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Finding wisdom in a taxi

Thank you, President Taylor, for your interesting article on taxi drivers (“President’s Corner,” February 2006 Bar News). My father was a taxi driver for some 50 years, most of them in the Seattle and Snohomish County areas. For a time, he owned a small company in Snohomish County.

Throughout high school and into college, I was an employee and eventually its manager. While Snohomish County in those years was not as diverse as it is now, the drivers were still fascinating men and women even if not from other countries. Ranging from tough older women who just didn’t like to sit behind a desk to young men starting out in the workforce to a pastor looking for extra money, they worked long hours for little money. They were caring people who carried groceries up the steps even for a $3.00 fare who would only tip a quarter. They would worry about little old Miss Mathison who went to the Pancake House in Edmonds...
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every day for lunch. If 11 o’clock came and went without hearing from her, one of the drivers would casually mention to me over the radio that they were just going to go check on her.

While people complain sometimes now of the drivers who are so new to the area that they don’t know their way around as much as they will in the future, I remember many a lifelong American driver getting just as lost in the wilds of Briar or Woodway in Snohomish County so many years ago. Have patience, they will learn to find their way around just as my drivers did 30 years ago.

Taxi drivers have a unique opportunity sometimes to change the course of a person’s life. One night my father picked up a distraught and drunk man from a bar whose wife had just left him. He was going from bar to bar, drinking with strangers. The man wanted to go to yet another bar. The man had over $20,000 on him and was virtually giving it away to the other patrons because he saw no future for himself. My father, a recovering alcoholic himself, talked the man into checking into a hotel and sleeping it off. He talked him into allowing him to take the rest of his money to give to his children to hold for him. He came home with an envelope filled with cash and called the man’s children who were very grateful that their father had, in effect, been rescued by a stranger from throwing away his entire fortune.

To this day, I love taking taxi rides and talking to the drivers. My friends always tease me for my exorbitant tips on short taxi rides, but I remember how much my drivers needed that extra money so long ago.

Anyway, thanks for reminding us all of the benefits of opening our eyes to the experiences of others from other communities and the freedoms we take for granted living in this country.

Nancy Hawkins, Seattle

Immigrants show the way to a restored America

Dear President Taylor: Thank you for sharing your commuting experiences with the rest of the bar association. What you relate illustrates that America is still a beacon on the hill and a land of hope, promise, and opportunity for so many around the world.

A key element to the success enjoyed by these immigrants, in addition to their diligence and hard work, however, is the tight and supportive family structure that they maintain. Sometimes over distances of thousands of miles.

The same opportunities exist here for native-born Americans, but in many cases the family unit has been destroyed by our social policies and that vital, nurturing, supportive structure no longer exists.

What an economic engine for our economy if the American family structure could be re-established. A worthy goal for our state and nation and the causes of the collapse of the American family are not difficult to identify.

Thank you for your most interesting and instructive “President’s Corner” column in the February issue of Bar News.

Carleton B. Waldrop, Pullman
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President’s corner

On the Road Again

S. Brooke Taylor, WSBA President

have a confession to make. At about 10 p.m. on January 27, I was feeling a little sorry for myself. As I drove off the ferry at Kingston on the Kitsap Peninsula, it was dark and the winter rain was pounding on my windshield as it had done throughout my week on the road. I was tired, and a long way from home. This was a departure from my normal habit of flying to Seattle for WSBA business, because I had too many places to go, and too much stuff to pack. And what had become a familiar pattern had played out again that evening: whether flying or driving, I had been required to leave an enjoyable evening event prematurely to catch either a plane or a ferry. This was the final leg of a three-day circuit through Olympia and Seattle, with two nights at the Mayflower Hotel, just a short walk from the WSBA office at Fourth and Blanchard. It had been a three-suit trip, one of which I was still wearing, and it looked like I had forgotten to take it off during that last night at the hotel. It would be at least 11 p.m. before I got home, and both Saturday and Sunday would be consumed by hours at the office doing the work my clients deserve.

I drove off into the night, just one in a long line of red taillights heading west, worrying primarily about staying awake, and thinking about the events of recent days. Before I reached the Hood Canal Bridge, my mood had changed from gloom to joy and pride, as I reflected on where I had been and what I had done. Early departure from the annual awards banquet of the Latina/o Bar Association of Washington (LBAW) detracted little from a wonderful event, attended by lawyers, judges, and law students from across the state, together with numerous dignitaries, including Governor Christine Gregoire and New Mexico Attorney General Patricia Madrid. It was a positive, energetic, and inspiring evening.

The event reminded me of all the wonderful work our minority and specialty bars do for their members, our profession, and their constituent communities. Earlier in the day we had welcomed the founding members of our newest minority bar to WSBA headquarters: Attorneys with Disabilities Bar Association. Disabilities include blindness, paralysis, and crippling illness. What these colleagues have accomplished in the face of unimaginable adversity is beyond inspiring. You could not contemplate their courage...
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My pleasant reflections also carried me back to when I committed to the Board of Governors, that, if elected president, I would visit every county bar association that would extend an invitation. This was an idea that my predecessor, Ron Ward, had immediately embraced, and that led the two of us, together with Executive Director Jan Michels, to visit several counties throughout the state during his term. The second round of visits had started during this week that had just ended and would carry me, President-elect Ellen Conedera Dial, and our executive director to at least Whitman, Asotin, Spokane, Grays Harbor, Snohomish, Jefferson, Clallam, Chelan, Douglas, and Kitsap counties — and hopefully more.

By the time I crossed Hood Canal to the Olympic Peninsula, the traffic had thinned, but the driving rain continued. As I pressed on into the night, my thoughts turned to events earlier that week and the week before, which included two days in Olympia working on WSBA issues. It involved delightful interactions with students at two of Washington's fine law schools, and a lunch meeting in Moscow, Idaho, with members of the Whitman and Asotin county bars. One Pullman lawyer was moved by my remarks to volunteer his services in my initiative for the year. One second-year student at Gonzaga thanked me for remarks that inspired her all over again. After eight days on the road out of the last 10, I was reaping the rewards that make the position as your president the great privilege that it is. This is what every president should do. This is what I signed on to do. This is the most rewarding work I have ever experienced. Thank you for letting me do it.

Brooke Taylor may be reached at 360-457-3327 or sbtaylor@plattirwintaylor.com. If you would like to write a letter to the editor on this topic, please e-mail it to letterstotheeditor@wsba.org or mail it to WSBA Bar News, Attn: Letters to the Editor, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.
Demystifying Jury Selection

BY STEPHEN HAYNE
When I was arguing *Seattle v. Allison* before the Washington State Supreme Court, I offered up this scintillating comment: "With all due respect Justice Ireland, I’m afraid you just don’t understand the issue."

Justice Ireland authored the majority opinion. My inability to communicate effectively with judges is one reason I prefer trial by jury.

"Trial by jury is essentially a child of freedom. Where the scepter of the tyrant rules, it has no home. The system was inaugurated in the effort to thwart the power of the despot. It is the greatest safeguard of liberty, and the greatest protector of its privileges."

— Samuel M. Wolfe (1911)

Sam knew what he was talking about. The best protection against a government on the rampage is the "safeguard of liberty" — the wall between the accused and his accusers — a fair and impartial jury. For all trial lawyers, the trick, of course, is finding those "fair and impartial" jurors, especially in the face of highly publicized acquittals of "obviously guilty" celebrities. Do such jurors even exist? If so, how do we find them?

If we were honest, few trial lawyers would claim much affection for *voir dire*. It is a very uncomfortable setting: a group of trapped strangers being asked personal questions about touchy subjects. I suspect most lawyers and jurors squirm inside, distrustful of each other’s power. I must admit I don’t like jury selection. Despite 30 years of trying to like it, I still don’t. I’ve read books, articles, and treatises (often written by people who couldn’t possibly have tried many cases); been to the best seminars; watched and imitated the great ones; even written articles and given speeches on how to do it, but I still don’t like it. I’ve spent thousands of hair-pulling hours thinking about it and hundreds more anxious hours actually doing it.

I don’t like it for one reason: I’m not very good at it. I am always perplexed when I hear other lawyers claim they love *voir dire*. Maybe because when the jurors file in, they always seem to exchange warm smiles with my opponent, followed by steely glances at me.

At the start of all my trials, I feel like a racehorse fidgeting in the gate, still sorting through the juror information forms as the judge begins the general questioning. I scribble numbers as the courtroom becomes a kind of crazy auction: number nine gets one, number 20 gets one, number 14, number 11, number ... uh oh, I’ve already forgotten the question. The judge rushes on, numbers zipping by too fast to register.

At the end, I stare at my notes — meaningless drivel surrounded by dozens of numbers.

Prosecutors always seem to begin *voir dire* with a clever remark they learned at Prosecutors’ School, sharing a hearty laugh with the jurors while showing how reasonable and friendly they are. My prosecutors rarely ask repetitious, boring, offensive, irrelevant, political, religious, legal, gratuitous, stupid, personal, or other objectionable questions. They use open-ended, relevant, probing, intelligent, informative, empathic, educational inquiries instead.

When their time is up and all eyes turn toward me, I feel like a trapped rat. Anxiety burns up and down my neck. I really, really wish the fire alarm would go off or, God forgive me, somebody would have a heart attack. Anything to forestall the pain of jury selection. Taking a deep breath, I begin.

"Good morning ladies and gentlemen, my name is Steve Hayne and I...

"Objection!"

"Sustained. Ask a question."

"Er..., Mr. Johnson, I wonder how you feel about being called upon to sit in judgment of my client?" I ask open-endedly.

"Not much," he answers with a frown.

"Well then Ms. Jones, I believe you indicated to the judge earlier that you have been the victim of a crime?"

"Nope."

Giving up on this hopeless poltroon, I turn to the smiling juror in seat number five, wondering if she sympathizes with those unjustly accused.

"Good morning Ms. Jones. By the way, do you prefer Ms., Mrs., or Miss?"

"Doesn’t matter."

"Well then Ms. Jones, I believe you indicated to the judge earlier that you have been the victim of a crime?"

"No."

"Oh, of course. I guess I must have gotten you mixed up with another juror, ha ha. Well then, have you ever sat as a juror before?"

"Yes, as I explained to the prosecu-
tor a few minutes ago.”

“Oh yes. Well, could you tell us something about your experience, I mean, has there been anything about this process that you, er, that you’ve found particularly interesting or surprising, or have found surprising or interesting, er, your experience I mean. As a juror that is. Heh, heh. Know what I mean?” I resist mopping my brow.

“No.”

Shoes filling with sweat, I glance at the clock, hoping my time is almost up. Three minutes have elapsed. Damn! I respond to outright lies, single-syllable answers, and veiled hostility, all with a calm nod. I ask different jurors the same question, hoping for different answers. I don’t get any. On and on it goes, until the judge finally announces “time’s up!”

Okay, it’s not that bad, but even after all these years jury selection is still my least favorite part of the trial. One reason may be that, in the many DUI cases I try, the evidence is so overwhelming it feels like I’m selling air conditioners to Alaskans. And I suspect it’s hard for you, too, no matter the case. Maybe the following will make your task a little easier.

“In the jury box, every day the American way of life is given its rebirth. American juries are the custodians and guarantors of the democratic ideal.”
— Justice Bernard Botein (1946)

The importance of not being earnest
One reason Gerry Spence is so astounding successul with juries is his ability to gain their trust. Few are blessed with his talent, but we can learn from his example. You have doubtless heard the advice to “be yourself” in front of a jury. No one is more “himself” than Gerry Spence. He is able to reveal his warts and scars, his apprehension and fear, his faith in the jury system, his concern for his client, his sincere belief in the jurors as fair judges of his client’s fate. They trust him, in part, because he trusts them. He then transfers
that trust to his client, by humanizing him, helping the jury to feel and hear and see him, to make him real. After all, it’s a lot harder to condemn someone you know, like, and understand than a complete stranger called “the defendant.” Gerry gains their trust by showing he’s human, too, just like the jurors; that he’s not just a lawyer, but a real person needing the juror’s help in doing justice for his client.

The fact is, the jury won’t listen to or care about you if they sense you can’t be trusted. They don’t have to think you’re funny or clever or really smart, they don’t have to think you’re cute or handsome, or a good dresser. They don’t even have to like you very much. But, if you want to have any hope of winning, they must trust you. And the only path to trust is through sincerity and honesty.

Of course, being “yourself” is sometimes a very hard thing to do. When you’re holding onto a tiger’s tail for dear life, feeling overwhelmed, outgunned, incompetent, fat, ugly, and stupid — “yourself” feels pretty pathetic. It’s easy for Gerry Spence, I mean, he’s Gerry Spence. It’s a lot harder for the rest of us. But, revealing yourself and all your warts to jurors is just what you need to do to gain their trust.

Being yourself means talking about your case from your heart instead of your head, talking to the jurors like ordinary people, about ordinary, common feelings. Feeling anxious about the responsibility of defending your client? Worried that you might not be up to the task? Concerned that your working-stiff client won’t sound as articulate and polished as the police officer? Thinking no one charged with child molesting can get a fair trial? Fearful the jury won’t trust you because you’re a defense lawyer? People understand these concerns, and appreciate your dealing with them honestly. The point is, don’t stand there with a phony smile pretending you’re feeling totally in control when you’re just not. Trust the jurors with the truth, and they may trust you in return. That’s being yourself.

“I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution.”
— Thomas Jefferson (1788)
Sample Juror Questionnaire for a DUI Defense

Please carefully consider the following questions:

1. Have you ever contested a traffic ticket of any kind? ___no ___yes
2. Have you ever testified in court? ___no ___yes
3. Are you in favor of mandatory seatbelt and/or motorcycle helmet laws? ___no ___yes
4. Do you believe that, on the whole, the Criminal Justice System is: ___too lenient ___too harsh ___about right.
5. Have you ever had a particularly pleasant or unpleasant experience with a police officer? ___no ___yes
6. Have you ever been involved in a traffic accident involving alcohol? ___no ___yes
   If yes, when/where________________________________________________.
7. When it comes to testifying in court, would you generally consider a police officer more likely to be ___more truthful ___less truthful ___as truthful, when compared to other witnesses?
8. Have you any specialized knowledge, training, or experience in law enforcement, alcohol/drug abuse, chemistry, or medicine? ___no ___yes
   If yes, please explain______________________________________________.
9. How often do you consume one or more alcoholic beverages? ___never ___rarely ___occasionally ___once a week ___daily
10. Have you, any friends, or any relatives ever had problems with alcohol? ___no ___yes
    If yes, please explain______________________________________________.
11. Do you agree or disagree with the following statement? It should be against the law to drive after consuming any alcohol at all. ___agree ___disagree
12. Do you favor tougher laws regarding drinking and driving? ___no ___yes
13. Have you ever contributed money to or belonged to any organization advocating stricter laws regarding drinking and driving (MADD, SADD, etc.)? ___no ___yes
14. Have you heard or read anything concerning the state’s breath-testing machines? ___no ___yes
15. Based upon what you have heard, what is your opinion of the machine’s reliability? ___not reliable ___somewhat reliable ___usually reliable ___totally reliable
16. List the three people you admire the most.
   (1)___________________ (2)___________________ (3)___________________
17. List the three people you admire the least.
   (1)___________________ (2)___________________ (3)___________________
18. Who is your favorite radio talk-show host? ______________________________
19. Is there anything which might affect your ability to be fair in a DUI case? ___no ___yes
    If yes, please explain______________________________________________.

Some advice on trying cases

Let’s start with the basics. We’re all afraid of trying cases. If you’re not, you should be. It is the hardest thing I have ever done. You can take some steps to make it a little easier, though. First, prepare, prepare, and prepare, then prepare some more. Know the facts and players of your case better than anyone else. It is essential to keeping your confidence when your case starts falling apart during trial (it will). Accept that things are going to go wrong and take unexpected turns. Don’t even try to try the perfect case, you’re not going to. All trials are morality plays, a process of separating the good guys from the bad, and it is often unclear who’s ahead. It is a dynamic process, which requires that you be relaxed in the midst of the chaos, to listen and interpret, to understand the case from the jury’s point of view. Let me say it again: Preparation is the foundation for success, period.

If you’re unfamiliar with the courtroom, visit it a day or two before trial, preferably after hours. Sit at counsel table and in the jury and witness box. Practice your opening to imaginary jurors. Plan out how you’re going to use your exhibits. Get a feel for the courtroom. Then, on the morning of trial, get to the courtroom before the prosecutor and stake out your preferred place at counsel table. No, there is no “prosecutor’s chair” in a courtroom (unless the judge says so). I seat my client as close to the jury as possible, or at least where they can see him clearly. I want the jurors to see him as a real person from the moment they walk in the courtroom, not as the inanimate defendant.¹

Before trial, you really do need to prepare a checklist of what you need to bring to court.² Otherwise, you’re sure to leave something you absolutely positively must have back at the office. For most trials, I also bring
my own juror questionnaire to be filled out before *voir dire* begins. The clerk can then make copies for the judge and prosecutor before bringing the panel into the courtroom. Be sure to bring enough copies for the whole jury panel, and in district court, enough pens and clipboards. You also need to know your judge’s particular preferences in jury selection, which can vary widely. Ask a lawyer who has recently tried a case before your judge how the judge handled *voir dire*, juror questionnaires, general questions, challenges, etc. If you’re in a jurisdiction that assigns the judge on the day of trial, as soon as you get to the courtroom ask the clerk how the judge conducts *voir dire*.

After hearing motions *in limine*, the judge has the bailiff fetch the jury panel from the juror assembly room. The prospective jurors are sworn in and the judge asks general questions of the whole panel. If the judge always asks the same questions, ask for a copy of them from the clerk beforehand. It is always a good idea to prepare your own list of general questions for the panel as well, since many judges will ask your general questions if you have them in writing beforehand. Once the general questioning is concluded, questioning of individual jurors by the lawyers begins. Individual questioning by the lawyers must be allowed.4

Almost all Washington judges now use the struck method, wherein the lawyers take turns questioning the whole jury panel at once. Beware: The scope of allowable subjects and questions varies widely from judge to judge. Some just turn you loose; others are very restrictive. I have tried cases back-to-back in the same courthouse, where the first judge let me do whatever I wanted and the second almost found me in contempt for asking exactly the same questions.

Stay ahead of the process; be ready for *voir dire* before the clerk starts calling jurors into the box. Your client should know his or her role during jury selection as well. I always give my client a pen and pad for notes, and advise them not to distract me during *voir dire*. Set your table; have your juror questionnaires, jury selection form, legal pad, extra pen, and everything else you might need laid out and ready. I don’t actually use all that stuff, but it makes me feel more comfortable knowing I won’t have to search for it if I want it. I am always consumed with anxiety before the beginning of any trial and find taking a few deep breaths every once in awhile the most effective way of calming down.

Each side is allowed the same amount of time to question jurors, usually divided into two parts. The prosecutor goes first, and each attorney is usually allowed to use the time as he or she wishes. For example, if allowed 15 minutes each (typical in most district court trials), the prosecutor may elect to use 10 minutes, then yield to defense counsel, reserving the remaining five minutes for rebuttal questions, and vice versa. Jurors may be removed in two ways: challenges for cause and peremptory challenges. A challenge for cause is a request that the judge remove a juror for actual or implied bias. The judge will grant the request only if the juror is found unqualified as a matter of law, that is, unable to put the bias aside and follow the court’s instructions.5 Most judges will take great pains to avoid challenges for cause, suggesting the juror can overcome...
the bias and "follow the law." It takes an uncommonly honest and courageous juror to resist the all-powerful judge's suggestion. Ironically, honest and courageous jurors are the kind I want. So, exercise challenges for cause with caution and diplomacy.

Peremptory challenges are made at the end of questioning, but the method varies from judge to judge. Some ask each lawyer in turn to dismiss jurors; others do it at sidebar or in chambers. Since all the jurors — in and out of the box — are numbered sequentially, both lawyers know who will be replacing a bumped juror.

During the prosecutor's questioning, relax, listen, and watch the jurors carefully. Provocative topics for discussion will jump out all over — the better the prosecutor, the more there will be. Note any red-flag answers (I literally use those little red-flag tapes) when an important subject comes up. When a juror reveals something to the prosecutor that concerns me, I might start with something like:

"I have to tell you, it was hard to hear what some of you talked about with the prosecutor. Now, Bob is charged with drunk driving. Mr. Jones, as I listened to you describe how your brother was killed by a drunk driver, it made me feel awful. I can't imagine how painful that is for you. I know everyone in this room feels for you, including Bob. I thought, now this is a heck of a deal — Bob sitting here charged with drunk driving and your brother killed by a drunk driver. I thought, it would be awful hard for anyone to put that aside and give Bob a fair trial. Do you think you understand my concerns? Could we talk a little about that?"

The discussion then needs to flow naturally from how Mr. Jones feels about drunk drivers to how that might affect Bob's chance for a fair trial to what we should do about it. It needs to be an honest conversation; you need to take some risks, to allow it to go wherever it leads. By revealing your own feelings honestly, you show the jurors that you're real, that it's okay to be honest in return. Such discussions will tell you a lot more about what's going on inside the jurors' minds than the despite-the-fact-your-brother-was-killed-by-a-drunk-driver-will-you-promise-to-give-my-client-a-fair-trial routine. Having an honest conversation will tell you how willing the juror is to acknowledge his biases, and how willing to struggle with them he is. As a defense lawyer, I want jurors who are human and honest and plagued with self-doubt. I don't want jurors who are smug, self-assured, and unwilling to struggle with the pain of uncertainty and self-doubt. They are too quick to judge others and find them wanting.

Most lawyers advise that you should address each juror by name, but in the 15 minutes you're given in district court, it's way too distracting. Look each juror in the eye, make conversation, and avoid lecturing, or worse, cross examining the juror. Remember, you're just trying to get to know the juror, as you would when meeting anyone for the first time.

Always refer to your client by name, not "my client" or — heaven forbid — "the defendant." Occasionally walk over and stand behind him, put your hand on his shoulder, look at him periodically during questioning. Ask questions that require the juror to look at your client when answering. You're communicating
your sincere concern for your client and turning him into a real person in the eyes of the jurors. Show genuine interest in the jurors’ answers, listen carefully, and look each in the eye. You may laugh with a juror, but never at one. And it is always helpful to be able to laugh at yourself.

“The wisdom of our sages and the blood of our heroes have been devoted to the attainment of trial by jury. It should be the creed of our political faith.”
— Thomas Jefferson (1801)

On trial themes
Preparing for trial is a process of deciding where and how you’re going to attack the state’s case. It’s the answer to the questions: “Why am I trying this case? Where are the reasons for doubt?” The theme of your defense is a short answer to these questions. It can be as simple as “the state’s evidence is so full of contradictions that it just doesn’t add up” or “my client was at home in bed when Jones was robbed — it had to be someone else” or “the cop jumped to the conclusion my client was guilty, then set out to try and prove it, ignoring contrary evidence every step of the way.” Or, it may have to be more complicated. The point of having a theme is to focus your defense and the jury’s attention on the part of the state’s case that is the weakest, where you have a shot at finding reasons for doubt.

“For almost eight centuries trial by jury has remained the best, safest, surest, and perhaps the only bulwark to protect the basic rights of the average citizen. It is the ‘Fence of Liberty.’”

Thinking like a juror
For me, one of the hardest things about jury selection is getting the jurors to talk honestly about their feelings. Everyone in a courtroom is nervous, including most jurors, and they don’t want to do or say anything wrong. They know they are being scrutinized by the lawyers, they want to be on the jury, and they often naturally try to figure out what you want to hear. To get them talking, you need to show them it’s good to be honest, and they won’t be punished for it, by accepting their answers and personal feelings without judgment. While you are making judgments on the inside, on the outside, you’re just gathering intelligence.

You start by being honest yourself, and by asking provocative, emotionally charged questions:

“As I talked about this case with friends and neighbors over the last few weeks, it made me worry. When I mentioned Bob was charged with molesting a child, almost everyone automatically thought he must be guilty, without knowing anything about the case. And even other attorneys told me ‘no one can get a fair trial in a child-molesting case nowadays.’ If you found yourself charged with this horrible crime, would you worry about that? Why?”

“Most states now have three-strikes-and-you’re-out laws. “Does everyone here favor them? Does anyone think a two-strikes-and-you’re-out law would be...
even better?"

"What sort of image came to mind when you heard Bob was accused of drunk driving? Did you think of one of those drunk drivers in the news who kills someone? What if you were on trial for drunk driving, do you think you’d feel comfortable having someone with your feelings about it on your jury?"

The point is to start a discussion about our normal feelings we have about things that make all of us think or cringe, and then to see where it leads. They provide openings for talking about the issues in your case in a meaningful way.

"The jury trial has borne the test of a longer existence better than any other legal institution that ever existed among men. We owe more of our freedom and prosperity to it than all other causes put together."

— Chief Justice Jeremiah S. Black (1866)

Letting the jurors in on the secret: Why we’re all here

One of the goals of jury selection is to give the jury a preview of why your client is not guilty. For instance, if you have one of those wall-to-wall bad-news cases where your only hope is discrediting the police officer, you can give them a heads-up on what to look for:

"Mr. Green, I expect Trooper Bowen will have a lot of bad things to say about Bob Brown, most of which we just plain dispute. Now, Bob can’t ask him any questions, he has to depend on me. I’d like you to put yourself in his shoes for a minute. If you were sitting here wrongfully accused, you’d want me to challenge the trooper, wouldn’t you? Do you think it’s important for a police officer to be able to back up his statements?"

"I expect we’ll talk a lot about physical balance tests in this trial, and that Trooper Bowen thinks Bob failed them. Are you willing to challenge his conclusions if there’s reason to? Do you think cops are always right?"

"We don’t agree with Trooper Bowen’s conclusions. You wouldn’t think much of me as his lawyer if I just sat there and didn’t challenge him, would you? Will you ask yourself whether everything he testifies to makes sense?"

"The jury is an indispensable part of the machinery of justice. Liberty cannot exist without trial by jury, and despotism cannot long survive with it."

— Judge Henry Caldwell (1899)

"You know, folks, I really understand how frustrated everyone is with our criminal justice system. In fact, I often feel the same way. But as you and the prosecutor discussed how unhappy you are over crazy verdicts, I was getting more and more worried. You’re right, sometimes the system doesn’t work. Sometimes the guilty go free. And sometimes the innocent are sent to prison for decades.”

"I was wondering, how can we fix it? Maybe you can help me figure it out. Mr. Jones, you said you think there are way too many criminals set free by our courts and are convinced the system is screwed up. I wonder what we could change about it. Do you think the presumption of innocence might be partly at fault?"
What if we just got rid of it? What if we presumed Bob Brown guilty? How about if you were accused of a crime you didn’t commit — would you want to be presumed guilty?

He went on to discuss all the trial rights Americans enjoy, and got the jurors to consider getting rid of each in turn. He got everyone to discuss what it would feel like for them or someone they loved to be wrongfully accused under such a system. They talked about what it would be like to be accused of a crime in Afghanistan under the Taliban, or what would likely happen to them in a trial in Iran. By the time he finished, every juror was a true believer. It was a work of art. It’s the best method I’ve found for discussing the “rules” our system lives or dies by. Here are some conventional questions meant to provoke a meaningful discussion:

“Suppose you were sitting where Bob Brown is sitting, charged with a crime. Would you want someone who feels and thinks just like you feel and think right now on your jury?”

“Do you sometimes feel that our criminal justice system is too lenient with criminals? Why? What do you think we should do about it?”

“Do you feel that enough concern is paid to victims of crimes?”

“What do you think when you read in the paper that someone was arrested for a crime? Do you think: ‘Wait a minute, he’s presumed innocent?’ Why don’t we do that?”

“Why do you think it’s a good rule that Bob Brown doesn’t have to prove himself innocent? Do you think there is a valid reason for putting the burden of proof entirely upon the state?”

"It is not difficult to understand why the founding fathers entrenched the right of trial by jury in the supreme law of the land. They regarded the exercise of that right as vital to the protection of liberty against arbitrary power."
— Justice John Marshall Harlan (1900)

Telling your story
When you’re trying any criminal case, particularly DUIS, you and the jury are going to sit through a lot of bad evidence before you even start your case. How can they keep open minds in the face of such overwhelming evidence of guilt? By being told beforehand why the case is being tried, both in jury selection and opening, and getting them to think in terms of the rest of the story.

“Mrs. Smith, you described earlier how your children sometimes argue and that you always wait until you have
heard both sides of the story before trying to figure out the truth. Why do you do that? Of course, you don’t have to be convinced beyond a reasonable doubt to make up your mind in that situation, do you?”

“Would you ever make up your mind about any controversy after hearing only one side of the argument? Why not? Have you ever done so and regretted it?”

“Of course in a trial, the prosecutor has the advantage of putting on its version of what happened first and a lot of bad things will be said about Mr. Brown before we get a chance to respond. Will you make a special effort to remind yourself to wait during the prosecution’s case until you’ve heard our side of the story?”

“If you find yourself even leaning toward the prosecution during its case, do you think you should make a special effort to remind yourself that you haven’t heard our side yet? Why is that important to do?”

Another possible approach:

“Now, under the rules in this courtroom, Bob and I are not required to prove anything. We don’t have to convince you of his innocence — the state has to prove him guilty. If I decide not to have Bob testify, might you hold that against him?”

“When it comes to testifying, Bob’s in kind of a damned-if-he-does-and-damned-if-he-doesn’t situation, isn’t he? If I decide not to have him testify, it would be natural to think he’s trying to hide something, wouldn’t it? But if he does testify, the prosecutor’s going to argue he must be lying and is just trying to save his skin, right? Do you see what I mean? Would you be comfortable testifying in a trial? Can you think of any reason a defendant wouldn’t testify, other than that he’s guilty?”

“Well if the judge tells you that you can’t hold it against Bob if he doesn’t testify, then one of the other jurors brings it up during your deliberations, what are you going to do?”

“Do you think the rule that says a person accused of a crime doesn’t have to testify is a good one? Can you think of any good reasons for it? Do you think a person
should be required to get up and answer the charges on the witness stand?"

“No single institution that the wisdom of man has ever devised is so well calculated to preserve a people free, or make them so, as trial by jury.”

— Judge Sydney Taylor (1838)

Biases are like ears, everybody’s got ’em

Almost all jurors have strong negative feelings about criminals, but will deny any bias against the defendant. If you asked a white juror, “Are you prejudiced against black people?” he would almost certainly deny it. To get at a juror’s real feelings, you have to sneak up on him, by asking a series of questions. In a case involving race, for instance:

“Mr. Jones, how long have you lived in the suburbs? From where in the city did you move? Did school busing influence your decision to move? What other reasons did you have?”

“What are some of the things you prefer about your present neighborhood? Was your family’s safety a consideration?”

“Do you enjoy going for walks or jogging around your new neighborhood? Do you think you’d feel a little safer going for a walk or jog in your neighborhood versus downtown Seattle?”

“Would you feel less safe walking around the Central District than your own neighborhood? Why?”

“Do you share the feeling of a lot of us, that there’s more crime in areas where mostly black people live?”

“Do you own firearms? Was personal protection a part of your reason for purchasing a firearm?”

“Does your place of employment have an affirmative-action program? How do you feel about it? Has it been applied fairly in your experience? Do you believe affirmative-action programs do more harm or more good for minorities?”

The point is, uncovering bias is a process. The idea is to allow the juror to reveal his real attitudes by answering fairly innocuous, indirect questions that don’t directly challenge his fairness. In doing so, you’ll find out how aware the juror is of his own biases. Generally speaking, the more aware, the better the defense juror.

One of the best techniques I’ve seen for handling the subject of bias was used by Seattle attorney Jeff Jones in a case involving a direct conflict between his client’s version of the incident and that of the arresting officer. Using a series of questions, Jeff crept up on the issue rather than confronting it directly:

“How many people here think that police officers always tell the truth?” (Only a couple of hands were raised.)

“How many think police officers always lie?” (No hands were raised.)

“How many here think police officers usually tell the truth?” (Most hands were raised.)

“Well, we’ve just discovered a bias. Most of us have already decided that Trooper Bowen is probably going to tell the truth and Bob Brown is probably
going to lie.”

Or, current events can provide great opportunities for getting to the heart of the matter quickly:

“I’m sure everyone has been following the tragedy down in New Orleans and Mississippi. There’s been a lot of talk about the role of race in the aftermath. I’m wondering how you felt about it. Can anyone tell me about how they reacted to seeing all those folks at the Superdome? Did they have any responsibility for their plight by not evacuating in the first place? Why or why not?”

“Did anyone see the two photos of the black man and the white couple wading through water with bags of groceries? Do you recall the descriptions that were with the photos? What did you think about that?”

“A lot of people think the rescue would have been a lot faster if all those folks had been white. Does anyone agree with that?”

“The institution of trial by jury has been sanctified by the experience of the ages. It had been recognized by the Constitution of every state in the Union. It is deemed the birthright of Americans and it is deemed that liberty cannot subsist without it.”

— Judge Alexander Hanson (1788)

Educating the jury

“Educating the jury” on your side of the case is just giving them a heads-up on where the fulcrum points of the case are, where they need to focus their attention. Let’s say your client had to perform field sobriety tests following a car accident. Find a juror who’s been in an accident and discuss what it felt like.

“Ms. Jones, I’d like you to think back to when you were in that accident; how did you feel immediately afterward? Did it take a while to get back to feeling normal?”

“Even though you weren’t injured, would it have been a good time for you to do balance tests? How do you think you would have done on those tests? Do you think being in the accident might affect your ability to do those tests?”

“Were there two different versions of who was at fault in the accident? Did the police officer decide who was at fault on the spot? Did you and the other driver agree with his conclusion?”

Or let’s say your client had a personality conflict with the arresting officer. Ask if anyone’s had a bad experience with a cop. Then ask if they think cops are human, too, and how they can make mistakes — even when they’re positive they’re right.

“Have you ever been stopped by a police officer? Did it make you nervous? Did you have a suitcase of heroin in the trunk? Then why were you nervous?”

“Can you understand how Bob might have felt when Trooper Bowen started getting aggressive and impatient with him?”

“Have you ever been arrested? How do you think it would make you feel? Would you know what to do or say by the experience of the ages. It had been recognized by the Constitution of every state in the Union. It is deemed the birthright of Americans and it is deemed that liberty cannot subsist without it.”

— Judge Alexander Hanson (1788)
under the circumstances?"

"Trial by jury is the foundation of our free Constitution: take that away and the whole fabric will soon molder into dust."
— Lord Charles Pratt (1792)

Making good use of “bad” jurors

Jurors with close connections to law enforcement make bad defense jurors, right? Not necessarily. If you’re willing to ignore the stereotypes, relatives of police officers can be your best friend on the jury. For example, if the juror’s father was a cop, voir dire can be a gold mine of information on how human and biased cops can be.

"Do you think it was a little harder growing up the daughter of a police officer? Why? Was your dad maybe a little more of a disciplinarian than your friends’ fathers?"

"When you stayed out late, or a friend was accused of doing something wrong, did your dad always wait for the other side of the story before deciding what happened?"

"Did your family ever socialize with other police officers?"

"Did you find that most police officers believe the person they’ve arrested is guilty? In your experience, do police officers presume an accused person innocent?"

"Have you ever known any biased police officers? How were they biased?"

"What sort of slang terms have you heard police officers use to describe people they’ve arrested?"

"From some police officers’ points of view, what we’re doing in this courtroom is a waste of time, isn’t it? Do you think it is? Why not?"

"If you were to vote ‘not guilty’ at the conclusion of this case, would you consider it a criticism of the police officer? Why not?"

Jurors who have been victims of crimes will usually have some strong feelings about the experience and the way it was handled by the police. Were the cops heroes or insensitive clods? Is the juror waiting for an opportunity to repay the police and prosecutors for
helping him through the ordeal? Was the juror disillusioned with the police response?

“How was your case handled by the police and prosecutor? How do you feel about police as a result?”

“How would you rate police officers in terms of honesty?”

“When you pass a police officer on the street, do you feel like waving or stopping to shake his or her hand?”

“We are bound to the jury trial by all the holiest traditions of our past history; we esteem it as the very bulwark of our liberties.”
— John Norton Pomeroy (1863)

Prior experiences with court
Jurors who have testified in court can sometimes help explain what angst your client feels.

“When you were a witness in court? What was testifying like? Were you nervous? Do you think it showed? Was it because you weren’t telling the truth?”

“Trooper Bowen is a professional witness who’s been trained how to testify and who’s done it many times. Do you think you can look beyond the uniform and his manner to see if what he’s saying is supported by the rest of the evidence?”

A juror’s prior jury service can be useful in discussing the differences between civil and criminal cases. You also need to know if the juror has sat on any of the prosecutor’s cases during this same term.

“A juror’s prior jury service can be useful in discussing the differences between civil and criminal cases. You also need to know if the juror has sat on any of the prosecutor’s cases during this same term.”

“Trial by jury is the most valuable privilege of an American citizen. It stands as a bulwark of protection for even the lowliest individual against the power of the State. As long as we have trial by jury, our sacred freedoms shall remain safe and secure.”
— Justice Alphonse Beeton (1838)

Stereotyping
Questions that don’t focus on certain personality traits are fun, but dangerous. I have a friend who is a very good trial lawyer who automatically pre-empts any juror who is anti-NRA or doesn’t like hunting. He is convinced they are bad jurors. I think he’s wrong, but he wins most of his cases. I don’t recommend using stereotypes, because they can just plain mislead you.

For example, if you ask someone which dead president he most admires, his preference for John Kennedy (or Ronald Reagan) might mean he’s liberal (or conservative). But so what? Without substantial follow-up discussion, it doesn’t mean he’s a good or bad juror. So, let me join the chorus of other commentators in urging you to avoid use of such questions.

But, because some lawyers swear by them, I offer the following example of a list for use in a DUI case. A word of caution: Profiling is the easiest, but least reliable method of selecting jurors.
Traits of defense-oriented jurors (in a DUI case):
• Drinkers who admit to having more than two drinks at one sitting.
• Middle and lower classes.
• Those who are underdressed for a courtroom.
• Blue-collar workers.
• Country-music fans.
• Rugby-, softball-, dart-, or pool-team members; especially with tavern sponsors.
• Smokers.
• Overweight persons who drink.
• Social, easygoing, happy people.
• Individualists, anti-authoritarian people.
• Those who have fought many traffic tickets.
• Those who root for the underdog.
• Retired non-commissioned military personnel.
• Love-my-country-but-don’t-trust-my-government types.
• Beer and bourbon drinkers.
• Optimists.
• Anyone you instinctively like.

Traits of prosecution-oriented jurors (in a DUI case):
• Nondrinkers and recovering alcoholics.
• MADD members and sympathizers.
• Uptight, judgmental, unhappy people.
• Physical fitness buffs; non-team sports participants.
• Those with connections to police or prosecution.
• Those with close friends or family members with drinking problems.
• Those with experience with accidents involving a drunk driver.
• Computer geeks.
• Engineers and technical types.
• Pessimists.
• Persons in the medical professions.
• Persons employed in the insurance industry.
• Retired military officers.
• Supervisors.
• White-wine drinkers.
• Those who never drive after drinking.
• Anyone who you instinctively dislike.

Conclusion
Effective jury selection requires solid preparation, good listening techniques, a conversational approach, flexibility, and, perhaps above all, a willingness to be real in front of the jury. No, it’s not easy, and never will be. But if you can allow yourself to be human, to see the jury as your ally, and have faith that justice will be done by your new-found friends, you might be able to capture just a little bit of that Gerry Spence magic.

I wish you luck.

Tom D’Amore is a board certified civil advocate of the National Board of Trial Advocacy, and is licensed to practice in Washington, Oregon and California. He is an Eagle member of the Washington State Trial Lawyers Association, a President’s Circle member and a member of the Board of Governors of the Oregon Trial Lawyers Association, an Oregon delegate and President’s Club member of the Association of Trial Lawyers of America, and a member of the nationally acclaimed Trial Lawyers for Public Justice.

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A 2003 recipient of the Washington Association of Criminal Defense Lawyers’ William O. Douglas Award for “extraordinary courage and dedication to the practice of criminal law,” Stephen Hayne has tried hundreds of cases over 30 years, from capital murder to reckless driving. He has served as president of the Washington Association of Criminal Defense Lawyers and has chaired the criminal law sections of the WSBA, WSTLA, and KCBA. Mr. Hayne has been a trial practice instructor at the National Institute of Trial Advocacy, the Trial Masters Program, and the University of Wash-
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NOTES
1. Obviously, you will have thoroughly discussed appropriate dress and courtroom behavior with your client prior to trial.
2. See page 19 for a sample of one I use in DUI trials.
3. See page 20 for a DUI case sample.
4. CrR 6.4(e), Peremptory Challenges; State v. Laureano, 101 Wn.2d 745, 758 (1984) (the extent of voir dire is within the discretion of the trial court; however, it should allow the parties sufficient information so they can effectively challenge for cause and intelligently use their peremptory challenges); State v. Frederiksen, 40 Wn. App. 749 (1985). See also Cartmell v. State, 784 S.W.2d 138 (Tex. App. 1990), which ruled that a twenty minute limitation on voir dire was unreasonable. See also U.S v. Keen, 508 F. 2d 986 (C.A. Wash 1974) (Cert. denied) and U.S. v. Jones, 722 F. 2d 528 (9th Cir 1983).
5. State v. Latham, 100 Wn. 2d 59 (1983); State v. Moody, 18 Wash. 165 (1897); Wash. Const. Art.1, Sec. 22; RCW 4.44.170, .180, .190. See also City of Cheney v. Grunewald, 55 Wn. App. 807 (1989) (juror was member of MADD, had niece killed by drunk driver, but claimed had no bias; court ruled that failure to grant challenge for cause was reversible error).
6. United States v. Jefferson, 569 F. 2d 260 (5Cir 1978) held that jurors who have served in similar cases during the same term may be challenged for cause.
These occasional columns of mine have become such a fixture that it now seems as if they’ve been going on forever. But it was only a couple of years ago that the first one appeared. It was triggered by a particularly frustrating round of paper-grading, when I became acutely aware that many third-year law students still make fundamental errors in their writing — errors that, at one time at least, any sixth-grader could have noticed.

and corrected. One of the errors I emphasized in that first column was the misuse of the apostrophe, particularly in plurals and in the confusion of “its” and “it’s.”

Except for that brief sortie, I have avoided the topic of punctuation. That’s because, not long after I got started on this series of articles, Lynne Truss presented us with *Eats, Shoots & Leaves*, her delightful, curmudgeonly look at English punctuation that unaccountably became an international bestseller. Ms Truss has occupied the field, as far as I’m concerned, and I have little to say on the subject of punctuation that she hasn’t already covered. The best I can do is commend her book to those of you who have not yet read it.

However, I did say I have “little to say,” not “nothing to say.”

I start with a bit of forgotten antiquity. You may have noticed that I just referred to Lynne Truss as “Ms Truss.” You may have wondered why I didn’t put a period after the “Ms” title. It’s because I’m old-fashioned. I haven’t run into many people who actually remember this, but when the term “Ms” first appeared it was used without a period. The reasoning was this: The terms “Mr.” and “Mrs.” are followed by periods because they are abbreviations; the period, as in all abbreviations, denotes that some material has been removed — namely the letters that make up the full words “Mister” and “Mistress.” (“Mrs.” had, of course, come to be pronounced “mizz” rather than “mistress” long before the term “mistress” acquired an objectionable meaning; but the “r” is still there in “Mrs.” to remind us of its original meaning and pronunciation.)

The word “Ms” was introduced not as an abbreviation for the term “Miss” but as an alternative form of address designed to eliminate both “Mrs.” and “Miss.” The reasoning was perfectly sensible: We don’t use different forms of address for men based on whether they are married or not, so why should we do so for women? So “Ms” (pronounced “miz”) was born — but it was not followed by a period because it was not an abbreviation of anything, and there was no need for a dot to show that letters had been left out. That always made sense to me, which is why I still adhere to it.

Usage guides today, though, will tell you to display “Ms” with a period. I suspect this is based on the dubious theory that a term of address needs to be followed by a period, whether it’s an abbreviation or not. Of course, we never use a period after the titles “Doctor” and “Professor” if we spell them out in full. But when we use them as terms of address, we rarely spell them out, so they always appear as abbreviations. People are accustomed to seeing titles that end with periods, so they do so with “Ms” as well, whether it makes sense or not. George Bernard Shaw, who could always be counted on to have a better idea about things linguistic, adopted the opposite approach. He never put a period after any terms of address, using instead “Mr.,” “Mrs.,” or “Dr.” His idea was that we...
can tell it's used as a title, we know what it means, and putting a period after it is just a waste of ink.

**Dots**

You've probably noticed that I've been using the term "period" to identify the dot that follows an abbreviation such as "Mr." The British call it a "full stop," which at first glance seems more cumbersome, but is in fact one syllable shorter than our term. To each his (or her, but not their) own.

Of course in the digital age this mark has come to be known as a "dot" — but only in the context of Internet domain names and URLs (Uniform Resource Locators, which are not the same thing as domain names, but which always include domain names within them, just as e-mail addresses do). In math and accounting, the same mark is referred to as a "decimal point," or "point" for short; but I understand that in those fields many practitioners now use the shorter term "dot."

Three dots, used to indicate that material has been left out, or that a long pause is to be taken, make up what is known as an ellipsis. Two or more of them are ellipses. The proper way to make an ellipsis used to be to separate the three dots with spaces; but that was in the old days of manual typewriters and carbon paper. Today, the way you make an ellipsis is three dots right in a row (which some word processors will immediately convert into a single-character ellipsis instead of a three-character string of periods, presumably to save bits). The ellipsis should be preceded and followed by a space, and if it is used at the end of a sentence it should be followed by a space and another single period.

**Inside and Outside of Quote Marks**

You may also have noticed that, in this column, when following a quoted word with a period or a comma, I have sometimes placed the punctuation mark inside the quote marks, and sometimes outside. There is no absolute English rule on this. The British always put the punctuation on the outside of the quote marks. The default rule in American English is to put it inside unless it would harm the meaning. I've always thought it made a lot (not "alot") of sense to put the punctuation inside the quote marks if it's part of what's being quoted (as in my references to "Mr." above) and outside if it isn't (as in "George Bernard Shaw always wrote "Mr.").

When a parenthetical is used as a full separate sentence, the period should go inside the parentheses. (This is an example.) When the material inside the parentheses is a fragment, and the parenthetical appears at the end of a sentence, the period should go outside (like this).

**The Serial Comma**

Several readers have asked about the so-called serial comma. This is the comma that is (or isn't) used before the last item in a series. We know that we use commas to separate items in a series, so readers will know which terms go together and which are separate, and so that they'll have visual cues as to where to make a small pause when reading (especially aloud). The disputed question is whether (and when) the last element in the series should be preceded by a comma.

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**What's the rule? There is none. It all depends on context.**

As is so often the case with language, the closer you look at supposedly absolute rules, the less justification there is for regarding them as absolute. That's the reason that, in speaking and writing, it always helps to think about the words you have chosen and the way you have presented them. If misinterpretation is likely, or even possible, then it's a good idea to recast your sentence to make it absolutely clear. This is especially true when something as important as the division of Arthur's estate is on the line. It's longer, but better, to say: "Arthur left his estate in equal parts to Gavin, Tristram and Percival," which leaves at least three possibilities for Arthur's legacy: one part to each of the three heirs, one part to the first two together and one to the third, or one part to the first, and one to the second and third together.

So what's the rule? There is none. It all depends on context. As is so often the case with language, the closer you look at supposedly absolute rules, the less justification there is for regarding them as absolute. That's the reason why, in speaking and writing, it always helps to think about the words you have chosen and the way you have presented them. If misinterpretation is likely, or even possible, then it's a good idea to recast your sentence to make it absolutely clear. This is especially true when something as important as the division of Arthur's estate is on the line. It's longer, but better, to say: "Arthur left his estate in two equal parts to Gavin, on the one hand, and to Tristram and Percival on the other."

---

**Diacritics**

Before I finish talking about dots, I have to say a word about diacritical marks. Strictly speaking these are not punctuation at all; they are part of the correct spelling of a word — and that's my key point. A diacritic is "a mark, point, or sign attached to a letter to indicate its exact phonetic value, or to distinguish it from another letter." In American English, we don't customarily see diacritics. They are mostly characteristic of foreign languages. However, the fact that we don't use these in English is no excuse for the boorish way in which we, as a society,
disregard the proper use of diacritics in foreign terms. Besides, our language is adopting words from other languages all the time, and non-English languages are becoming increasingly common in the United States. It thus behooves us to know a little about diacritics and try to respect them.

As noted in the definition I cited above, the purpose of a diacritic is to distinguish one letter from another. Thus a letter accompanied by a diacritical mark is to be regarded as a different letter. The letter “ñ” is not the same as the letter “n.” Crossword puzzle setters have the annoying tendency to ignore the diacritical mark as if it were not a crucial part of the letter or word, but a mere decoration, to be retained or discarded at will. At least once a year I write to the crossword puzzle editor of the New York Times to remind him that “año,” not “ano,” is the Spanish word for “year,” and only a person who didn’t know what “ano” is the Spanish word for would put it into a crossword puzzle. At least in a family newspaper.

The uniquely American assumption that diacritical marks are merely decorative, and not seriously related to the proper spelling and pronunciation of a word, has had two results: We don’t use them when we should, and we do use them when we shouldn’t. Mötley Crüe and Häagen-Dazs are examples of the latter. They represent “decorative” uses of the German or Swedish mark known as an umlaut. Such uses not only have nothing to do with the proper pronunciation or spelling of the word, but actually render the word unpronounceable and meaningless. A reader recently reminded me of the umlaut over the “n” in “Spinal Tap”; that one’s excusable, though, because it’s part of the very attitude that This Is Spinal Tap lampoons. (Besides, I can’t write about it because there’s no standard ASCII character code for an n-umlaut.)

So what’s a person to do if she doesn’t know those ASCII codes? The “insert: symbol” menu in most word processors enables you to insert an uncommon letter such as ñ or ò or ü in its proper form. For some letters there are short cuts. For example, the umlaut in German words may be indicated by placing the letter “e” after the vowel affected (Loewenbraeu for Löwenbräu, which, by the way, is not pronounced anything like “lowen-brow”). This simple solution is commonly ignored, with embarrassing (and sometimes insulting) results. Every time I see a reference to a “Mobius strip,” I think of poor August Ferdinand Möbius (or Moebius) in his grave, rolling over ... and over ... and over ... .

Robert C. Cumbow is a shareholder with Graham & Dunn, Seattle, where he counsels clients in the technology, beverage, food, communications, entertainment, and other industries on trademark, copyright, and advertising issues. He is a past chair of the WSBA Intellectual Property Section and the Editorial Advisory Board, and is currently a board member of Washington Lawyers for the Arts. He teaches at Seattle University School of Law and writes on law, language, and film.

NOTES
1. Actually, the umlaut is also found occasionally in English, where it is called a dieresis and is used to indicate that the second vowel in a two-vowel sequence is to be pronounced separately, as in “naïve.”
The Board’s Work

BY LINDSAY THOMPSON

Olympia, January 12, 2006

In January the Board of Governors traditionally meets in Olympia. They have meetings with the Supreme Court and members of the Legislature on topics of common interest.

They had a light agenda this meeting: four hours in public session. After approving the minutes of the December meeting, the Board approved the one item on the consent agenda: an amendment to the bylaws of the Labor and Employment Law Section.

Governor/Treasurer Mark Johnson told the BOG that WSBA’s auditors gave the Association a clean report again this year. He said that in order to make it possible for more Washington lawyers to participate in WSBA-approved events, the Budget and Audit Committee approved a $5,000 fund to cover the costs of accommodation and travel for lawyers with disabilities. Governor Lonnie Davis is working on guidelines for the expenditure of the fund. Johnson said the Budget and Audit Committee is still looking into how to get a better return on WSBA investments, as the return has been lagging the inflation rate for some time. They are also looking at “unintended loopholes” that have emerged in armed-forces members’ license fee exemptions.

The Board reappointed Chi-Dooh Li of Seattle to another term on the Bench-Bar-Press Committee. They nominated a former governor from Seattle, Lish Whitson, for a seat on the Board of Judicial Administration’s Court Independence Response Team.

Governor Stan Bastian, who chairs the Awards Committee, brought up a committee idea to create another award, this one honoring lawyers for community service. The motion passed 12-0.

WSBA’s administration and finance director, Julie Mass, gave the Board a report on administration and finance, with a PowerPoint presentation showing the department’s staff and explaining what sorts of things they do.

Dan Fazio, who works for the Washington Farm Bureau, and Jerry Honeyford, who is president of the Yakima Farm Bureau, asked the Board to support modifying IOLTA rules to conform to state funding restrictions on paying for indigent legal defense. Former WSBA President Wayne Blair spoke in opposition. The Board agreed with Blair and declined to go along.

Former Governor Randy Gordon told the Board most Washington courts aren’t meeting ADA standards, and the Board ought to be taking an interest in this. The situation is an impediment to access to justice, he maintained. Governor Davis reported that the ATJ Board’s Impediments Committee is currently working on guidelines and a possible new court rule.

WSBA Legislative Director Gail Stone reported on WSBA’s bills in the legislative session, but there wasn’t much to tell, as the session was only four days along. The Board voted to back some initiatives from the Board of Judicial Administration on court funding that will also be offered as legislation.

Attorney General of Washington Rob McKenna dropped by to ask for support for two of his legislative proposals: a shield law to protect reporters, and a bill to limit government liability in lawsuits. The Board said “Hmmm” and didn’t take any action. ☹️
The “Who Is the Client?” Question

BY MARK J. FUCILE

One of the key elements in analyzing conflicts is identifying who your client is in a given representation. Sometimes that task is easy: it’s the single person sitting across the desk from you. But many times it’s not. Physically or virtually there may be several people sitting across the desk from you — a family, business partners, a government agency, or a corporate affiliate. The “who is the client?” question looms large in many situations, because it tells us to whom we owe our duties of loyalty and confidentiality — and to whom we do not.

In this column we’ll first look at the general rule for deciding whether an attorney-client relationship exists and then apply that rule in four contexts: corporations and their affiliates, partnerships, governmental entities, and insurance defense.

The General Rule
The general rule for determining whether an attorney-client relationship exists was set out in Bohn v. Cody, 119 Wn.2d 357, 363, 832 P.2d 71 (1992). The Supreme Court in Bohn outlined a two-part test. The first element is subjective: Does the client believe that an attorney-client relationship exists? Or, as the Supreme Court put it: “The existence of the relationship ‘turns largely on the client’s subjective belief that it exists.’”

The second element is objective: Is the client’s subjective belief objectively reasonable under the circumstances? Or, as the Supreme Court put it: “The client’s subjective belief, however, does not control the issue unless it is reasonably formed based on the attending circumstances, including the attorney’s words or actions.”

The Supreme Court in Bohn and other courts that have subsequently applied Bohn’s two-part test have emphasized that whether an attorney-client relationship exists is ultimately a question of fact. A written engagement agreement that sets out the nature and scope of the relationship in detail will likely be dispositive on this issue. But many situations either do not involve written agreements or, even if they do, the written agreements may not be sufficiently detailed to conclusively answer the question. In that event, the existence or absence of an attorney-client relationship will be inferred from the parties’ conduct as viewed through the prism of Bohn’s two-part test.

Corporations and Their Affiliates
As I write this, the proposed amendments to the Rules of Professional Conduct are pending before the Supreme Court. If adopted, the new rules will offer a significant clarification to the “who is the client?” question in the corporate context. New RPC 1.13(a) adopts the “entity approach” to corporate representation: A lawyer representing a corporation is deemed to represent the corporation rather than its individual shareholders or officers. This is the same tact taken by Section 131 of the Restatement (Third) of the Law Governing Lawyers and the ABA’s Model Rules of Professional Conduct. The “entity approach” doesn’t preclude joint representation of both the corporate entities, including the attorney’s words or actions.”

The Supreme Court in Bohn and other courts that have subsequently applied Bohn’s two-part test have emphasized that whether an attorney-client relationship exists is ultimately a question of fact. A written engagement agreement that sets out the nature and scope of the relationship in detail will likely be dispositive on this issue. But many situations either do not involve written agreements or, even if they do, the written agreements may not be sufficiently detailed to conclusively answer the question. In that event, the existence or absence of an attorney-client relationship will be inferred from the parties’ conduct as viewed through the prism of Bohn’s two-part test.

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significant way in the area of governmental representation. Current RPC 1.7(c) and proposed RPC 1.13(h) generally limit the “client” in governmental representation (absent some other arrangement in writing) to the specific agency for which the work is being handled rather than the broader governmental entity of which the agency is a part.

Insurance Defense
Although not an organizational conflict as such, insurance defense is an area where lawyers frequently encounter the “who is the client?” question: the insured who is being defended, the insurer who is paying the bill for that defense, or both? States vary in their approach on this issue, with some saying that an insurance defense counsel represents both the insured and the insurer, and some limiting representation to the insured only and treating the insurer as a third-party payor. Washington falls into the second group under *Tank v. State Farm Fire & Cas. Co.*, 105 Wn.2d 381, 388, 715 P2d 1133 (1986), and WSBA Formal Ethics Opinion 195 (1999). In Washington, therefore, an insurance defense counsel has only one client: the insured whose interests the lawyer is directly defending in the matter involved.

**Summing Up**
In some areas, such as insurance defense, the RPCs or cases draw a bright line between who a lawyer does and does not represent. In many other contexts, notably corporate affiliate representation, the line is much less distinct. Even with the adoption of RPC 1.13(a), the “who is the client?” question will remain a very fact-specific exercise. With any of these areas, however, lawyers can help answer that question by carefully defining the client in a written engagement letter and then handling the representation consistent with the engagement agreement.

Mark Fucile is a partner at Fucile & Reisling LLP, where he 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, is a past member of the Oregon State Bar’s Legal Ethics Committee, and is 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. *Id.* at 363 (citation omitted).
3. *Id.*
5. See also Restatement, supra, § 131, comment d at 367.
March of the Plea Bargains

A book review by William L. Downing


The American courtroom is both a simmering venue and a venerable symbol. It is frequently and aptly described as a stage, a crucible, and an arena. It has also been called the centerpiece of our ordered society.

The truth and the whole truth is that a courtroom is nothing but a room with wood paneling, flags, and water pitchers until you add in the humans who, within its confines, regularly act and are acted upon.

In Courtroom 302: A Year Behind the Scenes in an American Criminal Courthouse, journalist Steve Bogira chronicles an intense 12 months spent among the human actors, subjects, and combatants in one particular Chicago courtroom. Like a dedicated explorer, he dwelt among the inhabitants of that world — the defendants, deputies, clerks, prosecutors, defense attorneys, and judge — and he recorded every detail of how they experienced their reality.

It may be a good idea for those filming a documentary in Antarctica to keep their ears and torsos well bundled. This was decidedly not the approach of Bogira who put his finely tuned ear and heart to good use. To the wind-tossed, the windy, and the finger-in-the-political-wind, he listened patiently, and he presents their stories movingly. Bogira allows the dope-sick and dazed defendants, the beleaguered families, the frazzled attorneys, and the ambitious judge to speak in their own voices, and their stories ring true.

A jail commander speaks of the occupational hazard of getting “a stiff neck from looking the other way” as his deputies are (man)handling prisoners. A prosecutor refers to a death case as “a weird little murder.” The relieved mother of a defendant admits, “I’m glad when my kids is locked up.” And, outside of court, lawyers speak freely about the complementary “trial tax” and “plea discount.”

Courtroom participants may not be as predictable as Antarctic penguins, but they do have discernible patterns of behavior. Bogira has the good luck or good judgment (my guess is the latter) to have selected a steady stream of illustrative incidents to recount.

Like the reality it depicts, the book includes a couple of big trials (“heaters,” as they are called in the Windy City) along with a smattering of small ones, but it is the negotiated resolution of cases that is at its heart. In Courtroom 302, a thickening avalanche of criminal cases forces compromise on all participants as well as on justice itself. Many who came to legal careers inspired by Atticus Finch now see their daily jobs as “to move cases.” The judge’s output of “dispos” is monitored as if it were widgets being produced.

Bogira spent his year of study primarily in one room in one building in one city. Let us assume that some phenomena described are fairly unique to Cook County — such things as the creative uses of electroshock to obtain confessions and cash to obtain favorable judicial rulings. Most, however, are common to any big city court, differing only in degree. No American jurisdiction is free of the impact of racial disparities, local politics, caseload pressures, and the revolving door of drugs and petty crime. Through specific examples, Bogira explores each of these and presents valuable lessons for our society and for all who toil in its busy urban courts.

One not very shocking but still insightful revelation of this book is that — for good and ill — humans, not computers, administer our justice system. Lawyers, court staff, jurors, and judges bring to their tasks the human capacity for empathy and understanding. Unfortunately, they also bring the human tendencies toward laziness and self-interest. It takes an outsider like Bogira to remind us of the extent to which a “get along/go along” dynamic can develop among supposed adversary advocates and to which a judge may bend in the political breezes waiting invisibly through the courtroom.

One of Bogira’s several metaphors for the courthouse is that of the “mill” or “factory.” He employs this primarily in discussing the operational pressures for quantity over quality in the production line. But, like millworkers, those laboring in the courts can get worn down, and they do. “The system is run by people, but it often seems the other way around. The courtroom staff works, as it must, reflexively not reflectively. The workers have no time to give much thought to any but the most extraordinary case, or to examine what they are doing.” In the wonderful quote from G. K. Chesterton that he uses as an epigraph, Bogira gently warns that all courthouse regulars run a risk of getting to the point where they “only see their own workshop.”

Bogira writes in a lively, journalistic style, carefully describing people and events as a witness but generally avoiding the bold pronouncements of the expert witness. He certainly has his opinions, but he prefers to broadly hint at them through sprinkling his narrative with the occasional statistic, historical note, or study result. When a feckless con is sent off for an eternity-plus-five, for example, expect to learn what’s on the public price tag.

Another fine technique is the layering of the story. A deft example of this is in a chapter called “Good Facts, Bad Facts.” We first see the attorneys, as proper advocates in court, playing up one and playing down the other. Then, shortly after a scene in which the judge comments on why he doesn’t consider poverty or a deprived childhood as sentencing mitigation, Bogira inserts the same judge’s sad tale of how paternal abandonment led his Uncle Vic to membership in the mob.

Only once does Bogira come close to climbing squarely onto a soapbox. In his prologue, he suggests the book is about “how justice miscarries every day, by doing precisely what we ask it to.” Some have read into this that the book is an “indictment” or “condemnation” of our criminal justice system or that the courts have been “found guilty.” In fact, Bogira’s point is more sophisticated than this.

If we in society truly expect our criminal justice system to cure, or even transcend, our manifest social ills — the ravages of racism, inadequate education, and inequality of opportunity — then that system is indeed a failure. That this is an irresponsibly unrealistic measure is readily
apparent to the reader of this book. While some may cling to the notion that arming police and judges with ever stricter laws will cure what ails us, those who believe the criminal sanction is an effective way to end drug addiction and its attendant criminal activity have not been paying attention for the past century.

What we ask our criminal courts to do is to process the mounting volume of cases that result from society’s refusal or inability to meaningfully address the root causes of crime. And we ask that this be done with resources so limited that no more than a small fraction of those cases could possibly be fully adjudicated on their merits. At the end of each court day, it may be that the right amount of net punishment has been dispensed, but it has been arbitrarily distributed among the various defendants based on any number of odd extraneous factors. The justice system has done what we have asked of it, but neither the process nor the end product stands as a shining example of our society’s values.

Beyond this societal message, the book also delivers a vital lesson for those inside the court system. Bogira notes in passing that it can be difficult to make out the sculpted figures high up on the grimy courthouse walls. It would be a healthy exercise for all court workers to pause in their labors and periodically lift up their heads to these cold stone icons representing wisdom, truth, and justice. By reminding themselves daily of purposes more noble than “moving cases,” judges and lawyers could better serve the flesh-and-blood figures that occupy their attentions day in and day out.

The parade of humanity passing through the courtroom is not simply made up of actors, subjects, and combatants. Steve Bogira saw more than that and so should we. Each is an individual who, for a brief but always important moment, is occupying the centerpiece of our ordered society.

William L. Downing is a King County superior court judge. He is chair of the YMCA High School Mock Trial Program and the Washington Bench-Bar-Press Liaison Committee.
Kevin Diaz won the Miembro Excepcional Award ... The Cairncross & Hempelman firm is pleased that three minority bar association presidents are among the lawyers there: Michele Alicia Wong (Vietnamese American Bar Association of Washington); Diankha Linear (Loren Miller Bar Association of Washington); and Michael Heath (QLaw: The GLBT Bar Association of Washington). Well done, one and all.

News Coups

Olympia Attorneys Receive WSBA Local Hero Awards

On January 13, two Olympia attorneys, the late Richard W. Hemstad, who died December 12 at the age of 72, and Nancy Koptur, were honored with the WSBA's Local Hero Award, presented to lawyers who have made noteworthy contributions to their communities. WSBA President S. Brooke Taylor presented the awards at a luncheon with members of the WSBA Board of Governors, Thurston County Bar Association, and Government Lawyers Bar Association at the Phoenix Inn Suites in Olympia. Mr. Hemstad’s widow, Micki Hemstad, accepted the award on his behalf.

Mr. Hemstad, a former state senator and 12-year member of the Washington Utilities and Transportation Commission (UTC), was one of three commissioners regulating private investor-owned utilities in Washington. He was originally appointed by former Governor Mike Lowry to the three-member panel in 1993, and reappointed by former Gov. Gary Locke in 1998. “Dick was one of the most dedicated public servants this state has ever known,” said former Governor Dan Evans. “He was a long-time valued colleague and friend. He exemplified the very best in his devotion to public service.”

Ms. Koptur, as the president of Thurston County Volunteer Legal Services (TCVLS) and a member of its board of trustees for many years, has been an indefatigable volunteer and legal advocate on behalf of low-income people facing legal problems in the civil-court system. She has been a frequent volunteer at TCVLS since 1997, volunteering at more than 35 legal clinics in the last two years. “I can think of no other volunteer who is as constant and dedicated in her volunteer activities in support of legal services for the most vulnerable members of our community and who makes such a direct contribution in so many ways to the realization of equal justice,” wrote TCVLS Director Scott Douglas in nominating Ms. Koptur for the award.

In Memoriam

Judge Jack E. Tanner

Judge Jack E. Tanner, who rose from a black working-class Tacoma family to a seat on the U.S. District Court bench, died January 10 at the age of 86 in Tacoma, where he lived his entire life.

A staunch and indefatigable champion of civil rights, Judge Tanner marched in Mississippi during the civil rights movement, helped Washington tribes fight for their fishing rights, accused the U.S. justice system of institutional racism, testified on behalf of U.S. Supreme Court nominee Clarence Thomas during his confirmation hearings, and served as a mentor to young black attorneys.

“He lived life to the fullest,” said Pierce County Superior Court Judge Beverly Grant, who served as Tanner’s law clerk shortly after he was appointed to the federal bench by President Carter. On June 2, 1978, Tanner took the oath of office and became Washington’s first African-American member of the federal judiciary.

One of his most famous rulings came in 1983, when Tanner found that Washington state’s policy of paying lower salaries for jobs held primarily by women was a form of wage discrimination and, therefore, illegal. The so-called “comparable worth” ruling was later overturned on appeal, but the state settled with thousands of workers for back wages.

Judge Tanner spent more than 20 years practicing law in the Puget Sound region before ascending to the federal bench. Lawyers who knew him say he did...
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To assist with your valuation needs or answer any questions, please feel free to contact Brian Kennett at (206) 382-7777 or by email at bkennett@pscpa.com.
WSBA Presidential Search

Application Deadline: May 15, 2006

The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2007-2008. Pursuant to Article IV (A)(2) of the WSBA Bylaws, the primary place of business of candidates for president for 2007-2008 must be in the area east of the Cascade mountain range. The WSBA member selected to be president will have an opportunity to provide a significant contribution to the legal profession.

Applications for 2007-2008 WSBA president will be accepted through May 15, 2006, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no less than five or more than 10 references. The Presidential Search Committee and the Board of Governors will consider endorsement letters received by May 26, 2006. Applications and endorsement letters should be sent to the WSBA Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

Confidential interviews with the Presidential Search Committee may be conducted. Direct contact with the governors is also encouraged. All candidates will have an interview with the full Board of Governors in open session at the June 9, 2006, meeting. Following the interviews, the Board will select the president.

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

The commitment begins in June 2006 following selection. A one-year term as president-elect will begin at the Annual Business Meeting in September 2006. The president-elect is expected to attend the two-day board meetings held approximately every five to six weeks, as well as numerous subcommittee, section, regional, national, and local meetings. In September 2007, at the WSBA Annual Business Meeting, the president-elect will assume the position as president. During his or her service, the president-elect and president will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar’s legislative activities. Appropriate time will need to be devoted to communication by letter, e-mail, and telephone in connection with these responsibilities. The duties and responsibilities of the president are set forth in the WSBA Bylaws.

Board of Governors Election

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

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

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

Nomination forms are available from the Office of the Executive Director, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330, or by calling 206-727-8244, or at www.wsba.org. The WSBA executive director must receive nomination forms by 5 p.m. on Wednesday, March 1, 2006. The Board of Governors determines the official dates of the election. Ballots will be mailed on or about April 14.

American Bar Association (ABA) House of Delegates Application Deadline: March 31, 2006

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the ABA House of Delegates representing Washington state. There are four positions available (three incumbents are eligible for reappointment) commencing in August 2006. A written expression of interest and a résumé is required for incumbents seeking reappointment. The control and administration of the ABA is vested in the House of Delegates, the policymaking body of the ABA. The House, composed of approximately 500 delegates, elects the ABA officers and board and meets out of state twice a year. Delegate attendance is required. The WSBA’s allowance is $800 per year per delegate. Members appointed to the House of Delegates serve a two-year term, with the opportunity to reapply to serve a maximum of three consecutive terms. Please submit a letter of interest and résumé to: WSBA Bar Leaders Division, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330, or e-mail barleaders@wsba.org.
Judicial Evaluations by Minority and Specialty Bars
Several Washington minority bar associations conduct judicial evaluations of applicants to state superior and appellate courts. Attorneys interested in becoming judges are encouraged to contact these organizations to begin the rating process before a position becomes available for appointment or early in an election campaign. Ratings from most bar associations are valid for up to two years. For information on obtaining a judicial rating, contact the following minority bar representatives:

Asian Bar Association of Washington
Jill Otake, judicial evaluations chair, 206-553-7970.

Latina/o Bar Association
Cristobal Joshua Alex, president, 206-622-1604.

Loren Miller Bar Association
Clarence Jones, judicial evaluations chair, 206-373-7237.

QLaw: The GLBT Bar Association of Washington
Ross Farr, judicial evaluations chair, 206-447-3392.

Washington Women Lawyers
Janet Chung, state judicial evaluations chair, 206-398-4077.

In addition, the WSBA Judicial Recommendation Committee evaluates applicants for appointment to the Court of Appeals and the state Supreme Court. Contact Anthony Miles, chair of the WSBA Judicial Recommendation Committee, at 206-370-7585. More information on the WSBA’s judicial recommendation process can be found at www.wsba.org/lawyers/groups/judicial_recommendation.

Casemaker News
In response to positive feedback from WSBA members using Casemaker — the free online legal-research tool — the WSBA has created Casemaker News, with the latest Casemaker information, updates, and tips on using Casemaker. To access Casemaker News, click on the link on the right sidebar of the Casemaker home page at http://www.pro.wsba.org/Casemaker. For help using Casemaker, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail questions@wsba.org.

Computer Clinic
The WSBA offers a hands-on computer clinic for members wanting to learn more about what Microsoft Office programs — such as Outlook, PowerPoint, Excel, and Word, as well as Adobe Acrobat — can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no CLE credits are offered. The next clinic will be held on March 13 from 10 a.m. to noon at the WSBA office. For more information, contact Pete Roberts at 206-727-8237 or peter@wsba.org.

Contract Lawyers Meeting
The WSBA Law Office Management Assistance Program (LOMAP) hosts a meeting of contract lawyers the first Tuesday of every month at the WSBA office. The next meeting is March 7 from noon to 1:30 p.m. Please bring your lunch — coffee provided — and network with other contract lawyers.

LOMAP & Ethics Traveling Seminars
Plan to attend in Vancouver, Washington, on May 9; Montesano on May 10; or Olympia on May 11. Or come to Walla Walla on June 13, Richland on June 14, or Yakima on June 15. Registration is $84, and each seminar has been approved for four CLE credits, including two ethics credits. For more information, contact Julie Salmon at 206-733-5914 or juliesa@wsba.org.

Lawyer Services Statewide Conference
Join us for a relaxing and informative weekend March 31 to April 2 at Campbell’s Resort on Lake Chelan, focusing on collaborative law. CLE credit available. For more information, contact Michelle Reindal at 206-727-8268 or micheller@wsba.org.

LAP Solution of the Month: Anger Management
Got rage? Does your temper cause problems for staff, family, or friends? Learn constructive ways to handle your anger before you lose someone or something you value. If you’d like suggestions on how to proceed, call the Lawyers’ Assistance Program at 206-727-8268.

ABA TECHSHOW®
Celebrating its 20th year, the ABA TECHSHOW is the world’s premier legal technology conference and exposition. Take
advantage of more than 60 legal technology programs and training sessions. More than 100 technology vendors will feature the latest in legal technology products and services. WSBA members receive a $100 association member registration discount. Register early and receive an additional $200 early-bird discount (ends March 10) to save a total of $300 in registration fees. The exposition runs April 20-22 at the Sheraton Chicago Hotel & Towers. To register, visit www.techshow.com. Choose Program Promoter Registration and specify promoter code PP108.

2006 WSBA Awards Nominations Sought

Each year, members of the Washington State Bar Association 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 Washington State Bar Association’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 Petruss Award for Lawyers in Public Service
Named in honor of the late Angelo R. Petruss, 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 is new this year. 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, 2006. The deadline for all other nominations is May 8, 2006. Please send nominations to: Washington State Bar Association, Attn: Annual Awards, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; fax: 206-727-8319; e-mail: denec@wsba.org

The awards will be presented at the WSBA Annual Awards Dinner in Seattle on September 14, 2006, with the following exceptions: The Pro Bono Award will be presented at the Access to Justice Conference in Yakima on June 10, and the Outstanding Judge Award will be presented at the Fall Judicial Conference.

Legal Foundation of Washington

Elections Held

At its November 19, 2005, meeting, the Legal Foundation of Washington’s board of trustees unanimously elected Judge Michael E. Schwab of the Yakima County Superior Court as the Foundation’s president for 2006. Erika L. Lim, Seattle University director of career services, was elected vice president; Perkins Coie attorney Nicholas P. Gellert was elected secretary; and Nancy L. Isserlis, a principal at Winston and Cashatt Lawyers, was elected treasurer.

The Foundation was established in 1985 at the direction of the Washington Supreme Court to support legal aid and law-related education through the Interest on Lawyers’/Limited Practice Officers’ Trust Account (IOLTA) program.

Statewide Diversity Conference to Be Held in June

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

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

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

Seattle University School of Law Wins ABA Regional Negotiation Competition

Two teams from the Seattle University School of Law won first and fifth places in the Northwest Region at the American Bar Association’s recent Negotiation Competition held in Missoula, Montana. Out of 22 teams from 11 law schools, Seattle University’s Hagen Ganem and James Anderson took first place, and John Fetters and Matt Johnson placed fifth. Ganem and Anderson will go on to represent Seattle University and the Northwest Region at the ABA National Negotiation Competition February 11-12 in Chicago.

MCLE Certification for Group 2 (2003-2005)

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

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

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

All WSBA-approved courses that you list on your C2 form must have an Activity ID number. This number is listed on your online MCLE profile and is assigned at the time that the Form 1 for each course is reviewed. If you have taken courses that have not yet been approved by the WSBA, please submit Form 1s for these courses immediately to ensure that they are approved before your C2 is due. Due to high volumes, Form 1s submitted electronically (at pro.wsba.org) could take up to four weeks or more to process. 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.

The deadline for completing the C2/C3 form and returning it to the WSBA was February 1, 2006. All active members in Group 2 (except those admitted in 2004) must send in a completed
C2/C3 form. If you were not able to meet the credit requirement by December 31, 2005, and need more time to complete your credits, an automatic extension will be granted until May 1, 2006. There is no need to apply for it. However, a late fee will be imposed if you took any courses after December 31 that were needed for compliance or if your C2 form is submitted late. If this is the first reporting period in which you have not met MCLE compliance requirements, the late fee is $150. The late fee increases by $300 for each consecutive reporting period you are late in meeting MCLE requirements.

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

MCLE Certification for Active Members

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.)


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<th>Reporting Group</th>
<th>Next Reporting Period</th>
<th>Complete Credits by</th>
<th>File C2 Form by</th>
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<tbody>
<tr>
<td>Group 2</td>
<td>2003-2005</td>
<td>December 31, 2005</td>
<td>February 1, 2006</td>
</tr>
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Credit Requirements. The following credit requirements must be met by December 31 of the last year of an active member’s reporting period:

- At least 45 total credits of WSBA-approved CLE activities must be taken, which need to include a minimum of 30 live credits and six ethics credits.
- A/V courses cannot be more than five years old, except approved “skills-based” courses.
- Six pro bono credits can be earned per year. Two of these credits are for approved annual training, which must be taken 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.
- Group 1 members are exempt from reporting CLE credits for the year of your admission and the following calendar year. If you were admitted in 2001, you will not report for this reporting year. Group 2 members this year (which will be Group 1 members due to report) are in Group 2.
- All active members due to report are required to file a Continuing Legal Education Certification (C2) form with all CLE courses taken for credit compliance. The deadline for filing your C2 form is February 1 of the year following the end of your reporting period. Note:
  - Your online roster is not a substitute for filing the C2 form.
  - The C2 form is an affidavit and must be signed and dated, and the city and state where signed must be identified.
  - C2 forms are included in the license packets sent in early December to all members due to report (which will be Group 2 members this year).
- 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 reporting forms after March 1 of the following year (the end of the grace period after the February 1 deadline), must pay a late fee of $150. The late fee increases by $300 for each consecutive three-year reporting period of noncompliance.
- Newly Admitted Members. If you are a newly admitted member, you are exempt from reporting CLE credits for the year of your admission and the following calendar year. If you were admitted in 2004, you will not report for this reporting period (2003-2005) even though you are in Group 2. You will first report at the end of the 2006-2008 reporting period. When you report at the end of your first reporting period, you may claim all CLE credits earned on or after your date of admission to the WSBA.
- MCLE Comity. If you are an active member of the WSBA and your primary office for the practice of law is in Oregon, Idaho, or Utah, you may meet your 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 form, will satisfy your MCLE requirements in Washington.
- MCLE System — Course Listing and Member Profiles. Members may use the online MCLE system at http://pro.wsba.org to:
  - Review courses taken and credits earned.
  - Apply for course approval.
  - Apply for writing credit, pro bono credit, or prep-time credit.
  - Search approved courses and view offers.

To use the MCLE system, go to http://pro.wsba.org, click on the “Member” tab, then select “Member Login.” The online instructions will lead you through the process of creating a confidential pass-
word 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 or 206-443-WSBA, or e-mail us at questions@wsba.org.

**YMCA Mock Trial Program Seeks Volunteers**

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

**WSBA Arbitration Program**

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

**Notice of Intent to Form Juvenile Law Section**

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

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

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

**Books for Belarus**

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

**WSBA Court Rules and Procedures Committee to Review General Rules**

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

**Facing an Ethical Dilemma?**

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

**WSBA Ethics Opinions Now Searchable Online**

The WSBA announces the availability of a new online search tool for Washington ethics opinions. Lawyers can now search both formal and informal WSBA ethics opinions at www.pro.wsba.org/io/search.asp. Opinions can be searched by number, year issued, ethical rule, subject matter, or keyword. Ethics opinions are issued by the WSBA to assist members in interpreting their ethical obligations in specific circumstances. The opinions are the result of study and analysis in response to requests from WSBA members. For assistance, call the Ethics Line at 800-945-9722, ext. 8284, or 206-727-8284.
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. For more information, contact Jennifer Favell, Ph.D., at 206-727-8267.

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

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

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

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

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

Upcoming Board of Governors Meetings
March 3-4 — Seattle, April 21-22 — Walla Walla, June 9 — Yakima, July 21-22 — Port Angeles
With the exception of a one-hour executive session the morning of the first day, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Please contact Donna Sato at 206-727-8244 or e-mail donnas@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/schedule.htm.

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

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

Random Acts of Professionalism Program
The WSBA Professionalism Committee has created a way for lawyers and judges to recognize their colleagues who have conducted themselves in a professional manner consistent with the Creed of Professionalism. Through the Random Acts of Professionalism Program, lawyers and judges may nominate their colleagues for the award. Nominating a lawyer or judge is easy: Simply send his or her name, along with a brief description of why you are nominating the person, to Judy Berrett, staff liaison to the Professionalism Committee, at judithb@wsba.org, or fax to 206-727-8319. That’s all there is to it! The nominee will receive a letter, a certificate, and a copy of the WSBA Creed of Professionalism.

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in February 2006 was 4.669 percent. Therefore, the maximum allowable usury rate for March is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/
To apply for any of the following committee, board, or panel positions, please complete the waiver below and send with a letter of interest and résumé. Deadline is March 31, 2006. Send to WSBA, Bar Leaders Division, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

WSBA Character and Fitness Committee
The WSBA Board of Governors (BOG) is seeking applications from WSBA members who have been active members for at least seven years for appointment to the Character and Fitness Committee. This is a three-year term commencing October 1, 2006. The upcoming vacancies include positions in Districts 4, 6, and 7-East.* Applicants must reside in one of these districts to be considered for appointment. This committee deals with matters of character and fitness bearing on qualifications of applicants for admission to practice law in Washington; conducts hearings on the admission of any applicant; makes recommendations to the BOG and Supreme Court; and considers petitions for reinstatement after disbarment.

WSBA Disciplinary Board
The WSBA Board of Governors is seeking applications from WSBA members who have been active members for at least seven years (ELC 2.3 (b) (2)), to serve a three-year term on the WSBA Disciplinary Board commencing October 1, 2006. The upcoming vacancies include positions in Districts 3, 4, and 6.* The Disciplinary Board carries out the functions and duties assigned to it according to the Rules for Enforcement of Lawyer Conduct adopted by the Supreme Court. The full board meets at least six times a year, reviewing hearing officer decisions and stipulations. Three-member review committees meet at least an additional three times a year and review disciplinary investigation reports and dismissals. Considerable reading and meeting preparation is required; meetings are on Fridays in Seattle; 14 members.

WSBA Lawyers’ Fund for Client Protection Committee
The WSBA Board of Governors (BOG) is seeking applications from active WSBA members for appointment to the Lawyers’ Fund for Client Protection Committee. The upcoming vacancies include positions in Districts 3, 7-West, and 8.* Applications are also being accepted for one nonlawyer position. This is a three-year term commencing October 1, 2006. The committee reviews claims for reimbursement of financial loss sustained by reason of an attorney’s dishonest actions; decides claims up to $25,000; and makes recommendations to the BOG on claims for greater amounts. Meets four times a year; 13 members.

WSBA Mandatory Continuing Legal Education (MCLE) Board
The WSBA Board of Governors is seeking applications from active WSBA members for appointment to the MCLE Board. The upcoming vacancies include positions in Districts 8, 5, and 2.* This is a three-year term commencing October 1, 2006. The MCLE Board approves courses and educational programs that satisfy the educational requirements of the mandatory CLE rule and considers MCLE policy issues, as well as reporting and exception situations.

*If you are not sure which congressional district you reside in, please see: www.leg.wa.gov/DistrictFinder/Default.aspx.

To assist the Board of Governors in ensuring diversity, please provide the following optional information:

Ethnicity □ American Indian/Alaska Native □ Asian/Pacific Islander □ Black/African American □ Caucasian □ Latina/o □ Multi-racial

Gender □ Male □ Female

Disability □ Yes □ No

City of residence ____________________________

Employer ____________________________

Number of years in practice ________

Area of practice ____________________________

The Board of Governors expects that appointed members will attend meetings and perform the group’s work as needed. If unable to fulfill this commitment, members may be removed from the committee/board/panel.

To complete your application, please include the waiver with application materials.
Davies Pearson, P.C.
Attorneys at Law

is pleased to announce that

Peter T. Petrich

has been elected managing partner and president of the firm.

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Tacoma, WA 98401
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Toll-free: 800-439-1112
Fax: 253-572-3052
E-mail: ppetrich@daviespearson.com

www.dpearson.com

Law Office of J. Mark Weiss, P.S.
Attorneys and Counselors at Law

is pleased to announce that

J. Mark Weiss

has been named a Fellow of the American Academy of Matrimonial Lawyers

Mr. Weiss will continue his practice in family law using mediation, collaborative law, and litigation.

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Seattle, WA 98101
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info@mark-weiss.com
www.mark-weiss.com

Sebris Busto James

is pleased to announce that

Jillian Barron

has been named a shareholder. She will continue to represent employers in labor and employment law matters and to act as a neutral investigator and mediator.

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Bellevue, Washington

is pleased to announce that

Ginger Edwards

whose practice emphasizes civil and commercial litigation and commercial transactions has become an associate attorney in the firm.

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

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

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

Suspended

James E. Keech (WSBA No. 29972, admitted 2000), of Omak, was suspended for one year, effective August 17, 2005, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct in 2001, 2002, and 2003 involving failure to act with reasonable diligence and promptness, failure to keep a client reasonably informed, failure to protect a client’s interests upon termination of the representation, failure to return client property, and failure to make reasonable efforts to expedite litigation.

Matter 1: In January 2003, Mr. Keech was hired to represent a client in a worker’s compensation matter. On two occasions Mr. Keech informed the client he would forward information to the Department of Labor and Industries but failed to do so. In April and/or May 2003, the client tried unsuccessfully to reach Mr. Keech by telephone. Mr. Keech did not answer the telephone and his messaging system was typically full and unable to take messages. In June 2003, Mr. Keech moved from Olympia to Okanogan to work for another law office and did not inform his client of the move. The client tried unsuccessfully to reach Mr. Keech by telephone. On one occasion, the client was connected to Mr. Keech’s new law office, but was unaware that the office was located in Okanogan. The client left a message for Mr. Keech but did not receive a return call. In July 2003, the client went to Mr. Keech’s former office in Olympia and learned that he had moved. The client telephoned Mr. Keech, who informed the client that he was withdrawing from the case and would deliver the client file the following weekend. Mr. Keech did not deliver the client file until three months later.

Matter 2: In August 2001, Mr. Keech was hired to represent a client in a worker’s compensation matter. Prior to the hearing, Mr. Keech and the opposing counsel agreed that medical testimony would be taken by perpetuation deposition. Mr. Keech did not interview or communicate directly with his client’s medical expert before the deposition. Prior to the deposition of the opposing side’s medical expert, Mr. Keech read the medical expert’s report and identified specific areas for cross-examination, but
he failed to examine the medical expert on these areas during the deposition.

In November 2001, a hearing was held before an industrial appeals judge. Mr. Keech intended to offer exhibits to support his client’s claim for time loss compensation, but did not do so. At the conclusion of the hearing, Mr. Keech offered to file a post-hearing brief, but did not do so. In March 2002, the industrial appeals judge issued a decision denying the claim, which was affirmed by the Board of Industrial Appeals (BIA) in May 2002. Mr. Keech filed an appeal of the BIA’s decision in the wrong county, and, consequently, the appeal was dismissed. In November 2002, Mr. Keech filed a notice of appeal to the Court of Appeals, but did little or no work on his client’s case thereafter. In February 2003, owing to Mr. Keech’s failure to file a timely statement of arrangements or designation of clerk’s papers, the Court of Appeals commissioner notified Mr. Keech that the appeal would be dismissed without further notice unless the documents were promptly filed. Mr. Keech did not respond, nor did he inform his client of the ruling. In April 2003, the appeal was dismissed. Mr. Keech did not inform his client that his appeal was dismissed. In June 2003, Mr. Keech moved from Olympia to Okanogan to work for another law office and did not inform his client of the move.

Mr. Keech’s conduct violated RPC 1.3, requiring that a lawyer act with reasonable diligence and promptness in representing a client; RPC 1.4(a), requiring that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; RPC 1.4(b), requiring that a lawyer explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.15(d), requiring that a lawyer 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; RPC 1.14(b)(4), requiring that a lawyer 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 3.2, requiring that a lawyer make reasonable efforts to expedite litigation consistent with the interests of the client.

Marsha A. Matsumoto represented the Bar Association. Mr. Keech did not appear in the proceeding either personally or through counsel. Erik S. Bakke Sr. was the hearing officer.

Suspended

Mark G. Obert (WSBA No. 27299, admitted 1997), of Salem, Oregon, was suspended for 30 days, effective May 27, 2005, by order of the Washington State Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Oregon. This discipline was based on his conduct in 1999 and 2000 in three matters involving representation of clients with conflicting interests, neglect of a legal matter, misrepresentation, and failure to return client property promptly.

Matter 1: Mr. Obert was hired in September 1999 to represent a married couple in the husband’s adoption of his wife’s child from a prior relationship. The couple did not have contact with the child’s biological father and were unsure of his residence or mailing address. During the time between the signing of the adoption petition in November 1999 and its filing in January 2000, Mr. Obert’s assistant made several unsuccessful telephone calls to locate the biological father’s residence and mailing address. Mr. Obert did little else to advance the adoption and eventually stopped returning the couple’s phone calls. In July 2000, Mr. Obert was appointed to represent the child’s biological father in three criminal matters. Mr. Obert did not recognize the appointed client as the biological father, and his office lacked any mechanism to identify conflicts of interest. Mr. Obert did not realize there was a conflict until September 2003, when the couple informed him that the child’s biological father was in prison. He subsequently withdrew as the couple’s lawyer, refunded their money, and referred them to another lawyer.

Matter 2: In December 1999, Mr. Obert was appointed to represent a client in a proceeding for post-conviction relief. After a petition for relief was denied, the client instructed Mr. Obert to commence an appeal. Mr. Obert failed to file the notice of appeal within 30 days as required by court rule. As a result, the court dismissed the appeal as untimely. Upon learning of the dismissal, Mr. Obert failed to relay that information promptly to his client and, eventually, cut off all contact with the client. Mr. Obert did not inform the client of the dismissal until five months after its entry.

Matter 3: In March 1999, Mr. Obert was appointed to represent a client on appeal after the court had denied the client’s petition for post-conviction relief. At the beginning of the representation, the client gave Mr. Obert documents relating to his case. In 2001, after the state appellate court had issued a final judgment, the client wrote to Mr. Obert asking him to return those documents in order to pursue federal habeas corpus relief. Despite telephone calls from the client reiterating his need for the documents, Mr. Obert did not return his client’s messages and did not take action to return the files to the client until approximately five months later.

Mr. Obert’s conduct violated Oregon DR 6-101(B), prohibiting a lawyer from neglecting a legal matter entrusted to the lawyer; DR 5-105(E), prohibiting a lawyer from representing multiple current clients in any matters when such representation would result in an actual or likely conflict; DR 1-102(A)(3), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and DR 9-101(C)(4), requiring a lawyer to promptly deliver to a client as requested by the client the properties in the possession of the lawyer which the client is entitled to receive.

Felice P. Congalton represented the Bar Association. Mark G. Obert represented himself.

Suspended

Steven R. Scharfstein (WSBA No. 24992, admitted 1995), of Lake Oswego, Oregon, was suspended from the prac-
In May 1999, Mr. Scharfstein was hired by an insurance company to file suit against an uninsured motorist who had caused damage to a vehicle owned by an insured person. Between June 1998 and November 2002, when the insurance company terminated his employment, Mr. Scharfstein failed to file suit, failed to respond to the insurance company’s attempts to contact him, and failed to keep the insurance company informed about the status of its case. During an ensuing disciplinary investigation, Mr. Scharfstein failed to provide information concerning his conduct in response to requests of the Oregon State Bar Disciplinary Counsel's Office.

**Matter 1:** In June 1998, Mr. Scharfstein was hired by an insurance company to file suit against an uninsured motorist who had caused damage to a vehicle owned by an insured person. Between June 1998 and November 2002, when the insurance company terminated his employment, Mr. Scharfstein failed to file suit, failed to respond to the insurance company’s attempts to contact him, and failed to keep the insurance company informed about the status of its case. During an ensuing disciplinary investigation, Mr. Scharfstein failed to provide information concerning his conduct in response to requests of the Oregon State Bar Disciplinary Counsel's Office.

**Matter 2:** In May 1999, Mr. Scharfstein was hired to represent a company in collection litigation. Between May 1999 and April 2002, Mr. Scharfstein failed to file a lawsuit, failed to respond to the company’s attempts to contact him, and failed to keep the company informed about the status of its case. During an ensuing disciplinary investigation, Mr. Scharfstein failed to provide information concerning his conduct in response to requests of the Oregon State Bar Disciplinary Counsel's Office.

**Matter 3:** In March 2001, Mr. Scharfstein was hired by a married couple to represent them in a stepparent adoption. Between March 2001 and October 2003, Mr. Scharfstein failed to complete the adoption, failed to respond to his clients’ attempts to contact him, and failed to keep his clients adequately informed about the status of their case. In August 2003, the court dismissed the adoption proceeding for want of prosecution. Thereafter, until October 2003, Mr. Scharfstein failed to take any steps to set aside the order of dismissal.

In August 2001, the same clients hired Mr. Scharfstein to represent them in a medical malpractice claim. Between November 2002 and October 2003, Mr. Scharfstein took no substantial action on their medical malpractice claim, failed to respond to attempts to contact him, and failed to keep the clients informed about the status of the case.

Mr. Scharfstein’s conduct violated Oregon DR 1-103(C), requiring a lawyer who is the subject of a disciplinary investigation to respond fully and truthfully to inquiries from and comply with reasonable requests of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers; and DR 6-101(B), prohibiting a lawyer from neglecting a legal matter entrusted to the lawyer.

Joanne S. Abelson represented the Bar Association. Mr. Scharfstein represented himself.

**Admonished**

**John Henry Browne** (Bar No. 4677, admitted 1972), of Seattle, was admonished following a stipulation approved by a hearing officer. The discipline was based on his conduct in 2000 and 2001 involving charging an unreasonable fee. Mr. Browne is to be distinguished from John Haynh Brown of Springfield, Virginia.

In September 2000, Mr. Browne was hired to represent a client in a criminal matter involving charges of murder in the second degree and assault in the second degree. The written fee agreement between Mr. Browne and the client stated, in pertinent part:

I. Retainers. The Client shall pay the Attorneys a retainer in the amount of $5000, all of which shall be non-refundable and considered earned upon receipt. Attorneys hereby acknowledge receipt of $5000.00 for said retainer.

II. Fees. In the event the Client is charged, Client shall pay the Attorney an additional $5000.00 for representation until trial. If Client elects to proceed to trial, the Client shall pay the Attorneys an additional $10,000.00 prior to the Omnibus Hearing . . . .

Mr. Browne and the client also agreed that the client would be charged $50,000 for representation through trial; however, this agreement was not put in writing. Between September and December 2000, Mr. Browne requested and received a total of $25,000 in fees from the client’s mother. In March 2001, on the advice of both Mr. Browne and another lawyer, the client entered a guilty plea to manslaughter, and the assault charge was dismissed. The plea was entered before either a trial date was set or an omnibus hearing occurred.

In light of the guilty plea and under the terms of the written fee agreement, Mr. Browne was entitled to total fees of at least $10,000 and no more than $20,000. Given the oral understanding between the parties about the $50,000 in fees for representation through trial, it was unclear as to when and how Mr. Browne was to earn the “additional $10,000 prior to the Omnibus Hearing.”

Mr. Browne’s conduct violated RPC 1.5(a), requiring a lawyer’s fee to be reasonable (and specifying that one of the factors considered in determining the reasonableness of a fee is whether the fee agreement or confirming writing demonstrates that the client had received a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer’s billing practices).

Christine Gray represented the Bar Association. Carolyn Cairns represented Mr. Browne. Veronica Alicea-Galvan was the hearing officer.

**Admonished**

**Aaron C. Masser** (WSBA No. 32692, admitted 2002), of Longview, was admonished on April 15, 2005, by order of a review committee of the Disciplinary Board. The admonition is based upon his conduct in 2004 involving lack of diligence.

In 2002, Mr. Masser agreed to collect a $1,387.99 small claims court judgment for a client. Mr. Masser initiated garnishment proceedings. In February 2004, Mr. Masser closed his office without completing the client’s garnishment or providing the client with a new ad-
dress or telephone number. The client contacted a new lawyer, who completed the garnishment. Mr. Masser did not respond to telephone calls from the client’s new lawyer.

Mr. Masser’s conduct violated RPC 1.3, requiring that a lawyer act with reasonable diligence and promptness in representing a client.

Nancy Bickford Miller represented the Bar Association. Mr. Masser represented himself.

Admonished

Elizabeth S. Pearson (WSBA No. 29073, admitted 1999), of Bellevue, was admonished on April 15, 2005, by order of a review committee of the Disciplinary Board. The admonition is based upon her conduct in 2003 and 2004 involving the practice of law while suspended.

In 2002, Ms. Pearson left a law firm to work as an in-house counsel. The Bar Association was not notified of her new mailing address. Consequently, she did not receive notices relating to the payment of her 2003 license fees and failed to pay these fees. As a result, the Washington State Supreme Court suspended Ms. Pearson’s license on August 12, 2003. Ms. Pearson continued to practice law until September 2004, when she discovered that her license was suspended. Ms. Pearson took immediate steps to update her address and resolve the suspension. She also removed herself from the practice of law until her license was reinstated in October 2004.

Ms. Pearson’s conduct violated RPC 5.5(e), prohibiting a lawyer from engaging in the practice of law while on inactive status or while suspended from the practice of law for any cause.


Admonished

Leslie O. Stomsvik (WSBA No. 3071, admitted 1970), of Tacoma, was admonished on May 6, 2005, by a review committee of the Disciplinary Board. This discipline was based on his conduct in 2002 involving retention of an unreasonable fee, failure to explain the basis for a fee, failure to deposit client funds into a trust account, and failure to render an appropriate accounting to the client.

On May 13, 2002, Mr. Stomsvik agreed to represent a client on a child visitation matter. The client signed a written fee agreement requiring payment of a $500 “retainer.” The fee agreement did not state that the $500 was nonrefundable or explain how the fee would be calculated. Mr. Stomsvik deposited the money into his general account, believing that the client’s funds were paid as a nonrefundable retainer that was earned when received. On May 15, 2002, the client requested that work on the matter cease because he had begun negotiations with the other parent. After the matter was resolved, the client asked for a refund. Mr. Stomsvik did not refund the money or provide the client with an accounting.

Mr. Stomsvik’s conduct violated RPC 1.5(a), requiring that a lawyer’s fees be reasonable; RPC 1.5(b), requiring that a lawyer who has not regularly represented a client communicate to the client the basis or rate of the fee or factors involved in determining the charges for legal services and the lawyer’s billing practices; RPC 1.14(a), requiring all funds of clients paid to a lawyer be deposited into a trust account; and RPC 1.14(b)(3), requiring that a lawyer 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.

Randy V. Beitel represented the Bar Association. Mr. Stomsvik represented himself.

Non-Disciplinary Notices

Suspended Pending Outcome of Disciplinary Proceedings

William R. Joice (WSBA No. 19944, admitted 1990), of Seattle, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.1, effective January 4, 2006, by an order of the Washington State Supreme Court. This is not a disciplinary action. Mr. Joice is to be distinguished from William F. Joyce of Seattle.

Suspended Pending Outcome of Disciplinary Proceedings

Eric R. Vargas (WSBA No. 20364, admitted 1991), of Yakima, was suspended pending the outcome of disciplinary proceedings, pursuant to ELC 7.1, effective January 4, 2006, by an order of the Washington State Supreme Court. This is not a disciplinary action.

Corrections

The January 2006 Disciplinary Notices incorrectly indicated that Allen C. Jorgensen (WSBA No. 23671, admitted 1994) was disbarred effective May 11, 2005. The notice should have reported an effective date of May 17, 2005.

The January 2006 Disciplinary Notices incorrectly indicated that Kevin M. Myles (WSBA No. 24987, admitted 1995) was suspended for 60 days effective July 22, 2005. The notice should have reported an effective date of July 29, 2005.
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Successful Prosecution in Complex Business Disputes
March 30 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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

Animal Law
14th Annual NW Dispute Resolution Conference
April 28-29 — Seattle. CLE credits pending. By UW School of Law; 800-CLE-UNIV or 206-543-0059.

4-Day Intensive Mediator Training Program
April 25-28 — Seattle. 40.5 CLE credits, including 2.5 ethics. By Alhadeff & Forbes Mediation Services; 206-281-9950.

Employment Law
The 13th Annual Employment Law Institute
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The 3rd Annual Trust and Estate Litigation Conference
March 16 — Seattle. 6.25 CLE credits; including .75 ethics; April 21 — Spokane. 6.5 CLE Credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Government
Not Above the Law: The Government as Defendant
April 26 — Seattle. By WSTLA; 206-464-1011.

Indian Law
Annual Indian Law Conference
April 28 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Dispute Resolution

Employment Law

Estate Planning

Family Law

Special Issues in Working with Divorcing Parents: Domestic Violence and High Conflict Parents Featuring Joan Kelly
March 3 — Seattle. 6 CLE credits. By UW School of Law; 800-CLE-UNIV or 206-543-0059.

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April 28 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.
**Practice Development Brown Bag**  
— Primer on Indian Law  
March 15 — Seattle. By WDTL; 206-749-0319 or kristin@wdtl.org.

**Insurance Law**

**Annual Insurance Law Update**  
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**Intellectual Property**

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March 24 — Seattle. 6.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**Litigation**

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**Motions Practice**  
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**Mergers and Acquisitions**

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March 23 — Seattle. 6.25 CLE credits. By The Seminar Group; 206-463-4400 or 800-574-4852.

**Miscellaneous**

**Annual Senior Lawyers Seminar**  
April 14 — SeaTac. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

**2006 Innocence Network Conference**  
March 17-19 — Seattle. CLE credits pending. By UW School of Law; 800-CLE-UNIV or 206-543-0059.

**Nurses Law School**  
March 10 — Bellevue. 6 CLE credits. By WSTLA; 206-464-1011.

**Presentations Skills for Professionals and Executives**  
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**Professional Guardian Initial Certification Training**  
March 30-31 — Seattle. 12 CLE credits and 1.5 ethics. By KCBA. Log on to www.kcba.org/cle to register.

**Transfer Pricing Workshop**  
March 27 — Seattle. 8 CLE credits. By UW School of Law; 800-CLE-UNIV or 206-543-0059.

**Real Property**

**Advanced Real Estate Purchases and Sales**  
March 6-7 — Seattle. 13 CLE credits pending, including 1 ethics. By Law Seminars International, 206-567-4490 or 800-854-8009.

**Advanced Topics in Real Estate Development**  
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o the Academy Awards impend. In this bread-and-circuses life, why should we not focus on the things that really count?

Which brings me to what my sister and I, raised in the blinkered world of small-town Southern gentility, refer to as THAT MOVIE.

“Well,” she started off, “have you seen it?”

“Seen what?”

“THAT MOVIE.”

“Of course,” I replied. Seattle was in the first wave of cities in which it opened. How can I miss a public scandal? “I expect you will have to drive up to Charlotte to see it, like you had to do for The Pianist.”

So I was surprised when my sister told me THAT MOVIE was playing on four screens in Greenville, South Carolina. Full house, she told me, the night she and her family went.

Lots of movie critics have been hailing THAT MOVIE as either a ticket to the End Times or the dawn of a new Rapture of Tolerance in America. Apparently it has cleared the admittedly low bar of Hollywood usually does: miserable and alone, or dead. They’ve been cranking out breakthrough gay movies for half a century, and it pretty much always ends up that way. The Children’s Hour, in 1961, ended in a lesbian suicide. 1962’s Advise and Consent saw the senator with a gay past kill himself. Rex Harrison and Richard Burton played a gay couple in a movie that sank like a stone. Midnight Cowboy, a sort of ur-THAT MOVIE, is mainly known as the only X-rated film to win an Oscar. Philadelphia changed no more minds than Boys Don’t Cry or Gods and Monsters.

For all the actors in those movies, the prediction was the same as for Messrs. Gyllenhaal and Ledger: career death. Didn’t happen before, won’t happen now. Brad Pitt is reported to be scouting around for a High Profile Gay Script to burnish his bona fides. Other trade papers speculate on what sort of movie Ledger and Gyllenhaal could do together in the future that wouldn’t make viewers think of, well, THAT MOVIE.

My 15-year-old nephew saw THAT MOVIE and thought it was a Hollywood play to make money off gay people, as they do with every other subject that comes to hand. He’s a smart fella. He liked the movie but didn’t think it will turn blue states red or anything.

So the little statues will get handed out; speeches, inane speeches, will be made; and almost none of the male actors will shave for the event. THAT MOVIE may win a clutch of awards, but the next day we’ll still be dealing with Tim Eyman’s latest initiative and referendum plan, same-sex marriage, constitutional amendments, and the major parties will still beat each other up for being for or against those issues. If THAT MOVIE has a lasting impact, it will be for the way its title and several lines of dialogue have entered the lexicon of late night talk show jokes and popular slang. Gonzaga University’s Kennel Club booster group has apparently been shouting “Brokeback Mountain!” at opposing teams’ players. Aaron Magruder’s comic strip The Boondocks has a character, eying a shoulder bag, comment, “That man-purse is so brokeback.” Columnists will debate the meaning of THAT MOVIE making more, or less, than The Passion of the Christ.

I guess we can’t resist big Oscar speculations any more than we can say we don’t care who’s playing the Super Bowl halftime show. Over-the-top will always draw a crowd. There’s the ever-present possibility of outré behavior and wardrobe malfunctions, but overall, we know these megaspectacles will offend only the most Pecksniffian tastes. We ooh and ahh, or make ironic comments. The news cycle moves on. We live to fight another day.

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