receive similar levels of financial support for staff and expenses?

Another measure may be relative spending levels over time. In Grant County, public-defense spending lagged behind both large increases in caseloads and spending on prosecution. For example, in 1993 Grant County spent roughly 46¢ on public defense for every dollar spent on the prosecuting attorney’s office. By 2003, Grant County was spending just 30¢ on public defense for every dollar spent on the prosecuting attorney’s office. Likewise, spending for public defense on a per-case basis fell sharply: Grant County paid an average of $825 for the defense of each felony case in 1991 but just $468 per case in 2003.

If a lawyer wants to find out whether a county takes public defense seriously, one of the first things he or she will look at is how much a county pays for it. In the case of Washington counties, county budgets for public defense and prosecution are...
easy to obtain: one need only serve a request under the Public Disclosure Act and the cat’s out of the bag.

9. Ignore Warning Signs
A public-defense system in trouble will show symptoms. In Grant County’s case, the warning signs included court findings of ineffective assistance of counsel and the disbarment of two public defenders. In addition, superior court judges pointed out problems, private attorneys complained, and criminal defendants described the mishandling of their cases. A county faced with those kinds of warning signs needs to act. If it does not, it invites a legal challenge to its public-defense system — and evidence that a county that has stuck its head in the sand simply makes the case for judicial intervention that much more compelling.

10. Assume No One Can Hold the County Accountable
Another way to invite a challenge to a public-defense system is for the county to ignore the fact that one can be brought. As Best shows, it is possible to challenge a public-defense system. Indeed, in some respects it is easier to obtain systemic reform than to challenge an individual conviction. As previously mentioned, the Best court followed the unanimous teaching of other courts and held that plaintiffs in a civil suit for injunctive relief need not show that any specific individual was wrongly convicted. Instead, plaintiffs mounting a systemic challenge need only satisfy the traditional standard for an injunction. That contrasts with the requirement imposed on challenges to individual convictions by the Supreme Court in Strickland v. Washington, which requires a showing of actual prejudice.

Due to the large numbers of public-defense clients and their constantly changing population, challenges to a public-defense system are peculiarly amenable to certification as class actions under CR 23(b)(2). While a class action is a very efficient approach to managing public-defense litigation once it starts, it is likely to be expensive to defend, indeed, probably more expensive than simply providing a good public-defense system and avoiding litigation in the first place.

Also remember that plaintiffs, if they prevail, are entitled to recover their attorneys’ fees and costs from the county. Together the defense costs and liability for plaintiffs’ attorneys’ fees will likely be more than enough to fund the difference between a public-defense system that passes constitutional muster and one that doesn’t for many years to come. Thus, good public defense isn’t just constitutionally required — it’s fiscally responsible.

Epilogue: Grant County One Year Later
As this article goes to press, it has been roughly one year since the court approved the settlement of Best v. Grant County.

As the Best case illustrates, counties in Washington state have a constitutional duty to ensure that their public-defense systems provide effective representation in compliance with constitutional standards. Counties ignore those duties at their own peril.

David Taylor is a partner with Perkins Coie LLP. Don Scaramassa is an owner with Garvey Schubert Barer. Beth Colgan is managing attorney of the Institutions Project at Columbia Legal Services. The authors were among the lawyers who represented the plaintiffs in Best v. Grant County as pro bono cooperating attorneys for the American Civil Liberties Union of Washington Foundation (ACLU-WA) and Columbia Legal Services (CLS). The authors acknowledge the contributions — both to the prosecution of Best v. Grant County and to this article — of current and former attorneys and staff at the ACLU-WA and CLS, including but not limited to Pat Arthur, Chris Kerkering, Joe Morrison, and Nancy Talner. The ACLU-WA is a statewide, nonpartisan, nonprofit organization dedicated to the preservation and defense of constitutional and civil liberties, including the right to counsel. ACLU-WA relies on volunteer attorneys and their law firms to assist in its mission and undertake ground-breaking litigation when necessary to remedy civil liberties violations. CLS is a not-for-profit organization that provides civil legal assistance to low-income and special-needs people and organizations in Washington. CLS works to bring about social and economic justice for its client populations by providing legal assistance in the full array of civil justice forums.

NOTES
2. Kittitas County Superior Court Cause No. 04-2-00189-0.
5. See RCW 10.101.030.
6. Id. The WSBA-endorsed standards are available on-line at www.defensenet.org.
7. WSBA-endorsed Standard 3 Commentary ("Caseload levels are the single biggest predictor of the quality of public-defense representation. Not even the most able and industrious lawyers can provide effective representation when their workloads are unmanageable").
9. See Strickland, 466 U.S. at 691 (defense counsel has a “duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary”); ABA Standards for Criminal Justice (requiring “prompt investigation of the circumstances of the case and all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction”).
10. RCW 10.101.040.
11. All amounts in 2003 dollars.
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When Washington Attorney General John J. O'Connell joined 21 other states and commonwealths in signing an amicus brief submitted in a criminal case before the United States Supreme Court, our state took a position that we take for granted today: that every indigent person accused of a felony in a state court is guaranteed the right to counsel.

It was 1962, and the case was Gideon v. Wainwright, 372 U.S. 335 (1963). At the time, 35 states required that counsel be appointed to indigents accused of non-capital felonies in state court. The nature and scope of the right to counsel continues to be further defined by our courts and legislative bodies even to this day.

Prior to the Gideon decision, Betts v. Brady, 316 U.S. 455 (1942), dictated that an indigent person accused of a non-capital crime did not have a due process right to counsel unless, under the facts of the particular case, refusal to appoint counsel would constitute "a denial of fundamental fairness, shocking to the universal sense of justice." However, the United States Supreme Court had not allowed a denial of counsel to stand under that test since 1950. In Washington, constitutional and statutory mandates already dictated that a person subject to criminal prosecution had a right to counsel.

Although the decision in Gideon was described at the time as "not unexpected," 13 states that required that counsel be appointed to indigents accused of felonies in their own states did not join the amicus brief. The states' brief that Washington joined argued that historical developments in the interpretation of the due process clause compel the finding of a constitutional right to counsel in state felony trials, if there is a risk of loss of liberty, whether or not a capital crime is involved. The states likened the denial of counsel on the basis of indigence to discrimination, citing a prior United States Supreme Court decision which stated, "In criminal trials a State can no more discriminate on account of poverty than on account of religion, race, or color." Plainly stated, "[t]here can be no equal justice where the kind of trial a man [or woman] gets depends on the amount of money he [or she] has." To quote directly from the states' 25-page amicus brief, "So firm is the attachment of the undersigned states to that principle that we could confidently rest our case on that assertion alone."

In the Gideon case, there was, also not surprisingly, an amicus brief filed in support of Florida by the state of Alabama, which was also signed by North Carolina. That brief argued that states could certainly decide to provide appointed counsel in non-capital criminal cases, but that decision is not constitutionally required.

In that distant day when finally the millennium is reached, no layman shall be compelled to defend himself without legal assistance in a state criminal prosecution. No indigent individual shall be compelled to suffer illness or injury without the attention of a physician or benefit of necessary medicine or hospital care. No poor person shall be compelled to suffer the pangs of hunger or the discomforts occasioned by a lack of adequate clothing, suitable housing or other creature comforts. Humanitarian principles require that such assistance be given to the needy even today, but it cannot be argued logically that, under the due process or equal protection clauses of the Fourteenth Amendment, the states must furnish them. If and when, in the considered judgment of the people of the individual states, such gratuitous services or aid are warranted morally or are feasible financially, they will be provided. Though man's social evolution is slow, history proves that he does advance in all fields. To be lasting, however, his progress must result from his own volition rather than come from judicial fiat.

The amicus brief of Alabama also makes an interesting observation that a recent gathering of the state's prosecuting attorneys revealed "widespread agreement among them that an accused, tried without aid of counsel, stands a
better chance of obtaining from a jury either an outright acquittal or less severe punishment than one represented by an attorney.” Nonetheless, Mr. Gideon was acquitted on remand after a trial in which he was represented by counsel.13

The Gideon decision reflected consideration of the principles contained in the amicus brief that Attorney General O’Connell signed on behalf of the State of Washington. In establishing the principle that counsel is required for Mr. Gideon and others like him, the Court stated, “reason and reflection require us to recognize that in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.”13 Washington and 21 other states acknowledged that the time had come to recognize this important right. The Court concluded its opinion, in which it overruled Betts:

Florida, supported by two other States, has asked that Betts v. Brady be left intact. Twenty-two States, as friends of the Court, argue that Betts was “an anachronism when handed down” and that it should now be overruled. We agree.14

The important considerations supporting the constitutional right to appointment of counsel have not stood still since the Gideon decision. In the intervening years, our courts and Legislature have recognized that the right to counsel means much more than simply providing a lawyer to indigent individuals accused of felonies. Examples include the statutory right to counsel in certain civil proceedings, such as involuntary mental health commitment hearings,15 sexually violent predator proceedings,16 and parental termination trials;17 the appointment of at least two attorneys with demonstrated proficiency in capital cases;18 and the right to counsel in certain misdemeanors as well as felonies.19 The law in this area continues to be shaped by lawmakers and reviewed by our courts. 20

Rob McKenna is Washington’s 17th attorney general. As the state’s chief legal officer, he directs 500 attorneys and nearly 700 professional staff providing legal services to state agencies, boards, and commissions.

NOTES
1. The brief was drafted by the states of Massachusetts and Minnesota, and joined by Alaska, Colorado, Connecticut, Georgia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Michigan, Missouri, Nevada, Ohio, North Dakota, Oregon, Rhode Island, South Dakota, Washington, and West Virginia.
5. The Washington Supreme Court explained the rights of the accused in the following manner: “The right of an accused to appear and defend by counsel is expressly guaranteed by Art. I § 22 (amendment 10) of the state constitution. In furtherance of this constitutional guarantee, RCW 10.01.110 and 10.40.030 imposes upon the court three duties: (1) to inform the defendant that it is his right to have counsel before being arraigned; (2) to ascertain whether because of the defendant’s poverty he is unable to employ counsel, in which event, the court must inform the defendant that the court shall appoint counsel for the defendant at public expense if he so desires; (3) to ask whether the defendant desires the aid of counsel.”
8. Id. at 19.
11. Id. at *7.
15. RCW 71.05.360(5)(b).
16. RCW 71.09.050.
17. RCW 13.34.090.
18. SPRC 2.
19. CRHL § 3.1(a).
Counsel for Poor Criminal Defendants: An American Tradition

BY JOANNE I. MOORE

In 1789, Congress adopted and the states ratified the Bill of Rights in order to protect individuals against unwarranted, arbitrary interference by government. Shortly before the adoption of the Bill of Rights, Thomas Jefferson wrote to James Madison: "In the arguments in favor of a declaration of rights ... one which has great weight with me [is] the legal check which it puts into the hands of the judiciary." One of the 10 constitutional amendments comprising the Bill of Rights, the Sixth Amendment establishes that "in all criminal prosecutions, the accused shall ... have the Assistance of Counsel for his defense." In fledgling America, the assistance of counsel was viewed as a critical protection against unjust criminal actions. The right to the assistance of counsel was a sharp departure from English law, which denied the aid of counsel in most felony trials until 1836.

Some 37 years after the adoption of the Bill of Rights, Constitutional commentator William Rawle wrote that: "The most innocent man, pressed by the awful solemnities of public accusation and trial, may be incapable of supporting his own cause. He may be utterly unfit to cross-examine the witnesses against him, to point out the contradictions or defects of their testimony, and to counteract it by properly introducing it and applying his own." Many years before the U.S. Supreme Court interpreted the Sixth Amendment as guaranteeing that poor criminal defendants have the right to assistance of appointed counsel if they cannot afford to pay, a number of our historical lawyer leaders proved the depth of their belief that attorneys are necessary in criminal matters by taking this responsibility upon themselves.

Nineteen years prior to the adoption of the Bill of Rights, John Adams, for example, agreed to defend eight British soldiers and a captain charged with the murder of five Americans during the Boston Massacre. Adams accepted a nominal fee of only 10 guineas on accepting the case, and eight guineas at trial. When he took the case, Adams well understood that his defense of these hated British soldiers would result in "endless labour and Anxiety if not to infamy and death, and that for nothing, except, what indeed was and ought to be all in all, a sense of duty." Adams, one of Boston's finest lawyers, obtained acquittals for six of the eight soldiers by proving that they were fired upon first. Later, he observed in his diary that the fee paid for his labors was paltry, and said: "The Part I took in Defence of Cptn. Preston and the Soldiers, procured me Anxiety, and Obloquy enough. It was, however, one of the most gallant, manly and disinterested Actions of my whole Life, and one of the best Pieces of Service I ever rendered my Country. Judgment of Death against those Soldiers would have been as foul a Stain upon this Country as the Executions of the Quakers or Witches, anciently.

Some 30 years later, Alexander Hamilton and Aaron Burr joined with another New York attorney, Brockholst Livingston, to represent Levi Weeks, a notorious criminal defendant, on a pro bono basis. Weeks was charged with the murder of his fiancée, Guilielma Sands. Witnesses had seen the victim conversing with him on December 22, 1799, in front of the Manhattan boarding house where they both resided. A few days later, she was found drowned in a well. Widely circulated handbills described her grotesquely bruised and bloated body and her relatives displayed the corpse publicly, inciting fury against Weeks. At the trial, the defense's opening statement described the: "...unexampled industry that has been exerted to destroy the reputation of the accused and to immolate him at the shrine of persecution without the solemnity of a candid and impartial trial...the public opinion comes to be formed unfavorably and long before the prisoner is brought to his trial he is already condemned."

During the three-day trial in which 55
witnesses were called, the defense established that Weeks had an alibi and cast suspicion on Richard Coucher, another boarding-house resident. It has been reported that part of the defense technique was to hold lighted candles near Coucher's head in order to facilitate the jury's observation of his face while he testified. The jury returned a not-guilty verdict after deliberating for some five minutes. 7

In 1857, Illinois attorney Abraham Lincoln told Hannah Armstrong, a widow, that he would represent her son pro bono in his murder trial. William Armstrong had been arrested for killing Preston Metzker in a drunken brawl several months before, on August 29, 1857. At trial, the primary witness against Armstrong testified that he had clearly seen the defendant deliver a fatal blow to Metzker at about 11:00 at night, under an almost-full moon. Lincoln then demonstrated his considerable talents as a trial lawyer. In an early use of judicial notice, he offered the Farmers' Almanac to show that on August 29, the moon was just past the first quarter, producing so little light that the witness could not have seen the fight. Based on this evidence, the jury quickly acquitted Armstrong. 8

Counsel was appointed for the accused in a number of criminal trials during the 19th century. Two famous examples are John Brown's Kansas state murder trial for the attempted insurrection and raid on Harpers Ferry trial in 1859, 9 and the Lincoln assassination conspiracy trial in 1865. 10

By 1934, as the Supreme Court summarized in the Adams v. Powell case overturning the Scottsboro Boys' convictions, the right to counsel for poor defendants was guaranteed by federal statute and by state statute or state case law, to varying degrees but at least for capital cases, throughout the United States. In the 1942 Betts v. Brady case, the Court ruled that whether the Sixth Amendment required that the states appoint counsel depended on the circumstances of the case. The Betts approach was overturned by Gideon v. Wainwright, decided in 1963, when the Supreme Court proclaimed that the Sixth and Fourteenth Amendments guarantee counsel to criminal defendants, including those without the means to pay.

In the Gideon opinion, the Court reviewed America's history of providing counsel for poor criminal defendants, and found that: "From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to ensure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with a crime has to face his accusers without a lawyer to assist him..."

Similar reasoning must have been undertaken by Adams, Hamilton, Burr, and Lincoln. These lawyer leaders passionately believed that counsel was essential to a fair murder trial for the poor defendants they represented. They had abiding faith in the procedural and substantive safeguards available through their representation. Indeed, even though the defendants represented by them in each case clearly appeared to be guilty before trial, through able lawyering, these historical leaders succeeded in proving they were innocent. 9


NOTES
1. Thomas Jefferson to James Madison, 1789.
5. Supra.
7. Hamilton and Burr's relationship subsequently deteriorated; Burr killed Hamilton four years later in their infamous duel. Supra.
Right to Counsel Remains Threatened in Washington

by Robert C. Boruchowitz

Every American who watches television knows that someone who has been arrested has the right to a lawyer, and "if you cannot afford one, one will be appointed for you by the court." Most lawyers believe that this right is implemented in our courts. The shocking truth is that every day in Washington, judges take guilty pleas from accused persons who "waive" their rights without ever having a real opportunity to talk with a lawyer. And for many accused persons who are assigned a public defender, their rights are compromised because the defender has so many cases that he or she cannot effectively represent the clients. It is time for all lawyers and judges to make it a priority to correct these assaults on the integrity of our courts.

Defenders Often Are Overwhelmed

As recently as last year, a defender in Thurston County could expect to be assigned 800 misdemeanor cases per year. That is approximately four cases per work day. It means that a lawyer would have about two hours per case to meet with the client and the client’s family, research the law, read the police report, do investigation, negotiate with the prosecutor, conduct preliminary motion hearings, do a trial, and, if necessary, prepare for and conduct a sentencing hearing. That kind of caseload is simply absurd, and no competent lawyer in private practice would ever contemplate undertaking it. Yet defenders around the state and the nation often are expected to do it.

In 2006, Cowlitz County issued a request for proposals for an attorney to do misdemeanor cases. It described the work as a "part-time position," noting that, in 2005, the contract attorney received 1,144 appointments. Cowlitz County is now developing a public defender office. In 2005, the county paid the indigent defense contractor $126,802 for the district court work. Under the Standards for Public Defense endorsed by the Washington State Bar, 1,144 cases require 3.81 attorneys handling 300 cases per year each. That would yield $33,252 gross income per attorney, had the contractor followed the standards. Another way of thinking about it is that the attorney was paid $110.84 per case. How many hours of attorney time does that buy? The State Supreme Court in 1993 found that $125 per hour was a reasonable attorney fee. In re Estate of Mathwig, 68 Wn. App. 472 (1993). The federal courts today pay $90 per hour for routine criminal matters, and $163 for capital cases.

Even in King County, which has provided great resources for public defense, defenders in juvenile court each have 330 cases per year, meaning that they have approximately five hours per child. Imagine how you would feel if your child or your friend’s child were charged with a crime — facing years in juvenile prison and the possibility of a record that would follow her for life — and were to be represented by an attorney who had only five hours to work on the case. If you were to hire an attorney to represent your child, would you say you would pay for only five hours of work? When does a lawyer with that kind of caseload consult with expert witnesses on mental-health or substance-abuse issues? When does that lawyer prepare a trial memorandum, or go to the scene of an arrest, or prepare a cross-examination? The answer in King County is that those lawyers have to work far beyond any normal expectation of a “billable year,” and are
forced to implement a triage system that constantly threatens to produce ineffective assistance of counsel.

**Some Judges Still Routinely Deny the Right to Counsel**

Despite several judges having been disciplined for violating the right to counsel, it is not uncommon for judges in courts of limited jurisdiction to take guilty pleas from defendants who either have not been advised of their rights or who have "waived" them in "colloquies" with the court that last less than a minute and that do not meet the requirement that there be a knowing and intelligent waiver.

These practices violate constitutional rights and court rules as well as the basic integrity of our judicial process. The United States Supreme Court has written that:

The constitutional right of an accused to be represented by counsel invokes, of itself, the protection of a trial court, in which the accused — whose life or liberty is at stake — is without counsel. This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused.


The Washington State Supreme Court has held:

An accused should not be deemed to have waived the assistance of counsel until the entire process of offering counsel has been completed and a thorough inquiry into the accused’s comprehension of the offer and capacity to make the choice intelligently and understandably has been made. *State v. Chavis*, 31 Wn. App. 784, 789 (Wash. Ct. App. 1982).

And court rules require that a lawyer needs to be provided. CrRLJ 3.1 states:

(2) A lawyer shall be provided at every critical stage of the proceedings.

(d) Assignment of Lawyer.

(1) Unless waived, a lawyer shall be provided to any person who is financially unable to obtain one without causing substantial hardship to the person or to the person’s family.

CrRLJ 4.1(a)(2) provides:

The defendant shall not be required to plead to the complaint or the citation and notice until he or she shall have had a reasonable time to examine it and to consult with a lawyer, if requested.

The implications of that language, as well as the following paragraph (3) of CrRLJ 4.1, require the availability and appointment of counsel:

(3) Advisement. At arraignment, unless the defendant appears with a lawyer, the court shall advise the defendant on the record:

(ii) of the right to be represented by a lawyer at arraignment and to have an appointed lawyer for arraignment if the defendant cannot afford one.

**Defense Lawyers Can Seek Relief by Citing Ethical Opinions**

There is no question that defenders working in under-funded government offices and contract defenders working for small cities and less affluent counties are faced with difficult choices — continue to work under impossible caseloads or stand up to protest and risk losing their jobs. One contract defender in Island County recently lost his job after he based his proposal for renewal of his contract on implementing the WSBA-endorsed caseload standards.

But there have been positive developments that defenders can cite to their funding authority, and that they must consider when faced with these difficult choices. The American Bar Association, this past summer, issued ethics opinion 06-441, "Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation." The opinion, reaffirming existing...
The American Council of Chief Defenders issued an ethics opinion in 2003 that requires chief defenders to decline new cases when they would affect their ability to provide competent representation:

A chief executive of an agency providing public defense services is ethically prohibited from accepting a number of cases which exceeds the capacity of the agency’s attorneys to provide competent, quality representation in every case....

When confronted with a prospective overloading of cases or reductions in funding or staffing which will cause the agency’s attorneys to exceed such capacity, the chief executive of a public defense agency is ethically required to refuse appointment to any and all such excess cases. [available at www.nlada.org/DMS/Documents/1082573112.32/ACCD%20Ethics%20opinion%20on%350Workloads.pdf]

At some point, defender attorneys will face ethical complaints because they have too many cases. One lawyer recently was disbarred after a disciplinary proceeding in which he was charged among other things with "voluntarily maintaining an excessive caseload while one of the lawyers under contract to provide indigent criminal defense.” See, http://pro.wsba.org/PublicView-Discipline.asp?Usr_Discipline_ID=594.

Prosecutors Have Ethical Responsibilities as Well

Every day in some courts, some prosecutors are negotiating plea deals with incarcerated and unrepresented defendants, sometimes with the defendant in handcuffs. Although the judges in these courts sanction this behavior, it is of questionable ethics.

RPC 3.8, Special Responsibilities of a Prosecutor, provides in part:

The prosecutor in a criminal case shall:

- make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- make reasonable efforts to ensure that the accused has sufficient funds to retain counsel and, if necessary, to secure the appointment of counsel at public expense;
- not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing.

Prosecutors could make an enormous difference in protecting the rights of accused persons if they would simply speak up to the court and say: "Judge, Mr./Ms. ______ does not have an attorney and we should provide one to advise them on their rights before they enter a plea today.” Prosecutors should not try to take a plea from unrepresented people who have not consulted with an attorney and who have not exercised a knowing, voluntary, and intelligent waiver of counsel. Prosecutors should work with defenders and judges to persuade local funding authorities to provide counsel at all hearings.
What Needs to Be Done

As result of the work of a coalition of lawyers, judges, bar leaders, and government officials called “Justice in Jeopardy,” state funding has been obtained and is beginning to be distributed by the state Office of Public Defense to local governments to improve public-defense services and to move toward implementing the WSBA-endorsed standards. The WSBA has a Committee on Public Defense, which plans to make a series of recommendations to the Board of Governors in March. The Legislature will be asked to continue and to expand its funding for public defense.

There is a long way to go to make real the promise of Gideon v. Wainwright, that in American courts there will be a lawyer to help an accused person to defend against the government’s accusation and the resources of the state. In 1987, I wrote an article for Bar News called "Funding Crisis Threatens Right to Counsel." Three years ago, I wrote an article called "The Right to Counsel: Every Accused Person’s Right." Many of the issues are the same as I described in those two articles — excessive caseload, lack of resources, judges who ignore the Constitution.

We need to require judges, prosecutors, and defense lawyers to meet their ethical obligations and to provide the individual consideration and dignity to which each person is entitled. And governments need to provide adequate resources for defenders to make sure that their courts are dispensing justice.

Robert C. Boruchowitz is a visiting clinical professor at Seattle University School of Law. He recently completed 33 years as a public defender, including 28 years as director of The Defender Association, and he served 20 years as president of The Washington Defender Association.

NOTES
1. In December 2006, the Judicial Conduct Commission reprimanded a municipal court judge for “engaging in a routine pattern and practice of failing to properly advise criminal defendants of their constitutional rights at arraignment and probation review hearings, and by failing to insure that guilty pleas were validly entered.” www.cjc.state.wa.us/Case%20Material/2006/4453%20Hellbing%20Stip%20FINAL.pdf.
Improving Public Defense in Washington: A Progress Report

It was just over 40 years ago that the U.S. Supreme Court, in 1963, honored Clarence Gideon's plea for help and decided that the assistance of counsel is required — guaranteed — for indigent defendants by the U.S. Constitution. Washington's justice system — the courts' Justice in Jeopardy Initiative, the counties, the state, the Washington State Bar Association, the Washington Defender Association, the Washington Association of Prosecuting Attorneys, the American Civil Liberties Union, and others — are still working toward that ideal.

The tasks ahead include establishing consistent systems for the delivery of defense services; objective criteria for the evaluation of court-appointed counsel; development of oversight mechanisms for the entire system; and adequate funding for all of those needs. The issues are large in scope: Each year, some 43,500 felony defendants and well over 100,000 misdemeanor defendants are indigent.

**Public Defense Pilots.** High defense-attorney caseload levels remain chronic throughout Washington. In 2005, the Legislature appropriated funds pursuant to the courts' Justice in Jeopardy bill, SB 5454, for the development of pilot programs to implement caseload standards and adequate case resources. Washington State OPD is working with three jurisdictions to initiate these pilots:

- A city-state program in Bellingham Municipal Court that features two additional state-funded attorneys, an investigator, and other support, such as social worker and paralegal services. These additions have lowered attorney caseloads and allowed public-defense representation at defendants' first appearance. Municipal Court Judge Debra Lev says that the court saw significant benefits even at the beginning of the pilot, and that the additional services have been well received by the public.

- A county-state partnership program in Grant County Juvenile Court that has added 1.4 attorney FTEs to lower public-defense representation caseloads to the state standard of 250 cases per attorney per year. Now, juveniles can meet with their attorneys before their first court appearances — something that did not happen before the pilot. The public-defense caseload is supported by investigative services and a part-time social worker.

- A program in Thurston County District Court adding attorneys to help handle a caseload so high that one news commentator called it a “circus” in 2005. Now, investigator services are readily available and attorneys represent indigent clients at their first appearances. "I am so pleased to see a decrease in the number of unrepresented individuals at their first court hearing, who stare up at the bench, afraid of what is happening," Judge Kip Stilz recently said. "In Thurston County, I believe this project has significantly improved the quality of criminal justice."

These pilot programs provide information and practical experience in implementing state funding to improve public defense on a court-by-court level. An evaluation measuring the results will be published in 2007.

**Targeted CLEs.** Legislative funding was
provided under SB 5454 for six regional Washington State OPD public-defense conferences, held this year in Vancouver, Wenatchee, Richland, Spokane, Poulsbo, and Ocean Shores. These two-day CLEs were provided free of charge to public-defense attorneys practicing in the regions. More than 300 attorneys attended statewide. Pertinent public-defense issues were covered, including ethical considerations of plea negotiations, cross-examination of expert witnesses, sentencing options, updates on the Rules of Professional Conduct, procedures for filing appeals, and recognizing and dealing with cross-cultural issues and immigration consequences of convictions. Numerous attorneys noted they appreciated that these conferences were held in their areas, and that useful, practical information was presented.

Parents’ Representation. Another major public-defense program, Washington State OPD’s Parents’ Representation Program, was expanded to about half the counties during the last two years. This program was initiated as a pilot in Benton-Franklin and Pierce juvenile courts in 2000. The program furnishes state-funded attorneys for indigent parents in dependency and termination proceedings, which can lead to termination of all parental rights. In the past, the counties funded parents’ attorneys at a much lower level than the state funded assistant attorneys general to represent the state. Parents’ attorneys were hindered by overwhelming caseloads and few expert or social work services to assist their clients. The new funding, now about $8.5 million per year, allows contract attorneys to carry reasonable caseloads within state standards and to access support services where needed.

“Better representation means that all the parties and the court have the information needed to make just and proper decisions for the children and families involved in these difficult cases,” OPD Director Joanne Moore noted. Three independent evaluations of the Parents’ Representation Program pilots found that family outcomes have improved substantially. More children are safely reunited with their parents, and don’t have to grow up in government-paid care.

The Next Steps
In 2004, the WSBA Blue Ribbon Task Force on Public Defense found that though the problem of “deficiencies in the provision of defense services in Washington” has been reported by a multitude of studies, reports, and court decisions over a period of many years, few remedial steps had been taken. Three years later, progress has begun, but much is left to be done. Fortunately, the coalition of concerned Washington justice-system members remains committed to addressing indigent defense’s deeply embedded deficiencies.

Following the Blue Ribbon report, the WSBA appointed the Committee on Public Defense to develop action recommendations for consideration by the WSBA Board of Governors. “The Committee on Public Defense has made substantial progress by bringing together a diverse group of public defenders, prosecutors, and community leaders to address Washington’s public-defense problems and support state funding for counties and cities struggling with these issues,” said Co-chair Jon Ostlund.

The Committee will soon submit its report to the Board of Governors, recommending proposed court rules, updates to the indigent-defense standards, measures to make the application of the death penalty more fair, continued educational efforts for judicial and county officials, methods for improving mental health proceedings, and a recommendation for the continuation of a WSBA public-defense committee, among other actions. Significant improvements will be gained upon the implementation of such action steps.

Another critical remedy is increasing state funds and scrupulously using them to address the jurisdictions’ individual needs. The beauty of HB 1542 is that as additional funding is appropriated by the Legislature, each jurisdiction uses the state dollars to improve public defense in conformance with the WSBA standards. Washington State OPD audits the jurisdictions’ use of HB 1542 funds. Thus, state appropriations assure apt, localized public-defense improvements.

This session, the justice system coalition is advocating for additional biennial funds of $19 million for indigent defense and $17 million for the Parents Representation Program. Given the state’s favorable budget climate, this is a good year for Washington to honor its constitutional obligation to provide effective counsel for indigent defendants. Gideon’s holding — that the criminal justice system will provide a lawyer for those who cannot afford one to ensure the accused stands equal before the law — requires our state’s commitment to implement a system that truly guarantees that the Sixth Amendment is fulfilled.

Rafael Gonzales is a public defense services manager at the Washington State Office of Public Defense. He previously served as a senior trial attorney with the Yakima County Department of Assigned Counsel.
Effective Public Defense — Benefits to the Bottom Line

BY MARY JANE FERGUSON

If defense breaks down, the whole justice system breaks down.

Adequate funding for public defense is not only a constitutional requirement, but also plays a critical part in constructively addressing the rising costs of criminal justice.

"Defense shortcomings are the ‘elephant in the room’ to the justice imperative — if defense breaks down, the whole justice system breaks down."1 Conversely, a strong public-defense system "facilitates a smoother operating justice system and, in so doing, allows the courts to respond effectively to growing caseloads."2

With the cost of a 15-minute hearing estimated at $230 in superior court and $252 in district court, it is easy to calculate the money wasted if one of the few public defenders in the courthouse is down the hall dealing with a matter in courtroom A, while the judge, prosecutor, court reporter, bailiff, clerk, defendant, and jail personnel wait for him or her to get to the scheduled hearing in their courtroom B. More difficult to estimate but equally real is the cost to the system of overburdened defenders with little time to adequately meet their clients and prepare for trials and sentencing.

Where there is no defender or a defender who has had inadequate time to prepare for the bail hearing, courts may have little choice but to retain the defendant in already overcrowded jails.

Even as early as a pretrial bail hearing, adequately funded public defenders can help their clients and the justice system. When a defender has had adequate time to meet with a client, the defender can present relevant job, family, and community information about an individual who has been arrested and is in custody, for example, on a misdemeanor theft charge. The court is then able to effectively evaluate that defendant’s danger to the community and risk of flight. A release on personal recognizance or an affordable bail level can allow the client to retain his or her job, keep the family off assistance, and even pay taxes — instead of running up jail costs.

When there is no defender or a defender who has had inadequate time to prepare for the bail hearing, courts may have little choice but to retain the defendant in already overcrowded jails.

At a daily average cost of $47.90 per jail day in Washington state counties, adequate public defense can translate into substantial costs for taxpayers.

"The City of Spokane bail hearings are video hearings, with the judge and prosecutor at the courtroom and the defendant at the jail. We used to have public defenders at the jail for these hearings, but because of budget cuts, we don’t have anyone there to represent the defendants," Kathy Knox, director of the City of Spokane Public Defender, said.

"And without a defender face-to-face with the defendant, it’s virtually impossible for the judge and prosecutor to have sufficient information to assess a person’s mental health or obtain information that might serve as a basis for release or affordable bail."

But adequate representation at bail hearings can make a proven difference. In one Baltimore study, providing improved representation over an 18-month period to nearly 4,000 lower-income defendants resulted in over two-and-a-half times as many represented defendants released on personal recognizance compared to unrepresented defendants. In addition, the improved representation resulted in two-and-a-half times more represented defendants having their bail reduced to an affordable amount compared to unrepresented defendants.3

Among programs found to provide significant dollar benefits compared to costs were cognitive-behavioral therapy in prison or community; job training in the community; drug treatment in community; and adult drug courts — all of which were found to reduce crime.

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With the cost of a 15-minute hearing estimated at $230 in superior court and $252 in district court, it is easy to calculate the money wasted if one of the few public defenders in the courthouse is down the hall dealing with a matter in courtroom A, while the judge, prosecutor, court reporter, bailiff, clerk, defendant, and jail personnel wait for him or her to get to the scheduled hearing in their courtroom B. More difficult to estimate but equally real is the cost to the system of overburdened defenders with little time to adequately meet their clients and prepare for trials and sentencing.

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Even as early as a pretrial bail hearing, adequately funded public defenders can help their clients and the justice system. When a defender has had adequate time to meet with a client, the defender can present relevant job, family, and community information about an individual who has been arrested and is in custody, for example, on a misdemeanor theft charge. The court is then able to effectively evaluate that defendant’s danger to the community and risk of flight. A release on personal recognizance or an affordable bail level can allow the client to retain his or her job, keep the family off assistance, and even pay taxes — instead of running up jail costs.

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At a daily average cost of $47.90 per jail day in Washington state counties, adequate public defense can translate into substantial costs for taxpayers.

"The City of Spokane bail hearings are video hearings, with the judge and prosecutor at the courtroom and the defendant at the jail. We used to have public defenders at the jail for these hearings, but because of budget cuts, we don’t have anyone there to represent the defendants," Kathy Knox, director of the City of Spokane Public Defender, said.

"And without a defender face-to-face with the defendant, it’s virtually impossible for the judge and prosecutor to have sufficient information to assess a person’s mental health or obtain information that might serve as a basis for release or affordable bail."

But adequate representation at bail hearings can make a proven difference. In one Baltimore study, providing improved representation over an 18-month period to nearly 4,000 lower-income defendants resulted in over two-and-a-half times as many represented defendants released on personal recognizance compared to unrepresented defendants. In addition, the improved representation resulted in two-and-a-half times more represented defendants having their bail reduced to an affordable amount compared to unrepresented defendants.3

Among programs found to provide significant dollar benefits compared to costs were cognitive-behavioral therapy in prison or community; job training in the community; drug treatment in community; and adult drug courts — all of which were found to reduce crime.
Surveys of the Baltimore defendants also demonstrated a non-monetary result: increased respect for the justice system’s “overall fairness and confidence in assigned counsel.”

With individual clients, public defenders and assigned counsel are in a unique position to identify the problem, counsel the client, and advocate for treatment services.

Another important area where public defenders can be effective in assisting their clients and helping to make the system work in an effective and economical way is in exploring sentencing options for their clients. “Overcrowding at the county jail is a recurring problem and courts are looking for cases where alternatives to jail are possible or a reduced sentence is appropriate,” according to Jon Komorowski, director of the Whatcom County Public Defender.

In 2006, a Washington state study reported that treatment of alcohol, drug, and mental-health disorders “can achieve roughly a 15 to 22 percent reduction in the incidence or severity of these disorders” in the short term, and society-wide “can achieve about $3.77 in benefits per dollar of treatment cost.”

A working paper prepared for the Program in Criminal Justice Policy and Management at Harvard University emphasized the crucial role a well-prepared defender can play at sentencing to seek a “client specific disposition.”

“Public opinion polls show that more Americans favor treatment and other rehabilitation programs over incarceration for non-violent offenses. Most people know or have heard that an overwhelming percentage of defendants have substance abuse and mental health problems. With individual clients, public defenders and assigned counsel are in a unique position to identify the problem, counsel the client, and advocate for treatment services.” [footnote omitted]

“In Spokane, the city is looking at as many sentencing options as possible,” said Knox. “The city is in negotiations with the court to expand sentencing options — working with probation trying to expand their role in these options — for example, making electronic home monitoring more available. They’re also looking at day reporting and community service options.

“In addition to creating these sentence alternatives, all of these options also require defender time to research and present to the court — but the benefits can be significant both for the individual client and for the community,” she said.

Knox noted that Spokane used to have a community relicensing program for defendants facing the misdemeanor charge of driving while license suspended third degree, but the program was cut due to inadequate funding. “Over a third of our cases can be DWLS 3rd,” Knox said. “Under this program, defendants can make reasonable payments over time to pay the fine and maintain their licenses and have the charge dismissed. This program can mean the difference between defendants’ keeping their jobs and supporting their families or not. And the system benefits, because they aren’t ducking the charge with warrants running up administrative costs.”

Among programs found to provide significant dollar benefits compared to costs were cognitive-behavioral therapy in prison or community; job training in the community; drug treatment in community; and adult drug courts — all of which were found to reduce crime.

In a recent study, the Washington State Institute for Public Policy examined public-policy options used in the United States which can reduce criminal-justice costs, including sentencing options (in conjunction with an ongoing study by the Sentencing Guidelines Commission); intervention programs for persons in juvenile and adult correctional systems; and prevention programs. The study concludes that if Washington could successfully implement “a moderate-to-aggressive portfolio of evidence-based options, a significant level of future prison construction can be avoided, taxpayers can save about two billion dollars, and crime rates can be reduced.”

Among programs found to provide significant dollar benefits compared to costs were cognitive-behavioral therapy in prison or community; job training in the community; drug treatment in community; and adult drug courts — all of which were found to reduce crime. Electronic monitoring to offset jail time was also found to be financially beneficial in costing less than jail time, although no reduction in future crime was associated with it as an option. For juvenile offenders, program options were found to result in “especially attractive long-run economic returns.” Effective programs studied included an adolescent diversion project; family integrated transitions and functional family therapy on probation; and aggression replacement therapy.

More and more defendants are mentally ill because of cutbacks over the years in those services, and we need to help courts address this reality in their sentences.

Such beneficial results can only be achieved if the defendant can be successfully placed in available programs, and such placement depends on the
research and advocacy by the defendant’s public defender. Komorowski noted that Whatcom County is one of the few public defender offices which meets state standards for investigative support. “We’re fortunate to have five investigators to support our 19 lawyers,” he said. “Because of this healthy ratio of investigators to attorneys, cases can be prepared and resolved more quickly and sentencing options can be more thoroughly researched.”

The Department of Community Trade and Economic Development reported in 2003 that 14 to 20 percent of the jail populations statewide were “seriously mentally ill” and over half of the jail inmates in Seattle and Spokane tested positive for drug use. Getting defendants to available services can start to address the issues.

Whatcom County Public Defender has a full-time social worker on staff to assist defendants and their clients in navigating the labyrinth of DSHS services for mental-health or drug-and-alcohol treatment and to help tailor a sentence to the particular client. “More and more defendants are mentally ill because of cutbacks over the years in those services, and we need to help courts address this reality in their sentences,” Komorowski noted.

“Funding public defense adequately can make such a huge difference,” Knox emphasized. “For our clients, for the criminal justice system, and for society.”

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.

NOTES
6. Id.
10. Id. at 9.
11. Id. at 11.
12. Id. at 9.
Each year, the Legislature passes new laws directed at increasing public safety and holding criminal offenders accountable. Whether you support or oppose the policy choices made, you should find it frustrating that the funding of the criminal-justice system is a burden left almost entirely to local government. Washington state ranks near the bottom of the 50 states when measuring direct state funding for the criminal-justice system. At a minimum, the state of Washington should jointly fund the cost of indigent defense with local government.

Now why in the world are prosecutors concerned about indigent-defense funding? Are not those defense lawyers our adversaries? Don’t they make our job that much harder? The informed answer is “no.” A prosecutor’s office has significant duties other than criminal prosecution, but for that component of our offices dedicated to prosecuting crimes, we will tell you that justice is best served when a balance exists between the resources brought to bear in the courthouse by the prosecution and the defense. Too many attorneys on either side can create an imbalance, driving a motion practice that prevents a just and efficient resolution of criminal cases.

Aside from these practical considerations, prosecutors have a specific obligation, unique in our adversarial American legal system, to pursue justice on behalf of the entire community, including his or her opponent — the defendant. These obligations are more than those owed to an opponent by each civil practitioner of the Bar, and are not reciprocated by the criminal-defense practitioner to the state. These obligations arise from the prosecutor’s role as a public official vested with both executive-branch and judicial-branch powers. It flows naturally from these obligations to write in support of public funding for indigent criminal defendants.

The Washington Association of Prosecuting Attorneys believes in a healthy criminal justice system, and a consistent level of public-defense funding throughout the state. It is what serves the cause of justice for all of our state’s citizens. That is why we join with our colleagues in the defense bar to ask the state Legislature to share equally with local governments in providing stable funding for indigent public-defense services. There is no excuse for our state to rank near the bottom in the nation in support of justice for all.

Tom McBride is the executive secretary for the Washington Association of Prosecuting Attorneys.

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In-House Counsel: Same Issues, Different Perspective

Over the past year, several colleagues have moved in-house. What they report is that they deal with the same set of professional issues they did in private practice, but from a different perspective. In this column, we’ll look at four: conflicts, confidentiality, the “no-contact” rule, and multistate licensing.

Conflicts
A few lawyers who become corporate counsel do so for more than one unrelated corporation or maintain their position with their law firm. Those lawyers face the same set of multiple-client-conflict issues that outside lawyers do under RPC 1.7 (current client conflicts) and RPC 1.9 (former client conflicts).

Most in-house counsel, though, work solely for one corporation or integrated corporate group. In that sense, conflict issues are easier: Under new RPC 1.13(a), they only have one client, the corporation. Even in this more common situation, however, conflict issues can arise. For example, a corporate “constituent,” such as an officer or director, might seek corporate counsel’s advice on a personal employment matter in which the interests of the corporation and the officer are adverse. In that situation, RPC 1.13(f) requires in-house lawyers to explain their role to corporate constituents. Similarly, RPC 1.13(g) only permits representation of corporate constituents where their interests either do not conflict with the corporation or where both have given their consent to a waivable conflict.

Another aspect of conflicts that periodically lands on corporate counsels’ desks are conflict waivers, with the question switched from private practice’s “how should I ask” to in-house counsel’s “should I grant.” The decision to grant or deny a waiver will turn on the particular circumstances involved. Although the new rules shift the term of art from “full disclosure” to “informed consent,” the essence of the standard remains the same: You should be given adequate information about the conflict you are being asked to waive and the potential consequences of a waiver. Just as under the old rules, conflict waivers under the new rules must be confirmed in writing — although e-mail will now suffice in most situations.

The Supreme Court did not adopt proposed Comment 22 to RPC 1.7 that discussed advance waivers. The failure to adopt that comment, however, should not prohibit their use in appropriate situations with sophisticated clients, such as those with in-house counsel available to advise them.

Confidentiality
In-house counsel are subject to RPC 1.6’s confidentiality rule and, in turn, their legal advice to their corporate clients is generally subject to the attorney-client privilege and the work-product doctrine.

A potential exception occurs when a lawyer performs both legal and business roles for a corporation. The advice rendered in a legal capacity will generally be protected by the attorney-client privilege. For example, if an in-house counsel is consulted confidentially during contract negotiations on the legal effect of a provision being considered, that advice should be protected by the attorney-client privilege. By contrast, if the in-house counsel also “wears the hat” of the company’s director of administration and is a fact witness in a contract dispute involving that role, the attorney-client privilege may not apply where the lawyer’s role doesn’t involve providing legal advice. Similarly, simply passing an otherwise non-privileged business document, such as a sales report, through a lawyer or copying the lawyer on such a document does not automatically cloak the document in the attorney-client privilege. As the federal court in Seattle put it in a comparatively recent case: “Business advice is not protected merely because a copy is sent to in-house counsel. Only if the attorney is ‘acting as a lawyer,’ and giving advice with respect to the legal implications of a proposed course of conduct, may the attorney-client privilege be properly invoked.”

“No-Contact” Rule
Outside lawyers usually approach “no-contact” questions under RPC 4.2 from the perspective of “can I contact” a current or former employee of a litigation opponent. With in-house counsel, the frame of reference more often becomes: “Which corporate members are my clients for purposes of the rule?” Comments 7 and 10 to new RPC 4.2 note that Wright v. Group Health Hospital, 103 Wn.2d 192, 691 P2d 564 (1984), remains the touchstone for analysis in this area. Mirroring Wright, Comment 7 observes: “In the case of a represented organization, this Rule prohibits
communications with a constituent of the organization who supervises, directs or regularly consults with the organization’s lawyer concerning the matter or has authority to obligate the organization with respect to the matter.” Again like Wright, Comment 7 notes that former corporate employees (regardless of their position) are “fair game” for direct contact unless they have their own counsel in the matter involved.

The new rules also mirror Wright in another related respect. Wright prohibited a corporation from instructing employees who fall outside the circle of corporate representation to refuse to speak to a litigation opponent’s lawyer: “Since we hold an adverse attorney may . . . interview ex parte nonspeaking/managing agent employees, it was improper for Group Health to advise its employees not to speak with plaintiffs’ attorneys. An attorney’s right to interview corporate employees would be a hollow one if corporations were permitted to instruct their employees not to meet with adverse counsel. This opinion shall not be construed in any manner, however, so as to require an employee of a corporation to meet ex parte with adverse counsel. We hold only that a corporate party, or its counsel, may not prohibit its nonspeaking/managing agent employees from meeting with adverse counsel.” 103 Wn.2d at 202-03 (emphasis in original). Comment 5 to new RPC 3.4, which deals generally with evidence and evidence gathering, notes that Wright controls in this regard, too.

Multi-State Licensing
Corporate counsel travel across jurisdictional boundaries as often — if not more often — than do their counterparts in private practice. In recent years, the lawyer licensing rules in many states, including Washington, have been updated to reflect that modern corporate reality. Washington Admission Rule to Practice Rule 18, for example, permits broad reciprocal admission with an increasing number of jurisdictions. Further, newly amended RPC 5.5(d)(1) now allows in-house counsel licensed elsewhere to provide legal services to their corporate employers in Washington (except for litigation matters otherwise subject to pro hac vice admission). In doing so, this new rule replaces the house counsel admission process under former APR 8(f). At the same time, many states around the country (including, in the Northwest, Oregon and Idaho) have moved to similar versions of RPC 5.5 and allow temporary “in-state” practice by corporate counsel licensed out of state who are there on behalf of their corporate employers.

Summing Up
Corporate counsel play a vital role in advising their client-employers and in coordinating the work of outside counsel. Although their dual role as both lawyers and clients creates a different perspective, the ethical issues they confront share much common ground with their counterparts in private practice.

Mark Facile, of Facile & Reising LLP, handles professional responsibility, regulatory and attorney-client privilege matters, and law-firm-related litigation for lawyers, law firms, and legal departments throughout the Northwest. He is a past chair and a current member of the WSBA Rules of Professional Conduct Committee, a past member of the Oregon State Bar’s Legal Ethics Committee, and a member of the Idaho State Bar Professionalism & Ethics Section. He is a co-editor of the WSBA’s Legal Ethics Deskbook and the OSB’s Ethical Oregon Lawyer. He can be reached at 503-224-4895 or mark@frllp.com.

NOTES
2. RPC 1.13 is new. Although the ABA Model Rules have had a similar provision since 1983, Washington did not adopt it when it moved to the RPCs in 1985. See also Cmt. 3 to RPC 1.13 including law departments within the definition of a law “firm” and discussing the representation of subsidiaries and affiliates.
3. Investments in clients under RPC 1.8(a) require the conflict waiver to be signed by the client.
5. New RPC 1.6(b)(3) expands the scope of permitted disclosure where a client has committed fraud resulting in substantial financial injury to third persons where the fraud was furthered through the use of the lawyer’s services.
6. Other states, such as Oregon and Idaho, have retained their house counsel licensing procedures for corporate counsel who are officed there, even though they have adopted versions of RPC 5.5 substantially similar to Washington.

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The Washington State Bar Foundation is a nonprofit organization whose focus is to improve the delivery of legal services to all segments of the public; foster improvement of relations among the Bar, the judiciary, and the public; advance programs related to new-lawyer development; support diversity efforts; and promote the administration of justice. As such, the Foundation has undertaken projects to help attorneys enter and stay in public-service work through its Loan Repayment Assistance Program (LRAP); established a Presidents’ and Governors’ Diversity Scholarship Fund to benefit law school students; and administered grants and donations in support of WSBA programs and services.

The Washington State Bar Foundation would like to thank the following individuals, companies, and associations who contributed to various Foundation funds and programming between January 2003 and September 30, 2006.

**Loan Repayment Assistance Program**
- Charlotte & Arthur Zitrin Foundation
- Garvey Schubert Barer
- Sallie Mae
- WSBA Administrative Law Section
- WSBA Criminal Law Section
- WSBA Family Law Section
- WSBA Labor and Employment Law Section

**Presidents’ and Governors’ Diversity Scholarship Fund**
- M. Wayne Blair
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For more information about the Foundation, visit www.wsba.org/lawyers/wsbf.htm.
Section and Committee Reports for 2006

Administrative Law Section
The Administrative Law Section’s leadership, especially Steve Marshall and Larry Berg, ensured that the Public Records Deskbook was published in a timely manner in September 2006. The quarterly newsletter, produced by former section chair and current treasurer, Larry Berg, continued to report on developments in administrative law, and connecting and keeping informed the section’s members. The section’s Leadership Council continued to provide direction for recognition of the leaders in the administrative law field. Led by Dean Little, Patrick McIntyre, C. Robert Wallis, Judith Endean, and Larry Berg, the Leadership Council managed the selection of our 2006 Frank Homan Award recipient, Prof. William R. Andersen, UW Emeritus Professor of Law, and the award process. (Note: See photo on page 52.)

The Young Lawyers and Diversity Program, coordinated by Kristine Wilson and Cindy Gideon, produced a successful career-development lunch. Michael Bahn, the section’s CLE coordinator, organized the seminar “Washington’s Public Disclosure and Open Public Meetings Laws,” which took place at the Washington State Convention Center in September 2006.

Animal Law Section
The Animal Law Section (ALS) Executive Committee met four times this year through teleconference. The section had one general membership meeting in December 2005, which included a mini-CLE and a catered vegan dinner. The section also held its fourth full-day animal law conference and CLE in April 2006, in conjunction with the WSBA CLE Department. The subjects included landlord/tenant laws relating to animals, animal law in times of crisis, Indian law and the treatment of animals, legislative updates, dog-bite laws, and a discussion of animal testing in Vioxx litigation. ALS is currently planning another full-day animal law conference and CLE in 2007. ALS hopes to offer more mini-CLEs during the next fiscal year and forge greater interaction with the public and law schools by publishing brochures on animal law topics.

For the first time this year, the section also sponsored a student in a national animal law moot court competition. The section has budgeted funds for future competitions and hopes to make this a regular part of our member-benefit program.

Business Law Section
The Business Law Section recently completed and circulated the ambitious Washington Business Corporations Act (RCW 23B) Sourcebook. The Sourcebook was distributed to its members, including supplements, as well as periodic newsletters addressing current topics of interest to members.

The Corporate Act Revision Committee tackled revisions to the corporate dissolution provisions of RCW 23B. Also, the section’s Securities Law Committee worked hard on reviewing and commenting on the proposed Washington Uniform Securities Act, which would replace in its entirety the current Securities Act in RCW 21.20. The section is also currently expanding its website, which will contain some content accessible only to members.

The section continues its support of Washington Attorneys Assisting Community Organizations (WAACO), a statewide organization that matches volunteer attorneys with charitable and community-based nonprofits. At the ABA’s 2005 Business Bar Leaders Conference in Chicago, WAACO was specifically recognized as an effective model of how business lawyers could provide meaningful pro bono services. The section also solicited executive committee nominees from minority bars, and looks forward to continuing its commitment to diversity in the coming year.

Construction Law Section
During the last year, the Construction Law Section sponsored a well-attended and profitable midyear meeting on construction contract clauses. The section also initiated a half-day CLE in Spokane last fall, making midyear presentations available to both sides of the state. This will become an annual event. One of the topical issue forums held throughout the year was a December 2005 debate on the impacts of the Mike M. Johnson decision and whether legislation should be introduced to modify that decision. The section also published a quarterly newsletter. Priorities for the coming year include planning the annual midyear and forum series, increasing local events for members in Eastern Washington, and completing standard jury instructions.

Dispute Resolution Section
Over the last membership year, the Dispute Resolution Section (DRS) sponsored free mini-CLE lunchtime presentations for its members on a variety of subjects of interest, including implementation of the Uniform Mediation Act, crisis negotiations, dispute review boards, decision analysis as an ADR tool, arbitrating for the NASD, and mediating in New Orleans in the aftermath of hurricanes Katrina and Rita.

The section held its annual meeting and day-long CLE seminar, “Can You Hear Me Now?...What Mediators, Arbitrators and Litigators Really Want to Say to Each Other,” in September 2006. The program was developed in collaboration with the WSBA Litigation Section and administered by the WSBA CLE Department.

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During the 2006 fiscal year, the DRS maintained sponsorship of two summer legal internships in the field of dispute resolution. DRS was also a co-sponsor with the University of Washington School of Law for the 14th Annual Northwest Dispute Resolution Conference, a two-day CLE program that showcases national and local experts and practitioners in the conflict resolution arena.

Priorities for the section during the next fiscal year include continuation of the summer DRS internship program, which offers grants to a law student from each of the Washington state law schools; co-sponsorship of the 15th annual Northwest Dispute Resolution Conference; examination of ways to increase diversity within the mediation profession; improvement of the section’s website and its online directory and quarterly newsletter; providing up-to-date information about court decisions pertinent to ADR practice; and development of a roadshow program with other WSBA sections and local bar associations on the use of ADR in collaboration.

**Environmental and Land Use Law Section**
The Environmental and Land Use Law Section (ELUL) hosted six quarterly free mini-CLEs, including three forums on Initiative 933 hosted in Seattle, Vancouver, and Spokane. ELUL also hosted an all-day CLE in the fall on administrative law practice, as well as a three-day midyear meeting in May 2006 in Ocean Shores. The section continues to be active with law student environmental law organizations and provided scholarships and grants for these groups during 2006. In addition, ELUL produced three lengthy editions of the ELUL newsletter during the fiscal year.

Section members are encouraged to attend the midyear meetings, which are held each year in a resort location. Each of the free CLEs includes a catered social hour hosted by the section where attendees can network, discuss recent trends in environmental and land use law, and have follow-up conversations with the speakers. Members are eligible for scholarships for the section’s fee-based programs, including individual scholarships of up to $500 to attend the midyear meeting. Starting in 2006, the section plans to fund these scholarships through donations from law firms. Some of the goals set for the upcoming year include how to raise revenues, sponsorship of a winter CLE focusing on water quality and supply, and a May 2007 midyear meeting to be held in Chelan.

**Family Law Section**
The Family Law Section held its highly successful annual midyear in Walla Walla in June 2006. With more than 200 section members in attendance, the seminar provided intermediate to advanced instruction in areas of family law and provided members with social and networking opportunities. The section once again provided a low-cost “skills training” seminar in the spring. This year’s seminar focused on alternative dispute resolution processes, including settlement negotiations and mediation. The seminar also introduced practitioners new to family law to the concept of collaborative law and helped identify ways in which family law lawyers can help their clients reduce conflict.

The Family Law Section reviewed and commented on numerous pieces of legislation of concern to family law litigants and testified on behalf of, or against, several proposed bills, including a bill that would mandate specific parenting schedules.

The section was honored to work with the Washington Young Lawyers Division to provide free family law training for the Spokane Greater Access and Assistance Project (GAAP). The section donated $5,000 to LAWFund and to Habitat for Humanity for rebuilding homes in Louisiana in the aftermath of Hurricane Katrina. The Family Law Section also donated $2,000 to the King County Bar Association for creation of its manual for Title 26 guardians ad litem. The executive committee also worked with the Washington State Gender and Justice Commission to put together a successful sold-out CLE held in October 2006 on family law and domestic violence.

The Family Law Section’s goals for fiscal year 2007 include the introduction of legislation intended to improve child-support law; prevention of passage of laws and rules that will harm family law litigants in Washington; contributing to programs designed to improve access to justice for family law litigants; and continuing to provide quality seminars.

**Indian Law Section**
In April 2006, the Indian Law Section hosted its 18th annual CLE, “Contemporary Legal Challenges in Indian Country.” Renowned leader Billy Frank Jr. provided the keynote address, and topics included ethics in lobbying, state-tribal relations, financing economic development, and environment and treaty rights. The section hosted its annual membership meeting in September 2006. Two Indian Law newsletters were produced, covering a wide variety of Indian law issues. The section also collaborated with the Northwest Indian Bar Association for creation of its manual for Title 26 guardians ad litem.

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**International Practice Section**
The International Practice Section’s annual membership meeting was held in July 2006 to thank outgoing executive committee members and elect new executive committee members. Additional networking events included a meeting...

Beginning in June 2006, the section worked with the Washington Association of Immigration Lawyers, the South Asian Bar Association of Washington, and the Latina/o Bar Association of Washington to propose a motion to the WSBA Board of Governors in support of the ABA position on immigration reform. The proposal was unanimously adopted by the BOG on September 15, 2006.

Litigation Section
The Litigation Section hosted a midyear CLE seminar, “Elements of Litigation, Advanced Strategies, Techniques and Demonstrations from Both Sides of the Bar.” For the first time, the section’s CLE featured an interactive live broadcast and real-time feed to seminar participants in Wenatchee.

Goals discussed for the upcoming fiscal year include a continued positive relationship with the BOG, with the executive committee represented at every Board of Governors’ meeting; a task force created by WSBA President Ellen Conedera Dial to investigate and address the proliferation of local rules, with the Litigation Section taking an active role; and expansion of the interactive live broadcast of midyear CLE to at least two locations in eastern Washington to improve access for our members throughout the state.

Real Property Probate and Trust Section
The Real Property, Probate and Trust Section (RPPT) held its annual midyear meeting in June 2006. The section maintains a very active website and publishes a highly valued quarterly newsletter. The section also created a membership directory located in the members-only portion of the section’s website.

A subcommittee has been created to address practice issues relating to the recent adoption of revised Rules of Professional Conduct, most specifically RPC 1.15A. The subcommittee intends to educate section members on the new requirements of this rule and provide a report to the Washington State Supreme Court in the coming months. In the coming year, RPPT will sponsor its annual midyear, the trust and estate litigation seminar, fall real estate seminar, and a joint seminar with the Family Law Section.

Senior Lawyers Section
The Senior Lawyers Section annual meeting and seminar, held in April 2006, continued to see increased attendance. The executive committee now has representation from eastern Washington and is working to put on the 2007 annual meeting. The section publishes a quarterly newsletter. Several members of the executive committee assisted in a CLE provided for senior lawyers held in conjunction with the WSBA’s Annual 50-Year Member Tribute Luncheon in September 2006.

Taxation Law Section
The Taxation Law Section’s highlights for 2006 included an annual luncheon where the section’s annual $5,000 scholarship was awarded to a graduate student in tax law; sponsorship of a Circular 230 CLE; and periodic e-mails circulated on legislation of interest.

Current benefits that section mem-
Mediating disputes involving Beneficiaries of Estates requires a balance of Mediation experience, knowledge of Estate Law, and sensitivity for the dynamics of family relationships.

**Committees**

**Alternative Dispute Resolution Committee**
This year, the Alternative Dispute Resolution Committee divided into three subcommittees: training seminar, policy review, and program promotion. The training seminar held in May 2006 was very successful, with 73 participants. Committee member and Dispute Resolution Section Chair Marilyn Endriss wrote an article for Bar News that is awaiting publication. WSBA staff members Natalie Cain and Chris Sutton have been working on a poster that can be placed in courtrooms around the state as well as other public spaces.

**Bar Examiners Committee**
As always, the goals of the Bar Examiners Committee are to design, develop, and administer two quality bar examinations; to train and develop new examiners through the use of a BOG-mandated training session and the use of the Question Bank; and to maintain good relationships with other bar exam organizations and communities throughout the state and nation.

Activities for the past year included the implementation of laptop testing for the bar exam. The Bar offered its first laptop exam for the winter 2006 exam. The committee continues to be involved in the process of studying whether it is feasible to administer the Washington exam in more than one location. A survey of the applicants taking the 2005 summer exam determined there was significant interest in having the exam administered in Spokane as a second site.

**Continuing Legal Education Committee**
The Continuing Legal Education Committee was formed to provide program input to the CLE director. The committee formed four subcommittees: quality control, technology, programs, and sections and external relations. The quality control subcommittee focused on creating a branding image to ensure members of the highest quality in connection with a WSBA-CLE program. The technology subcommittee is working towards integration of web-based legal education programs. This program is at the center of the required new preadmission education and represents the first stage of the new training and orientation program.

The programs subcommittee continues to identify appropriate programming and to provide assistance to WSBA staff in identifying qualified faculty. The sections and external relations subcommittee continues to build strong relations with the sections and works closely with...
members to improve service. In March 2006, the Board of Governors agreed to extend the terms of committee members from one year to three years to allow for greater continuity of the committee.

**Court Rules and Procedures Committee**
The Court Rules and Procedures Committee presented its annual report to the Board of Governors at the July 2006 board meeting.

**Judicial Recommendation Committee**
The Judicial Recommendation Committee conducted a mandatory orientation for new members. Many returning members also attended the session. The committee interviewed eight candidates and is continuing to fine-tune interview questions asked in pre-interview reference checking and during the interview process. The Board of Governors approved additional meetings of the committee of up to four per year.

**Lawyers Assistance Program Committee**
Efforts to make the services of the Lawyers Assistance Program (LAP) Committee known to the membership of the Bar continued with the presentation of a LAP production on active listening. The statewide conference in Chelan in April 2006 was very successful and well-received. The conference provided an opportunity for peer counselors and other interested parties to get together to share ideas. A subcommittee was formed to make recommendations for marketing LAP services at the three Washington state law schools. In order to facilitate outreach at the law schools, the subcommittee recruited a member of the Washington Young Lawyers Division to join the subcommittee’s efforts.

**Public Information and Media Relations Committee**
The Public Information and Media Relations Committee focused on compiling a list of popular websites containing legal information to distribute to professional journalists. The committee also conducted a forum entitled “Judging the Judges — What You Need to Know About the Judicial Elections,” with former King County Superior Court Judge Robert Alsdorf and committee members Darwin Roberts, Rea Culwell, and Rob Boggs. The one-hour program was moderated by KOMO-TV reporter Michelle Esteban at the King County Superior Court and aired on TVW and the Seattle Channel throughout the fall election season.

**Rules of Professional Conduct Committee**
For fiscal year 2006, the Rules of Professional Conduct Committee had two significant goals: to provide timely responses to inquirers, and to review prior formal opinions to determine whether a recommendation should be made to the Board of Governors that opinions should be withdrawn or modified. The latter goal was instituted because significant changes to the RPCs had been proposed to the Washington State Supreme Court. The committee devoted considerable energy to questions about networking organizations and inquiries about whether membership in various organizations would violate RPC 7.1 and 7.2.

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Opportunities for Service

American Bar Association (ABA) House of Delegates
Application Deadline: March 30, 2007

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the ABA House of Delegates representing the WSBA, to serve the remainder of a two-year term now vacant due to the election of Paula Boggs, a previous WSBA delegate, as the state delegate. The term will commence upon appointment and expire in August 2008. 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 550 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 have the opportunity to reapply to serve a maximum of three consecutive terms. Those serving on the ABA House of Delegates must be ABA members in good standing throughout their tenure. Submit a letter of interest and a résumé to: WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, or e-mail barleaders@wsba.org.

Court Interpreter Certification Advisory Commission
Application Deadline: February 15, 2007

The WSBA Board of Governors will be nominating one member to be appointed by the Washington State Supreme Court to serve the remainder of a three-year term on the Washington State Court Interpreter Certification Advisory Commission. The term will commence upon appointment and is effective through September 30, 2008.

The Commission, which operates under a Supreme Court rule, has three standing committees to maintain critical operations of the interpreter program: the Issues Committee, the Disciplinary Committee, and the Judicial and Court Administration Committee.

Please submit a letter of interest and a résumé to: WSBA Bar Leaders Division, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, or e-mail barleaders@wsba.org.

Call for Applications for One of Two Board of Governors At-Large Seats
Deadline: March 1, 2007

To increase member representation on the Board of Governors, the WSBA Bylaws provide for two at-large seats. The full text of the Bylaws can be reviewed at www.wsba.org/bylaws. One of those seats is up for election to a three-year term commencing at the close of the annual meeting in September 2007.

Persons interested in filling an at-large position should submit a letter of application and current résumé. The Board of Governors will elect the at-large governor at their meeting on June 1, 2007. The application should include a statement addressing how the applicant believes he or she meets the intent specified in Article III, Section N. There is no intent that these seats are dedicated or rotationally filled by any one element of diversity or group of members.

(Excerpt from the WSBA Amended Bylaws, Article III, Section N)

N. ELECTION OF AT-LARGE GOVERNORS.
Any active member of the Bar, except a member previously elected to the Board of Governors, may apply for the office of At-Large Governor. Filing of applications shall be in accordance with Section C of this Article.

At the regularly scheduled June meeting of the Board of Governors following the regular election of Governors from Congressional Districts, or at a special meeting called for that purpose, the Board of Governors shall elect additional Governors from the active membership at-large. Election may be by a secret written ballot. There shall be two at-large Governor positions to be filled with persons who, in the Board’s sole discretion, have the experience and knowledge of the needs of those lawyers whose membership is or may be historically under-represented in governance, or who represent some of the diverse elements of the public of the State of Washington, to the end that the Board of Governors will be a more diverse and representative body than the results of the election of Governors based solely on Congressional districts may allow. Under-representation and diversity may be based upon the discretionary determination of the Board of Governors at the time of the election of any at-large Governor to include, but not be limited to, age, race, gender, sexual orientation, disability, geography, areas and types of practice, and years of membership, provided that no single factor shall be deterministic.

Members interested in the at-large position on the Board of Governors should submit a letter of application and résumé to: WSBA Office of the Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; 206-727-8244 or 800-945-9722, ext. 8244.

2007 Notice of Board of Governors Election
Deadline: March 1, 2007

Three positions on the WSBA Board of Governors will be up for election this year. These are the governors representing the 2nd, 7th-Central*, and 9th congressional districts. These positions are currently held by Eron M. Berg (2nd District), Lonnie Davis (7th-Central District), and James E. Baker (9th 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 nomination form 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, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; 206-727-8244 or 800-945-9722, ext. 8244; and the WSBA website at www.wsba.org. The WSBA executive director must receive nomination forms by 5:00 p.m. on Thursday, March 1, 2007.

Ballots will be mailed on or about April 16 and counted on or about May 15. (The 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 the coming year, the central sub-district (zip codes are 98101, 98102, 98103, 98104, 98108, 98109, 98111, 98112, 98114, 98124, 98134, 98138, 98148, 98154, 98158, 98161, 98164, 98166, 98168, 98174, 98181, 98184, 98188, and 98191) will elect a new governor.
Special Meeting of the WSBA Judicial Recommendation Committee

Deadline: 5:00 p.m., February 28 for March 22 interview

Due to a recent vacancy on Division III of the Court of Appeals, a special meeting of the WSBA Judicial Recommendation Committee (JRC) will be held on Thursday, March 22 to accommodate candidates for this position. Interested individuals will be interviewed by the JRC, and the JRC's recommendations will be reviewed by the WSBA Board of Governors and referred to Governor Gregoire for consideration.

To obtain an application, see the WSBA website at www.wsba.org/lawyers/groups/judicialrecommendation or contact the WSBA at 206-727-8212 or 800-945-9722, ext. 8212, or barleaders@wsba.org. Specify whether you need the application for a judge or an attorney.

Application material deadlines for future interviews are: 5:00 p.m., March 9, 2007, for April 18, 2007, interviews; 5:00 p.m., May 11, 2007, for June 13, 2007, interview.

MCLE Certification for Group 3 (2004-2006)

If you are an active WSBA member in MCLE Reporting Group 3 (2004-2006), you should have received your Continuing Legal Education Certification (C2/C3) form that you received in your online MCLE profile and is assigned at the time that the Form 1 for each course is input to the MCLE system.

If you have taken courses that have not yet been approved by the MCLE Board, submit Form 1s for these courses immediately to ensure that they are approved before your C2/C3 is due. A "Certificate of Attendance" or other sponsor-provided certification is not sufficient to receive course credit. If the sponsor has not received course accreditation from the Washington MCLE Board, you must submit a Form 1 application and full agenda for the course in order to receive credit. Because of high volumes from October through February, Form 1s submitted electronically (at http://pro.wsba.org) could take up to four weeks or more to process. Paper Form 1s may take up to six weeks or more to process. If you submit a paper Form 1, you will be notified by mail of its Activity ID number.

If you were not able to meet the credit requirement by December 31, 2006, and need more time to complete your credits, an automatic extension will be granted until May 1, 2007. There is no need to apply for it. However, a late fee will be assessed if you took any courses after December 31 that are needed for compliance or if your C2/C3 form is submitted late. If this is the first reporting period in which you will not meet MCLE compliance requirements, the late fee will be $150. The late fee increases by $300 for each consecutive reporting period you are late in meeting MCLE requirements.

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

MCLE Certification for Active Members — Due Date for MCLE Reporting

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


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 MCLE Board-approved CLE activities must be taken, which need to include a minimum of 30 live credits and six ethics credits.
- Pre-recorded self-study (A/V) courses cannot be more than five years old, except MCLE Board-approved "skills-based" courses.
- Pre-recorded self-study courses include the traditional audio-visual (A/V) media of video tapes and cassette tapes. They also include archived webcasts, DVDs, compact discs, and other media with a soundtrack of the MCLE Board-approved course presentation. Written materials should be included with these courses and reviewed prior to claiming credit. In addition, written materials must be purchased by each member, where required by the sponsor, prior to claiming credit.
- Six pro bono credits can be earned per year. Two of these credits are for approved annual training, which must be taken prior to 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 total exceeds 45, you may 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/C3 Reporting Requirement. All active members due to report are required to file a Continuing Legal Education Certification (C2/C3) form listing all CLE courses taken for credit compliance. The deadline for filing your C2/C3 form is February 1 of the year following the end of your reporting period. Note:
- Your online roster is not a substitute for filing the C2/C3 form.
- The C2/C3 form is a declaration and...
must be signed and dated, and the city and state where signed must be identified.

- C2/C3 forms are included in the license packets sent in early December to all members due to report (Group 3 members this year).

- All CLE courses listed on member rosters as of October 2006, are printed on the back of the C2 form. If you took more CLE courses after October 1, and if they appear on your online roster and you do not want to hand-write them on the back of the C2 form, you may print a copy of your roster and attach it to your C2/C3 form. State on your C2/C3 form that the attached online roster printout is a true and correct statement of the CLE courses taken for credit compliance.

- You must verify that the credit hours listed on the C2/C3 and on your online profile correctly reflect the hours actually attended for each CLE. You can edit credits online by clicking on the "edit" link next to each course. You can correct credits on the C2/C3 manually.

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

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

Newly Admitted Members. If you are a newly admitted member, you are exempt from reporting CLE credits for the year of your admission and the following calendar year. If you were admitted in 2005, you will not report for this reporting period (2004-2006) even though you are in Group 3. You will first report at the end of the 2007-2009 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 Washington mandatory CLE requirements by providing proof of current MCLE compliance from the Oregon, Idaho, or Utah state bar. Only a Certificate of MCLE Compliance from your primary state bar, not a “Certificate of Good Standing,” sent with your WSBA C2/C3 form, will satisfy your MCLE requirements in Washington.

**MCLE System — Course Listing and Member Profiles.** You can use the online MCLE system to review courses taken and credits earned; apply for course approval; apply for writing credit, pro bono credit, or prep-time credit; and search for approved courses being offered. To use the MCLE system, go to the WSBA website at www.wsba.org and click on "MCLE Website" in the upper left corner. On the next screen, click on the "Member" tab, then select "Member Login." The online instructions lead you through the process of creating a confidential password and using the system. Online help is available.

If you have any questions about using the MCLE system or about the MCLE compliance requirements, see the online FAQs at www.wsba.org/lawyers/licensing/faq-mcle.htm, call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org.

**New APR 11 Regulation 104(e) Requirements for In-House CLEs.** Starting with the 2005-2007 reporting period, you are limited to a total of 15 credits of private-law-firm CLEs and 15 credits of corporate-legal-department CLEs in each reporting period, regardless of who the private legal sponsor was. There are no limits on the number of credits you may earn at CLEs sponsored by government agencies. These limitations are the result of amendments to APR 11 Regulation 104(e) adopted by the Supreme Court that went into effect on November 8, 2005.

**MCLE Compliance Report (C4/C5) in 2007 License Packets**

All active members who are not due to report MCLE compliance at the end of this year, including new admittes, received a report (the C4/C5 form) in their 2007 licensing packets. Each member’s report lists all credits reported to the WSBA for the member’s current reporting period as of mid-October 2006. APR 11.6(a)(3) requires that the WSBA provide an annual report to each active member regarding the credits and courses posted to their MCLE online rosters. This report will help non-reporting active members to better track their credits as well as to ensure correct reporting and compliance at the end of their reporting period.

If you received the C4/C5 form in your 2007 license packet, it is for your information only. No action needs to be taken unless you want corrections to be made.

If you want to make corrections to your WSBA MCLE roster, go to http://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 confidential password and beginning to use the system. Online help is available. You may also contact the WSBA Service Center to have corrections made and/or to request an MCLE system instruction booklet at 800-945-WSBA (9722) or 206-443-WSBA (9722), or questions@wsba.org.

**APR 11 Review Project — Input Invited**

The MCLE Board is undertaking a project to review all the rules and regulations that govern mandatory legal education in the state of Washington (APR 11) to update and clarify them. A comprehensive review of APR 11 was last done in 1997-1999, with new rules and regulations being adopted by the Supreme Court in 2000. All members, sponsors, and other stakeholders will be invited to give input to this process within the next couple of months by responding to an online survey about significant MCLE issues. Notification will be sent when the survey is available. You may also send input to be considered by the Board to the MCLE Board executive secretary, Kathy Todd, at kathyt@wsba.org.

**Online, On-Demand CLEs from WSBA-CLE**

Want CLE credits without having to stir from your office? WSBA-CLE now offers 200 online courses in 20 practice areas, including ethics. Most are one-hour segments, providing 1.0 CLE A/V credit each, so you can purchase exactly the amount of credits you need. From your computer, you get audio and text from a course originally presented live. Once you purchase a course, you have three months to listen to it. Go to www.wsbacle.org/on demand to browse the offerings.

**2007 Licensing Packets**

Licensing 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 yet received your licensing packet, please call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or e-mail questions@wsba.org to request a duplicate. Please note that it is your responsibility to pay your annual license fee, regardless of whether you receive the licensing packet.

**If You Are Mailing Your Forms and Payment**

The return envelopes for your forms
and payments have instructions on the reverse side for improvement in processing and ease of use. Please review them carefully before mailing your forms and payment.

If You Are Paying Your Fees Online. To pay your fees online, go to www.wsba.org, click on the "For Lawyers" tab, and see "Pay Your License Fees Online." Sign in with your WSBA Bar number and password. Prompts lead you through the process to pay your 2007 license fees by MasterCard or Visa. The system allows payments only for the full amount billed, e.g., no Keller deductions or status changes. Note that 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.

Reminder Notice. A reminder notice will be sent in mid-February to those members who have not paid their 2006 license fees.

Payment Deadline. 2007 license fees are due no later than February 1, 2007. Please note that if your payment is postmarked or delivered to the WSBA office later than March 1, 2007, WSBA Bylaws require that a 20 percent penalty be assessed, and a pre-suspension notice will be mailed. On April 3, 2007, a 50 percent penalty will be assessed if your payment has not been postmarked or delivered to the WSBA office prior to this date.

Important Note About Paying Your Fees. If either your license fee, late fee, or, for active members, the Lawyers' Fund for Client Protection assessment 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.

WSBA Members on Active Military Duty. WSBA Bylaw I.E.1.b, providing for a fee exemption for eligible members of the Armed Forces, was amended in March 2006. Please contact the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or questions@wsba.org; or contact Kevin McKee at kevinm@wsba.org or 206-727-8319 for application information. All requests for exemption must be postmarked or delivered to the WSBA office on or before March 1.

How Has the Armed Forces Exemption Changed? Not all active Armed Forces members stationed in the United States are eligible for consideration unless activated from reserve status to full-time active duty. This must be for more than 60 days of the applicable licensing year. Those who are deployed or stationed outside the United States for any period of time for full-time active military duty will be considered for eligibility. Members must submit satisfactory proof that they are so activated, deployed, or stationed.

Resources. The 2007 Resources Directory will print the contact information in the WSBA membership database as of February 1, 2007. Now is the ideal time to check that the WSBA has your correct contact information in its database. You can check by going to the online lawyer directory on the WSBA website at http://pro.wsba.org.

If your contact information has changed, please complete and return the Contact Information Change form included in the license packet to the address shown on the form or by fax to 206-727-8319, or e-mail the changes to questions@wsba.org.

More Information. Full explanations of license fees, forms, policies, and deadlines are on the WSBA website at: www.wsba.org/lawyers/licensing/annuallicensing.htm. The WSBA Service Center is available to assist you Monday through Friday, 8:00 a.m. to 5:00 p.m., at 800-945-WSBA (9722), 206-443-WSBA (9722), or by e-mail at questions@wsba.org.

2007 WSBA Awards Nominations Sought

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

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

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

Angelo Petrucc Award for Lawyers in Public Service. Named in honor of the late Angelo R. Petrucc, a senior assistant attorney general who passed away during his term of service on the WSBA Board of Governors, this award is given to a lawyer in government service who has made a significant contribution to the legal profession, the justice system, and the public.

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

Pro Bono Award. This award is presented to a lawyer, nonlawyer, law firm, or local bar association for outstanding efforts in providing pro bono services. This award is based on cumulative efforts, as opposed to a lawyer’s or group’s pro bono hours or financial contribution.

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

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

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

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

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

Community Service Award. This award was created in 2006. Lawyers are known for giving generously of their time and talents in service to their communities. This award recognizes exceptional non-law-related volunteer work and community service.

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

Nomination submissions: If you know an individual who fits the criteria set forth above, please visit www.wsba.org/barleadershomepage.htm and complete and submit the nomination form. Self-nominations will not be accepted. Please note that
the completed nomination form must accompany each nomination in order to be considered. The deadline for Pro Bono Award nominations is March 31, 2007. The deadline for all other nominations is April 30, 2007. Please send nominations to: Washington State Bar Association, Attn: Annual Awards, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101; fax: 206-727-8319; e-mail: denec@wsba.org.

The awards will be presented at the WSBA Annual Awards Dinner in Seattle on September 20, 2007, with the following exceptions: The Pro Bono Award will be presented at the Access to Justice Conference in Wenatchee on June 2, and the Outstanding Judge Award will be presented at the Fall Judicial Conference.

Judge Thomas Warren's Retirement Party Benefits VAS

Wenatchee Attorney Russ Speidel, Chelan-Douglas County Bar Association President Steve Woods, and District Court Judge Thomas Warren had a brief conversation at the 2006 spring bar party about a retirement party for Judge Warren, who was completing 21 years on the Chelan County District Court bench and had announced he would not be running for another term. In the discussion, someone suggested that it might be interesting to make the retirement party a fundraiser for the Volunteer Attorney Service (VAS).

The Chelan-Douglas Volunteer Attorney Service (VAS), created in 2002, has been extremely successful, with more than 100 local attorneys annually handling more than 500 civil cases and donating more than 1,200 hours of their time and expertise for low-income people facing civil legal problems, including family, housing, and consumer cases.

Sponsor categories for the dinner included Extortion in the First Degree (over $5,000), Temporary Insanity ($3,000), Unlawful Imprisonment ($1,500), Entrapment ($400-700), Gross Misdemeanor ($200-399), and Parking Tickets (up to $199). No one had any idea as to whether this would be successful, as no one on the committee had ever heard or participated in a retirement celebration that was also a charitable fundraiser.

The event, held in early November, was successful beyond anyone’s imagination. The retirement celebration was promoted in an editorial in the Wenatchee World that set the tone for accomplishing something good for the community beyond marking Judge Warren's retirement. More than 225 people attended the banquet/roast, bringing in receipts in excess of $35,000. After expenses, there was a net contribution to VAS of $28,000. VAS is now solidly financed with reserves to guarantee the long-term success of the agency.

Judge Warren stated, "With my lifetime of voluntary service to my community and my advocacy of judges reaching out to the community, it was great to be the catalyst for raising money for a great law-related service that otherwise is below the usual charitable radar.”

YMCA Mock Trial Program Seeks Volunteer Attorneys and Judges

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 prepare the case for trial before a real judge in an actual courtroom. A “jury” of attorneys rates the teams for their presentation 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 role of law and the judiciary.

The state championship competitions will be held Friday, March 23, through Sunday, March 25, at the Thurston County Courthouse in Olympia. Volunteer attorney raters and judges are needed. To volunteer, contact Janelle Nesbit at 360-357-3475 or youthandgovexec@qwest.net. Visit www.youthandgovernment.org for more details. This program is sponsored in part by the Washington Young Lawyers Division.

Administrative Law Section Presents 2006 Frank Homan Award

In 2005, the WSBA Administrative Law Section’s Board of Trustees established the Frank Homan Award, to be given annually in recognition of extraordinary professional service and leadership in the administrative law practice area. The 2006 award was presented to University of Washington Emeritus Professor of Law, and Judson Falkner Professor of Law, William R. Andersen. Among his many accomplishments, Professor Andersen was instrumental in the drafting and enactment of the 1981 law that created the Office of Administrative Hearings. He was also part of a select task force that drafted and secured passage of the Administrative Procedure Act in 1988. The award was presented to Professor Andersen by WSBA President Ellen Conedera Dial and Seattle attorney Dean Little (who served with Professor Andersen on the aforementioned task force).

WYLD President-Elect and Trustee Applications Sought

Young lawyers interested in serving on the WYLD Board of Trustees are invited to submit applications for the following positions: Trustee, at-large; Trustee, King County District; Trustee, Snohomish County District; Trustee, Southwest District; Trustee, Spokane County District; and President-Elect, Washington state.

Applications must be received by 5:00 p.m. on Tuesday, May 1, 2007. For detailed information and application instructions, please visit www.wsba.org/lawyers/groups/wylde/default.htm.

Legal Foundation of Washington’s Board of Trustees Elections

At its November 18, 2006 meeting, the Board of Trustees of the Legal Foundation of Washington unanimously elected Seattle attorney Erika L. Lim as the Foundation’s president for 2007.

Nancy L. Isserlis, principal, Winston and Cashatt Lawyers, was elected vice president; Nicholas P. Gellert, of counsel, Perkins Coie, was elected secretary; and Michele G. Radosevich, partner, Davis Wright Tremaine, was elected treasurer.

The Washington State Supreme Court also elected Rima J. Alaily, associate with Heller Ehrman, to her first two-year term beginning January 1, 2007. Judge Michael E. Schwab, Yakima County Superior Court; William D. Hyslop, Lukins & Annis; Nancy A. Pacharzina, Toulouse Brain Stephens; and Wallace Webster II, Bank of America, will return as trustees.

The Foundation was established in 1985 at the direction of the Washington State Supreme Court to support legal aid and law-related education through the IOLTA
program. The Foundation is a supporter of the Alliance for Equal Justice, a statewide network of organizations providing legal aid to those with nowhere else to turn.

**Contract Lawyer Meeting**
The WSBA Law Office Management Assistance Program (LOMAP) hosts a meeting of contract lawyers the second Tuesday of every month. The next meeting is Tuesday, February 13, from noon to 1:30 at the WSBA office. Please bring your lunch — coffee is provided — and network with other contract lawyers. Please note the WSBA’s new address: 1325 4th Ave., Ste. 600, Seattle, WA 98101-2539.

**LAP Solution of the Month: Job Satisfaction**
Do you look forward to going to work? If not, why not? If you’re unhappy doing your current job but aren’t sure what to do about it, call the Lawyers Assistance Program at 206-727-8268 or 800-945-9722, ext. 8268, to schedule a free, confidential consultation. Life is short — why not enjoy it?

**Computer Clinic**
The WSBA offers a hands-on computer clinic for members wanting to learn more about what software programs — such as Outlook, PowerPoint, Excel, Word, and Adobe Acrobat — can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and noCLE credits are offered. The next clinic will be held January 8 from 10:00 a.m. to noon at the WSBA office. For more information, contact Pete Roberts at 206-727-8237, or 800-945-9722, ext. 8237, or peter@wsba.org.

**Problem Getting a Client to Pay?**
Dispute with another lawyer or an expert witness? The WSBA offers two programs to aid in the resolution of disputes involving lawyers. These programs serve both members and the public. The Fee Arbitration Program focuses on fee disputes between a lawyer and his or her client. To participate, both parties must agree to be bound by the arbitrator’s decision. The Mediation Program provides a venue for parties to work together to resolve any dispute involving a lawyer, including those between a lawyer and a client, a lawyer and another lawyer, and a lawyer and another professional. Either party to a dispute may initiate fee arbitration or mediation. Both programs are non-disciplinary, voluntary, and confidential. For more information, visit the WSBA website at www.wsba.org/lawyers/services/adr.htm or call the ADR coordinator at 206-733-5923 or 800-945-9722, ext. 5923.

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

**Casemaker Access**
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, you can contact the WSBA Service Center at 800-945-WSBA (9722), or 206-443-WSBA (9722), or e-mail questions@wsba.org.

**Search WSBA Ethics Opinions Online**
Formal and informal WSBA ethics opinions are available online at http://pro.wsba.org/io/search.asp, or from a link on the WSBA homepage, www.wsba.org. You can search opinions 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 206-727-8284 or 800-945-9722, ext. 8284.

**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 next meeting is February 14 at the WSBA office. Please note the WSBA’s new address: 1325 4th Ave., Ste. 600, Seattle, WA 98101-2539. 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 800-945-9722, ext. 8269 or rebeccan@wsba.org.

**Speakers Available**
The WSBA Lawyers Assistance Program offers speakers for engagements at county, minority, or specialty bar associations, or other law-related organizations. Topics include stress management, life/work balance, and recognizing and handling problem-personality clients. Contact Jennifer Favell, Ph.D., at 206-727-8267 or 800-945-9722, ext. 8267.

**Assistance for Law Students**
The Lawyers Assistance Program offers counseling to third-year law students attending Washington schools. Sessions are held in person or by phone. Treatment is confidential and available for depression, addiction, family and relationship issues, health problems, and emotional distress. A sliding-fee scale is offered ranging from $0-30, depending on ability to pay. Call 206-727-8268, or 800-945-WSBA, ext. 8268, or visit www.wsba.org/lawyers/services/lap.htm.

**Help for Judges**
The WSBA Judges Assistance Program provides confidential assistance to judges experiencing personal or professional difficulties. Telephone or in-person sessions are available on a sliding-scale basis. For more information, call the program coordinator at 206-727-8268 or 800-945-9722, ext 8268.

**Learn More About Case-Management Software**
The WSBA 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 make recommendations. To make an appointment, contact Julie Salmon at 206-733-5914, or 800-945-9722, ext. 5914, or juliesa@wsba.org.
Announcements

Montgomery Purdue Blankinship & Austin PLLC

takes pleasure in announcing that

Andrew R. Chisholm

has become a member of the firm.

Mr. Chisholm’s practice includes insurance coverage, general business litigation, and landlord-tenant relations.

55th Floor, Columbia Center
701 Fifth Ave.
Seattle, WA 98104-7096
206-682-7090

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in January 2007 was 5.094 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.

Whatcom County Chapter of Washington Women Lawyers Hosts Reception

From left to right: WSBA President Ellen Conedera Dial, 2006 Whatcom County Bar Association Secretary Dominique Y. Zervas-Foley, and WSBA Executive Director Jan Michels at a reception given for President Dial by the Whatcom County chapter of Washington Women Lawyers. Washington Women Lawyers strives to further the full integration of women in the legal profession, to promote equal rights and opportunities for women, and to prevent discrimination.

WSBA President Dial Speaks at Whatcom County Bar Luncheon

From left to right: 2006 Whatcom County Bar Association Secretary Dominique Y. Zervas-Foley, 2006 WCBA Treasurer Jennifer Willner, WSBA Executive Director Jan Michels, 2006 WCBA Vice President/President-Elect Thomas H. Fryer, WSBA President Ellen Conedera Dial, and 2006 WCBA President Jeff Lustick at the Whatcom County Bar Association December Luncheon. WSBA President Dial was a featured guest and spoke about issues such as the WSBA’s new offices; the roll-out of the new Rules of Professional Conduct; the search for an executive director; the ongoing public-education project regarding protection of judicial independence; and her goal to raise the visibility of volunteer work being done by Bar members.

Davies Pearson P.c.

Attorneys at Law

is pleased to announce that

Csilla Muhl

has joined the firm and is accepting clients in the practice area of family law.

Ms. Muhl graduated from Southern Illinois University School of Law in 1994. She received her bachelor’s degree from University of Washington in 1990. Prior to joining Davies Pearson, P.C., she was with the law firm of Eisenhower & Carlson, PLLC.

253-238-5114 • cmuhl@dpearson.com

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Tacoma, WA 98401
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www.dpearson.com

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**REEVE SHIMA, P.C.**

is pleased to announce that

**Jonathan James**

has joined the firm as an associate.

Mr. James graduated *magna cum laude* from Seattle University School of Law in 2006 and was a published member of the Seattle University Law Review. He will practice in the areas of workers' compensation and employment law.

**REEVE SHIMA, P.C.**

500 Union St., Ste. 800
Seattle, WA 98101
www.reeveshima.com

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**FLOYD & PFLUEGER, P.S.**

is pleased to announce that

**A. Troy Hunter**

has become a partner of the firm.

The firm's litigation practice emphasizes complex civil litigation, including the defense of construction defect claims, claims of professional negligence, and toxic torts.

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Seattle, WA 98121-1445
Tel: 206-441-4455
Fax: 206-441-8484

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**WILSON SMITH COCHRAN DICKERSON**

is pleased to announce that

**Michael A. Jaeger**

and

**Dylan E. Jackson**

have become Directors of the firm.

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DISCIPLINARY INVESTIGATION and PROCEEDINGS
Patrick C. Sheldon, former member of the Washington State Bar Association Disciplinary Board, is now accepting referrals for attorney disciplinary investigations and proceedings.

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E-mail: patrick@fisav.com

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206-378-4125
E-mail: michaelc@michaelcaryl.com

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E-mail: peb@aterwynne.com

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Michael Heatherly
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northwestdrg@mhprom57.com

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Fax: 206-575-1397
E-mail: tom@talmadgelg.com
www.talmadgelg.com

CONSTRUCTION SITE INJURIES
Bradley K. Crosta
Counsel for plaintiff in State v. PBMC, Inc., 114 Wn.2d 454 (1990) (General contractor has primary responsibility for the safety of all workers.)
Is available for consultation, association, or referrals.
CROSTA AND BATEMAN
999 Third Avenue, Suite 2525
Seattle, WA 98104-4089
206-224-0900
bcrosta@aol.com

INSURANCE BAD FAITH
For when they insure it is sweet to them to take the money; but when disaster comes it is otherwise and each man draws his rump back and strives not to pay.
— Francesco di Marco Datini — Florentine businessman, letter to his wife, 14th century.

SOME THINGS DON’T CHANGE
The excuses are endless. The bottom line is the same — insurance companies gladly accept your premiums but all too often resist paying your valid claims.
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former WSBA chief disciplinary counsel (1987-94), represents and advises lawyers in all aspects of legal ethics and lawyer discipline.
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E-mail: leland.ripley@comcast.net

APPEALS
Philip A. Talmadge, former justice, Washington State Supreme Court; fellow, American Academy of Appellate Lawyers
Emmelyn Hart-Biberfeld, former law clerk, Washington State Supreme Court; invited member, the Order of Barristers
Anne E. Melley, former law clerk, Washington State Court of Appeals
Thomas M. Fitzpatrick, former executive director, Snohomish County; former assistant chief, civil, Snohomish County Prosecuting Attorney’s Office; fellow, ABA Center for Professional Responsibility
Available for consultation or referral on state and federal briefs and arguments.
TALMADGE LAW GROUP PLLC
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Tukwila, WA 98188-4630
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Fax: 206-575-1397
E-mail: christine@talmadgelg.com
www.talmadgelg.com
Suspended

Gail Schwartz (WSBA No. 28994, admitted 1999), of Spokane, was suspended for six months, effective May 11, 2006, by order of the Washington State Supreme Court following a default hearing. This discipline was based on her conduct between 2003 and 2005 involving lack of diligence, failure to abide by a client’s decisions concerning the objectives of representation, failure to provide an accounting, charging an unreasonable fee, and failure to refund unearned fees.

In April 2003, Ms. Schwartz was hired by a client to provide representation in a dissolution action. The client specifically requested that Ms. Schwartz file a withdrawal of joinder and change of venue from Lincoln County to Skagit County. In May 2003, the client signed a “Retainer Agreement” and paid Ms. Schwartz a $1,000 “minimum fee and retainer.” The agreement provided that Ms. Schwartz’s hourly rate was $120 and that a portion of the “minimum fee and retainer” could be refunded depending on the billings. In May 2003, Ms. Schwartz filed a notice of appearance and withdrawal of joinder. In July and September 2003, Ms. Schwartz wrote to her client’s estranged husband regarding a proposed property division and asked him to contact her. No other legal work was performed for the client. Between April and December 2003, the client called Ms. Schwartz weekly and spoke to Ms. Schwartz approximately five or six times. After December 2003, neither Ms. Schwartz nor anyone from Ms. Schwartz’s office contacted the client. The client’s husband also contacted Ms. Schwartz’s office on several occasions, but he was rarely able to speak to her. Ms. Schwartz made four appointments to speak with the husband regarding the dissolution, but Ms. Schwartz did not follow through on any of these appointments.

The client hired a new lawyer to obtain the change of venue and to complete the dissolution. Despite multiple requests from the client’s new lawyer, Ms. Schwartz did not sign and return a substitution of counsel, provide an itemized billing, or refund any unearned fees to her client.

Ms. Schwartz’s conduct violated RPC 1.2, requiring a lawyer to abide by a client’s decisions about the objectives of representation and to consult with the client as to the means by which they are to be pursued; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter, to promptly comply with reasonable requests for information, and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.5(a), requiring a lawyer’s fee to be reasonable; RPC 1.14(b)(3), requiring a lawyer to maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his or her client regarding them; RPC 1.14(b)(4), requiring a lawyer to promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive; and RPC 1.15(d), requiring a lawyer to take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned.

Sachia Stonefeld Powell represented the Bar Association. Ms. Schwartz represented herself. Jane Bremner Risley was the hearing officer.

Admonished

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington State Supreme Court Rules for Enforcement of Lawyer Conduct, and pursuant to the February 18, 1995, policy statement of the WSBA Board of Governors.

For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206-733-5926, leaving the case name, and your name and address.

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

WSBA Bar News Calendar
1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539
Fax: 206-727-8319
E-mail: comm@wsba.org

Information must be received by the first day of the month for placement in the following month’s calendar.

Animal Law
Fifth Annual Animal Law Conference
March 9 — Seattle. CLE credits pending.
By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Business Law
Protecting and Collecting: Advising Business Clients Victimized by Pirates and Counterfeiters
March 8 — Seattle. CLE credits pending.
By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Valuation of a Closely Held Business
March 20 — Seattle. CLE credits pending.
By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Intellectual Property
12th Annual Intellectual Property Institute
March 16 — Seattle. CLE credits pending.
By WSBA-CLE and WSBA Intellectual Property Section; 800-945-WSBA or 206-443-WSBA.

Labor and Employment Law
14th Annual Employment Law Institute
March 30 — Seattle. CLE credits pending.
By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Law Practice Management
You Asked for It: The Essential Guide for the Solo/Small Firm Practitioner
February 22 — Seattle. 6 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Litigation
The Ultimate Guide to Trying Cases in Thurston County Courts
February 9 — Tumwater. 6 CLE credits.
By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Mediation and Arbitration
Four-Day Intensive Mediator Training Program
February 13-16 — Seattle. 41.5 CLE credits, including 4.5 ethics. By Alhadeff & Forbes Mediation Services; 206-281-9950 or www.mediationservices.net.

Miscellaneous
WDTL Northwest Snowbreak Conference
February 1-2 — Park City, Utah. 6 CLE credits, including .5 ethics. By WDTL; 206-749-0319.

Four Fascinating Jewish Trials that Changed History — Freedom of Religion and Goldman v. Weinberger
February 7 — Seattle. 1.5 credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Real Property, Probate, and Trust
Fourth Annual Trust and Estate Litigation Seminar
March 28 — Seattle. CLE credits pending.
By WSBA-CLE and WSBA Real Property, Probate and Trust Section; 800-945-WSBA or 206-443-WSBA.

Trial Law
A Taste of Spence’s Trial Lawyers College
February 2 — Tacoma. 5.25 CLE credits. By WSTLA; 206-464-1011.

Non-Disciplinary Notice
Theresa M. Sowinski (WSBA No. 32549, admitted 2002), of Kingston, was by stipulation suspended pending the outcome of disciplinary proceedings pursuant to ELC 7.4, effective November 29, 2006, by an order of the Washington State Supreme Court. This is not a disciplinary action.

Poulbo office-sharing: Large, comfortable, and tastefully appointed executive office as well as secretarial space available. Share conference room, copier, fax, scanner, high-speed Internet, phone system, and kitchen. Contact Drake Mesenbrink at 360-697-0155 or drakemesenbrink@earthlink.net.

New offices available for solo or small firm downtown Seattle, expansive view from 47th floor of the Columbia Center. Share reception, kitchen, conference rooms (including in rent). Other administrative support available if needed. DSL/VPN access, collegial environment. Please call Jeannie, Badgley Mullins Law Group, 206-621-6566.

110-125 sq. ft. office spaces: Three blocks from RJC in Kent, $525-575 with windows, waiting room, beautifully renovated historic building. Contact Connrie at 253-630-0231.

Congenial downtown Seattle law firm (business, I.P., tax). Spacious offices, staff areas for sublease. Rent includes receptionist, conference rooms, law library, kitchen. Copiers, fax, DSL Internet also available. 206-382-2600.

Downtown Bellevue sub-lease. One, two, or three offices available in great location and grade-A building. Completely equipped law office, including shared receptionist, high-speed Internet access, and copier access. Possible referrals. IT support available. Winston 425-213-0553.


New professional office building — Available in summer of 2007. Up to 7,000 sq.ft on each of the two floors, in Clearview, WA, midway between Snohomish and Woodinville on Highway 9. This highly visible location with over 36,000 cars passing each day is located on the south side of the Clearview Plaza Shopping Center, in a rapidly growing community. Excellent financial terms. Will build to suit (legal, medical, dental). Contact Stuart Kastner at 206-300-3207, or spkastner@msn.com.

Retirement of established attorney creates opportunity to practice in Langley and live on South Whidbey Island. Office space available in historic mercantile building, with views of Saratoga Passage. Office is fully equipped with library, office equipment, furniture, and furnishings. Please call 360-221-5859 for more information.

Downtown (Seattle) class A, two office spaces available for sublease. Kitchen, reception, conference room, and much more. Please call for more information, 206-838-5387.

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Ah, the sentiment of it all

by Lindsay Thompson

“That’s nonsense,” said Laura. “One is always ready to fall in love. It isn’t something you have to train for.”

— Peter Cameron, The Weekend (1993)

When I was a lad, February was “The Month of Holidays.” There was Lincoln’s and Washington’s Birthday, and Valentine’s Day, all observed in the public schools of Hoke County, North Carolina.

The big holidays were the occasions for “chapel programs” in the auditorium. I suspect the name outlived the original programmatic material: by the early 1960s, they were largely vaudeville revues choreographed by the school music teacher.

Tall for my age, I was cast as Abraham Lincoln in one of the February entertainments. Decked out in my best clobber, with a construction-paper beard and stovepipe hat, I recited my lines about Lincoln and retired into the staged throng. I can’t remember a word I said.

Most vivid was the 1965 Easter Program, when we thespians got to march down the aisles and up on stage, wearing the most outrageous hats our parents would admit to owning, singing:

Who will wear a hat to the hat parade today?
Who will wear a hat to the hat parade today?
Who will wear a hat?
Who will wear a hat?
Fala la la, fala la la, hi ho hey!

Valentine’s Day was a different order of business. It was full of anticipation of undying declarations of friendship of the sort only seven- and eight-year-olds can come up with.

Lincoln’s Birthday falling on the 12th, we had to hustle his life and career lessons double-quick to make room for Valentine’s Day. Because for the latter, we got to make stuff.

Crayons, mucilage, blunt-ended scissors, and construction paper all came out, and we busied ourselves making pouch-like envelopes to hang from the blackboard chalk trays. They bore our names and illustrations that would have had the Lascaux cave painters doubled over in giggles.

Back then, you could go to the five-and-dime, and for a token sum, get a packet of 30 or so valentine cards, tailored-made for the grade school fete. You had to make one out for everyone else in class. The teacher passed out a class roster to everyone to make sure.

On the day, after some hortatory sentiments from the teacher, we all lined up and made the rounds, filling the pouches with cards and small candies. They were mainly heart-shaped and bore expressions like “Be Mine” and “Not if You Were the Last Boy on Earth.”

Then we got to collect our booty and go through it — 28 valentines each, most bearing scrawled names, a few here and there with additional comments that would mark their authors out as achievers in the coming days of high school yearbook inscription.

In Seattle, among the voting-age population, the tradition continues in a weekly called The Stranger. People pay money to spread the most gelatinous sentiments about their loves. There are pages upon pages of the stuff, and no search feature.

I take it as a given there’s none in there addressed my direction. My friends have an authorization: When I start talking about falling in love, they are to roll up a Sunday New York Times and beat me with it till I come to my senses.

For me, it has been the most errant folly. I was the Maginot Line of Love: Just when I thought I’d fortified myself against past errors, someone would pivot around through Belgium and attack my flank. Trench warfare always followed.

So I view these things from the sidelines now. As Shakespeare says in As You Like It, “My age is as a lusty winter/Frosty but kindly.”

Happy Valentine’s Day. ☺

Editor Lindsay Thompson practices law in Seattle and can be reached at barnewseditor@wsba.org.
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