Washington State Bar Association

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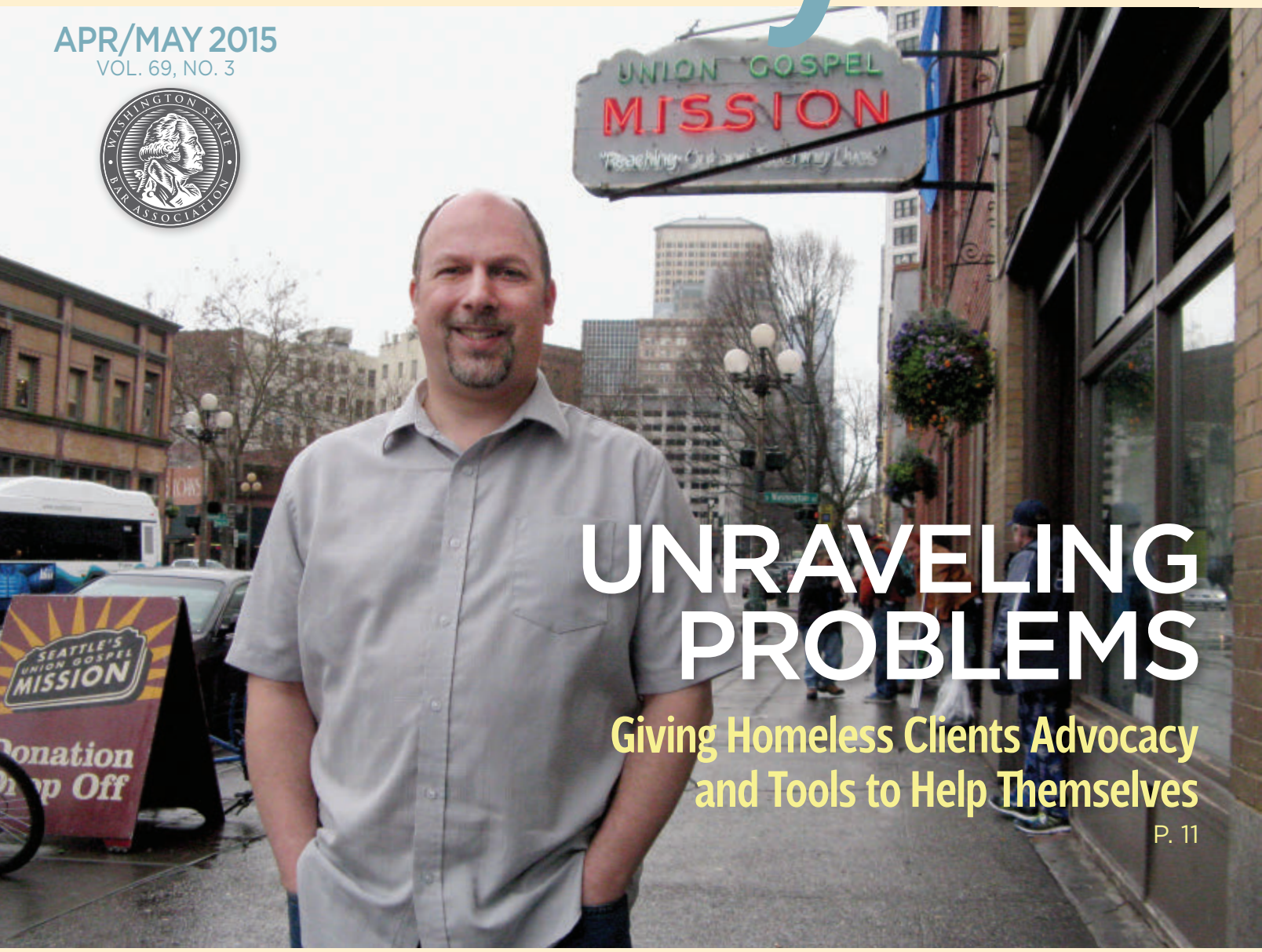
2014 LUMINARY AWARD EXCELLENCE IN PUBLICATIONS

NWLawyer

APR/MAY 2015
VOL. 69, NO. 3



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ON THE DOCKET

Celebrating 125 Years

ON THE COVER: David Mace, WSBA member and executive director of Open Door Legal Services, stands outside the Union Gospel Mission in Seattle's Pioneer Square. The law firm, a branch of the Mission, provides free legal services to the homeless and holds a free walk-in clinic every Friday afternoon staffed by volunteer attorneys. *Photo by Randy Trick*.

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NWLawyer

The WSBA's Official Members' Magazine

NWLawyer will inform, educate, engage, and inspire by offering a forum for members of the legal community to connect and to enrich their careers.

Published by the
WASHINGTON STATE BAR ASSOCIATION
1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539

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NWLawyer is published nine times a year (February, March, April/May, June, July/August, September, October, November, and December/January) by the Washington State Bar Association, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539, and mailed periodicals postage paid in Seattle, Washington (ISSN 2327-3399). For inactive, emeritus, and honorary members, a free subscription is available upon request (contact nwlawyer@wsba.org).

A portion of each member's license fee goes toward a subscription. For nonmembers, the subscription rate is $36 a year. Washington residents, please add sales tax; see http://dor.wa.gov for sales tax rate.

Postmaster: Send changes of address to:
NWLAWYER
WASHINGTON STATE BAR ASSOCIATION
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

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Marshall Rule

In the last issue of *NWLawyer* ["The Sham Affidavit Rule," March 2015], Mr. Adam Starr's article on the Marshall Rule made the common mistake of stating that evidence could be stricken for violating the Marshall Rule. Instead, as the authorities below make clear, the Marshall Rule is a rule of the sufficiency of the evidence on summary judgment — that is that a party's statement that contradicts prior sworn testimony is, by itself, insufficient to create a genuine issue of material fact.

Despite ongoing efforts of the appellate courts, trial judges continue to mis-apply the Marshall Rule to exclude evidence.

The 2013 Treciak court traced the doctrinal history of the subsequent clarifications that the Marshall Rule is a narrow, sufficiency of evidence rule, *not* an admissibility rule (emphasis added):

> We previously explained *Marshall*'s evidential impact in *408 *Schonauer v. DCR Entertainment, Inc.*, 79 Wash. App. 808, 905 P.2d 392 (1995), review denied, 129 Wash.2d 1014, 917 P.2d 575 (1996). In DCR, we noted that Marshall does not stand for the proposition "that statements in a party's affidavit are inadmissible (i.e., may not be considered by the court) if the affidavit is inconsistent with an earlier deposition and fails to explain the inconsistency." *DCR*, 79 Wash.App. at 817, 905 P.2d 392. Instead, we determined that the Marshall court was considering sufficiency, not admissibility, of the testimony...The *DCR* court set forth the basic evidential premise that on summary judgment, a later declaration should be considered in light

of other evidence presented in the case to determine whether sufficient evidence raises a factual issue....

In striking Treciak's declaration, the trial court ruled that it was inadmissible. This is contrary to *DCR* and the trial court erred in doing so.

State Farm Mut. Auto. Ins. Co. v. Treciak, 117 Wash.App. 402, 407-08 71 P.3d 703 (2013).

If an explanation of the contradiction is offered, then the issue is simply one for the trier of fact. On December 29, 2014, the Court of Appeals reversed the trial court's application of the Marshall Rule, where the (a) party (Taylor) had (b) *offered an explanation* of his prior, contradictory, statement:

... whether the explanation is plausible is an issue to be determined by the trier of fact. *Safeco Ins. Co. v. McGrath*, 63 Wash.App. 170, 175, 817 P.2d 861 (1991).

Taylor v. Bell, P.3d ----, 2014 WL 7387790, (2014, WL at p. 11).

In conclusion, if a judge applies the Marshall Rule to exclude evidence, it is clear error.

If a judge finds contradictory statements insufficient to survive summary judgment, that is clear error if party provides an explanation for the contradiction, as the plausibility of that explanation is a jury question.

The Marshall rule is a narrow rule that a sworn statement of a party that contradicts prior sworn testimony is *insufficient — without explanation* or other witness or documentary support — to create a genuine issue of material fact to survive summary judgment.

Craig A. Mason, Spokane

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CORRECTION: The article "A Brief History of the Death Penalty In Washington" (March 2015 *NWLawyer*) stated that, until recently, all counties except King have abandoned the death penalty, when, in fact, the death penalty has been sought in other Washington counties, in recent years.

We're all ears!

Let us hear from you! We welcome letters to the editor on issues presented in the magazine. Email letters to nwlawyer@wsba.org.

Michael Heatherly
NWLawyer Editor

Dollars and Sense

Like most of you, probably, my awareness of the ethical rules for lawyers dawned in law school. Despite being in training to become one, I maintained a natural skepticism about lawyers, who usually rank somewhere near telemarketers in public opinion polls. So I was unexpectedly impressed to see the comprehensiveness and thoughtfulness of the rules designed to ensure lawyers behave not only competently but honestly in their dealings with clients and others.

Then we came to a principle enshrined in Washington Rules of Professional Conduct section 5.4 (and with equivalent provisions nationwide) that prohibits a lawyer or law firm from sharing legal fees with a non-lawyer, or forming a partnership with a non-lawyer, if any of the activities of the partnership involve the practice of law.

It was a subject I had never thought about before, although I realized that law firms were generally self-contained entities that didn't stray into other areas of business. But in my not-yet-a-lawyer naiveté, learning that in order to join the profession lawyers had to effectively swear never to collaborate with non-lawyers in business struck me as, well, if not un-American, then at least contrary to free enterprise. In contrast to the rules clearly meant to protect the public from incompetent or unscrupulous lawyers, this provision appeared intended mainly to protect lawyers' monopoly on running the business of law.

Of course, our professors explained that the framers of RPC 5.4 and its ilk strove to protect clients from the (presumably) nefarious effects of (presumably) cutthroat non-lawyer business interests that would contaminate the provision of legal services if given the chance. I wondered whether the framers of the ethical rules realized that most people trust the majority of other business people and professionals more than they trust lawyers. To me, that rule always stuck out like a sore thumb.

Those who think about our profession's big picture are increasingly concluding that one of our biggest challenges is providing affordable legal services to not only the poor but also middle-income people and small organizations. I am frequently contacted by people who, for example, have a civil dispute that would realistically result in a $5,000 or $10,000 award of damages if they were to prevail. However, I have to tell them that getting to that result might cost them several thousand dollars in attorney fees. To their dismay, I also have to inform them that in the majority of cases, the law does not provide for them to recoup their attorney fees and costs from the opposing party. I have to imagine that such people nationwide walk away from millions or billions of dollars to which they are legally entitled because they cannot afford legal representation.

By contrast, look at how many other necessities (and not-so-necessities) of life are affordable to those of even modest incomes: cars, televisions, cellphones. Even former luxuries like airline travel or the occasional resort vacation are within reach of middle-income households, at least once in a while.

Of course, much of the affordability of products and services today is thanks to technology, combined with the globalization of commerce and expansion of free markets. Whether some aspects of these developments are good for humanity in general is a discussion for another day. But if innovation is carried out ethically and fairly, it can benefit consumers with lower prices and better service.

Imagine, for the sake of argument, that LegalZoom or some similar company were allowed to franchise its services to local lawyers everywhere. A small-town or small-firm lawyer could become a sort of authorized dealer of LegalZoom documents. LegalZoom would pledge to keep its documents up to date in each jurisdiction, relying on ethical, competent on-staff lawyers to do so. Of course, the franchisee lawyers would be obligated by the rules of their own jurisdictions to practice competently and ethically. They would further customize the documents as needed to meet their specific clients' needs and provide whatever additional legal assistance a client might request. The lawyers would take responsibility for the content of the documents. Imagine further that the efficiency and economies of scale of this system allowed lawyers to provide common legal services (drafting wills, setting up business entities, transferring real property) at half of today's prices, while still making a good living.

In "Does Law Need Investors?" (p. 29), Patrick Palace, immediate past-president of the WSBA, asks whether allowing non-lawyers to invest or join in business with lawyers might provide the additional capital and innovation needed to make such a scenario viable, to the benefit of clients as well as lawyers.

Concerning innovation in the more traditional access-to-justice model of pro bono service, in "Unraveling Problems: Lawyers for the Homeless Give Advocacy and Tools to Clients" (p. 11), author Randy Trick tells the story of Open Door Legal Services, a division of the Union Gospel Mission, where volunteer attorneys provide both advocacy and self-help tools to those facing the legal entanglements common to the homeless.

Meanwhile, WSBA member Christal Olivia Wood, who practices "low bono" law in Ferry County, tells the harrowing tale of how she got into the practice of law in the first place, which involved taking the bar exam not once, not twice, but seven times in "A Funny Thing Happened on the Way to the Bar Exam" (p. 20). **NWL**

NWLawyer *Editor Michael Heatherly practices in Bellingham. He can be reached at 360-312-5156 and nwlawyer@wsba.org. Read more of his work at nwsidebar.wsba.org.*

Treasurer's Report

BY WSBA TREASURER KEN MASTERS

I am very excited to report that the Board of Governors has approved a lease extension at Puget Sound Plaza, the current headquarters of the WSBA, through 2026. **This extension will yield over $3.1 million in savings over the life of the lease.** Let me review how we were able to create this terrific opportunity and how it will benefit our members.

Reducing Our Footprint — Efficiencies Produce Savings

Prior to this transaction, the Bar leased a total of 58,516 square feet at two locations (the WSBA headquarters and the WSBA conference center). Changes over the last three years enabled us to reduce our total footprint by 7,700 square feet. As previously reported, we worked very hard to increase the Bar's efficiency, implementing a management reorganization; reducing staff, expenses, and Board costs; and taking other cost-saving measures. We achieved additional work and space efficiencies by investing in technology. We also found that technology helped us reduce conference-center space needs: with members increasingly attending continuing legal education seminars by webcast, less space is required to support these programs. Given all of these changes, the Board chose not to exercise a five-year option on the conference center lease, but to search for suitable space with a reduced footprint that would support the Bar's operational and conference needs.

Testing the Market — Visiting Cost-Effective Venues

Price was a key driver for our search, but access to transit was also important. Each year, we rely heavily on the time and talent of more than 800 members across the state to advance the Bar's mission to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice. Considering commute patterns for volunteers as well as employees, we focused our search on the greater Seattle metropolitan area (downtown, north, south, and eastside). We took a close look at locations offering the highest value of space versus cost. All of this work made clear that renewing the lease at Puget Sound Plaza was our best option. We then secured very favorable terms that support operations and conference needs on a reduced footprint, while providing a welcoming and efficient space for WSBA members, staff, and visitors.

Renovating Our Space — Please Excuse Our Dust!

As you read this column, renovations are underway. Our remodeled space will maximize functionality, efficiency, and accessibility. In addition to incorporating into our headquarters state-of-the-art webcast and conference space, we are making significant ADA enhancements, plus key tenant and technology improvements — thanks to negotiating a generous tenant-improvement allowance with our landlord. We anticipate that this remodeling process will be completed by the end of September, with major renovations occurring between April and July. I'll provide further updates in future articles.

Largely thanks to our hard-working staff and executive team, this is a great accomplishment for the Bar. We've achieved significant cost savings while improving and enhancing work and meeting space. I look forward to any questions or feedback that you may have. **NWL**

KEN MASTERS *is the WSBA governor from the 1st District and the WSBA treasurer. The founder of Masters Law Group, he has been litigating civil appeals for about 23 years. He can be contacted at ken@appeal-law.com.*

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President's Corner

The Next Chapter of Equity in Education

Nicole McGrath from TeamChild presents us with some examples of how small cultural competency and awareness changes can have big impacts on youth in our justice system. — A.D.G.

BY NICOLE MCGRATH

The students I have represented over the years, ones who get suspended and expelled from school, possess gifts and skills our communities badly need. One student could get his younger brothers and sisters dressed, make them a breakfast omelet, get them out the door, and clean his family's apartment spotlessly. He was expelled from school. Another student had experienced physical abuse, multiple moves, and the loss of a parent to incarceration. He demonstrated strong oral advocacy skills and a desire to open a small business one day. He had been kicked out of school a lot. "What would be your ideal school?" I asked him once. His response: "A place like Seahawks stadium — where you feel the momentum is behind you." These students possess survival skills born out of adverse childhood experiences that have left a mark on their lives. Living through physical or sexual abuse, trying to protect siblings, and just trying to help their family get their basic needs met equates to these students possessing real-life leadership skills. They also often possess a natural aptitude for math, science, and reading. Yet these students have said again and again that it felt as if they did not belong, that they were not wanted. For students of color, an additional collective experience often threads their stories: accounts of experiencing misperceptions and fears encountered in the school system based upon their race. I believe their stories and I have witnessed some of those encounters.

The term "school-to-prison pipeline" is used to describe the systemic phenomenon of overly punitive policies which have contributed to thousands of Washington's students excluded from school.[1] Data shows that students of color are suspended or expelled from Washington's schools at a disproportionate rate.[2] Communities of color are on record making recommendations about how the Legislature can close the education opportunity gap.[3] Yet all of us still respond to one another based upon deeply entrenched biases about the color of one another's skin. That includes me. To disrupt the "pipeline" requires lawyers helping more students of color get back into school. It also means that lawyers must be willing to acknowledge race and our biases when working to solve the education equity issue.

Education for all children is the priority for the Legislature in 2015 due to the Supreme Court's decision in *McCleary*.[4] Communities are hoping that legislators from Eastern and Western Washington succeed in striking a bipartisan compromise to produce a budget that affords each child in Washington state an excellent education — whether the child lives in Marysville or

Mercer Island. But money alone is no guarantee that all children will get an opportunity to receive a meaningful education. Access to education must also be measured by who is permitted to attend and who is excluded from school.

During the 2013 Washington State Legislative session, community members, educators, families, and students testified in Olympia about the effects of exclusionary school discipline. In the past, a student could be excluded from school indefinitely — with no clear path for how to return to school. The Legislature heeded their stories, substantiated by data, and passed historic changes which still allow discretion for educators to correct student misconduct, keep schools safe, and are now intended to help regain excluded students.[5]

The new law requires that school districts host a re-engagement meeting to create a plan for addressing the student's individual needs and strengths, the causes that led to the student's misbehavior, and steps to help the student remedy the situation.[6] Educators alone should not have to shoulder crafting this plan. With the new laws in place, lawyers can play the role of collaborator or facilitator with educators and other community partners by helping an excluded student obtain a re-engagement plan. Schools are better served when community stakeholders, including caring lawyers, collaborate at the meeting table to talk about how to get the student's needs met, redress the behavior, and support a speedy plan to return the student to school.

Lawyers can bring information sheets about school re-engagement meetings to community boards they serve on, share information with their children's schools, or consider taking a pro bono case to help an excluded student return to school.[7] Small acts like these will disrupt the pipeline. A chapter in the story about equity in education will certainly include the racial disparities found in exclusionary school discipline. Let that chapter be filled with stories of lawyers building a loud, supportive momentum to help students return to school where they belong. **NWL**

NICOLE MCGRATH *is a TeamChild attorney representing low-income students in school discipline and other education matters. McGrath serves on the King County Bar Association Board of Trustees and is a past-president of the Latina/o Bar Association of Washington. Contact her at nicole.mcgrath@teamchild.org. This article was edited by Anne Lee and Caroline Tillier of TeamChild and is dedicated to the Snohomish County education administrators, teachers, behavior specialists, special education team members, and school staff who often collaborate to help TeamChild students of color return to school.*

NOTES

1. See "Reclaiming Students: the educational and economic costs of exclusionary discipline in Washington State," by Washington Appleseed and TeamChild, November 2012.
2. *Id.* at 39–44. See also Discipline Data report presented at Discipline Task Force Meeting on Sept. 8, 2014, presented by Tim Stensager, Director of Data Governance, WA OSPI at 14–15, 24–25.
3. 2014 Annual Report: Recommendations from the Educational Opportunity Gap Oversight and Accountability Committee (EOGOAC), which endorses reducing the length of time students of color are excluded from school and provide student support for reengagement plans. The report can be found at http://k12.wa.us/achievementgap. See also Discipline Disparities Series: Acknowledging Race — "You Can't Fix What You Don't Look At: Acknowledging Race in Addressing Racial Discipline Disparities," by Prudence Carter, Russell Skiba, Mariella Arredondo, and Mica Pollock, December 2014.
4. In the case of *McCleary v. State of Washington*, 173 Wash.2nd 477 (2012), the *McCleary* court held that the Washington State Constitution education clause, Article IX, Section 1, carries a judicially enforceable obligation for the State to ensure ample provision of an education for all children.
5. See ESSB 5496 enacting new school discipline laws during the 2013 Washington legislative session.
6. See RCW 28A.600.022, Suspended or expelled students–Reengagement plan.
7. Information sheets about school reengagement meetings can be found at www.teamchild.org/index.php/resources/137. Lawyers can also play a more traditional role by representing students at school discipline hearings.

UNRAVELING PROBLEMS

Giving Homeless Clients Advocacy and Tools to Help Themselves

by Randy Trick

A decade ago, King County and the City of Seattle launched a plan to end homelessness. It was a 10-year plan.

But, in January 2015, the annual one-day count of homeless in King County found 3,772 people living outside homeless shelters — 732 in doorways, under roadways, in bushes or alleys, 770 in some structure or bus stop, and 1,138 in vehicles. The homeless population increased 21 percent from 2014, though the figure includes 115 homeless found in geographic areas that had not been counted before. Overall, homelessness in King County is down from the estimated 8,500 homeless when officials wrote the 10-year plan. About half of the unsheltered homeless population in the state can be found in King County, according to the State of Washington Department of Commerce.

The causes of homelessness are as complicated and varied as each person's struggle. But many who work with the homeless say there are a handful of common legal issues that create barriers: bench warrants from unpaid legal financial obligations or missed court dates, unpaid child support and wage garnishment, the difficulty of challenging agency decisions to deny or cut off benefits, and issues with driver's licenses or identification. These problems compound each other and, without assistance, most homeless people cannot find a solution or unravel their legal issues.

David Mace, executive director of Open Door Legal Services, stands with some of the original office equipment of Union Gospel Mission in his office, located in the Pioneer Square homeless shelter. The law firm, a branch of the Mission, provides free legal services to the homeless of Seattle and Puget Sound.

PHOTOS BY RANDY TRICK

Unraveling the Issues

David Mace, executive director of Seattle's Open Door Legal Services, believes "unravel" is an appropriate word to describe what it takes for many of his clients to resolve their legal issues. Open Door Legal Services is a division of the Union Gospel Mission in the Pioneer Square neighborhood. The three-attorney firm does not charge clients and holds a walk-in clinic every Friday staffed by volunteer attorneys. Mace also visits other homeless shelters in the Puget Sound area.

According to Mace, resolving one legal issue for a client often means resolving a different one first — sometimes in a different jurisdiction or even a different state. For example, a client may not be able to quash local warrants without going to jail because warrants in other counties need to be quashed first. Or a client may have all his belongings in a backpack that is stolen, including documents such as vital records or court papers, and be unable to get new identification without any of that paperwork. Without ID, one cannot apply for housing, health insurance, or have access to many other state programs.

Another common example, Mace says, occurs when a person with mental health issues is unable to find work, and without the income does not have the means to pay legal financial obligations, which typically leads to a felony warrant for non-payment of fines. Because of the felony warrant, Social Security disability benefits that pay for the mental health medication are cut off.

In some cases, complying with rules or regulations is impossible for a homeless person with no address or with few means; sometimes it is a bureaucratic problem or a communication problem. Either way, Mace says, a person struggling for stability faces a lot of unfairness trying to navigate the system.

"Sometimes injustice is within the system and the laws need to change. Sometimes the injustices are written into the procedures and it's how the agencies talk to each other. Sometimes the injustices are written into how the agencies interact with this specific population," Mace says.

Open Door Legal Services is unique in that it is the only law firm located inside a homeless shelter. Several attorneys initially conceived it as a Christian legal service firm. When the founders saw that the client base overlapped so much with that of the Union Gospel Mission, it seemed to make sense, in terms of reducing overhead and combining resources, to become a division of Union Gospel Mission. Mace took over as executive director in 2007 and was initially the firm's only attorney. The firm has since grown to employ three full-time attorneys and a part-time (soon to be full-time) administrative staff member. Clients of the firm need not live at the Union Gospel Mission, nor do they need

to be Christian.

The Union Gospel Mission, an established and successful Seattle charity organization since 1932, receives its funding through private donations and relies very little on grants, with about $21.8 million in total support last year. That independence gives the Mission a lot of freedom to support a new venture, such as a legal clinic, and it gives the clinic a lot of freedom with its clients, Mace explains.

"We don't have to turn away people from outside King County, or if they are undocumented citizens [a condition of most federal grants]. There is no arbitrary screening or financial test at intake. It's a matter of who can find us, and if it's getting slow, we reach out to case managers," Mace says.

A Different Clientele

The typical client of Open Door Legal Services is not homeless in the sense that they are living under bridges or sleeping on park benches, Mace says. In those situations, a person is preoccupied with their safety or food, or perhaps their mental health issues are not under control. Most of Mace's clients make their appointment or come to the walk-in clinic once they have a little housing security.

"Most clients are in some sort of transitional housing. When they're on the streets, they don't have the bandwidth to deal with their legal issues," he says.

Running a law firm for homeless clients makes Open Door Legal Services unique in terms of client management as well. Mace knows that his clients have many pressing priorities other than their legal matters, and months or years sometimes pass between client visits.

"We do not predict in advance who can and cannot follow through... [we] try to involve a client as much as possible," he says. If a document is on file in the courthouse, for example, the attorney will send the clients to get it themselves, and in doing so give the client some ownership over their own success. The strategy also saves staff time and proves to be an effective way to see which clients are in a position to follow through. "It reduces our workload," Mace says, "and if they're not getting the little things done, it lets us self-identify whether they are ready and they can select out early."

This year is a deadline for the federal government as well, as the U.S. Veterans Administration seeks to end veteran homelessness by the end of the year. Some cities, such as New Orleans and Salt Lake City, have proudly ended veteran homelessness in recent months. The federal effort, called "Opening Doors," began in 2010, and has reduced the homeless veteran population by 33 percent. The most recent data on Seattle's veteran homeless population found that about 20 percent of shelter residents are veterans.

Anne Durbin, a veterans' transitions program case manager at the Salvation Army, is one case manager who refers clients to Open Door Legal Services. The residents of the Salvation Army's William Booth Center, a 30-bed facility for veterans, have their temporary housing paid by the U.S. Department of Veterans Affairs. By the time they reach Durbin, they have enough stability to begin to address the issues that led to their situation, making them ready to work with an attorney.

"When people come in, there is a pretty structured packet we go over with them, and one item is about their goals. And typically their goals are to get into housing, addressing their mental health, and health care," Durbin says. Clearing up legal issues usually makes these goals easier to achieve, she says, and she is quick to send a client to Mace's walk-in clinic on Fridays.

Durbin sees her clients at the center with many of the same legal issues Mace addresses. But, she says, veterans can have unique issues. Depending on how they left the military, they may not be eligible for some federal tax benefits or health benefits. One unique legal issue is petitioning for a client's veteran status to be upgraded from a "dishonorable discharge" to a "less-than-honorable discharge"; this change opens up tax benefits, some federal benefits, and possible payments. Clients who are still not eligible for federal health benefits are directed toward the Apple Care program, which has proven invaluable to giving homeless vets medical care.

Durbin says that sometimes the hardest part about working for the homeless is being patient as a bureaucracy reaches a decision on a client's matter. One client, she says, waited seven months to be approved for Social Security Disability Insurance, during which time he had no real income. When the letter of approval arrived, along with back payments, her client could finally afford to move into subsidized housing.

Open Door Legal Services focuses on the individual client work and doesn't have the staff or resources to delve into larger issues affecting the community as a whole, Mace says. Advocating on issues like housing reform or removing questions about criminal records from job applications is done instead by groups such as the American Civil Liberties Union, Columbia Legal Services, and the Homeless Rights Advocacy Project at Seattle University School of Law.

Vanessa Hernandez, staff attorney at the ACLU, works with the Second Chances Project and helps people with criminal records overcome the associated barriers. Criminal records block access to employment and housing, and can be a major contributor to homelessness. To address these issues, Hernandez and fellow attorneys at the ACLU help individual clients try to have conviction information removed from their record when possible. They also teach housing agencies or government agencies about how conviction data can and cannot be used.

"A conviction record means being categorically barred from housing and employment, and having a crushing amount of legal financial obligations and debt," Hernandez says.

A major accomplishment has been the so-called "ban the box" initiative — legislation to keep questions about past convictions off job applications until later in the hiring process.

"I've been effective allowing my clients to have conversations with employers beyond their criminal record," Hernandez says. "Without 'ban the box' or other initiatives like that, it prevents that conversation from happening."

The ACLU of Washington and Columbia Legal Services recently released a report calling for the state to reform

how courts issue and enforce legal financial obligations without regard to ability to pay or charging double-digit interest even while a person is incarcerated, and in some Washington counties locking up poor probationers who cannot pay.

Seattle University's Homeless Project

Meanwhile, the Seattle University School of Law's Homeless Rights Advocacy Project plans to issue its own report in May highly critical of city ordinances in the state that seek to prevent sleeping, loitering, lying down, camping, or panhandling. These laws, or "criminalization ordinances," as they are referred to by Sara Rankin, the project's director and Seattle University professor of lawyering skills, punish activities that are necessary by all people, but which the homeless cannot perform anywhere other than in public. The Seattle University project uses first- and second-year students to research the issue of homelessness and the criminal justice system, then draft policy papers and advocate on the civil-rights issues of the homeless. Seattle University has partnered with organizations such as the ACLU and the University of California–Berkeley School of Law on the project.

The project's data from surveys of the homeless thus far have revealed that between 70 and 90 percent of homeless in the state report being harassed, cited, or arrested for sleeping in public, lying down in public, or loitering. About three-fourths of homeless people reported that they did not know of a safe and legal place to sleep. According to Rankin, even when ordinances make such activities civil violations rather than criminal acts, it jeopardizes the lives of those who are homeless.

"The moment I give that [citation or court summons] to you as a person experiencing homelessness, the moment you will be required to follow through with it, the chances that you will are nil," Rankin says. If warrants and further legal troubles follow a failure to appear or respond, then the civil violations become "criminal violations in waiting." Further, defendants aren't entitled to counsel for civil violations and, after a failure to appear, a defendant loses the ability to contest the underlying infraction.

"Bias and prejudice and discrimination that is leveled at visible poverty is the least understood discrimination… what is always astonishing to me is just how comfortable people can be vocalizing their disdain for homeless people, who are really the visibly poor people," Rankin says. "What I expect our policy briefs are going to show is our complicity to create the environment where homelessness can thrive. These criminalization laws are motivated by our desire to remove it from the public space, but that motivation ensures their inability to remove themselves from homelessness."

Finding Solutions

The first step in helping a new client is trying to organize all the legal issues, Mace says. A person without an address may not learn of a court date or respond to a summons. For criminal matters, a bench

warrant usually follows, and with it, the risk of jail. For child support matters, the court usually imputes income and sets support obligations far beyond what the person can pay, which could lead to wage garnishment. In each of these instances, a court-appointed lawyer cannot provide enough legal support to resolve the issues. For criminal defendants, most public defense contracts do not provide attorneys when a case is in warrant status, leaving the defendant to quash the warrant. In child support contempt hearings, the court-provided attorney advocates only on the topic of whether nonpayment has been willful, not whether the level of support is correct.

"With child support cases, they get a public defender only to help with the contempt of court where there could be jail, but not to help them with a modification of support," Mace says. "That is the piece that is really missing."

Quashing bench warrants and adjusting child support can have the most impact on a person's situation. Though court-appointed attorneys can address contempt and the failure to pay child support, a large part of Open Door Legal Services' work is modifying support obligations. Before leading Open Door Legal Services, Mace worked as a Snohomish County prosecutor, enforcing child support orders. He says that he has rarely seen a parent unwilling to pay child support who has the means. Because of that, Mace and his office help clients "not from the perspective of dodging child support responsibilities, but to arrange their legal situation so they can handle it, so they can participate."

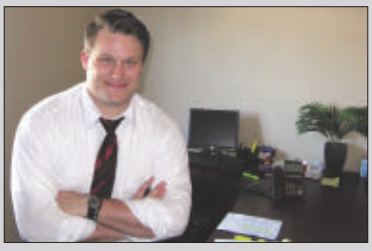
If an attorney can address back support and modify the monthly obligation to something manageable, it is more likely to be paid. Because owed child support can cause some disability benefits to be garnished, modifying the orders can have a big impact on a homeless person's ability to survive, Mace says.

"Take a person receiving Social Security Disability Insurance because they are disabled and cannot work — those benefits are considered income replacement and therefore eligible to be garnished. They are garnished at 50 percent (the maximum allowed). Then, if they are in subsidized housing, they are expected to pay a third of their income. That leaves maybe $100 to live on for a month," Mace says. "Imagine doing that for the rest of your life."

Quashing bench warrants is also a critical service. A warrant could mean time in jail, and in the case of misdemeanor matters, Mace has seen clients spend more days in jail waiting to clear up a warrant than a prosecutor seeks as part of a plea offer. For clients who are engaged in drug or alcohol treatment, time in jail because of an active warrant can put the recovery at risk. "They get sober, or they get here in the mission, but if they get picked up on a warrant, they lose their place in the program," Mace says. "Our goal is to minimize the jail time."

Open Door Legal Services rarely files a notice of appearance or files briefs or motions to help its clients quash warrants. Instead, the attorneys work with the clients to gather letters from treatment providers, case managers, and others to show the progress a client has made. The lawyers also work with their clients to help them present their case and empower them to navigate the courts and government agencies themselves.

"The things clients struggle with most is in telling their story ... we help them prioritize (their strategy to unravel their legal issues) and then express that situation to the court," Mace says. "A huge part of our job is just storytelling and telling the judge about our client and progress ... we focus on a positive bias. That's the advocacy. That's the lawyering." **NWL**



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MIND THE BACK DOOR

Protecting Client Information from Cyber Threats

BY SUZANNE SKINNER AND DAVID MATTHEWS

Here's a nightmare. Going through your work emails, you notice a confirmation from your bank of a six-figure cash transfer from your client trust account. Your bookkeeper knows nothing about it. You panic. A cybersecurity specialist eventually discovers that your bookkeeper clicked on a link that allowed a computer virus to copy account numbers and passwords as she typed them — giving hackers direct access to the accounts.

This nightmare became reality for a Toronto law firm last December.[1] That attack was not unique. Cyberattackers increasingly target law firms.

The Exploding Problem of Data Breaches

Why? Press attention on large-scale cyberattacks has prompted corporations to beef up their cybersecurity. Hackers, looking for softer targets, recognize that corporations' law firms store massive amounts of confidential and valuable data — from intellectual property to business secrets to personally identifiable information — making them a virtual back door to their clients' data and funds, as well as the firm's. Moreover, law firms aggregate the sensitive information of many corporate clients, making them "one-stop shopping" for hackers. And some law firms are still storing information on a single directory, making mass theft easy. Law firms have rarely gone public about attacks — for business and ethical reasons — and without much press coverage of the threat, too many in the profession are ignorant and vulnerable.

The threats are real and frightening.

Chinese cybercriminals infiltrated the relatively soft target of seven major Canadian law firms to attempt to derail a corporate acquisition by destroying data and stealing sensitive client information.[2] More commonly, law firms face "advanced persistent threats": attacks that slip by a firm's standard firewalls, focus on specific targets, and lurk undetected while collecting intellectual property and other data. Mandiant, a prominent security consulting firm, estimates that 10 percent of its recent investigations of "advanced persistent threats" occurred at law firms.[3]

Data leaks, whether intentional or negligent, are another threat. A data leak by a Seattle law firm grabbed the head-

lines recently when a firm employee mailed a confidential database of 7,403 Seattle special education students to a student's guardian — likely violating federal law and the firm's ethical duties. The Seattle School District fired the law firm and the U.S. Department of Education is investigating.[4]

Data leaks also occur from sloppy security practices, such as lost mobile phones, misplaced thumb drives, and stolen laptops. Lawyers often use their phones to access hosted databases, like Dropbox, or their employers' systems. One lost cellphone in the wrong hands can create havoc. The International Legal Technology Association's 2014 survey identified control of personal and mobile devices as a top, and difficult, security concern.[5]

The ABA's Tepid Response

The rising problem of cyber breaches prompted the American Bar Association (ABA) to issue Resolution 109 in August 2014 to encourage firms and their clients to "develop, implement, and maintain an appropriate cybersecurity program *that complies with applicable legal and ethical obligations*, and *is tailored to the nature and scope of the organization, and the data and systems to be protected*."[6] The Resolution offers high-level direction as to the essential components of an appropriate cybersecurity plan, namely:

1. Governance by boards of directors and/or senior management.
2. Development of security strategies, policies, and procedures.
3. Creation of inventories of digital assets and selection of security controls.
4. Determination of technical configuration settings and performance of annual audits.
5. Delivery of training.[7]

The Resolution also stresses that cybersecurity plans must be updated to respond to ever-morphing threats, but offers little advice as to what cybersecurity standards are appropriate for law firms. The reason is understandable. While certainly both general and specialized industry standards exist, from the International Organization of Standards 2700 series to specific standards for the electrical grid and payment card systems, the scale and expense of these standards are not easily adapted to the cybersecurity needs of a large law firm, let alone a smaller firm or a solo practitioner.[8]

ATTORNEYS ARE ETHICALLY BOUND TO UNDERSTAND THE RISKS TECHNOLOGY POSES TO CLIENT CONFIDENCES AND TO REASONABLY PROTECT THEM.

Nevertheless, the responsibility to craft an appropriate cybersecurity program is unavoidable. Any attorney who uses technology to practice law, as we almost all do, is now ethically obliged to understand cybersecurity to reasonably ensure that attorney-client and other confidential information is insulated from infiltration or loss.

Ethical Duty to Provide Cybersecurity

Back in 1999, when lawyers were tethered to desktop computers and cellphones were not "smart," the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 99-413, advising lawyers had a reasonable expectation of privacy in unencrypted emails. The Committee could not foresee the proliferation of smart devices transmitting emails via Wi-Fi hot spots. So in 2014, the Standing Committee amended the comments to Model Code of Professional Responsibility (MCPR) (Rules 1.1, Competence, and 1.6, Confidentiality) to tie those ethical duties to how a lawyer practices law in the virtual world.

Resolution 105 A, Comment [8] to MCPR 1.1 on Maintaining Competence requires, as part of an attorney's duty to "keep abreast of changes in the law and its practice," to understand "the benefits and risks associated with relevant technology" (ABA Model Rule 1.1 Comment 8 (2012)). Competence is closely linked to an attorney's duty to maintain confidentiality. MPRC 1.6(c) instructs lawyers "to make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client."

Comment [18] takes a stab at enumerating factors to determine the "reasonableness" of potential technological protections including "the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use)."[9]

The WSBA has not adopted the MPRC changes but similarly linked competence with the duty of confidentiality in two opinions pertaining to cyber-responsibility. WSBA Formal Advisory Opinion 2215 requires an attorney using cloud computing to ensure that confidentiality protections meet a reasonable standard of care. Formal Advisory Opinion 2216 cautiously grounds in the twin duties of competence and confidentiality in a lawyer's handling of metadata, the hidden data in a transmitted document that could contain client secrets. For lawyers overwhelmed by emerging technological responsibilities, the WSBA opines that the duty of competence means acquiring specialized assistance to "ensure that confidential information reflected in metadata is not inadvertently disclosed."[10]

Best Practices

Given that every attorney using technology is ethically obliged to have or procure enough technological competence to protect client data, what reasonable cybersecurity measures are required? The industry standards for cybersecurity storage and use of data are neither reasonable in scale nor scope for most lawyers given foreseeable threats. Best practices, appropriately scaled, are the only safe and reasonable course to achieve the three key goals of a cybersecurity program:

- Protecting confidential information from intentional or inadvertent disclosure.
- Protecting the accuracy and completeness of information from corruption or loss.
- Ensuring that the information is reli-

ably available when needed.[11]

As discussed in the ABA's *Cybersecurity Handbook*, these cybersecurity goals can be met if a firm implements the flexible best practices program set forth below.

1. Evaluate the firm's current data and risk profile. Determine where data is stored (including mobile devices) and the nature of the data. Determine if regulatory, ethical, and contractual requirements apply to some data classes, which require heightened security measures.
2. Determine whether your firm's information technology support can provide cybersecurity advice and monitoring. If not, hire an outside expert.
3. Establish a cybersecurity and information governance committee.
4. Define and implement a standardized risk-based security program. Perform regular audits.
5. Establish requirements for data security in software installations, data outsourcing, cloud storage, and vendor contracts.
6. Identify all mobile and portable devices that contain and transmit firm data. Develop controls governing the use of those devices, encryption of data, and access protocols to the firm network.
7. Establish protocols for monitoring potential threats and audit regularly.
8. Develop an incident response plan that addresses when to notify clients, government authorities, or third parties impacted by data breaches.
9. Train employees on cybersecurity protocols.

Conclusion

The advent of technology has been a boon to the practice of law, but not without risks. Attorneys are ethically bound to understand the risks technology poses to client confidences and to reasonably protect them. Reasonable protection means employing best practices appropriate to the sensitivity of the data involved, scale, and regulatory requirements, among other considerations. Crafting appropriate best practices is and will continue to be an ongoing challenge to the practice of law that will require closer work between information security professionals and lawyers. **NWL**

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A FUNNY THING HAPPENED on the way to the BAR EXAM

The Seventh Time Is the Charm for This Test-Taker

BY CHRISTAL OLIVIA WOOD

As a new crop of legal beagles prepares for the bar exam this month, I reflect on my own trials and tribulations. For me, the seventh time was the charm. I probably know more about taking the bar exam than anyone I know. I've concluded that the WSBA bar exam (and perhaps testing in general) is 10 percent cognitive and 90 percent psychological. My obstacles were all in my head. On my journey to passing the bar exam, I learned lessons that not just every test-taker should know, but that every lawyer should know, too.

Pass or fail, I don't know a single colleague who had an easy or enjoyable time sitting for the bar exam. In fact, I submit that "examination" is a misnomer. The test should be called a "hazing" or perhaps even an "initiation." During my first few attempts, every molecule in my body rejected the notion that I must be a sheep and move with the herd. When speaking of the bar exam, professors and classmates alike advised to regurgitate — a concept which I found deplorable. *I am not a parakeet! I am a lawyer!* I thought to myself.

When the major bar prep companies courted my class during our third year in law school, I attended a free BarBri® preview session. The subject was contracts. The sample worksheet distributed during the class looked to me like MadLibs™: "A contract exists when there is _____ (noun), and _____ (noun), and _____ (noun)." I slipped out before the program ended.

Hordes of Rigos® test-takers appeared wearing grey t-shirts that read "I'm Here to Pass." I mused at how one might improve upon them with a

Sharpie: "I'm Here to Pass *Out*" or "I'm Here To Pass *Gas*."

Aside from my esoteric nature, another problem for me was that I had a life. The structure of most bar prep models, much like law school, assumes that its attendees have no life. But, for better or worse, I did. I'm a single mom and a passionate activist. During law school, I managed to keep things afloat and scrape by with loans, grants, some work-study, and student housing. All that vanished after graduation. My daughter and I found our lives turned upside down, resorting to couch-surfing at night. Not being licensed, I was unable to find steady work.

As time went on, my daughter and I got more desperate. I applied for Temporary Assistance for Needy Families (TANF), which meant full-time participation in the Washington WorkFirst program as a condition of receiving aid. Thirty-five hours per week of "job search activities" at the equivalent of $2/hour, which the State would later recoup out of future child support. The ostensible goal is to help families stabilize their lives, but the opposite resulted. The program was too restrictive and unduly bureaucratic. I had to appeal up the bureaucratic ladder to get permission to attend bar prep classes or to study, and sometimes they said no. As far as administrators were concerned, I had "maxed out" my education.

The rhetoric which justifies Washington's WorkFirst program presumes its participants are unskilled and deficient. After failing the first few times, I started to believe it. But no, I'm not stupid. I earned a J.D. from a top-tier law school, and I've always been an overachiever — there are few tests that I haven't passed. And no, I didn't fail on account of laziness. I worked as hard as anyone, if not harder than most. I studied bar prep books; I attended classes; I wrote my own outlines; I tried other people's outlines; I took 100 practice exams; I made shoeboxes full of flash cards; I printed and outlined entire RCW sections; I created PowerPoint presentations that worked like a game of *Jeopardy*; I even tried a board game called Passing the Bar. I subjected myself to every manner of brutality associated with brute-force review.

The test should be called a "hazing" or perhaps even an "initiation." During my first few attempts, every molecule in my body rejected the notion that I must be a sheep and move with the herd.

Each approach had its merit, but it took me too long to realize the value of the advice given to me by a colleague: "If you work past a certain point, you start working in reverse." For me, I worked so hard I not only went in reverse, I began doing circles around myself. I would spend three-and-a-half years studying for, taking, and failing the bar exam — longer than it took me to graduate from law school.

During this time, the bar exam loomed over me, chasing me like that little personal raincloud in anti-depressant commercials. The more autoreply rejections that clogged my email inbox, the more job applications and letters of interest that were rejected, the greater my personal life complicated, the more times that I failed the exam, the deeper I sank into a psychological hell.

Time and again, I failed to adapt to that ridiculous alter-world where 24 hypothetical people walk into your imaginary office over the course of two-and-a-half days, with an assortment of oddball problems all over the map, and you have only 20 minutes to analyze the issues and produce written advice. During law school, I never did IRAC very well — as an expressive, inductive writer, legal writing was my weakest subject. Time routinely expired before I completed a set of questions, and I failed more than once because of it. (As a practicing lawyer, I now continue to exceed the time allotted for my consultations, and I've decided that's OK.) I also had the worst luck in the world. I almost had a nervous breakdown at one sitting when I attempted the exam on my computer and my laptop's battery died on the first day.

The structure of most bar prep models, much like law school, assumes that its attendees have no life. But, for better or worse, I did. I'm a single mom and a passionate activist.

I attended a post-law school mixer, to network, and to keep my morale up. I met a judge and told him about my bar exam troubles. He put his arm on my shoulder, looked into my eyes, and said, "It's just a basic skills test, that's all." I'm sure his comment was well-intended, but it didn't make me feel better. Plus, by that point, I disagreed completely.

The bar exam is not a basic skills test. The bar exam is the quintessential high-stakes test. With all its pomp and circumstance, the exam is a sacramental rite of passage. Of all the things it may be, however, the most important is what it is not. The bar examination is *not* an IQ test, and it's absolutely not a test to determine whether you're a good lawyer or not. Nowhere in the exam is there a portion that tests virtue, dedication, integrity, compassion, civility, humility, oratory, or bedside manner. If it did, I know some lawyers who would still be taking it, and I might have passed much sooner.

By exam number seven, I felt so defeated that I gave up my principles. Only then was I capable of doing essentially what everyone had been saying from the beginning: ignore the details, ignore the nuances, regurgitate. Well, I threw up as best as I could all over those pages. I tried not to think of the taste in my mouth, and I just prayed it was over. And finally it was. But then again, it almost wasn't.

Attorneys don't specialize, but if the profession allowed, my business

card would say that I specialize in "Snowballs in Hell." On the seventh go-around, I came up within the appeal range of passing. I prevailed, but not until after spending a lengthy and positively traumatic deliberation in the WSBA office lobby over which of my answers could get that extra point in front of new eyes. To my great relief, somewhere along the line, somebody decided the practice of law was better with me in it than outside of it.

Shortly after I passed the exam, almost as if to mock me, the WSBA switched from an essay format to administering the Multistate Bar Exam, which includes multiple-choice questions. Honestly, I'm not sure the difference would have mattered that much for me. Although multiple-choice saves writing time, the devil can be in the subtle nuances between choices. As a result, some will continue to do better and some worse, depending on the person.

Who knows where my spiral might have led if I were still trying to pass the bar exam. And who knows where I would be if it weren't for good people. Thank goodness for friends, family, and fellow colleagues. Thank goodness for Andy Benjamin, and his generous compassionate counsel. I appreciate my licensed brethren, who rolled their eyes a bit but still vouched for me, again and again. Thank goodness for Steve Carroll at the WSBA front desk who always made me feel better about coming back around with another application. Thank you to random people on the bus, always willing to lend an ear, or share advice, or a particularly funny or disastrous test experience. Whenever I thought I would just drop it, give up, and move on, there was someone to say some equivalent of "*Ne illegitimi carborundum*!"

The Facebook post in which I announced my victory received about 75 "Likes." Yet I found myself strangely numb. On the way to bar certification, my life had become a mess. I had taken the WorkFirst issue to trial. The suicide of someone significant had shaken me. A good bit of time had passed. I was almost embarrassed at how much I had let this process dominate me.

Now, almost five years later, I work independently, practicing in one of the poorest counties in the state, playing the female Atticus Finch I had always wanted to become. My clients don't ask or care how many times I took the bar exam. They care that I did pass it, and that I am committed to justice. I'm still bitter about the whole thing, but at the same time I can't say the experience didn't change me for the better, as challenges often do.

All bar-takers deserve congratulations. Those who pass the bar the first time, however, perhaps miss a very useful lesson in emotional intelligence: As a lawyer, you better get used to losing, because you're going to lose...a lot. Well, probably. On any given day, in every adversarial court, one side wins and one side loses. Often, it will have nothing to do with how smart the attorneys are, or how hard everyone tried, or how well-intentioned the parties were. While there are certainly bad lawyers, losing doesn't mean you're one of them. And winning doesn't necessarily mean you're a good lawyer. It is what it is, and you can't fear trying again — 700 times, if you must! Give up? *Ne illegitimi carborundum!* **NWL**

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A BITTER HISTORY

Alien Land Laws and Restrictive Covenants in Washington State

BY DANIELLE FLATT

In 1948, Mrs. Haruye Masaoka received a plot of land from four of her sons so their widowed mother could build a home in her old age. Her children were Nisei — a term that literally means "second generation," but was used to designate children born to Japanese immigrants in a new country. Because of their Japanese origins, the Masaoka family was interned at the Manzanar War Relocation Camp in California during World War II. Despite the internment, five of the Masaoka brothers volunteered for combat service. One was killed in action, two others were wounded, and the war left one completely disabled. Collectively, the five brothers received 30 individual decorations and awards, and the four who survived were honorably discharged. But when they purchased this land and presented it to their mother — using money they earned from wartime military service — the State of California escheated the land because she was "an alien ineligible for citizenship."

How could Mrs. Masaoka be deprived of the ability to own land, to receive a gift borne from the sacrifices of her five sons? The answer: alien land laws.

In the 19th century, American businesses brought Chinese immigrants to the United States as a source of cheap labor to aid with the booming railroad and mining industries, and to work on southern sugar plantations. But widespread fear that Chinese immigrants might usurp land and jobs from white Americans took hold during the late 19th century. In response, Congress and state legislatures passed laws that forbade the entry into the United States of all Chinese

laborers. During and after World War II, most of these laws were repealed or deemed by courts as unconstitutional. Washington state, however, was the last in the Union with alien land laws on the books.

During the 1960s, members of the Washington State Committee for the Repeal of the Alien Land Law would share and retell the story of the Masaoka family in their campaign speeches, juxtaposing the intense patriotism and wartime sacrifice, with the unjust social and legal exclusion that Japanese-American families experienced because of the legislation.

Origins of Alien Land Laws

In 1853, the Washington Territory was carved out from the Oregon Territory. Isaac I. Stevens, the first governor of the Washington Territory, took the initial steps toward statehood. He negotiated treaties with the Native American tribes in Washington. These treaties were, arguably, Washington's first "land laws," as their primary goal was relocating tribes to reservations and make their land available for white settlement. Still reeling from the Indian Wars of the 1850s, the territorial government aimed to spur white immigration and homestead settlements, and solidify the territory as "white man's land."

In 1864, industries such as fishing and forestry dominated the Washington Territory's local economy. These industries needed capital investment to grow, and to develop other industries such as mining and saw mills, all of which required expensive machinery. In addition, the territory needed additional funds and labor to build a stronger infrastructure of railroads to facilitate its connection to the rest of the nation it hoped to join. As a result, Washington passed legislation that same year that actually *allowed* noncitizens to own land "in like manner and with like effect as if such alien were a native citizen" of the Territory or the United States. The law enabled Chinese immigrant workers to supply much of the needed labor in the agriculture, mining, and salmon canning industries. The Territory transformed into a vibrant frontier settlement with farmers, merchants, budding cities, and a population that grew from 11,000 to 23,000 in just a decade.

In 1889, when Washington became a state, Article Two, Section 33 of the Washington Constitution read, "The Ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state ..."

But anti-immigrant sentiment across the nation was also on the rise. During the Reconstruction Era, President Ulysses S. Grant signed the Naturalization Act of 1870, which extended citizenship rights to "aliens of African nativity and to persons of African descent," but excluded other ethnic groups. The land laws relied on cryptic language excluding "aliens ineligible for citizenship" to prohibit primarily Chinese and Japanese immigrants from becoming landowners without explicitly naming any racial group.

In 1886, the Washington Territory passed the first restrictive alien land law, barring "aliens ineligible for citizenship" from land ownership. In 1889, when Washington became a state, Article Two, Section 33 of the Washington Constitution read, "The Ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state" and that "all conveyances of lands hereafter made to any alien directly, or in trust for such alien shall be void." Because Asian immigrants were not eligible for naturalization, they could not hold property.

Alien Land Laws on the Rise

In 1882, Congress passed the Chinese Exclusion Act, which effectively ended Chinese immigration to the United States. But Washington state employers still demanded cheap labor. Japanese immigrants were encouraged to settle in the Western United States to replace the Chinese workers in the roles from which they were now excluded. Japanese immigrated to the United States with their families, and pursued agricultural labor to establish community ties and settle neighborhoods. Many started as laborers, but managed to save enough money to later become farmers themselves, leasing their own land plots and selling their own crops. The Japanese, however, were forced to work around the alien land laws, which prohibited their ownership of land outright, so most acquired land by contract, share, or lease.

World War I and the region's melting pot of social, cultural, and ethnic diversity threw Washington state into a fury of social tension and agitation from 1914 through 1924. The alliance between the United States and Japan during World War I briefly quelled anti-immigrant sentiment, but after the war, the rise of communism in Russia, and military advances of Imperial Japan triggered isolationist fears and violence towards "non-Americans," such as "blacks, Jews, and other ethnic groups."

In 1921, the Washington State Legislature passed its first alien land law since the state's birth. The law was intended to deny Japanese immigrant farmers the right to lease or rent land. Japanese farmers scrambled to keep their croplands; some abandoned their leases and worked as contract farmers. Those who could afford it purchased the land they had been farming in the names of their American born children. These "loopholes," however, irritated white supremacist sponsors of the state's discriminatory laws. In 1923, Washington's Legislature closed many loopholes and

deemed that land put in the name of a second generation immigrant would be considered held in trust for the alien-parent. Some families were able to put the children's land in the trust of white lawyers and sympathizers, but many families' land escheated to the State.

Legal Battles

When the 1921 land law took effect, Frank Terrace, a white man, openly declared he would lease some of his land to a Japanese family because he believed the law improperly restricted land ownership, unfairly prohibited aliens from pursuing common occupations, and was unconstitutional. He sued the state of Washington to enjoin enforcement of the law, and the litigation went before the U.S. Supreme Court, where Terrace ultimately lost (*Terrace v. Thompson*, 263 U.S. 197 (1923)). But two years after the U.S. Supreme Court's decision, the federal Immigration Act of 1924 effectively ended Japanese immigration. In 1937, however, Washington's Legislature revived earlier anti-immigrant sentiment by clarifying that the definition of "alien" meant "non-citizens of the United States ... who are ineligible to citizenship by the United States." In doing so, the Legislature essentially announced what had been implicit before: Asian immigrants already in the United States could not own or control land.

> In 1921, the Washington State Legislature passed its first alien land law since the state's birth. The law was intended to deny Japanese immigrant farmers the right to lease or rent land. Japanese farmers scrambled to keep their croplands; some abandoned their leases ...

Repealing Alien Land Laws

After World War II, additional challenges to alien land laws were mounted. In what amounted to a significant shift in world politics and national sentiment, the U.S. Supreme Court struck down alien land laws, and upheld the rights of citizens to hold property despite their relationship with alien parents. (See, e.g., *Oyama v. California*, 332 U.S. 633 (1948).) Lower courts honored the Supreme Court's announcement and later deemed alien land laws infringed on aliens' rights to equal protection under the law. Although they were

deemed unconstitutional, Washington's anti-immigrant laws remained on its books through the 1960s. Several voter initiatives that were intended to repeal alien land laws were placed on the ballots between 1960 and 1966. Proponents of the repeal lobbied voters by traveling the state, delivering speeches, and recounting stories such as the one about the Masaoka family. Each initiative failed, however, until 1966, when voters finally approved the repeal.

This was by no means the end of anti-immigrant sentiment in Washington, which still lingers to this day. Restrictive deed covenants, which prohibited entire classes of people from the purchase, lease, or occupation of a piece of property, were an insidious legal impediment to property ownership. The National Association of Real Estate Boards' Code of Ethics cautioned that a realtor "should never be instrumental in introducing into a neighborhood a character of property or occupancy, members of any race or nationality, or any individuals whose presence will clearly be detrimental to property values in that neighborhood." Though the federal Fair Housing Act of 1968 and Washington's Law Against Discrimination deemed these practices unlawful, title companies still uncover covenants in deeds that restrict the ownership rights of immigrant and minority citizens.

As attorneys, we are charged with the affirmative obligation to protect and uphold state and federal laws, including those that prohibit discriminatory practices. But this year, the 125th Anniversary of the Washington State Bar Association, it is important to look closely at the stains that tarnish our law books so that we may avoid them in the future. China's emergence as a formidable economy in the wake of the global economic disaster that started in 2008 is giving rise to new fears over threats posed to the United States' well-being. Modern forms of alien land laws are emerging, and the struggle for property ownership that dominated Washington's early settlement is repeating itself today against the backdrop created by the digital age and the age of information. Net neutrality, economic inequality, data discrimination — these are just some of the terms attorneys must learn if we are to avoid repeating the mistakes we made in the past. **NWL**

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CLASS ACTION SETTLEMENTS HAVE CONSEQUENCES

From Florida to the State of Washington

BY DENNIS J. WALL

Most people agree to pay for force-placed insurance. They just may not realize it.

When we borrow money, we almost always give our lenders collateral to back the loan. We also agree that we will buy insurance to protect the collateral if the collateral is particularly big, such as our house in a mortgage loan. In the event that we do not make the loan payments, or if we do not keep insurance in place to protect the collateral, we also agree that our lenders can place insurance to protect the collateral and force us, the borrowers, to pay for it.

But we generally do not agree to pay the additional price of kickbacks and other secret charges which insurance companies allegedly pay to banks in exchange for a place on the lenders' approved list of insurance companies offering force-placed insurance.

In the case of *Keller v. Wells Fargo Bank, N.A.*, 2014 WL 6684895 (W.D. Wash. Nov. 25, 2014), the U.S. District Court for the Western District of Washington refused to immediately dismiss a lawsuit filed by homeowners as a class action in Washington state over alleged practices of lenders and their agents in force-placing insurance.

The Court instead provisionally granted the named plaintiff-homeowner's motion to temporarily enjoin the defendants' foreclosure sale of their home. The federal judge in the Western District of Washington ordered a temporary injunction subject to proof from the plaintiffs that they timely "opted out" of a Florida class action settlement which seemed to involve the same issues of alleged lender force-placed insurance practices:

> Accordingly, as set forth below, the court will grant limited injunctive relief to allow plaintiffs an opportunity to come forward with evidence or argument that demonstrates that they opted out of the [Florida] settlement or that their claims are somehow not covered by the settlement. (*Keller v. Wells Fargo Bank, N.A.*, 2014 WL 6684895 *2-*3 (W.D. Wash. November 25, 2014)).

The Florida class action settlement was written and reached in a case called *Fladell*.

Two earlier decisions in other districts have come to light involving the same defendants and the same Florida class action settlement. One such decision is in *Ali v. Wells Fargo Bank, N.A.*, 2014 WL 819385 (W.D. Okla. March 3, 2014). The judge in Oklahoma took a different approach to the same issue which faced the federal judge in Washington state.

The federal court in Oklahoma found that "the alleged conduct of Wells Fargo on which Plaintiff bases her claims [in the Oklahoma case] constitutes the same factual predicate for the class claims in *Fladell*. A settlement in *Fladell* will likely prevent class members from subsequently asserting claims relying upon a legal theory or theories different from that relied upon in the class action complaint, but depending upon the same factual predicate." *Ali v. Wells Fargo Bank, N.A.*, 2014 WL 819385 *2 (W.D. Okla. March 3, 2014). Since the Oklahoma plaintiff's case may have been resolved without her participation by the pending settlement in the Florida case, said the Oklahoma judge, "[u]nder these circumstances, the Court finds a stay of this case is appropriate." *Ali v. Wells Fargo Bank, N.A.*, 2014 WL 819385 *2 (W.D. Okla. March 3, 2014).

Since the cited decision was made in Oklahoma, the federal court in Florida has approved the class action settlement in *Fladell*. Although the Oklahoma parties were ordered to report to the Oklahoma judge on the results of the Florida class action settlement in *Fladell*, PACER, the portal for Public Access to Court Electronic Records which includes the Oklahoma court's electronic docket, shows that nothing was filed by the clerk since the date of these Orders on March 3, 2014.

The oldest case found in which *Fladell* has been urged as a bar to lender force-placed insurance claims also came before the settlement in Florida had been reduced to a written agreement, let alone before a federal court in Florida approved the *Fladell* settlement. The earliest such decision was rendered by a federal court in Califor-

nia immediately after settlement negotiations began in Florida in *Fladell*.

"On February 3, 2014 the parties in *Fladell* reached a settlement in principle," anticipating that a motion for preliminary approval of their class action settlement would be filed in March. On Feb. *19*, 2014, a Federal Court *stayed* an alleged LFPI class action involving California homeowners. The ground for the California court's order was that a settlement in Florida in *Fladell* might preclude the LFPI class action alleged in the complaint which was filed in California in October 2013. *Ursomano v. Wells Fargo Bank, N.A.*, 2014 WL 644340 *1-*2 (N.D. Cal. Feb.19, 2014). (Emphasis added.)

In sum, the approach of the Washington court is the best-reasoned decision of the three cases discussed here on the same issue. The federal judge's ruling in Washington bears emphasis and repetition alike. That ruling allows the plaintiffs in Washington "an opportunity to come forward with *evidence or argument* that demonstrates *that they opted out of the [Florida] settlement or that their claims are somehow not covered by the settlement*." (Emphasis added.)

There is really only one arguably better-reasoned approach than this. That approach would be to make the *defendants* raising the issue of claim preclusion come forward with evidence or argument that demonstrates that the Washington state plaintiffs' alleged claims and classes are somehow covered by the settlement of *Fladell* in Florida. **NWL**

Dennis Wall *is working on a book on lender force-placed insurance practices, scheduled for publication by the American Bar Association in spring 2015. He is an experienced litigator and expert witness, an AV-rated attorney, and an elected member of the American Law Institute. Contact him at djw@dennisjwall.com or 407-699-1060.*

Does Law Need Investors?

BY PATRICK PALACE

In this new column, FUTURE OF THE PROFESSION *continues the discussion initiated at the WSBA's Mission Possible: Choose the Future of Your Practice forum and will appear in each issue throughout the year. Your participation in the conversation is welcome and encouraged.*

It is easy to find successful "American dream" companies that arose from a bright idea and grew to revolutionize an industry. In the Northwest alone, we have companies like Starbucks, Amazon, and Microsoft, to name a few who have redefined an industry and changed what we as consumers need, as well as where and how we buy their products and services.

Now identify a law firm that has done the same. In fact, name any firm in history that did or does practice law that has ever revolutionized the industry, grown tenfold overnight, or come up with innovation that changed the way Americans consume law. Sadly, I can't think of any, and it makes me ask, "Why is that?"

Maybe we just aren't innovators? But based on the growing body of case law and ever-expanding theories of law coming before the courts, I'd say we are one of the more innovative professions.

Maybe it's the market? Lots of lawyers are having a hard time making profits and growing their firms. Competition is tough, right? Well, if that were the case, then we would be providing legal services to the 85 percent of low-income and the majority of the middle-income (or moderate-means) consumers of law who are currently ignored. We know that these huge segments of our population are grossly underserved to the point of near abandonment. In fact, many argue that this "latent" market is worth billions nationwide. Despite this great need for lawyers, most Americans make do without any legal services because they cannot afford a lawyer and lawyers won't take their cases and can't afford to offer them legal services. If anything, the market is ripe with (lost) opportunity.

So what are we missing? When will we see our game-changer? I think it boils down to two key missing ingredients: outside investment and interprofessional collaboration.

Angels Wanted

No startup disrupts an industry without investors; without money to grow its new idea and backers to make it succeed. For example, Facebook was created in February 2004, had its first angel investor of $500k a few months later and then in April 2005, Accel Partners agreed to make a $12.7 million venture capital investment in Facebook. The rest is history.

So why isn't this kind of innovation and growth happening in law? Why aren't there investors and venture capitalists offering law firms money to capture this latent market worth billions?

The short answer is because investors want a part of the profits. The current regulation of our profession prohibits non-lawyers from sharing our profits. RPC 5.4 (a) says that "a lawyer or law firm shall not share legal fees with a nonlawyer" and 5.4 (b) says that "A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law."

No shared profits and no partnerships means no outside investment opportunities. No partnerships also means we cannot create collaborative law firms with other professions who could bring a wealth of knowledge, technology, business opportunity, and a litany of specialty expertise that lawyers simply do not have and probably never will.

Open the Door

Without an infusion of real money, real investment into the practice of law, we remain static, even shrinking in value against a growing population with ever-expanding legal needs. We are stagnating because of our inability to create, afford, access, and utilize technology and all that comes with it. Without access to greater resources, we cannot offer higher-quality legal services cheaper and faster to those who need our help. Indeed, today we are becoming increasingly isolated from the growing, expanding, and changing business world that whirls around us. And without partners from that world, we will continue in vain to run our firms of yesterday, alone and in relative isolation.

If, however, we were to open our doors to innovation, technology, partnerships, and the investment money that comes with it, then perhaps we can begin accessing our real potential. Perhaps then we too can be innovative. Perhaps then our firms can grow tenfold and revolutionize the way law is delivered and consumed. And perhaps then we can truly fulfill our promise of justice for all. **NWL**

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BY CHARITY ANASTASIO

Sometimes I see other lawyers with an email address through Gmail, Yahoo, or another free provider. Is it okay for lawyers to use these email services for business? Should I be concerned for my client data if I send it to them?

I see free emails frequently, too. Chalk it up to the days of old when free email accounts were new and the dangers of sending an email were utterly unheard of in mainstream business. Back then, if you had an email account at all — AOL, anyone? — you were forward-thinking and tech-savvy.

But you have the right instincts here. We should not be using free accounts for our businesses any longer, considering branding and professionalism, if nothing else. (Hillary Clinton might agree.) Buying a web domain always comes with at least one email address at an affordable rate (maybe $120 a year). If a lawyer is really hooked on the backend infrastructure of Google, consider buying Google for Work at $50 per year and customizing the front end to be lawyername@lawfirmof....com. And encrypt emails! Security in and out of any email server is questionable, but a free email exemplifies the notion that email is the equivalent of a postcard.

My firm has told me I need to start doing "rainmaking activities," but they've given me no directions or specifics. I don't want to ask because I'm worried they will think I'm ignorant or not equipped to perform the task. Can you tell me what rainmaking means?

Rainmaking activities: that's talking up the firm and bringing in business. At many firms, it used to be the marketing staff's job and now it's everyone's job. If you detest all forms of self-promotion, this may seem like a daunting challenge. But there is another, more positive way to look at it. First, the best rainmaking is authentic. Share what you do and who you serve. Second, rehearsing and standardizing the message is not inauthentic. Learn the elevator speech like you are an actor who wants to give a sound, heartfelt performance. Good rainmaking always starts with asking, *What is the vision and mission of the firm*? From that, generate and tell a good, concise story, and make the right connections. Third, a marketing plan (or rainmaking plan) should include both online presence and in-person connections. It should spring organically from the work you do and the clients you have.

As to your firm's request and not wanting to appear in the dark, part of the reason may be because the firm isn't sure what it wants, hasn't done a business plan, and hasn't identified these key elements. Planning leads to success, so ask what the plan is. If there is no plan, consider volunteering to come up with a rough draft or start generating the discussions that will initiate a plan. Then tap us in the WSBA's Law Office Management Assistant Program (LOMAP), because we have a slew of excellent marketing books in the lending library and online resources. And frankly, if anyone would think you ignorant for asking a sound question like, "What rainmaking activities did you have in mind?" I take issue with them. Rainmaking could be anything from volunteering at a community food bank to doing presentations about your work, from getting new business cards to writing a blog.

Is there a danger with taking credit cards that feed into your lawyer trust account (an IOLTA)?

Yes. There is a danger of chargebacks that could negatively impact your IOLTA unless you have an agreement with your merchant account provider that they will take any chargebacks from your operations account instead. The issue is that chargebacks — or client challenges to credit card charges — are generally pulled from the account they went into automatically by almost all merchant account companies. The client can challenge any credit-card charge for up to 120 days. Say you have a client who pays an advance-fee deposit with a credit card, you do the work, bill, wait a reasonable time with no client objection, and then pay yourself. Months later, the client can decide that he didn't want to pay you after all and object through his credit card company. If you have a regular merchant, it pulls from your IOLTA. Best-case scenario, then, is that you need to replace the other clients' money that was just pulled out somehow. Worst-case scenario is that it results in insufficient funds and the financial institution contacts the WSBA to say the IOLTA is overdrawn. Still, credit cards are often a good idea and hope is not lost. Certain merchants will take a chargeback out of your operations account instead — and call you before they do so. Also, regular merchant accounts are fine for earned fees that go straight to the operations account.

CHARITY ANASTASIO, *practice management advisor in the WSBA Law Office Management Assistance Program, talks with lawyers about how to open a law office, run it better once it's up, and close it down when it's time. She answers your questions on practice management with practical advice and action steps that you can apply today. Send your questions to charitya@wsba.org.*

APP CORNER

Expensify

It's tax time again. Oh, how I love thee, tax time. Receipts and deductions and all this messy awful calculating. My Luddite small-business-owner mother taught me how to prepare my taxes and it was (need I admit this?) not the easiest system. Here is how I should have done it: Downloaded Expensify onto my phone and clicked a picture of every receipt right when I got it, made sure it was logged and categorized, then threw the bugger out. It does more, but just this would have saved oodles of time for me. You can attach notes about the expense to the receipt. You can categorize them as reimbursable, billable, or neither. Not all the categories match typical tax categories, which is a bit irritating, but the ones that aren't can be categorized as "other" and noted with the proper category. You can export results and manage your expenses online. It also has a trip plan organizer that lets you import your itinerary, gives you flight alerts, and auto-expenses certain things. The free version limits you to 11 receipts per month and limits the features. The pay version ($15) permits more receipts, time tracking, and invoicing. Not all the reviews are positive, but even a limited use may help you as it would have helped me.

Primer

Primer is a free Google app that gives you quick 3–5 minute lessons on different marketing techniques and how to analyze them. It is sleek, easy to use, and fun. If marketing ideas do not come to you naturally, or you want to have a quick tool on your phone that you can access while you are on the go, download Primer and give it a ride. The only downside I found is that the home screen is cumbersome to get back to and some of the most recent reviews are crying for an update. **NWL**

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Digital Self-Portraits

Investigations through Electronic Social Media

BY MARK J. FUCILE

I was recently involved in two cases that provided powerful illustrations of the role electronic social media can play in investigations today. In the first, a lawyer had obtained screen shots of a litigation opponent's publicly available social media pages that ran directly counter to the opponent's position in the pleadings and used them to devastating effect during the opponent's deposition. In the second, a jury consultant in a very compressed time period was able to assemble an extremely broad array of information about prospective jurors for use in *voir dire* — again, based solely on their public web and social media pages.

We know intuitively that concepts of privacy have been reshaped by electronic social media and, as a result, people from all walks of life now routinely post information about themselves in the digital public square that simply would not have been openly available a generation ago. Although these electronic self-portraits are, in appropriate circumstances, subject to formal discovery under CR 26(b)(1), the element of surprise that independent investigation affords — as was the case in the deposition I witnessed — can prove vital in making the most effective use of the information involved against an opponent or a witness. Similarly, although jurors provide basic background information about themselves during *voir dire*, the ability to independently investigate how a prospective juror sees him- or herself in an electronic self-portrait can provide crucial insights on whether or not to exercise a challenge.

Although investigations can yield critical information, they are also subject to important constraints. In this column, we'll explore those constraints that lawyers and those working with them must follow when searching through the Web and social media postings for opposing parties, witnesses, and jurors. In doing so, we'll look both at Washington and how these issues are being analyzed nationally. On this last point, all of the authorities mentioned are available on their respective national, state, or local bar association websites.

Opposing Parties

With opposing parties, the primary concern is RPC 4.2 — the "no contact" rule. RPC 4.2 broadly prohibits interactive communication — whether "real time" or delayed — with represented parties. It applies with equal measure to represented individuals and, under *Wright v. Group Health Hospital*, 103 Wn.2d 192, 691 P.2d 564 (1984), the "speaking agents" of represented entities.

The ethics opinions nationally that have examined this facet of investigations through social media focus on whether there is any "communication" via the particular electronic venue involved. New York State Bar Association Opinion 843 (2010) and Oregon State Bar Opinion 2005-164 (2005) are representative of the national authority and contain clear guidelines.

These opinions conclude that simply viewing publicly available web or social media pages does not trigger the "no contact" rule, because there is no communication. To illustrate this point, the Oregon opinion uses the example of buying a book written by a party opponent. By contrast, the opinions caution that interactive communication with a represented opponent through electronic social media will trigger the rule in the same way as contact by telephone or email.

Remedies for violations of the "no contact" rule range from regulatory discipline (see, e.g., *In re Haley*, 156 Wn.2d 324, 126 P.3d 1262 (2006)) to exclusion of any resulting evidence obtained (see, e.g., *Engstrom v. Goodman*, 166 Wn. App. 905, 271 P.3d 959 (2012) (striking improperly obtained declaration)) to disqualification (see generally *Jones v. Rabonco*, 2006 WL 2401270 (W.D. Wash. Aug. 18, 2006) (unpublished) (discussing disqualification as remedy in this context)). Moreover, these remedies are not mutually exclusive.

Witnesses

Assuming that a witness is not represented, the "no contact" rule does not apply. With witnesses, the question is often whether a lawyer or someone working with the lawyer can misrepresent their identity or purpose to gain access to online material hidden behind a "privacy wall." This, in turn, implicates RPC 4.1(a), which prohibits false statements of material fact to a third person, and RPC 8.4(c), which prohibits conduct involving dishonesty, fraud, deceit, or misrepresentation.

The ethics opinions nationally that have considered this facet of investigations through social media are uniform in holding that a lawyer cannot misrepresent his or her identity — sometimes referred to as "pretexting" — in seeking material behind a privacy wall. Opinions from the Philadelphia (2009-02 (2009)) and San Diego County (2011-2 (2011)) bars have been particularly influential on this point.

Ethics opinions vary nationally in their approach on two related questions.

Some, such as Kentucky (Ethics Opinion E-434 (2012)), Massachusetts (Ethics Opinion 2014-5 (2014)), New Hampshire (Advisory Opinion 2012-13/05 (2012)), and Pennsylvania (2014-300 (2014)), extend the prohibition on pretexting to non-lawyers working on behalf of the lawyer involved under state variants of RPCs 5.3, which deals with lawyer responsibility for non-lawyer assistants, and 8.4(a), which prohibits violating the professional rules through the acts of another person. Others, such as Oregon (Formal Opinion 2013-189 (2013)), allow lawyer supervision of otherwise lawful covert investigations that use deception if permitted by state variants of RPC 8.4 (as in Oregon).

Some, such as the Philadelphia and San Diego opinions noted above, reason that a lawyer cannot even make a "friend request" or the equivalent of a witness using the lawyer's own name without disclosing the purpose of the request, because to do otherwise would constitute a misrepresentation by omission. Others, such as New York City (Formal Opinion 2010-2 (2010)) and Oregon (Formal Opinion 2013-189 (2013)) conclude that a lawyer can use the lawyer's own name, reasoning that there is no inherent misrepresentation even if the purpose of the request is not disclosed.

The same range of remedies is generally available for improper conduct with a witness as noted earlier for "no contact" rule violations — but with an important twist. Misrepresentation in almost any setting typically increases the potential sanction because it touches on a core value: a lawyer's honesty.

Jurors

RPC 3.5(b) makes clear that a lawyer cannot communicate *ex parte* with either a prospective or selected juror during trial (unless otherwise permitted by a court order). Comment 2 to RPC 3.5 reinforces the prohibition contained in the text of the rule. Both the rule and comment are patterned on the corresponding ABA Model Rule.

The ABA recently addressed Web-based investigations of prospective and selected jurors in Formal Opinion 466 (2014). Analyzing the identical ABA Model Rule, the ABA concluded that a lawyer — or a non-lawyer working for the lawyer — cannot contact a juror directly through electronic means. Because Model Rule 3.5(b) is framed broadly, the ABA also reasoned that the prohibition extends to access requests. At the same time, the ABA found that simply viewing a juror's publicly available web or social media pages does not violate the rule, because that does not involve communication. The approach taken by the ABA is consistent with the Washington Supreme Court's extended discussion of prohibited "*ex parte* communications" under RPC 3.5 in *State v. Watson*, 155 Wn.2d 574, 578-81, 122 P.3d 903 (2005).

Sanctions for improper contact with a juror can range from regulatory discipline (see, e.g., *In re McGrath*, 178 Wn.2d 280, 298, 308 P.3d 615 (2013) (disciplining lawyer for improper contact with judge under RPC 3.5(b)) to mistrial and associated monetary penalties (see generally *State v. Casey*, 2012 WL 1392945 (Wn. App. Apr. 23, 2012) (unpublished) (discussing mistrial as a remedy for improper contact with a juror)).

Summing Up

People today often paint with an extremely broad brush in their digital self-portraits on the Internet and in social media. Independent investigation can offer the significant advantage of stealth over traditional discovery for parties and witnesses or the equivalent for prospective jurors in gathering this information. At the same time, there are distinct constraints to gathering electronic information through independent investigation and corresponding sanctions for violating the rules involved. Lawyers need to be thoroughly familiar with those constraints so that the ultimate surprise when revealing this information in court won't be on them. **NWL**

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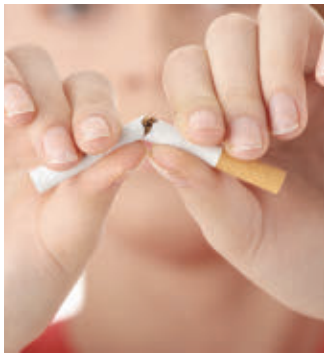
Our State Has Worked Hard for Our Smokes, Booze, Slot Machines, Jazz, and the Right to Dance Until We Drop (And To Prohibit All of the Above)

Legislating "Fun"

BY ALLISON PERYEA

Washington was admitted to the Union as the 42nd state in 1889. Soon thereafter, our state's founders and legislators sat down to the business of outlawing arguably enjoyable and potentially harmful activities and products. These prohibitions were applauded by progressives and members of the temperance movement. But others just wanted to buy a drink, light up a cigarette, and perhaps take in the spectacle of a "dance marathon."

Cigarettes

Washington was the first state to ban the sale of cigarettes to both adults and minors, in 1893. The penalty for violation: A fine of up to $500, six months in jail, or both. Sponsored by C.T. Roscoe, an Everett attorney and Republican state legislator, the law was struck down in federal courts the following summer on the grounds that it improperly restricted interstate trade. The state Legislature prohibited cigarettes again in 1907. To circumvent the interstate commerce concern, the new legislation exempted merchants involved in interstate commerce. Two years later, the reform-minded Legislature banned the possession (in addition to the sale and manufacture) of cigarettes and cigarette paper. This expanded prohibition was part of a revised criminal code that also outlawed tipping, required saloons be open to public view, and dictated that Superior Court judges wear black silk robes.

The cigarette laws were rooted in the belief that cigarettes were both a health hazard and an immoral habit. It was thought to be especially unseemly for women to light up "coffin nails" or "devil's toothpicks," as cigarettes were then known. However, enforcement of the ban was spotty and tended to occur only in rural areas. Police in small towns around the state arrested about 60 smokers during the first month that the law was in effect, but only six more thereafter. No arrests occurred in Seattle.

The most high-profile cigarette-ban violator was William D. "Big Bill" Haywood, a labor organizer who was convicted in North Yakima and Davenport. He was fined $9.50, plus court costs of $5.95. Though Haywood claimed to be the spark that ignited the movement to re-legalize cigarettes, several legislators had independent concerns about the enforceability of the law. Senator Josiah Collins, a member of the judiciary committee, helmed a successful campaign to lift the cigarette ban as part of the 1911 session.

Almost a century later, on Nov. 8, 2005, Washingtonians approved Initiative 901, which prohibited smoking in "public places" such as bars, restaurants, bowling alleys, and private residences used to provide social services like child care or adult

care. Smoking within 25 feet of entrances and exits is also prohibited. The initiative amended the state's 1985 Clean Indoor Air Act. All 39 counties in Washington voted in favor of the initiative, making Washington the tenth state to adopt a comprehensive statewide law prohibiting smoking in all restaurants and bars.

Gambling

The state constitution, adopted in 1889, prohibited all gambling. An exception for betting on horse racing was carved out by the Legislature in 1933. Longstanding issues with illegal gambling in King County culminated in the indictment of 51 police officers and public officials, alleging gambling payoffs, in 1971. That same year, the King County Superior Court ruled that a 1971 act authorizing bingo and raffles was unconstitutional. The following year, 62 percent of Washington voters approved gambling activities through a state constitutional amendment. The Legislature followed with authorization of pull tabs, bingo, and raffles in 1973.

In 1980, a grand jury indicted the House speaker, Senate majority leader, and an Olympia lobbyist for accepting payoffs in exchange for promoting gambling legislation. Only a couple of years later, the cash-strapped Legislature authorized the state lottery. Tribal gambling entered the scene when Congress authorized tribal casinos in 1988, which began operating electronic slot machines about a decade later. Repeated attempts to permit electronic slot machines outside of tribal casinos have failed despite lobbying efforts beginning in 2002.

Dance Marathons

In January 1931, Bellingham City Council passed Ordinance No. 5204 prohibiting dance marathons (called "continuance performance" in the ordinance). A dance marathon held at the State Street Auditorium prompted the emergency measure. Dance marathons, also euphemistically referred to as "walkathons," were endurance competitions in which couples danced continuously for hundreds of hours, sometimes as long as a month or two, in the hope of winning prize money. The dance marathon that prompted the law was hosted by Post No. 1585 of the Veterans of Foreign Wars.

Spectators, many of whom were out of work during the Depression era, could watch the events for a fee of 10 to 25 cents. Contestants were allotted 12- to 15-minute rest periods each hour, and were fed 12 times a day — while eating at a chest-height table, still moving their feet. Competitors were eliminated if they did not return from a break, if their knees buckled and they hit the dance floor, or if they fell down during increasingly brutal "elimination events." Both amateurs and professionals participated in dance marathons. Opponents to these types of events cited religious, moral, health, and public safety concerns. In particular, women's and religious groups thought the dance positions lacked enough space between participants.

The Bellingham ordinance required

future contests to terminate between midnight until 7 a.m. Violations were punishable by fines of up to $300, 90 days in jail, or both. The marathon at issue ended after 650 hours (about 27 days) when the contestants voluntarily agreed to end the event due to the new measure. (Despite the ordinance, the Veterans of Foreign Wars sponsored a second dance marathon in the summer of 1935.)

After only a few days, a dance marathon in Spanaway — just south of Tacoma in Pierce County — ended suddenly when its organizers were arrested in 1932. The event was promoted as the "Washington State Championship Walkathon Contest," and promised $3,000 to the winning couple, whereas similar events at the time offered closer to $500.

Those charged were cited for "unlawfully conducting an immoral, indecent, and obscene dance" and with "keeping the hall open during prohibited hours," as the venue had to be open 24 hours each day. The attorney for the promoter sought the appointment of a temporary receiver, since the promoter had no ability to pay the fine levied. The City Council of Tacoma responded to the arrest with an ordinance prohibiting dance marathons within Tacoma city limits. Seattle had outlawed dance marathons in 1928. (Dance marathons circumvented the laws by selecting venues just outside city limits.) A Vancouver dance marathon was held in the last month of 1936, but did not attain popularity, likely due to a flu epidemic and exceptionally harsh winter weather.

In 1937, Governor Clarence D. Marshall signed a bill outlawing dance marathons statewide. The law was not repealed until 1987.

Alcohol

When the fight for a statewide ban on alcohol failed to gain traction in the late 1800s, champions of the temperance movement narrowed their sights on more specific legislation. In 1895, the Washington State Legislature unanimously passed a law banning the sale of alcohol on or within two miles of the University of Washington campus (excluding a small part of the Madison Park neighborhood, which fell just within the two-mile boundary). Concerns about the law arose in 1907 during discussions about where to host the Alaska-Yukon-Pacific Exposition, which was expected to generate substantial income from alcohol concessions. The dry Exposition was held on campus and turned a profit.

In 2003, the state Legislature repealed the 1895 law in its entirety. Today the UW Board of Regents determines the school's alcohol policy and has continued to prohibit the sale of alcohol on campus except for special events.

In 1914, voters approved Initiative Measure Number 3, which prohibited alcohol in the state. The statewide ban predated the passage of federal Prohibition by three years. Prohibition took effect in Washington in January 1916; the 18th Amendment to the Constitution and the National Prohibition Act, aka the Volstead Act, made Prohibition nationwide in 1920.

In February 1917, Governor Ernest Lister signed House Bill 4, known as the "bone-dry" law, to further tighten state

restrictions by prohibiting the sale of medicinal liquor without a required permit, and prohibiting the importation of liquor into the state. Soon after, the U.S. Congress adopted the Reed-Randall Bone Dry Act, outlawing shipment of liquor into any state that had dry laws as of July 1, 1917. In 1919, the federal Prohibition amendment to the U.S. Constitution was ratified.

The new laws did not, of course, cease all production and consumption of liquor in the state. For example, in 1923, the King County Sheriff Department discovered 190 cases of liquor during a downtown Seattle raid at the Union Stables. The next year, the sheriff's office found one still, one sake press, and 30 gallons of sake during a raid in Seattle's International District. In 1926, the sheriff found 18 gallons of moonshine whiskey and five quart bottles of home brew beer at Nick's Place, an establishment about two miles northeast of Kirkland.

After more than 15 years of Prohibition, Washington voters repealed the state's bone-dry law by initiative in 1932, with 62 percent voter support. Local liquor restrictions were similarly repealed. This created an exception for medicinal liquor, as the federal law provided that patients could be provided one pint of medicinal liquor every 10 days. Tacoma was the first city in the state to stock medicinal liquor in its drugstores; Seattle residents had to wait a while, however, as the permitting process hit a snag due to the flood of applications to the Bureau of Industrial Alcohol. Access was provided on New Year's Eve 1932. Revelers, now with their medicinal needs addressed, crowded the streets.

The federal Prohibition amendment was repealed in its entirety in 1933 with the adoption of the 21st Amendment. That same year, the Washington Legislature adopted the "Steele Act," which established a comprehensive structure for state regulation of the sale of liquor and created a state Liquor Control Board. The Board adopted regulations that included a prohibition on the sale of any alcohol on Sundays and required that already-sold drinks be picked up by midnight on Saturday night.

Citing concerns about the state regulating conduct for religious reasons, Seattle attorneys Lem Powell and Camden Hall spearheaded an initiative campaign to repeal the state's "Blue Laws," which criminalized most sales and services — including sales of alcohol — on Sundays. The Blue Laws were repealed by a 64 percent voter approval of Initiative 229. The Liquor Control Board's Sunday ban remained, however. But in July 1967, after a public hearing, the Board announced its unanimous adoption of a new regulation allowing the sale of alcohol on Saturday nights until 2 a.m. and on Sundays from 2 to 10 p.m. Packaged wine and "hard" liquor could only be sold by state-owned liquor stores, which stayed closed on Sundays pursuant to a different statute, RCW 66.16.080. Sunday sales hours of everything but packaged hard liquor were extended in 1970 to match the other days of the week.

Decades later, a bottle of vodka or whiskey became a lot easier to access. Voters approved a ballot Initiative 1183 to privatize liquor sales, which

took effect in June 2012. Privatization turned over sales from 329 state-run or state-contracted liquor stores to more than 1,400 outlets, providing the state with a temporary revenue boost but drawing customer complaints that prices have increased.

Jazz Intoxication

Fearing a new trend in music, in 1933, Washington State Representative William A. Allen submitted a proposal to establish a commission to study the harmful effects that jazz music may have on the listening public. Allen's bill never reached a vote. The proposal would establish a five-man statewide group to "survey the havoc being wrought on society as a result of jazz intoxication." A finding of jazz intoxication — defined as "people becoming dangerously demented, confused, distracted or bewildered by jazz music" — meant that the commission should recommend that the governor take immediate action. The bill proposed the following solution for those afflicted: "All persons convicted of being jazzily intoxicated shall go before the Superior Court and be sent to an insane asylum." Representative Allen served only one term in the House. **NWL**

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with Gov. Barbara Rhoads-Weaver

Barbara Rhoads-Weaver was elected to the WSBA Board of Governors in 2012. In 2009, she formed her own practice, Sustainable Law PLLC, which focuses on representing injured people in civil suits. Since 2008, she has served on the board of directors for QLaw, the GLBT Bar Association of Washington. She is an Eagle member of the Washington State Association of Justice and a member of the Mother Attorneys Mentoring Association of Seattle (MAMAS). Rhoads-Weaver began her legal career as a law clerk to the Honorable Tom Chambers of the Washington Supreme Court, then worked as an associate at a law firm in Seattle for five years. She earned her law degree from Seattle University School of Law.

Gov. Rhoads-Weaver with her son, Luca, and daughter, Shane, at Point Robinson Lighthouse on Vashon Island.

1 Why did you want to serve on the WSBA Board of Governors?

I had clerked for Justice Tom Chambers, who had served the Bar. I also knew of Justice Fairhurst's service to the Bar. I greatly admire both justices and their commitment to service. I had thought one day — assuming it would be much later in my career — I would run for a seat on the Board of Governors. Then the opportunity to serve came along when I was not expecting it. Fortunately, when the opportunity presented itself, I was in a position both professionally and personally that I could make the commitment necessary to serve. I treasure the card/note I received from Justice Chambers congratulating me and reminding me to keep my head connected to my heart as I serve. On more than one occasion during my service on the Board, I have asked myself, "What would Tom do?" and hope that I have honored him in doing so.

2 What is the most important lesson you have learned about WSBA members since you've been on the Board?

We are a diverse, talented, and passionate group of professionals. I am constantly humbled learning about the amazing things members all around the state are doing in their communities for the public, for fellow members, and for the profession as a whole. I am also routinely humbled by the leadership skills of newer lawyers and the examples they set. For example, the Washington Leadership Institute Fellows and WSBA Young Lawyers Committee amaze me every time either group meets and shares what they are doing with the Board. It is similar to the feeling I sometimes get when reading about my undergraduate alma mater — that I am lucky to have attended when I did because I probably could not get accepted now. The important lesson being: Don't worry about the future of the WSBA, because the folks coming up behind me are already great leaders and will ably guide the Bar.

3 What decision or accomplishment are you the most proud of from your service on the Board?

I am most proud of the Legal Lunchbox Series. I served on a subcommittee that reviewed every member comment made on the membership survey. We identified the major themes of the comments, one of which was a need for low-cost CLEs that could be accessed by members all around the state. The idea was raised for a monthly CLE that would allow all members to meet their CLE requirements for free by attending online. I am proud of the idea and grateful to the WSBA staff for running with it and creating the program that exists today.

"Proud" is not the right word, but I am content with the role I often find myself playing in committees and around the Board table: to question assumptions and statements, point out elephants in the room, and raise or address uncomfortable topics/issues. The role can be lonely at times, but my hope is that the conversation around the table benefits and our collective decisions are better. I do believe the WSBA is in a better place than when I started my term on the Board and that in a small way my service contributed to that improvement. My hope is that each class of governors continues to improve the Bar and leave it better than they found it.

4 What has been the most difficult decision you had to make as a governor, and why?

Annual evaluation of and compensation for the executive director have been the most difficult decisions for me. It was difficult at the beginning of my first year, because I had only been on the Board for a month and didn't feel as though I had enough information to make an informed decision. Although the process for evaluation has improved during my time on the Board, the decisions have remained difficult because I have felt there were gaps in information that made it hard for me to make an informed decision.

5 Can you share one thing we may not know about you?

After moving to the Pacific Northwest and before deciding to go to law school, I became a whitewater rafting guide. Unfortunately, I have not been out rafting since my son was born. I miss being on the stick and am looking forward to hitting some rapids when my Board service is done. **NWL**

Take 5 lets you learn a little more about your Board of Governors. If you have further questions for Gov. Rhoads-Weaver, she can be reached at barb@sustainablelawpllc.com.

Education and the Law in Washington

BY RENÉE MCFARLAND

The Federal Organic Act established the Washington Territory with its passage in 1853. The Legislature of the new Territory of Washington passed a common school system law similar to that of Oregon on April 12, 1854.[1] Schools in this system were free for children between the ages of four and 24. Governor Isaac Ingalls Stevens had expressed the following in his gubernatorial message:

> The subject of education already occupies the minds and hearts of the citizens of this Territory, and I feel confident that they will aim at nothing less than to provide for a system which shall place within the means of all the full development of the capacities with which each has been endowed. Let every youth, however limited his opportunities, find his place in the school, the college, the university, if God has given him the necessary gifts. Congress has made liberal appropriations of land for the support of the schools, and I would recommend that a special commission be instituted to report on the whole system of schools. I will also recommend that Congress be memorialized to appropriate land for a university.[2]

First schoolhouse in Sultan, circa 1895. ***University of Washington Libraries, Special Collections, WAS0942.***

The provisions for the common school fund allowed for sale of sections 16 and 36 in townships of already donated federal land, as well as sale of future donated federal lands.[3] "The interest derived from the irreducible fund was to provide in part the current fund."[4] Other sources of revenue included an annual tax of two mills[5] on all of the taxable property of the county, to pay for teachers' salaries; all fines for breach of the penal code; and further taxes (with no limit) levied through a specific vote of a school district to pay for buildings, repairs, libraries, and equipment. If a school had not been in session for at least three months of the previous year, no funds could be used. The law provided for each county's election of a three-term "county superintendent of common schools."[6] Said superintendent "should examine teachers and issue certificates to those of good moral character and otherwise deemed worthy." In 1857, the Legislature granted a permissive right to district boards to determine the qualifications of teachers. Nine years later, the law changed to mandate that a "professionally competent officer" should certify teachers, not a school board.[7]

1871 saw the permanent establishment of the Office of Territorial Superintendent of Common Schools.[8] The Legislature created union or graded schools in 1877. Two or more districts could unite to create a union or graded school "in which instruction shall be given in the higher branches of education." A single district could establish a graded school for the same purposes. If a city or town had at least 500 students, the district was required to establish a graded school under district board regulations.[9] School attendance became compulsory that year for children between the ages of 8 and 18. In 1877, a Ter-

Primary grade school in Palouse around 1888. School built in 1883. ***Roy Chatters Newspaper and Printing Museum and Whitman County Library Rural Heritage Collection.***

ritorial board of education was created. This board was charged with, among other things, adopting a uniform series of textbooks for the Territory within five years and granting Territorial teaching certificates. The formation of the Territorial board of education was pivotal because "it marked the beginning of a genuine system of public education in the Commonwealth of Washington."[10]

The Legislature authorized the formation of union or graded school districts in 1881, also specifying that "no language other than the English, and no mathematics higher than arithmetic shall be taught."[11] That same year, the state's first accredited high school opened in Dayton.[12] In April 1889, the Washington State Teacher's Association, the precursor of the Washington Education Association formed, with a membership of 124.[13]

On Nov. 11, 1889, Washington was admitted as the 42nd state in the nation. At the time of statehood, over 1,000 schoolhouses existed throughout the state.[14] The Preamble to Article IX of the State Constitution states:

> It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste or sex.

Section 2 further provides that:

> The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.

In 1890, the Legislature "created an agency to administer the state's schools, set minimum standards for teachers, and established a 'normal school' in Cheney" dedicated to teacher training.[15] Through different legislation, Washington also established a normal school in Ellensburg that year.[16] Curriculum requirements at that time were as follows:

> All common schools shall be taught in the English language, and instruction shall be given in the following branches, viz.: Reading, penmanship, orthography, written arithmetic, mental arithmetic, geography, English grammar, physiology, and hygiene, with special reference to the effects of alcoholic stimulants and narcotics on the human system, history of the United States, and such other studies as may be prescribed by the board of education. Attention must be given during the entire course to the cultivation of manners, to the law of health, physical exercise, ventilation and temperature of the school room.[17]

The 1891 annual report of the Washington State Board of Education included a list of duties and responsibilities of teacher and student. Number 20 on the list of pupils' "general" duties is "to remember that energy and patient industry, enthusiasm and earnestness, are the surest reliance for success in student-life as well as in business or professional life."[18]

Funding for schools varied between counties and was cobbled together from a variety of sources in addition to local property taxes. The passage of the "Barefoot Schoolboy Act," on March 14, 1895, marked the beginning of "a uniform means of producing recurring income for the state's public schools by imposing a direct tax."[19] The Act allocated six dollars for each school-age child, regardless of whether he or she was actually attending school.[20] 120 years later, school funding is still a critical issue for our state.

Modern education law encompasses a wide range of issues, a small portion of which are highlighted here. A basic one is student nutrition. To that end, Congress passed the National School Lunch Act in 1946.[21] In 1954, the U.S. Supreme Court decided the landmark case of *Brown v. Board of Education of Topeka*,[22] holding that state laws establishing separate public schools for black and white students are unconstitutional.[23] In the 1960s and 1970s, many landmark education laws were enacted. In 1965, as part of President Johnson's War on Poverty, the Elementary and Secondary Education Act (Title 1) (ESEA)[24] was passed. The ESEA, later reauthorized as the No Child Left Behind Act in 2001, was the largest federal education program ever passed, and addressed the needs of "educationally deprived children" from low-income families. In 1968, Congress amended the ESEA with Title VII, the Bilingual Education Act (20 U.S.C.A. §880b et seq. (Supp. 1975)), to give federal aid to school districts so that they could assist students with a limited ability to speak English.

In 1972, Washington passed its Public Disclosure Act (renamed the "Public Records Act" in 2006), which is applicable to student record requests. RCW 42.56.230(1) provides that "personal information in any files maintained for students in public schools..." are exempt from public inspection and copying. Congress passed the United States Education Amendments of 1972 (Public Law No. 92318, 86 Stat. 235 (June 23, 1972), more commonly known as Title IX), outlawing sex discrimination in schools.[25] Two years later, Congress passed the Family Educational Rights and Privacy Act (FERPA), also known as the Buckley Amendments, which protects student records in any school receiving funds under an applicable program of the U.S. Department of Education. Under FERPA, parents or "eligible students"[26] have the right to inspect and review the student's education records maintained by the school. They may also ask that the school correct a record they believe to be inaccurate or misleading. The Education for All Handicapped Children Act of 1975, Public Law 94-142, was sweeping federal legislation that entitled all children with disabilities to a public education. The law provided for several important elements: "(1) a free appropriate public education, (2) an individualized education program, (3) special education services, (4) related services, (5) due process procedures, and (6) the least restrictive environment (LRE) in which to learn."[27] This law was renewed and renamed in 1990 as the Individuals with Disabilities Education Act (IDEA), and reauthorized again in 2004.[28]

In 1975, the Supreme Court held in *Goss v. Lopez*, 419 U.S. 565 (1975), that "a public school student has a legitimate entitlement to a public education as a property interest that is protected by the Due Process Clause, and that may not be taken away for misconduct without observing minimum procedures required by that clause."[29] Two years later, the Washington State Board of Education created student discipline rules that were mandatory for all Washington state school districts.[30] In 1994, Washington outlawed corporal punishment in schools.[31]

History is in the making this session as the Legislature debates how to comply with the Washington Supreme Court's holding in *McCleary v. State*[32] that "the State has not complied with its article IX, section 1 duty to make ample provision for the education of all children in Washington." (*McCleary*, 173 Wn.2d 477, at 484.) The court retained jurisdiction over the case to ensure that its ruling is enforced and that the State fully funds K–12 education by 2018. In its decision, the court discussed two earlier school funding cases: *Seattle School District No. 1 v. State*,[33] a 1978 Supreme Court case, and a trial court decision by Judge Doran in *Seattle School District v. State* in 1983. The *McCleary* case drew on a long history of the Legislature defining a "basic education," and concluded that "[t]he word 'education' under article IX, section 1 means the basic knowledge and skills needed to compete in today's economy and meaningfully participate in this state's democracy."[34] *McCleary* calls the longstanding system of local levy funding for schools into question because the Court held that "[a]mple funding for basic education must be accomplished by means of dependable and regular tax sources."[35] On Sept. 11, 2014, the Supreme Court issued an order finding the State in contempt of court because it did not "submit by April 30, 2014, a complete plan for fully implementing its program of basic education for each school year between now and the 2017–18 school year." The Supreme Court took the extraordinary step of threatening sanctions if, by the end of the 2015 legislative session, the State has not complied with the court's order. Recently, the *Seattle Times* reported that "[l]awmakers so far have only come up with about $1 billion of the cost, which has been estimated at between $3.5 billion to $7 billion per two-year budget period."[36]

From its rudimentary beginning, today the Washington public school system educates over one million K-12 students in 295 local school districts.[37] The *McCleary* case will profoundly affect the evolution of public education in Washington state. **NWL**

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NOTES

1. An Act Establishing a Common School System for the Territory of Washington, 1854 Wash. Terr. Sess. Laws 328.
2. Frederick E. Bolton & Thomas W. Bibb, *History of Education in Washington*, p. 86, fn 3 (1935).
3. *Id.*, at 86–87; See also Angie Burt Bowden, *Early Schools of Washington Territory*, 8

(1935). Bowden notes that no school fund accrued from the sale of these sections until they could be surveyed, which took many years. The commissioner of the land office also decided that the proceeds of the sale were not available until the territory became a state.

4. Bolton & Bibb, at 87.
5. A mill is "a money of account equal to 1/10 cent." *Webster's Ninth New Collegiate Dictionary*, 754 (1983).
6. Bolton & Bibb, at 87.
7. *Id.*, at 91–92.
8. L.K. Beale, "Charter Schools, Common Schools, and the Washington State Constitution," 535 *Wash. L. Rev.*, at 541 (1997).
9. Bolton & Bibb, at 98.
10. *Id.*, at 100–101.
11. *Id.*, at 95.
12. www.historylink.org/_content/printer_friendly/pf_output.cfm?file-id=9607, by John and Lorie Stucke.
13. www.washingtonea.org/index.php?option=com_content&view=article&id=1800&itemid=44.
14. Mary Jane Honegger, *Washington State Historic Schools, Status 2002*, Washington Trust for Historic Preservation (2002).
15. www.historylink.org/_content/printer_friendly/pf_output.cfm?file_id=10003, by John Caldbrick (2012).
16. Beale, at 557.
17. www.historylink.org/_content/printer_friendly/pf_output.cfm?file_id=10003, by John Caldbrick (2012).
18. Lorraine McConaghy, New Land, North of the Columbia: Historic Documents that Tell the Story of Washington State From Territory to Today (2011).
19. www.historylink.org/_content/printer_friendly/pf_output.cfm?file_id=10003, by John Caldbrick (2012).
20. *Id.*
21. www.fns.usda.gov/nslp/history, by Gordon W. Gunderson.
22. 347 U.S. 483 (1954).
23. In 2007, the United States Supreme Court decided *Parents Involved in Community Schools v. Seattle School District No. 1*, 90 Wn.2d 476, 585 P.2d 71 (1978), holding that using race as a tiebreaker in school assignments was unconstitutional.
24. P.L. 89-10.
25. See also RCW § 28A.640.010 (1975): "Inequality in the educational opportunities afforded women and girls at all levels of the public schools in Washington state is a breach of Article XXXI, section 1, Amendment 61, of the Washington state Constitution, requiring equal treatment of all citizens regardless of sex...."
26. An "eligible student" under FERPA is a student 18 years of age or older, or who is attending an institution of postsecondary education. 34 C.F.R. § 99.3.
27. Kern Alexander & M. David Alexander, *American Public School Law* 568 (2009).
28. *Id.*, at 569–570.
29. *Goss v. Lopez*, 419 U.S. at 573–574.
30. See WAC 392–400, originally codified in 1977 at WAC 180-40.
31. RCW § 28A.150.300 (2006).
32. *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (Wash. 2012).
33. *Seattle School District No. 1 v. State*, 90 Wn.2d 476, 585 P.2d 71 (1978).
34 . *McCleary*, 173 Wn.2d 477, at 483.
35. *Id.*, at 484.
36. John Higgins, "School-funding showdown: Legislature vs. Supreme Court," *Seattle Times*, February 16, 2015, at B1.
37. http://reportcard.ospi.k12.wa.us/summary.aspx?grouplevel=district&schoolId=1&reportlevel=state&year=2013-14.

1895 Luncheon Menu

From the Barchives showcases some of the more intriguing items we've pulled from the WSBA's archives and the stories behind them.

BY EMILY WITTENHAGEN

Washington State Bar Association.

HOTEL SPOKANE, JULY 19, '95.

TOAST-ROASTER, . . . WILL H. THOMPSON.
"And still they gazed, and still the wonder grew,
"That one small head could contain all (the jokes) he knew."

THE PROFESSION,
"A maxim in law has more weight in the world than an article of faith."
T. C. GRIFFITTS.

OUR COURT OF LAST RESORT,
"All his old opinions he has revised and rejected."
HON. JOHN P. HOYT.

RIDING IN THE OLDEN DAYS,
"Old times were changed,
"Old manners gone."
"But is this law? Ay,
"Marry is it."
P. H. WINSTON.

LAWYER,
"He knew a man who knew another,
"Who knew the very party's brother."
CHARLES S. FOGG.

RTESY,
What would you have? Your gentleness shall force
More than your force move us to gentleness."
RICHARD K. BONEY.

Where honor calls and justice points the way."
E. C. HUGHES.

ICULARS,
"Who is he with voice unblest,
"That calls me from the bed of rest?"
CYRUS HAPPY.

ERRITORY,
"I have seen more days than you."
N. T. CATON.

Nay, that I can deny by a circumstance.
It shall go hard, but I'll prove it by another."
HAROLD PRESTON.

OMERS,
in your eye, heaven in your cheek,
fair visage."
S. J. CHADWICK.

Menu.

Little Neck Clams.

Broth of Young Pigeon. Stuffed Olives.

SHERRY.

Brook Trout a la Chambord.
Mangoes.

JOHANNISBERG.

Saddle of Frogs, French Mushrooms.
English Kidney Potatoes.

Breast of Young Chicken with Truffles.
New Peas.

CLARET.

Maryland Terrapin. Asparagus Heads.

Haunch of Antelope, Red Currant Jelly.

Sorbet de Menthe.

CHAMPAGNE.

Tomato Salad, Mayonnaise.

Assorted Fancy Cakes, Strawberry Ice Cream.

Cheese. Fruits. Coffee.
Devonshire Cream.

Cigars

Menu and program from an 1895 meeting of the Washington State Bar Association at the Hotel Spokane.

Over the years, the WSBA has hosted a variety of luncheons, banquets, and meetings of the mind, all with one thing in common: **good food.** Always entertaining, the menus from these assemblies are some of our favorite items we've uncovered from the Barchives.

For many years, members of bar associations across the great Northwest would gather for a weekend summit, held annually on scenic waterfronts like Coeur d'Alene and in luxury hotels like the Arctic Club, where gold prospectors used to meet after striking it rich in the Yukon. Between formal discussions and speeches, members enjoyed boating excursions, rounds of golf — and, of course, feasting.

This menu is one of the Barchive's oldest. From July 1895, the menu is part of a program for a summit held at Hotel Spokane. The five-course meal served on the last day opens with broth of young pigeon and ends, appropriately, with cigars. In between, guests were treated to other notable delicacies as saddle of frogs, haunch of antelope, and for dessert, assorted fancy cakes. A toast between every course included sherry, claret, and champagne. Cheers!

And if you feel like stepping into the past, you're in luck — the Arctic Club is still in business, in the well-known walrus-festooned building at 700 3rd Avenue in downtown Seattle, now part of the DoubleTree by Hilton Hotel. **NWL**

EMILY WITTENHAGEN *is a freelance editor with a background in agriculture. She attended the University of Maine, where she earned a degree in creative writing and French. She holds an editing certificate from the University of Washington and is a certified community herbalist. Reach her at emily.wittenhagen@gmail.com.*

Lincoln County Courthouse

Excerpted from HistoryLink.org
Essay #9538 by Paula Becker

Photos by Todd Timmcke

The territorial legislature created Lincoln County on Nov. 1, 1883, naming Davenport as temporary county seat. This spurred a fight with the (then) much larger town of Sprague — Davenport's few buildings had barely been constructed, and the nearest rail line was 30 miles away. Spragueans fumingly bore the slight for one year, then emerged victorious when the county seat question was put to the ballot in 1884. Davenporters at first refused to relinquish their year's worth of official records, but eventually were forced to do so by a raiding party from their rival town.

Sweet revenge came in 1896 when Davenport — by then clearly the major town in Lincoln County — regained the seat. Sprague had recently suffered a major conflagration that had nearly taken the town (county records were spared). Davenport residents built a fine courthouse and county jail, and Sprague released the records.

The Lincoln County Courthouse, built high on the bluff overlooking Davenport in 1897, was an important center for all Lincoln County residents. Despite the removal of the iron fence surrounding its grounds to aid the war effort during World War II, the imposing courthouse building continued to serve county residents until the night of Dec. 21, 1995, when it was gutted by fire. A local teen admitted setting the blaze and served a prison term. The courthouse was painstakingly restored to its original exterior appearance (including replacing the iron fence that sets off the lush grounds surrounding the building) and modernized in its interior. It reopened with fanfare only one year after the arson incident. **NWL**

Sources available at http://www.historylink.org/index.cfm?displaypage=output.cfm&file_id=9538.

Scandal Rocks Washington's Supreme Court!

Arthur S. Beardsley's Account of the 1908 Root-Gordon Scandal

Introduction and postscript by Hugh Spitzer

One of the real gems of the University of Washington's Gallagher Law Library is **Arthur S. Beardsley's** 42-chapter unpublished manuscript of *The Bench and Bar of Washington: The First Fifty Years (1849–1900)*. Beardsley directed the UW's law library from 1922 to 1944, vastly expanding the collection, helping design the library's space in a new law school building, and launching the school's highly regarded law librarianship program.[1]

Beardsley was "a scholar and historian in every sense of the word"[2] whose research focused on Pacific Northwest legal history. Washington lawyers are probably most familiar with his *Sources of the Washington Constitution*, which is published biennially in the state's *Legislative Manual*[3] and which provides the likely sources of every article and section of the Washington State Constitution. But Beardsley's *magnum opus* was his massive history of the state's bench and bar during territorial days and early statehood.

Beardsley suddenly resigned from his post in 1944, and died in 1950 without completing and publishing his work. Nevertheless, the manuscript, including copious notes, photographs, and diagrams indicating the intended layout of the photos, is available to researchers at the Gallagher Law Library. The following is an excerpt from Beardsley's unedited and unpublished manuscript: a portion of Chapter 41 focusing on the 1908 Root-Gordon Scandal that rocked the Washington Supreme Court, lawyers and politicians, just as it would today. This account of high court opinion tampering provides a good example of Beardsley's careful research and lively writing.

ROOT-GORDON SCANDAL

In the summer of 1908, a sinister whisper ran over the state that M.J. Gordon, Great Northern attorney at Spokane, was $50,000 to $100,000 short in his accounts with that company. Gordon had held for five years the high office of justice of the Supreme Court of Washington, and for three years was chief justice. He had resigned from the supreme bench to take service with Great Northern. At first, men of cautious mind rejected these ugly rumors as mere fabrications of some sensational scandal monger. But the rumors would not be silenced, and grew in persistence and circumstantial detail until they became in November an open secret among the well-informed lawyers of the Northwest, and soon found their way into the columns of the public press.

Rumor added that a part of the alleged shortage had been paid to Judge Milo A. Root of the Supreme Court. Chief Justice Hiram E. Hadley requested Jesse B. Bridges, president of the State Bar Association, to investigate these charges of "conduct of a highly criminal nature," and Bridges appointed John H. Powell and Harold Preston, of Seattle, Theodore L. Stiles, former justice on the Supreme Court, and Robert S. Hudson of Tacoma, and H.M. Stevens of Spokane a committee to make the investigation.

On Nov. 24, 1908, Justice Root offered his resignation to the governor. "My relations with Judge Gordon," he affirmed, "will bear the closest investigation, and will reflect no more upon me than the indiscretions of friendship. Yet I realize that for a justice of the supreme court there should exist not even an indiscretion, especially as I realize that any reflection upon any member casts a cloud upon the entire court."

These sensational revelations stirred public sentiment to its depths, and the sensation was intensified by newspaper interviews wherein L.C. Gilman, general western counsel for the Great Northern, and W.R. Begg, general solicitor at St. Paul, admitted that a shortage existed in Gordon's accounts.

Gordon seemed dazed by the weight of his troubles, and personal friends maintained a close watch to prevent possible suicide. "Gordon," said a Spokane acquaintance "is one of the most remarkable men I have ever seen. He could stay up all night, hire an automobile in the morning, go into the country with a party of friends, sing a few songs, drink some booze, and return to town apparently refreshed and ready for the legal business in which he was interested. On these trips he usually insisted on paying all expenses. He is a good story teller, a good listener, and one of the best entertainers I ever knew. Apparently he had no sense of the value of money, and I often wondered what would be the finish at the clip at which he was going."

The bar association committee conducted investigations at Spokane, Seattle, Tacoma, and elsewhere. Root and Gordon came before it at Seattle, and

MILO A. ROOT

MERRITT J. GORDON

Atty. Gt. Northern Ry., Spokane; ex-Chief Justice State of Wash. Born Sherbrooke, Quebec, 1857. Arrived in Wash. 1889. Address, Spokane, Wash.

Root denied that he had ever received a dollar improperly from Gordon. In published statements Gordon denied that he was short with the Great Northern.

The investigating committee reported in January 1909, that Judge Root had corresponded with Gordon regarding a money transaction; that Root had accepted from the Great Northern, through Gordon and from other railroads, free transportation; that Root filed as the opinion of the Supreme Court an almost verbatim draft of an opinion dictated by Gordon as attorney for the Great Northern in the case of Harris against the railroad company.

The committee was unable to obtain any facts to substantiate rumors of the giving out of advance information concerning decisions of the Supreme Court, or to obtain any facts to substantiate rumors of bribery and corruption. The committee held that the conduct of Root in receiving free transportation was highly censurable; that his conduct in the Harris case was a gross breach of judicial and professional propriety and showed such a want of appreciation of the duties of a judge of the Supreme Court as to unfit him for occupying that position. The report recommended that the State Bar Association request the judges of the superior court of Spokane county to call a grand jury to investigate further the rumor of corruption.

Gordon was arrested on a specific charge of embezzling $9,200 from the Great Northern, and pleaded not guilty in the superior court of Spokane County.

A grand jury was called at Spokane, and its investigations were vigorously conducted by Prosecuting Attorney Fred G. Pugh. It returned a number of indictments against Gordon, who was arrested in May 1909, on additional charges of embezzlement.

While passing through Spokane on June 3, 1909, President James J. Hill, of the Great Northern, was served with a subpoena to appear before the grand jury, and went before that body the following day. "I have promised the grand jury that I will do all in my power to see that it gets the papers and documents which it desires," said Mr. Hill upon leaving the grand jury room. (Prosecutor Pugh had given him a list of the documents desired.) "I shall write to St. Paul this afternoon, so that a meeting of the board of directors may be held when I arrive." A few days later, the board of directors decided not to supply the grand jury with the desired records and documents. "This shows bad faith on the part of James J. Hill," said Mr. Pugh.

Gordon's trial came on in the superior court of Spokane on March 11, 1910, but the state's inability to obtain important documentary evidence from the books and files of the Great Northern, or to secure the presence as a witness of L.C. Gilman, greatly weakened the case, and Judge Kennan directed the jury to return a verdict of not guilty.

Postscript

Arthur Beardsley omitted from his vivid tale the lively proceedings at the Washington State Bar Association's 1909 Annual Convention, in Aberdeen. The special committee's report to Bar President Bridges[4] concluded "that the conduct of Judge Root and Gordon in the Harris case... was a gross breach of judicial and professional propriety. Such conduct would be intolerable in practice and would lead to abuses as serious as would corruption itself." The report concluded that Root's conduct while serving as a Supreme Court judge made him "unfit... from occupying that position," and that finding led directly to his resignation.[5] While some attorneys argued at the following bar convention that Root had suffered enough from the public humiliation, Grievance Committee member[6] George H. Walker, of Seattle, introduced a resolution directing that committee to commence disbarment proceedings. Walker said: "I was one of those who, at [Root's] instance and request, recommended him for a position to the Supreme Bench....[But] the ermine of the Supreme Court has not only been trailed in the dust, but it has, in my judgment, been dragged through the mud and the mire. The highest tribunal in our state... has, during the last few months, been subjected, and justly so, in my opinion, to the ridicule and the contempt of the whole people of the United States."[7] Walker asked whether "this Association [has] the self-respect, the nerve and the intelligence to purge itself of the membership of this man...or whether it will supinely, as it has before times done, smooth the thing over, let it go by the boards, and let the Association and the members thereof be held up to the continual and continuous contempt of all right-minded people?"[8]

As it turns out, Walker's motion was adopted,[9] but the Washington State Bar Association ultimately did "let it go by the boards." Former Justice Root was personally well-liked and was a longtime pillar of the establishment,[10] so the Grievance Committee did not institute disbarment proceedings against him "and the entire matter appeared to have been resolved and forgotten."[11] Well, not entirely resolved and forgotten. Milo Root returned to practicing law in Seattle, but when he ran for King County Superior Court in 1916, the entire affair was resurrected, he was censured by the Seattle Bar Association, and he met defeat at the ballot box.[12] Milo A. Root died the following year, a broken man.[13] Merritt J. Gordon, the other former justice involved in the 1908 scandal, had opened a law practice in Tacoma but died after being struck by a runaway car in 1925.[14] NWL

HUGH SPITZER *is an acting professor of law at the University of Washington, where he teaches both state constitutional law and professional responsibility. Contact him at spith@uw.edu.*

NOTES

1. Carissa J. Vogel, "Rediscovering Dr. Arthur S. Beardsley: A Brief Introduction to His Life and Work," 27 *Legal Reference Services Quarterly* 347 (2009). See also, Laura M. Goldsmith, "History of the University of Washington Law Librarianship Program," 82 *Law Library Journal* 239 (1990).
2. Vogel, *id*., at 353.
3. State of Washington, 2013–2014 Legislative Manual, 385. Also available at: www.lib.law.washington.edu/content/guides/waconst.
4. Washington State Bar Association, "Report of the Special Committee to Investigate Charges against Milo S. Root" (Jan. 7, 1909) (unpublished report, on file with the Gallagher Law Library, University of Washington). The Bar Committee report includes as attachments much of the correspondence between Root and Gordon, and other documentation, that provided the basis for the Committee's findings.
5. Justice Root's seat on the Washington Supreme Court was filled for the remainder of 1908 by Stephen J. Chadwick, who had just won election to a different position on the Court, and then by Mack F. Gose, commencing Feb. 12, 1909. Hugh Spitzer, "Pivoting to Progressivism: Justice Stephen J. Chadwick, the Washington Supreme Court, and Change in Early 20th-Century Judicial Reasoning and Rhetoric," 104 *Pacific NW Q.* 107, 109 (2013); Washington Supreme Court Justices by Year, 175 Wn.2d xxxvii (2012).
6. Members of the committee were listed in Proceedings, Washington State Bar Association Twenty-first Annual Convention, July 29, 30, and 31, 1909, at 3.
7. *Id*. at 124.
8. *Id*. at 125.
9. *Id*. at 130.
10. Charles H. Sheldon, *The Washington High Bench: A Biographical History of the State Supreme Court*, 1889–1991 (1992), at 287.
11. *Id*. at 189.
12. Sheldon, *supra* n. 9, at 289–90.
13. *Id*. at 290.
14. *Id*. at 170.

BY MICHAEL HEATHERLY

WSBA BOARD OF GOVERNORS MEETING

Jan. 22–23, 2015, Seattle, and March 19, 2015, Olympia

At the January 22–23, 2015, meeting in Seattle, the Board of Governors continued its discussion of proposed changes to WSBA's governance structure, including recommendations involving selection of board members and the Bar president.

Discussion of changes proposed last year by the Governance Task Force is expected to continue through this summer, after which the Board will draft its official response to each of the recommendations. Most of the proposed changes would require action by the Supreme Court to be implemented.

A Task Force proposal that prompted significant debate was a recommendation to increase Board members' terms from three to four years and permit former governors to serve a second, although nonconsecutive, term. That proposal found no support among current Board members. In discussion and an informal vote, governors showed most support for an alternative that would maintain the three-year term but add a six-month training period, during which new Board members would participate in meetings but not vote.

In debating the issue, several governors noted that it is already difficult to find candidates able to commit three years to service on the Board. Increasing the term by a year would only make matters worse, they argued. The proposal to increase term lengths was intended mainly to increase the "institutional memory" of the Board, which often addresses issues that require years to resolve. Adding the six-month training period to the existing term limit emerged as a compromise that would give new members an opportunity to get up to speed on current issues without committing to an entire additional year of full service.

As for allowing governors to serve a second term, a straw vote showed a majority of current Board members favored including that concept as a viable option as discussions continue. The board was split 50/50 on whether the second term could be consecutive or whether members would need to take time off before seeking a second term. Gov. Brad Furlong pointed out that many big issues cannot be handled in three years, and the option of a second consecutive term might be incentive for members to seek the additional term and continue to work on the issue. However, other governors argued that allowing consecutive terms would add to a perception of elitism and exclusiveness on the Board and reduce the opportunities to bring in new members with fresh ideas and outlooks.

Top: WSBA President Anthony Gipe presides over the Jan. 23 Board of Governors meeting. Bottom: At the Jan. 23 meeting, (left to right) President-elect William Hyslop, Immediate Past-President Patrick Palace, Gov. Robin Haynes, Gov. Karen Denise Wilson, and Gov. Elijah Forde listen to a presentation.

The Board also addressed a Task Force recommendation to select the WSBA president from the Board of Governors and have the president then serve as a voting member of the Board. Under the current rules, any WSBA member may be chosen as president, and although the president is a member of the Board, he or she does not vote except to break ties.

Current Board members decisively opposed this recommendation, preferring to maintain the current system. While acknowledging the importance of having a president who is well-versed on WSBA issues before taking office, Board members argued that restricting presidential candidacy to those already on the Board diminishes the opportunity to select presidents with new perspectives and from diverse backgrounds. Several also pointed out that in the current system, the president serves a full year as president-elect before taking the top position, which allows sufficient time to become familiar with the issues and procedures involved.

The Board next tackled a Task Force proposal to add three non-attorney positions to the Board, with those members to be appointed by the Supreme Court. Two of the positions could be filled by any non-attorney member of the public, while the third would be either a limited practice officer or limited license legal technician (the state's first group of LLLT candidates are eligible for licensing this year).

Governors were closely divided over whether either type of non-attorney representative should be added to the

PHOTOS BY TODD TIMMCKE

Board. Gov. Furlong argued that LPO and LLLT members don't require representatives on the Board because they already have their separate governing bodies and aren't directly involved in the Bar. He also opposed other non-attorneys from being added to the Board, contending that governance of lawyers should be restricted to those who practice law. Gov. Mario Cava said that while he might support an LPO or LLLT member, he also opposed adding other non-attorney members.

However, Gov. Ken Masters countered that since the Bar is involved in regulating LPO and LLLT activities, members of those groups should be allowed representation on the Board. He and others also expressed support for adding other non-attorney members, arguing that they bring alternative perspectives to issues. President Anthony Gipe stated that the WSBA is the only regulated professional group in Washington that does not have general-public members on its governing body. He maintained that the appointees' individual qualifications, rather than their particular professions, would determine their value to the Board. For example, an expert on technology could provide insight into technology's effects on the practice of law that lawyers wouldn't possess, he said.

Because of the differing opinions, the Board took no official position on the issue. However, it could reconsider the question before issuing its final report on the recommendations.

The Board also took up a related issue involving composition of the Board. To accommodate the proposed three non-attorney members, the Governance Task Force recommended reducing the number of member-elected governors from 11 to 9 (which would include the president, under the proposed voting-president model). The three current at-large positions (for a young/new lawyer and two WSBA members from traditionally under-represented groups) would be retained under the proposal.

Current Board members solidly voiced opposition to this proposal, preferring to retain the number and system for member-elected positions, which is based geographically on Congressional districts but would need to be modified if only nine positions were elected.

WSBA BOARD OF GOVERNORS MEETING

March 19, 2015, Olympia

The Board of Governors further refined its draft response to a set of recommendations for possibly overhauling the governance structure and procedures of the WSBA as the Board met March 19, 2015, in Olympia. The governors again addressed issues discussed at the January Board meeting and debated additional questions regarding WSBA governance.

The recommendations were proposed last year by an independent Governance Task Force. The Board will continue discussion of the recommendations through summer and expects to

have a completed draft of its entire response by the Sept. 17–18, 2015, meeting in Seattle. The Board will then submit its response to the Supreme Court, which will consider implementation of the recommendations, most of which would require amendment of the court rules that govern the WSBA.

At the March meeting, Board members discussed specific proposed responses based on their debate of the Task Force recommendations at the January meeting. The topics drawing the most discussion were:

1. Board Member Selection — Whereas the Task Force had recommended increasing Board members' terms from three to four years, the Board's draft response implicitly supports retaining the three-year limit but suggests adding a pre-term training period, during which newly selected members would participate in Board activities to familiarize themselves with the issues and procedures, but would not vote. The proposed response supports the Task Force recommendation to allow Board members to seek a second term, but not consecutive to the member's first term.

2. Selection of the WSBA President — The Board's response opposes the Task Force's recommendation that the WSBA president be selected only from among sitting Board members. The response contends that the current rules, which allow the Board to select any WSBA member as president, brings more fresh ideas and perspectives to the position while promoting greater diversity and inclusiveness.

3. Non-attorney Members on Board of Governors — The Task Force recommended adding three non-attorney positions to the Board: one for a representative from the Limited Practice Officers or Limited License Legal Technicians, and two for which any non-attorney would be eligible. While the current Board members were not unanimous on the issue in January, the proposed response to the Task Force recommendation supports adding the non-attorney members. Candidates for the non-attorney positions would be vetted and nominated by the existing Nomination Review Committee, with input from the limited-license professional sections. The nominations would then be submitted to the Supreme Court for appointment. Specifics — such as whether non-attorney members would be involved in decision making on issues such as setting license fees and attorney discipline — would be addressed later.

4. Composition of the Board of Governors — To accommodate the other proposed changes to the Board, the Task Force recommended reducing the number of Board positions elected directly by WSBA members from 11 to 9. The Board response opposes reducing the number of elected positions and suggests the Board work with the Supreme Court to find an alternative that would incorporate the proposed additional members without eliminating existing positions.

The draft responses to three additional Task Force recommendations essentially concurred with the recommendations and brought little or no dissent among Board members at the March meeting. Those proposals are to create a Board-appointed Search Committee to solicit qualified candidates for the Board, establish an Executive Committee to address routine and non-strategic matters on behalf of the Board, and to develop permanent procedures to reduce the overall workload of the governors.

Also at the March meeting, the Board conducted an open-ended discussion on four other recommendations proposed by the Task Force. Although the Board took no action on the topics, their comments likely will be incorporated into the next version of the draft response. The additional Task Force recommendations involved were:

- That the Washington Supreme Court should meet with representatives of the Board and WSBA executive director at regular and frequent intervals to discuss priorities and ongoing projects. Over the years, ten-

sion has arisen between the Court and WSBA leadership over certain issues, which many believe stems partly from insufficient communication between the two entities.

- That amendments to WSBA Bylaws should be approved by the Washington Supreme Court. Although the Board amends Bylaws without involving the court, the court has consistently maintained its ultimate authority to regulate the profession. Proponents of the recommendation argue that having the Supreme Court explicitly approve Bylaw changes would help avert policy conflicts between the Board and Court.
- That dismissal of the WSBA executive director or chief disciplinary counsel should be subject to veto by the Supreme Court. This recommendation also is based on the court, rather than the WSBA, having ultimate authority over regulation of the profession. Board members acknowledged that the court has such authority, but they expressed differing ideas about exactly how that would relate to dismissal from these positions and how such a situation could be handled without creating conflict between the court and the WSBA.
- That the Supreme Court should re-evaluate placement of certain boards under the WSBA as well as the funding of such boards. For those boards that remain under the WSBA, the court should help ensure adequate funding. Prompting particular discussion was the Limited License Legal Technician Board. The Board opposed creation of the LLLT program but was effectively overruled by the Court, which created the program nonetheless. This put the WSBA in the awkward position of having to create and maintain a board to administer a program the Bar's own Board officially opposed. **NWL**

MICHAEL HEATHERLY *is the editor of* NWLawyer. *For more information on the Board of Governors and Board meetings, see www.wsba.org/bog. To provide feedback to the Board of Governors, email governance@wsba.org.*

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Tammy L. Williams

as she embarks on her journey throughout North America.

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News and information of interest to WSBA members

Opportunity for Service

Interested in Being Interviewed for Appellate Court Vacancies?

Deadline: May 22 for June 17, 2015, Interviews

On June 17, 2015, the WSBA Judicial Recommendation Committee (JRC) will interview attorneys and judges interested in being appointed by the Governor to fill potential vacancies on the Washington Supreme Court and Court of Appeals. The JRC's recommendations are reviewed by the WSBA Board of Governors and forwarded to the Governor for consideration when making appointments. To be considered for an interview, complete and submit the questionnaire posted on the JRC webpage at www.wsba.org/jrc by May 22, 2015. For further information, visit the JRC webpage.

WSBA News

Board of Governors Elections End April 15

All active WSBA members in the 1st, 4th, 5th and 7th-South districts are encouraged to vote in the Board of Governors elections that began March 16 and end April 15. If you received an email or paper ballot, please follow the instructions on the ballot to vote. If you did not receive a ballot, contact the WSBA Service Center at questions@wsba.org or 800-945-WSBA. More information about the elections can be found at www.wsba.org/elections.

Represent New and Young Lawyers on the WSBA Board of Governors

Interested in representing new and young lawyers on the WSBA Board of Governors? Don't miss this chance! Applications for the at-large seat representing new and young lawyers are due April 17 at 5 p.m. Interested members must qualify as a new and/or young lawyer at the time of submission. Along with your application form and biographical statement, you may submit a résumé and any letters of support. Email newlawyers@wsba.org.

New Family Law Forms Coming Soon – Share Your Feedback

In fall 2015, the Administrative Office of the Courts and the Access to Justice Board will unveil the final versions of an entirely new set of family law forms for the State of Washington, written in plain language. The plain-language forms will increase access to justice for *pro se* litigants and assist the courts in processing cases fairly and efficiently. These forms will be adopted for mandatory use, replacing the current forms by the end of 2015. This is a significant change that all practitioners should be aware of. Draft forms are available now for review and comment at www.courts.wa.gov/forms. Give your input now!

Join the WSBA New Lawyers List Serve

This list serve is a discussion platform for new lawyers of the WSBA. In addition to being the best place to receive news and information relevant to new lawyers, this is a place to ask questions, seek referrals, and make connections with peers. To join, email newlawyers@wsba.org.

Washington Young Lawyers Committee Meeting

The Washington Young Lawyers Committee will meet on Apr. 25, 2015, in Spokane, at a location to be determined. For more information or to attend, email newlawyers@wsba.org.

WYLC Public Service Incentive Award

New and young lawyers: would you like the opportunity to attend a WSBA CLE for free? Apply to receive a WYLC Public Service Incentive Award. Applications are due Monday, June 22. This award was created to encourage and support new and young lawyers who engage or would like to engage in public service and public service volunteer opportunities as described in RPC 6.1.

New Lawyer Education Web Series: Advising the New Tech Startup

Sign up for the New Lawyer Education web series, "Advising the New Tech Startup," presented in partnership with the Business Law Section. The series begins on April 7. Reduced rates are available for new lawyers! Visit wsba.org/nle for more information.

New Lawyer Education Seminar on Evidence and Objection

The New Lawyer Education seminar on Evidence and Objection takes place on June 16. Reduced rates are available for new lawyers! Visit wsba.org/nle for more information.

2015 License Renewal, MCLE, and Sections Information

Licensing Suspensions. If any portion of your license fee, LFCP assessment, or late fee remains unpaid, or if required certifications have not been filed after two months' written notice of your delinquency, a recommendation for suspension will be submitted to the Supreme Court.

MCLE Suspensions. If you were due to complete MCLE requirements for 2012–14 (Group 2) and have not done so after two months' written notice of your delinquency, a recommendation for suspension will be submitted to the Supreme Court.

Judicial Members. If you are still eligible for judicial membership and you have not filed your renewal within 60 days of the date of the written notice, your eligibility to transfer to another membership class upon leaving service as a judicial officer will not be preserved. If you are no longer eligible for judicial membership, you must notify the Bar within 10 days and, if you want to continue your affiliation with the WSBA, you must change to another membership class within the Bar.

Volunteer Custodians Needed

The WSBA is seeking interested lawyers as potential ELC 7.7 volunteer custodians. An appointed custodian is authorized to act as counsel for the limited purpose of protecting a client's interests whenever a lawyer has been transferred to disability inactive status, suspended, disbarred, dies, or disappears and no person appears to be protecting the clients' interests. The custodian takes possession of the necessary files and records and takes action to protect clients' interests. The custodian may act with a team of

custodians and much of the work may be performed by supervised staff. If the WSBA is notified of the need for a custodian, the WSBA would affirm the willingness and ability of a potential volunteer and seek their appointment as custodian. Costs incurred may be reimbursed. Current WSBA members of all practice areas are welcome to apply. Contact Sandra Schilling at sandras@wsba.org, 206-239-2118 or 800-945-9722, ext. 2118 or Darlene Neumann at darlenen@wsba.org, 206-733-5923 or 800-945-9722, ext. 5923.

WSBA Board of Governors Meetings

April 24–25, Spokane; June 12, Wenatchee

With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Ashka Nakhayee at 206-239-2125, 800-945-9722, ext. 2125, or ashkan@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/bog.

Legal Community

Save the Date: Access to Justice Conference, June 12–14

The Access to Justice Board is pleased to invite you to the 18th Access to Justice Conference from Friday, June 12, through Sunday, June 14, 2015, at the Wenatchee Convention Center. Our conference theme, "Working for Justice: Our Journey Continues," builds on the 20-year history of the Access to Justice Board and Alliance for Equal Justice, bringing together attorneys, judges, and other community leaders to address the challenges and opportunities of advocating for civil equal justice for our state's poorest and most disadvantaged communities. Lateefah Simon, a nationally recognized civil rights leader and program director for the Rosenberg Foundation, will keynote the conference. We will also offer networking opportunities and workshops addressing race inequality, community building, and leadership development. Some of the programming will be available for CLE credit. Learn more and register at www.wa-atj.org.

Ethics

Facing an Ethical Dilemma?

Members facing ethical dilemmas can talk with WSBA professional responsibility counsel for informal guidance on analyzing a situation involving their own prospective ethical conduct under the RPCs. All calls are confidential. Any advice given is intended for the education of the inquirer and does not represent an official position of the WSBA. Every effort is made to return calls within two business days. Call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

Search WSBA Advisory Opinions Online

WSBA advisory opinions are available online at www.wsba.org/advisoryopinions. You can search opinions by number, year issued, ethical rule, subject matter, or keyword. Advisory opinions are issued by the WSBA to assist members in interpreting their ethical obligations in specific circumstances. The opinions are the result of study and analysis in response to requests from WSBA members. For assistance, call the Ethics Line at 206-727-8284 or 800-945-9722, ext. 8284.

WSBA Lawyers Assistance Program (LAP)

Weekly Job Search Group

The Weekly Job Search Group provides strategy and support to unemployed attorneys. The group runs for seven weeks and is limited to eight attorneys. We provide the comprehensive WSBA job search guide, "Getting There: Your Guide to Career Success," which can also be found online at www.tinyurl.com/7xheb8b. If you would like to participate or to schedule a career consultation, contact Dan Crystal at danc@wsba.org, 206-727-8267, or 800-945-9722, ext. 8267.

Seeking Peer Advisors

Would you like to provide support to another lawyer in your community addressing topics such as mental health and self-care, alcoholism and addiction, or guidance in one's practice? Lawyers are often uniquely able to be resources to one another in these areas. We have a robust network of advisors, support groups, and clinical referrals throughout the state. Skills trainings and newsletters are being developed and planned. To participate or learn more, see http://bit.ly/104fpwN, contact 206-727-8268 or 800-945-9722, ext. 8268.

Mindful Lawyers Group

A growing number of legal professionals across the nation are applying mindfulness-based skills and training to lawyering. The Washington Contemplative Lawyers group meets on Mondays at the Lawyers Assistance Program from noon to 1 p.m. For more information, contact Sevilla Rhoads at SRhoads@gsblaw.com.

Judges Assistance Services Program

The purpose of the Judges Assistance Services Program (JASP) is to prevent or alleviate problems before they jeopardize a judicial officer's career. JASP provides confidential support and treatment for judges struggling with mental health issues, addiction, physical disability, or the loss of a loved one, among other topics. If you are a judge or are concerned about a judge, you are encouraged to contact the Judges Assistance Services Program at 206-727-8268 or at jasp@courts.wa.gov.

WSBA Law Office Management Assistance Program (LOMAP)

Casemaker Online Research

Casemaker is a powerful online research library provided free to WSBA members. Read about this legal research tool on the WSBA website at www.wsba.org/casemaker. As a WSBA member, you already receive free access to Casemaker. Now, we have enhanced this member benefit by

upgrading to add Casemaker+ with CaseCheck+ for you. Just like Shepard's and KeyCite, CaseCheck+ tells you instantly whether your case is good law. If you want more information, you can find it on the Casemaker website, or call 877-659-0801 and a Casemaker representative can talk with you about these features. For help using Casemaker, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

Learn More about Case-Management Software

The WSBA Law Office Management Assistance Program maintains a computer for members to review software tools designed to maximize office efficiency. LOMAP staff is available to provide materials, answer questions, and make recommendations. To make an appointment, contact lomap@wsba.org.

LOMAP Lending Library

The WSBA Law Office Management Assistance Program Lending Library is a service to WSBA members. We offer the short-term loan of books on the business management aspects of your law office. How does it work? You can view available titles at www.wsba.org/resources-and-services/lomap/lending-library. Books may be borrowed by any WSBA member for up to two weeks. LOMAP requires your WSBA ID and a valid Visa or MasterCard number to guarantee the book's return to the program. If you live outside of the Seattle area, books can be mailed to you; you will be responsible for return postage. For walk-in members, we recommend calling first to check availability of requested titles. To arrange for a book loan or to check availability, contact lomap@wsba.org.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in March 2015 was 0.076 percent. Therefore, the maximum allowable usury rate for April is 12 percent. **NWL**

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Questions? Contact nwlawyer@wsba.org.

Disciplinary Notices

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Active links to directory listings, RPC definitions, and documents related to the disciplinary matter can be found by viewing the online version of *NWLawyer* at http://nwlawyer.wsba.org or by looking up the respondent in the lawyer directory on the WSBA website (www.wsba.org) and then scrolling down to "Discipline History." As some WSBA members share the same or similar names, please read all disciplinary notices carefully for names, cities, and bar numbers.

Disbarred

Russell Kenneth Jones (WSBA No. 10887, admitted 1980), of Spokane, was disbarred, effective 12/11/2014, by order of the Washington Supreme Court. The lawyer's conduct violated the following Rules of Professional Conduct: 3.1 (Meritorious Claims and Contentions), 3.4 (Fairness to Opposing Party and Counsel), 8.4 (Misconduct). M. Craig Bray acted as disciplinary counsel. Kurt M. Bulmer represented Respondent. David A. Thorner was the hearing officer. The online version of *NWLawyer* contains links to the following documents: Hearing Officer's Decision; Hearing Officer's Amended Decision; Disciplinary Board Recommendation; and Washington Supreme Court Order.

Resigned in Lieu of Discipline

John Michael Lovejoy (WSBA No. 6012, admitted 1975), of Seattle, resigned in lieu of discipline, effective 1/28/2015. The lawyer agrees that he is aware of the alleged misconduct in disciplinary counsel's Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.15A (Safeguarding Property). Marsha Matsumoto acted as disciplinary counsel. John Michael Lovejoy represented himself. The online version of *NWLawyer* contains a link to the following document: Resignation Form of J. Michael Lovejoy (ELC 9.3(b)).

Suspended

Richard E. Kriger (WSBA No. 16346, admitted 1986), of Everett, was suspended for two years, with all but four months of the suspension withheld, effective 12/15/2014, by order of the Washington Supreme Court imposing reciprocal discipline in accordance with an order of the Supreme Court of the State of Idaho. For more information, see http://www.isb.idaho.gov/licensing/attorney_roster_ind.cfm?IDANumber=3318. Joanne S. Abelson acted as disciplinary counsel. Brett Andrews Purtzer represented Respondent. The online version of *NWLawyer* contains a link to the following document: Washington Supreme Court Order.

Suspended

Justin C. Osemene (WSBA No. 28082, admitted 1998), of Seattle, was suspended for two years, effective 12/23/2014, by order of the Washington Supreme Court. The lawyer's conduct violated the following Rules of Professional Conduct: 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), 1.4 (Communication), 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records), 1.16 (Declining or Terminating Representation), 4.1 (Truthfulness in Statements to Others), 8.4 (Misconduct). Joanne S. Abelson and Randy Beitel acted as disciplinary counsel. Justin C. Osemene represented himself. Craig Charles Beles was the hearing officer. The online version of *NWLawyer* contains links to the following documents: Hearing Officer's Decision; Disciplinary Board Recommendation; and Washington Supreme Court Order.

Suspended

Harold M. Turner (WSBA No. 33341, admitted 2003), of Federal Way, was suspended for six months, effective 12/18/2014, by order of the Washington Supreme Court. The lawyer's conduct violated the following Rules of Professional Conduct: 8.4 (Misconduct). Craig Bray acted as disciplinary counsel. Harold M. Turner represented himself. Octavia Y. Hathaway was the hearing officer. The online version of *NWLawyer* contains links to the following documents: Hearing Officer's Decision; Disciplinary Board Order Declining Sua Sponte Review; and Washington Supreme Court Order.

Reprimanded

Ryan Scott Taroski (WSBA No. 38412, admitted 2006), of Vancouver, was reprimanded, effective 10/23/2014, by order of the hearing officer. The lawyer's conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.16 (Declining or Terminating Representation), 3.2 (Expediting Litigation). Francesca D'Angelo acted as disciplinary counsel. Ryan Scott Taroski represented himself. The online version of *NWLawyer* contains links to the following documents: Order on Stipulation to Reprimand; Stipulation to Reprimand; and Notice of Reprimand.

Interim Suspension

Steven Miles Cyr (WSBA No. 33411, admitted 2003), of Portland, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 1/06/2015, by order of the Washington Supreme Court. This is not a disciplinary sanction. **NWL**

CLE Calendar

CLE seminars are subject to change. Please check with providers to verify information. To announce a seminar, send information to clecalendar@wsba.org. Information must be received by the first day of the month for placement in the following issue's calendar.

ACHIEVING INCLUSION SERIES

Working Effectively with Interpreters in the Courtroom
April 15, webcast. CLE credits pending. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Effective Representation of Transgender Clients
May 20, webcast. CLE credits pending. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Creating an Inclusive Workplace for Attorneys with Disabilities
June 17, webcast. CLE credits pending. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

BUSINESS LAW

New Lawyer Education — Advising the New Tech Startup Web Series
Business Formation Basics, April 7; Financing and Ethical Considerations, April 14; Ongoing Transactions and Exit Strategies, April 21. Webcast. 2 CLE credits each session. Presented by WSBA in partnership with the Business Law Section; 800-945-WSBA or 206-443-WSBA. www.wsba.org/NLE.

35th Northwest Securities Institute
April 17–18, Portland. CLE credits pending. Presented by the Oregon State Bar in partnership with the WSBA Business Law Section and the OSB Securities Regulation Section; www.osb.org/cle.

Cyber Security: Managing Risk Through Legal and Technical Strategies for In-house and Outside Counsel
April 21, Seattle. 1 CLE credit. Presented by the WSBA Corporate Counsel Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Business Law Annual Seminar
May 15, Seattle and webcast. CLE credits pending. Presented by WSBA in partnership with the WSBA Business Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

CONSTRUCTION LAW

Construction Law Annual Seminar
June 12, Seattle and webcast. CLE credits pending. Presented by WSBA in partnership with the Construction Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

CREDITOR DEBTOR

28th Annual Northwest Bankruptcy Institute
May 1–2, Portland. CLE credits pending. Presented by the Oregon State Bar in partnership with the WSBA Creditor Debtor Rights Section and the OSB Debtor-Creditor Section; www.osb.org/cle.

ELDER LAW

Short Talks/Hot Topics: Elder Law Spring Seminar
April 17, Seattle and webcast. 6.5 CLE credits, including 1 ethics. Presented by WSBA in partnership with the WSBA Elder Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

ENVIRONMENTAL

2015 WSBA Environmental and Land Use Law Section Midyear Conference
May 7–9, Union. 13.25 CLE credits, including 1 ethics. Presented by WSBA in partnership with the WSBA Environmental and Land Use Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

ESTATE PLANNING

12th Annual Trust and Estate Litigation Seminar
April 22, Seattle and webcast. 6.5 CLE credits, including 1 ethics. Presented by WSBA in partnership with the Real Property, Probate and Trust Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

ETHICS

CLE = COMEDIC Legal Education with Sean Carter, Humorist at Law
June 9, Seattle and webcast. CLE credits pending. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

FAMILY LAW

WSBA Family Law Section Midyear Conference
June 19–21, Spokane. CLE credits pending. Presented by WSBA in partnership with the Family Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

GENERAL

Two Lawyers and a Pot Farmer Walk into a Bar
April 30, Seattle and webcast, CLE credits pending. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Atticus Finch in the 21st Century
May 5, Seattle and webcast. CLE credits pending. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

INDIAN LAW

Annual WSBA Indian Law Section CLE
June 11, Seattle and webcast. CLE credits pending. Presented by WSBA in partnership with the WSBA Indian Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

INTELLECTUAL PROPERTY

Advanced Licensing in IP
May 22, Seattle and webcast. CLE credits pending. Presented by WSBA in partnership with the WSBA Intellectual Property Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

LEGAL LUNCHBOX SERIES

Client Communications: Best Practices and Ethical Considerations
April 28, webcast. CLE credits pending. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Client Communications: Difficult Conversations Made Easier
May 26, webcast. CLE credits pending. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Tech Addiction: Beyond Drugs and Alcohol
June 30, webcast. CLE credits pending. Presented by WSBA; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Classifieds

LITIGATION

Boot Camp: Evidence and Objection
June 16, Seattle and webcast. CLE credits pending. Presented by WSBA New Lawyer Education; 800-945-WSBA or 206-443-WSBA. www.wsba.org/NLE.

NEW LAWYER EDUCATION

New Lawyer Education — Advising the New Tech Startup Web Series
Business Formation Basics, April 7; Financing and Ethical Considerations, April 14; Ongoing Transactions and Exit Strategies, April 21. Webcast. 2 CLE credits each session. Presented by WSBA in partnership with the WSBA Business Law Section; 800-945-WSBA or 206-443-WSBA. www.wsba.org/NLE.

Boot Camp: Evidence and Objection
June 16, Seattle and webcast. CLE credits pending. Presented by WSBA New Lawyer Education; 800-945-WSBA or 206-443-WSBA. www.wsba.org/NLE.

REAL PROPERTY

Focus On an Ever-Changing Landscape: Annual Spring Real Estate Update
April 16, Seattle and webcast. 6.5 CLE credits, including 1 ethics credit. Presented by WSBA in partnership with the WSBA Real Property, Probate and Trust Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Real Property, Probate and Trust Section Midyear Conference
June 12–14, Spokane. CLE credits pending. Presented by WSBA in partnership with the WSBA Real Property Probate and Trust Section; 800-945-WSBA or 206-443-WSBA.

SENIOR LAWYERS

Senior Lawyers Section Annual Conference
May 1, SeaTac. CLE credits pending. Presented by WSBA in partnership with the WSBA Senior Lawyers Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

TAXATION

The Usefulness of Chapter 13 in Managing IRS Claims
April 30, Spokane. 1 CLE credit. Presented by the WSBA Tax Section: Transactional Tax Committee; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

POSITIONS AVAILABLE ads can be found online at the WSBA Career Center. To view these ads or to place a position available ad, go to http://jobs.wsba.org.

TO PLACE A CLASSIFIED AD

RATES, DEADLINE, AND PAYMENT: WSBA members: $40/first 25 words; $0.50 each additional word. Non-members: $50/first 25 words; $1 each additional word. Email text to classifieds@wsba.org by the first day of each month for the following issue (e.g. Oct. 1 for the Nov. issue.) Advance payment required. For payment information, see http://bit.ly/NWLawyerAds. These rates are for advertising in *NWLawyer* only. For questions, email classifieds@wsba.org.

RATE INCREASE: Classified advertising rates will change starting with the JUL/AUG 2015 issue of *NWLawyer*. WSBA members: $50/first 50 words; $1 each additional word. Non-members: $60/first 50 words; $1 each additional word.

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Ballard office space for solo attorney. Shared reception area, conference room, internet, and free on-street parking. $625 per month. Other amenities available. Share space with two bankruptcy attorneys and one Newfoundland. Contact Tanya at office@hutzbah.com or 206-448-7996.

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Available for sublease from law firm: Up to 6 offices and 3 cubicles available on 38th floor Bank of America Plaza, 800 Fifth Ave, Seattle 98104, three blocks from KC courthouse, adjacent to I-5, conference room, kitchen, storage space, front desk. David, 206-805-0135.

Olympia law office. Furnished law office for office-share $1250/month. Includes attorney and assistant office, conference room, lunch room, and reception. Internet, phone, fax, and parking available. Evergreen Plaza Building, 711 Capitol Way S., Suite 101, contact Claudia at 360-357-7410.

Downtown Seattle attorney office available. Class A, 11' X 13' furnished office on the 33rd floor of One Union Square for rent. Staffed reception, conference rooms and access to copiers/fax/postage meter. Use of legal assistant is negotiable. Price: $1,250/month. Contact Dolores at 206-626-5444 or dmevans@levy-law.com.

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WILLS

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Stephen C. Smith,
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State v. Sutherby,
165 Wn.2d 870 (2009)
State v. Stein,
144 Wn.2d 236 (2001)
State v. Stegall,
124 Wn.2d 719 (1994)

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Beyond the Bar No.

Bob Ferguson

WSBA No. 26004

- **Before law school,** I made my parents very nervous by attempting to become a professional chess player.
- **The best advice I have for new lawyers is** to appreciate the importance of becoming a good writer.
- **My long-term professional goal is** to run the Office of the Attorney General in an independent manner.
- **The most rewarding part of my job is** working with 1,100 employees devoted to serving the people of Washington.
- **The worst part of my job is** that many of those who work in my office are so underpaid.
- **I wish that more lawyers would** listen... really listen.
- **In 10 years I see myself** trying to navigate parenthood of two teenagers with my wonderful wife, Colleen.
- **The most memorable trip I ever took was** in 1990 with a college buddy (attorney Brian Bennett). We saw a baseball game in every major league ballpark in a beat-up Honda. We had two rules: 1) couldn't stay in a hotel, and 2) couldn't buy a ticket at the ticket window.
- **I look up to** my mom, Betty Ferguson, who raised seven kids (six boys!) and taught special education in our public schools.
- **I enjoy reading** anything by Ivan Doig.
- **I create work/life balance by** remembering how much it meant to me that my father, Murray Ferguson, spent time with me when I was a kid.
- **I worry about** how long I have to wait to see the Huskies in the Rose Bowl again.
- **I am happiest when** I am with my family at our rustic, off-the-grid cabin.
- **Nobody would ever suspect that I** get along with Reagan Dunn — my opponent in my campaign for attorney general. Great guy!
- **This is on my bucket list:** climb the highest point of all 50 states — five more to go!
- **This makes me roll my eyes:** people who don't think Edgar Martinez belongs in the Hall of Fame.
- **This makes me smile:** my six-year-old son, Jack, asking me to play a Bruce Springsteen CD.
- **My best habit is** reading to my children at bedtime. We are currently working our way through *The Chronicles of Narnia*.
- **I am thankful that** my wife, Colleen, is such a good mother and is willing to make sacrifices so I can devote my career to public service.
- **If I had a time machine,** I would visit my ancestors who homesteaded on the Skagit River in the 19th century, and say thanks.
- **My first car was** a '93 Honda Civic. It was totaled last year by a teenager who ran a red light. You know your car is old when the person who totals it is younger than the car.
- **My dream trip would be** to hike the Pacific Coast Trail with Colleen.
- **If I have learned one thing in life,** it is that kids spell love "T-I-M-E." **NWL**

We'd like to learn about you! Go to www.bit.ly/nwlbeyondthebar to download and fill out your own Beyond the Bar submission.

My name is Bob Ferguson and I am Washington's 18th attorney general and the son of a 40-year Boeing employee and a public school teacher. I graduated from the University of Washington where I served as student body president. I clerked in Spokane for Judge W. Fremming Nielsen, chief judge of the Eastern District of Washington, and Judge Myron Bright on the 8th Circuit Court of Appeals. I was a civil litigator at Preston, Gates and Ellis. My wife and I have young twins, Jack and Katie. I hope they are future Huskies.

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