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ON THE COVER: Washington’s Solicitor General Noah Purcell. Photo by Jon and Rach Photography.
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.

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THE DIALOGUE CONTINUES

Who can really believe the WSBA leadership’s public relations puffery? [“The Dialogue Continues,” by Paula Littlewood and Robin Haynes, FEB NWLawyer]. At least 5% of the WSBA members signed a petition to submit the proposed dues increases to a vote of the membership. After announcing the Board of Governors’ decision to refuse to hold the vote, the president and executive director assure us that “. . . we look forward to hearing more feedback and input about what services are valuable to you . . . We value your ideas, and are always interested in learning how best to communicate with you.” What pompous pretense! The real “feedback” is the vote which the Board refuses to hold.

The recent ill-advised Supreme Court order on dues increases does not tie the hands of the Board. The membership has an independent right to vote in order to express their opinion on this matter. Town halls and online chats are imprecise and lame compared to a tallied vote.

The Board may fear the vote because it may reveal that the Board is out of step with the membership. Regardless, there should be no taxation without member ratification.

RESPONSE FROM THE AUTHORS:

The license fee raise was unanimously adopted in Sept. 2016 after a year-long budget process during which the Budget & Audit Committee (comprised of a majority of the members of the Board of Governors, as well as the WSBA’s Executive Management team) and the full Board looked at regulatory and...
While I appreciate the article by Sheri Pewitt on police body-worn cameras [“To See or Not to See: Law Enforcement Use of Body-Worn Cameras,”

MAR 2017 NWLawyer], the true picture is not nearly as sanguine. A growing body of evidence suggests body cams can have a positive impact in reducing violence between law enforcement and community members only if implemented within a scheme geared towards police accountability; they may actually increase such violence without such a scheme. The impact of body cams on community-police trust, an important factor in reducing violence and protecting public safety, is also unknown. Will victims, witnesses to crime, or immigrants be reluctant to interact with officers equipped with body cams?

Some studies show body cams driving a drop in community-officer contact. Other critical questions remain unanswered: Should body camera footage be used as a tool to prosecute crimes, possibly in combination with facial recognition? If so, will such surveillance use target communities of color and activists, as has been the case with other surveillance technologies? Finally, can privacy concerns be reconciled with accountability must be carefully weighed against the potential privacy cost. That said, the benefit of law enforcement transparency and accountability must be carefully weighed against the potential privacy cost. That is no small task for the Governor’s Body Camera Task Force.

Robin Haynes,
WSBA President, Spokane
Paula Littlewood,
WSBA Executive Director, Seattle

RESPONSE FROM THE AUTHOR:

Effective body camera legislation must carefully define the parameters of how and when body camera footage can be used. There is a very real tension between protecting privacy interests and achieving law enforcement transparency through the use of body cameras. The Governor’s Body Cam Task Force has the difficult job of proposing statutory language that achieves a balance between the two interests. According to The Washington Post, “there are only seven existing studies on body cameras in the U.S., though many more are underway. Of those completed, the review found that officers may not necessarily have negative attitudes toward the cameras, and that they may reduce or speed resolution of complaints against officers. But whether the cameras create increased accountability, improved behavior or reduce the use of force is not clear.” (Jackman, Tom, “What do we know about police body cameras? Survey says: Not much,” The Washington Post, March 2, 2016.)

A 2015 George Mason University report on existing and ongoing body camera research examines what is known about the effects of body cam programs. The report considers all available U.S. studies as opposed to the 2012 hands-on findings reported by the Rialto California Police Department. (Lum, C., Koper, C.S., Merola, L.M., Scherer, A., and Reioux, A. (2015) “Existing and Ongoing Body Worn Camera Research: Knowledge gaps and opportunities.” Report for the Laura and John Arnold Foundation. Fairfax, VA: Center for Evidence-Based Crime Policy, George Mason University.)

In my experience as a criminal defense attorney, when dash cam and/or civilian video has captured an incident, the video has served as invaluable “objective” evidence to either corroborate or dispel an officer’s written report. When available, video footage has helped ensure that an accurate account of the incident is available to the defense, to the prosecutor and to the trier of fact. In my law practice, video footage has proven to be an invaluable tool to ensure that justice is served. That said, the benefit of law enforcement transparency and accountability must be carefully weighed against the potential privacy cost. That is no small task for the Governor’s Body Camera Task Force to achieve.

Sheri Pewitt, Seattle
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Heroes and Goodbyes

Millions of people know the work of the WSBA member attorney pictured on the cover of this issue of NWLawyer. Washington’s Solicitor General Noah Purcell, along with his colleagues in the Attorney General’s Office, captured the international spotlight in January after his oral argument in Washington v. Trump. Working with Mr. Purcell during the production of this issue was one of the highlights of my time as editor of NWLawyer — not because of his fame, but because of the impression he left me with. He is humble. He is respectful. He was responsive in his communications, generous with his time, and open about his work. He is just one of the many heroes I have met at the Bar.

In this issue, we have an in-depth account of the legal work of a WSBA member attorney who prosecuted genocide and war crimes for the International Criminal Tribunal for the Former Yugoslavia (ICTY) at the United Nations. Over 10 years, attorney Kyle Wood, a former King County deputy prosecutor, worked on the most complex international criminal cases prosecuted since the post-World War II Nuremberg Trials and the Tokyo War Crimes Tribunal. In his article, he shares his fascinating firsthand account of the challenges of prosecuting genocide and gives us insight into the necessity of continuing this important work.

In this time of heightened activism and widespread protest, we have a timely article from WSBA member attorney Patrick Preston about the legal issues surrounding activism, with insight from three leaders on their experiences with activism. Mr. Preston gives us his own account of the WTO protests in Seattle, and extensive discussion of civil rights, free speech, free assembly, and criminal prosecution of protestors, among other issues.

April is Autism Awareness Month, and we highlight the important work of WSBA member attorneys who are advocating for families affected by autism. Many of our readers have their own experiences with autism, including as parents, friends, or advocates. The authors, WSBA member attorneys David Roth and Mira Posner, advocate for health care coverage of effective and essential treatments for children and families affected by autism. They also give us a glimpse into the essential work of the hundreds of WSBA members who practice with nonprofits, advocating every day for people whose essential legal needs are not met otherwise.

We have more great articles from the legal community, including an analysis of current litigation involving the U.S. Department of Education and its public service loan forgiveness program for law students; tips on how to use a forensic neutral in discovery; information about the upcoming Access to Justice Conference; options for free legal assistance for seniors facing debt issues; and Mother’s Day tributes from WSBA members who remind us all to appreciate the influence of the great women in our lives.

This is my final issue as the editor of NWLawyer. It has been an honor to serve the legal community in this role. I have gained fascinating insight into the inner workings of the Bar, and an appreciation for the many heroes among us. Thank you for reading.

Send your comments and ideas for NWLawyer to nwlawyer@wsba.org.

Linda Jenkins is the departing editor of NWLawyer. After April 1, she can be reached at linda@writerlindajenkins.com.
A LOOK AT A WEEK IN THE LIFE OF WSBA VOLUNTEERISM

Early in the week, WSBA’s monthly free Legal Lunchbox program in the WSBA Conference Center was produced. More than 1,680 people tuned in to learn from volunteer faculty, Janet Gwilym, Nicole McGrath, and Jill Malat about Ethical Considerations While Representing Juvenile Clients. Volunteer faculty put in many hours working on their own and in partnership with our educational developers to design materials and presentations that are engaging, relevant and educationally effective. You can view this and other Legal Lunchbox presentations at https://mywsba.org/OnlineStore.

Just down the hall from the Conference Center, the Access to Justice Board’s Conference Planning Committee was meeting to review workshop proposals for the Access to Justice Conference coming up on June 2-4, in Yakima. This biennial conference focused on ensuring equal access to the civil justice system is not only planned in partnership with volunteers, but all of the speakers, moderators, panelists, and faculty are volunteering their time as well.

Switching gears from civil to criminal justice, on Tuesday, WSBA’s Council on Public Defense’s Juvenile Standards Committee met. This group has been hard at work on a set of standards that would serve as a guide to those providing public defense to juveniles. In 2012 the Council’s Standards for Indigent Defense Services were adopted by Supreme Court Order making the Standards an important benchmark to aid in the administration of justice.

On Wednesday, WSBA held the Board of Governors (BOG) Candidates forum. Our Board members are volunteers too! They give an average of 40 hours every month attending BOG and committee meetings, serving as liaisons to other WSBA entities and external entities, and engaging with WSBA members. This year we are excited to see a record number of candidates standing for election.

Bright and early on Thursday morning the learning track development team met to enhance our New Lawyer Education programming. This programming is designed to assist legal professionals in their first five years of practice to become competent and effective practitioners. This year we realize a long-term goal to offer learning tracks focused on various

ONE

of the hallmarks of being the only self-regulated profession in the United States is the fact that volunteers and professional staff work in partnership to perform the business of the Bar, both our regulatory and our professional association functions. On any given day, more than 1,000 volunteers are involved with WSBA – and this number doesn’t include all the volunteers helping with our educational programming. If you include that number, close to 2,000 volunteers assist in advancing the WSBA’s mission each year.

April 23-29 is Volunteer Appreciation Week; through a 1974 Presidential Proclamation and promoted by Points of Light Foundation, this week is focused on recognizing and thanking the volunteers who lend their time and talent to work they care about. A brief look at the WSBA conference rooms schedule on any given week will easily demonstrate that volunteers are a significant part of the work at WSBA, touching every corner of the organization. Those of us who work at WSBA get to see that effort every day and are excited to shine a light on how volunteers help us advance the mission of the WSBA. Illustrating just one week’s activities helps give us all insight into the critical work of our volunteers.
substantive areas of law. This initial launch will focus on trusts and estates and will be partially released in September. The program will include nine two-hour seminars that build off each other and cover the foundations of practice, progressing to intermediate and advanced topics. This programming would not succeed without a tremendous partnership between staff and volunteers. The six volunteers on this team will be working with our CLE staff for up to eight months developing the curriculum, recruiting faculty, and serving as faculty themselves.

Over lunch on Thursday, the Pro Bono and Public Service Committee met to discuss their efforts to enhance a culture of service and encourage members to engage in pro bono and public service. This committee is one of 10 committees that report to the BOG. While some committees focus on young lawyers, others focus on legislative or professional ethics issues. All of our committees are critical to the ongoing vitality of the organization and profession.

On Thursday we also launched our first educational forum in our new Decoding the Law series. This project is designed to seed conversations among members and the public on timely legal topics. Our first topic was the Death Penalty in Washington State. Our volunteer presenters, Mark Larrañaga, Mary Pat Treuthart, and Mark Larson did a fantastic job outlining the landscape and the issues in this first forum. If you missed any or all of the three-part series, you can find it online at http://www.wsba.org/News-and-Events/Decoding-the-Law.

Fridays are often busy meeting days at WSBA and this one was no exception, with all day meetings of the Disciplinary Board and the Law Clerk Board. As an agency of the Washington Supreme Court, the WSBA administers and supports six Supreme Court-created boards, like the Disciplinary Board, and four other boards created by Court Rule, like the Law Clerk Board. These boards regularly consider matters that are related to the regulation and discipline of Washington’s lawyers, Limited License Legal Technicians, Limited Practice Officers, and others like Rule 9 interns, as well as assist with regulatory determinations related to those who want to become licensed to practice law in Washington. Although these boards are administered by WSBA, many of them make direct reports and recommendations to the Supreme Court.

Of course, highlighting one week merely scratches the surface on the various and diverse roles our volunteers play, working alongside our staff to fulfill our mission. None of any week’s activities, efforts and impact would be possible without the countless hours, talent, and dedication of our volunteers. The theme for National Volunteer Week is “Service Unites.” This theme captures the power of change-makers to come together to build stronger, more vibrant communities through service. WSBA is fortunate to have such a committed membership step up to serve and make a difference in the legal community and for the public. NWL
“Let us not seek the Republican answer or the Democratic answer, but the right answer. Let us not seek to fix the blame for the past. Let us accept our own responsibility for the future.”

-John F. Kennedy

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Washington State Bar Association
the end of February, I was invited by the Oregon Chapter of the Association of Legal Administrators (ALA) to present about diversity in the Pacific Northwest law firm. The Portland Business Journal had just run an article on the most diverse Portland law firms, and the Oregon ALA wanted to talk about it at their managing partner summit. In an interactive presentation including clips of Idris Elba and Michael K. Williams (aka Omar Little), we shared success stories in achieving equitable diversity in law firms. This month, instead of giving depressing stats about wage gaps or blatant sexism, I wanted to talk about a way forward. The following nonexclusive steps are some of the ways that firms can move forward when it comes to diversity.

It's Not Them. It's You.

GET IN TOUCH WITH YOURSELF

I don’t mean in a mindful way, although former WSBA President Patrick Palace would agree that mindfulness is critical. I mean that a firm cannot become more diverse until a firm knows how diverse it is not. Do a deep dive inside — look at demographics of both current and former attorneys. What are your numbers for women attorneys or attorneys of color at all levels? Don’t just stop at titles and say, well, we have 20% women as equity partners. Look at salaries over a 10-year period or longer. Look at bonuses and raises. Analyze your bonus and promotion structure — are your partner bonuses 100% discretionary and based on the whims of a compensation committee that has no formula to use? Or is the bonus structure dynamic, based on a mix of origination, receivables, and volunteer work? What percentage of your top earners (not top billers) are LGBTQ attorneys?

Other things to look at include: Do you have a diversity committee? Do you have a trend of women leaving — especially if it’s usually the younger women (associates, junior partners) and especially if it has nothing to do with maternity leave? If you have a board, what is its makeup? How do you decide if someone gets to be on the board? How do you elect or select the managing partner(s)? What percentage of firm committees are chaired by traditionally underrepresented attorneys?

Go further and look at your vendors, as New York law firm Nixon Peabody recently did. The firm is considered a thought leader in BigLaw diversity. Do you hire court reporters from minority-owned businesses? Who is handling your coffee service (a critical item in the Pacific Northwest)? Where did you buy your toner? As the old business adage goes, “You can’t manage what you don’t measure.”

LEARN WHAT YOU DO NOT KNOW

I’ve written about implicit bias, which “refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual’s awareness or intentional control. Residing deep in the subconscious, these biases are different from known biases that individuals may choose to conceal for the purposes of social and/or political correctness. Rather, implicit biases are not accessible through introspection.” Start with the implicit bias assessments or hire a trainer. One way to think about it is to consider an actor who is typecast. If you watched In Living Color in the ’90s, did you ever expect the man who played Wanda to be an Academy Award winner? Did you think Jordan Catalano would win an Oscar, too?

Beyond that, the next step is cultural competence. This is not to say that any of you are incompetent — it is to say that we keep doing the same thing as a profession, and it’s not working. Part of that is probably because we as lawyers haven’t tried to truly learn about the experience of attorneys of color or immigrant attorneys in the law firm. The experience of being the only diverse attorney at a firm is often a daily highlight reel of that attorney’s “unlikeness” — diversity and exclusion. You must be willing to get uncomfortable, to not understand, and to be open.

In getting comfortable with the uncomfortable, many firms that have really committed to diversity have swallowed the bitter pill and reached out to former employees and partners to have repeated or long-delayed exit interviews. Be ready to actually listen — don’t come in with a ready explanation about how that lawyer just wanted to be a stay-
Charles Barkley’s Golf Swing

If you haven’t seen it, Google it right now. No, your internet connection isn’t freezing. That’s the real deal. Retention of any attorney, but especially diverse attorneys, is about meaningful firm engagement and mentoring. It is not about having all your social events at a golf course or a bar. Your Muslim associate does not drink, and your Latino associate may not have grown up with the means to pay for a round of golf. It is not all about assigning a mentor who “looks like” the associate and wishing for the best. It is about ensuring, from the top down, that all associates are getting good work, and if, at the end of the month, one associate has 250 billable hours and the other has 140 hours, you do not immediately assume the latter is not working hard enough. It is about making sure that leadership has real buy-in on changing the culture and will stand up to the senior partner who wants more attorneys who “look like BigLaw lawyers.”

Retention is not about having a family leave policy or the option to work from home. Retention is not penalizing the attorneys who want work-life balance but are otherwise getting the job done. Retention is not about offering diverse attorneys non-equity partnerships or of counsel positions, while taking the founding partner’s son to meet with your largest client.

Think Outside the Moot Court

Once you’ve self-assessed and learned a few things, it’s time to look at hiring. While the pipeline at most law schools is favorable to diversity, and while many summer associate classes are markedly diverse, the actual pipe is pretty homogenous. In the economic downturn beginning in 2008, the largest groups of attorneys losing jobs were women and attorneys of color, particularly women of color. Since the economy has picked back up, those diverse attorneys have not regained their limited footholds. So, the excuse that we’re just not getting diverse applicants is simply that — an excuse.

Who is on your hiring committee? Does that committee work with your diversity committee? Are you only interviewing applicants from one school or a handful of Ivies? Do you have a blind screening process for applications that removes names or demographic data before doing the initial cut? Have you participated in the Northwest Minority Job Fair? Do you ensure that a certain percentage of potential interviewees are from underrepresented groups before you begin your fall interviews?

If your firm is truly not getting diverse applicants, perhaps it’s time to go back to your data. In particular, look at your firm’s website and policies. Is every face on your firm website white and male? Do you have an actual parental leave policy? Do you have a diversity policy or equal opportunity statement? Does your most recent partner promotion class look like an all boys’ prep school class photo? Is the same “ambiguously ethnic” associate in every piece of your marketing materials?

But I’m Tired

We’ve heard it: diversity fatigue. We’re tired of talking about it, blah blah blah. Well, if your firm wants to continue in the ever-changing market, consider this. In early 2017, Hewlett Packard’s (HP’s) general counsel advised firms that not only would diversity be assessed in the hiring of outside counsel, but that up to 10% of invoiced attorneys’ fees would be deducted if outside counsel were not meeting diversity numbers and were not having diverse attorneys meaningfully participating in HP’s work. By 2050, census estimates predict that the United States will not have a single dominant race. Since lawyers never retire, that means for many of us, our client pool, neighbors, and communities will look considerably different than the current law firm makeup. So, be tired of it. And be left behind.
WSBA PRESIDENT ROBIN HAYNES can be reached at robin@giantlegal.net. Follow her personal Twitter and Instagram @GirlWonder34.

NOTES
1. For more information, check out the Kirwan Institute at Ohio State University: http://kirwaninstitute.osu.edu/researchandstrategicinitiatives/#implicitbias
2. For a great, short clip about being typecast, Google Omar Little and The Atlantic.

No one should suffer in an abusive environment.
Here are four legal puzzlers:

• An African-American student wants to attend the same school as white children. Can she?

• A man is charged with burglary, but he can’t afford a lawyer. Should the state give him one for free?

• Two men pass a worthless check and are convicted of misdemeanors. Can the state take away their right to vote because of those convictions?

• Can states outlaw interracial marriage?

The answers are obvious — now. But that’s only because we have the 14th Amendment to the United States Constitution and nearly 150 years of Supreme Court rulings interpreting it.

Most Americans have no idea what the 14th Amendment is or how it affects their lives. But we do. And our job as lawyers is to defend individuals’ rights under the Constitution and to explain that great document to the public.

That’s the idea behind Law Day. Every year on May 1, lawyers across the country engage their communities and rally behind the rule of law. This year, the theme of Law Day is The 14th Amendment: Transforming American Democracy — one of the most-litigated but least-known of all the constitutional amendments.

For more than a century, the 14th Amendment has been the legal basis for many major Supreme Court decisions, including those that desegregated schools (Brown v. Board of Education) and ensured counsel for criminal defendants (Gideon v. Wainwright).

The first section of the 14th Amendment — the part that’s most often litigated — states: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

“The reason we have the 14th Amendment,” said former U.S. Solicitor General Ted Olson, “is to provide the courts with the opportunity to override the will of the people when the will of the people discriminates against a segment of our society.”

This year, we’re asking lawyers to join judges and teachers across the country to engage students, elected officials and community leaders in Law Day discussions of the amendment’s significance.

There are many ways to celebrate Law Day. In Idaho, students are creating podcasts. In Boston, lawyers are visiting classrooms. In Texas and North Carolina, students are writing editorials, snapping photos and creating posters.

And in Washington D.C., the American Bar Association will sponsor two special events. On May 1, a scholarly panel, led by Jeffrey Rosen, president of the National Constitution Center, will debate the 14th Amendment’s role in transforming American democracy. The next day, 150 high school students from around the country will discuss the ideas of equal protection, due process and liberty under the 14th Amendment. I will help lead the discussion.

Law Day dates back to the heart of the Cold War, nearly 60 years ago. In 1957, ABA President Charles S. Rhine watched reports of the Soviet Union’s annual May Day celebration in Moscow’s Red Square, with its massive displays of military might. He thought that what made America great was its fidelity to the rule of law, not military power.

Rhine asked President Dwight Eisenhower to issue the first Law Day proclamation, declaring that “guaranteed fundamental rights of individuals under the law is the heart and sinew of our Nation.” It has been a presidential tradition ever since.

Today, it often seems that we are a nation divided, but there is one thing that Republicans, Democrats and Independents agree on: The American rule of law is the envy of billions around the world.

So on May 1, let’s celebrate and spread the word. The U.S. Constitution is America’s greatest creation. It is worth defending and teaching, on May 1 and every day.
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The rise of technical issues in litigation is steadily increasing the time and cost of resolving lawsuits. The average civil litigation in federal court takes upwards of 24 months to reach a resolution on the merits.\(^1\)

Thus, courts and attorneys are increasingly looking to alternative processes to address technical issues more efficiently, such as the appointment of special masters or neutrals. This article offers practical guidance on the nuts and bolts of selecting and working with special masters and neutrals in state and federal court to help reduce the time and cost of litigation.

Appointing a Discovery Special Master to Resolve Technical Issues in Discovery

A discovery special master is an individual who works at the direction of the courts to oversee and manage technical issues in the discovery process. Discovery special masters are the most widely used type of special master and can be valuable in any case in which complex discovery issues exist that would most efficiently be managed by an individual with legal and technical expertise.

Appointing a discovery special master differs under state and federal law. For Washington courts, Superior Court Civil Rule (CR) 53.3 provides that an appointment “may be made, for good cause shown, upon the request of any party in pending litigation or upon the court's own motion.” In federal court, an appointment is made pursuant to Federal Rule of Civil Procedure (FRCP) 53, which provides that a court “may appoint a master only to: (A) perform duties consented to by the parties; [or] (B) hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted.”

Under both state and federal rules, when a court appoints a special master, it provides an appointment order outlining the scope of the special master’s authority. However, the federal rules require a great deal more specificity in the appointment order than the state rules. In Washington, the rule defers to the court on the specifics of the appointment by stating that “the order ... may specify the duties of the master.” CR 53.3. Under the federal rules, the appointment order must detail several items, including: (1) the special master’s duties; (2) rules for ex parte communication; (3) procedures for documentation; (4) procedures and standards for reviewing the special master’s findings; and (5) the special master’s compensation. FRCP 53(b)(2). Broadly speaking, the state rules defer more to the court on when and how to appoint a special master than the federal rules.

While the specifics of appointing a special master may differ between federal and state court, in both cases, the intent is for a special master to adjudicate discovery disputes and, if appropriate, file a report with findings of fact and law to resolve pending legal issues. This requires both a firm grasp of state and federal law specific to...
discovery and — just as important — technical expertise. The discovery special master’s technical experience is often a critical driver of meaningful cost-saving and effective resolution of discovery issues.

An example of time and cost-saving is as follows: One large company involved in an employment class action has been served with a broad discovery request. The large company seeks to narrow discovery, citing FRCP 26(b)(1) that “the burden or expense of the proposed discovery outweighs its likely benefit.” The court does not understand the enterprise IT of the large company and is not able to determine the strength of the corporation’s argument. The parties elect to appoint a discovery special master rather than use experts and discovery motions. The discovery special master, assuming technological and legal proficiency, can determine the veracity of the IT argument and resolve the dispute. As this example demonstrates, the right discovery special master can expedite the resolution of discovery issues.

Appointing a Technical Special Master to Oversee Technical Issues in Litigation
A technical special master is a type of special master appointed by the court to oversee and manage technical issues beyond discovery. Technical special masters are typically appointed to advise the court on, establish protocols for, and ensure compliance with court mandates involving technical issues that may exceed the court’s expertise. The federal and state rules for appointing technical special masters are the same as those for appointing discovery special masters, as discussed above.

As an example of a technical special master appointment, consider a lawsuit over the ownership of a web-based application that both parties are using as part of their businesses. The judge grants a preliminary injunction giving both parties co-equal access to use the application in business, pending the results of the litigation. As the example below illustrates, a technical special master can assist a court on technical aspects of an injunction, oversee the implementation of the injunction, ensure compliance with the injunction, and resolve technical disputes over the shared application as they arise. That the court issued an injunction does not end the matter. The parties (and the court if necessary) must still address the technical details involved in granting the parties “co-equal access” to the application. The technical special master’s job is to work with the parties and IT personnel to fill in the gaps of the injunction from a technical perspective, often resulting in a written protocol defining precisely how the parties are to implement the injunction. The technical special master then may be responsible for holding hearings and mediating disputes between the parties on technical issues within the scope of the injunction.

There is no standard set of circumstances in which to seek the aid of a technical special master; each case is unique. Frequently, technical special masters are appointed in fact-intensive disputes in which the nuances of the software and hardware at issue are critical to the case. When selecting a technical special master, the court and parties should seek a technically savvy and experienced individual with specific experience regarding the systems at the heart of the dispute and a firm grasp of the law.

Appointing a Forensic Neutral to Investigate and Analyze Digital Evidence
Another type of court-appointed technical officer is the forensic neutral. Generally, courts and attorneys appoint forensic
neutrals to perform technical tasks involving locating, extracting, handling, and/or analyzing digital evidence on behalf of the court or parties in situations in which neutrality is critical. The forensic neutral’s job can involve determining the existence or veracity of digital evidence; performing settlement-related or court-ordered purging of data from systems; validating the removal of software or data from systems; forensically analyzing deleted or corrupted data for evidence of wrongdoing; and/or auditing systems to ensure compliance with a court order or regulatory mandate. Forensic neutrals are typically required to document their work in detail and deliver a report summarizing their methods and findings.

FRCP 53, discussed above with respect to special masters, also governs the appointment of forensic neutrals in federal court. RCW 4.48.010 governs the appointment of forensic neutrals in Washington. RCW 4.48.010 states that a “court shall order all or any of the issues in a civil action, whether of fact or law, or both, referred to a referee upon the written consent of the parties.” (The term referee in the Washington statute encompasses neutrals.) The Washington statute further specifies that unless an alternative process is agreed to by the parties, a referee must conduct his or her proceedings applying the rules of pleading, practice, procedure, and evidence used in the superior courts of this state. RCW 4.48.060.

The use of a forensic neutral is illustrated by the following example. In a trade secret case, a court awards an employer a preliminary injunction against its former employees, ordering the employees to turn over all employment-related information in their possession. How can the court ensure that the employees have complied with the order? The court can appoint a forensic neutral to conduct a forensic investigation to determine whether the employees have undisclosed data repositories, and whether any such repositories contain any information subject to the injunction. The
forensic neutral can then ensure that the relevant information is transferred to the employer and properly deleted from the employees’ devices.

As shown, a forensic neutral can assist courts and attorneys when a dispute calls for the management, investigation, and/or analysis of digital evidence. It is essential that courts and attorneys consider a candidate’s technical qualifications and experience, as well as the candidate’s track record for neutrality, when appointing a forensic neutral.

Conclusion
The demand for special masters and neutrals is likely to increase as disputes become more complex and interwoven with technology. To truly get the benefit of these alternative processes, parties and courts must ensure that the special master or neutral has the requisite technological and legal experience. NWL

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NOTES
PROSECUTING GENOCIDE AND WAR CRIMES

Trying Massive International Criminal Cases for the United Nations

by Kyle Wood

There are no small criminal cases. This is one of the first lessons I learned as a deputy prosecuting attorney at the King County Prosecuting Attorney’s Office. Each case — felony or misdemeanor — involves victims and witnesses touched by crime and a defendant facing loss of liberty. When I moved from Seattle to the Netherlands to prosecute war crimes for the United Nations, however, I learned just how massive criminal cases could be, and why international criminal tribunals are more important now than ever.

For 10 years, I worked for the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY), prosecuting some of the most complex criminal cases ever indicted. I went from trying felonies at the Regional Justice Center in Kent to litigating years-long cases of genocide, war crimes, and crimes against humanity before panels of international judges in The Hague, Netherlands. It’s difficult to overstated the magnitude and difficulty of the cases we tried there.

Rough Roads and Hostile Witnesses

For my first assignment at the ICTY, I spent 11 months investigating the murders of 21 men who had disappeared into ad hoc Army of Bosnia and Herzegovina prison camps. We were trying to prove a series of 12-year-old murders for which we had no forensic or eyewitness evidence, and that were committed more than 800 miles away in a still-fractured country whose former general we had charged with war crimes. Gathering evidence meant relying on the cooperation of a government opposed to the most important aspect of our case: proving that the foreign mujahedin soldiers who came to Bosnia during the war had joined its armed forces. Interviewing witnesses in person meant persuading our bosses in The Hague that the information we expected to get was valuable; booking travel to Bosnia; arranging for an interpreter (preferably of the same ethnic group as the witness); flying to Sarajevo; and driving Toyota 4Runners through the mountainous Bosnian countryside to villages so small they had no street names or house numbers. Then, within minutes of arriving, we were asking sometimes-hostile or traumatized people we’d just met to tell us about events they’d often spent years trying to forget.

I spent the following year litigating that case — the first of 11 trials I worked on at the ICTY. It was the nearest thing to a small case as any trial at the tribunal, where the average trial from opening statements to final judgment lasted two years and four months. Eight ICTY trials spanned more than three years from start to finish. The longest trial lasted eight years, four months, and 24 days.

A “Short” Trial: 11 Months, 77 Witnesses, 1,346 Exhibits

Our case was based on a four-count indictment charging murder, rape, and cruel treatment involving more than 100 victims over a period of two-and-a-half years. We called 64 live witnesses and offered 689 exhibits. The defense called 13 witnesses and offered 657 exhibits. Many of our witnesses came from those same small villages we had visited during our pre-trial missions to Bosnia. Some had never left their municipalities, much less their country, so logistics had to be arranged: passports, security, chaperons. For some of them, a trip to The Hague was as incomprehensible as a trip to the moon. One man told us, quite reasonably, that he couldn’t come to testify because it was lambing season and he had to be there in case anything went wrong. Others just did their best to ignore the summons delivered to their doors by the police, but were ultimately persuaded to attend without the trial chamber having to invoke its power to hold them in contempt for refusing to appear.

Once our witnesses did arrive, they were called to testify in spaces that looked more like television studios than courtrooms. All ICTY proceedings are broadcast more or less live —
both to the former Yugoslavia and over the internet — so each courtroom bristles with bright lights and cameras, and everybody wears headphones tuned to their preferred language. Spectators sat in a gallery separated from the courtroom by a thick sheet of bulletproof glass, which gave one the impression of performing in a fishbowl. The proceedings plodded along at a pace sufficiently slow to allow the courtroom interpreters to translate every word uttered into the three official languages of the tribunal: English, Bosnian/Croatian/Serbian (B/C/S) and French. In one case before the tribunal, the defendants all conducted themselves in B/C/S, the lawyers conducted themselves in English, and the judges conducted themselves in French. The pace could be excruciating: question, interpretation; answer, interpretation; question, interpretation; and so on. This made direct examinations slow and cross-exams positively glacial.

It was established by the United Nations Security Council in May 1993 to try “Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991.”

It is the first international criminal tribunal since the post-World War II Nuremberg and Tokyo tribunals.

It applies law in the Statute of the International Criminal Tribunal, which was adopted by the Security Council and reflects Customary International Law during the time of the wars in the former Yugoslavia, between 1991 and 1999. Statutory crimes are genocide, crimes against humanity, violations of the laws or customs of war (war crimes), and grave breaches of the Geneva Conventions of 1949.

Its modes of liability are: committing, planning, ordering, instigating or otherwise aiding and abetting or for failing, as a commander, in the obligation to prevent the crimes of one’s subordinates or failing to punish subordinates for their crimes.

A total of 161 people (160 men and one woman) were indicted between 1993 and 2004: 89 were convicted (including six with appeals pending); 21 were acquitted at trial or on appeal; 15 died pending trial or appeal; indictments against 22 were withdrawn, and 13 cases were transferred to courts in Croatia, Bosnia and Herzegovina, and Serbia for trial. One case is pending trial judgment.

Its final appeal judgment (Prosecutor v. Jadranko Prlić et al.) and final trial judgment (Prosecutor v. Ratko Mladić) are scheduled to be delivered in autumn 2017, after which the ICTY will cease operations.
While the pace inside the courtroom dragged, the pace outside it was frenetic. Keeping up with the pace meant devoting evenings, weekends, and holidays to interviewing future witnesses, summarizing the evidence of the witness you just finished, and preparing the direct or cross examination of your next witness. The judges, under intense pressure from the U.N. Security Council to speed the pace of trials, loathed a gap. There was little patience from the bench for delays caused by the regular winter fog at the airport in Sarajevo or a witness’ pre-testimony jitters at the hotel.

Ultimately, we convicted the Bosnian general of cruel treatment — a war crime — for failing to prevent the crimes of the mujahedin and for failing to punish them for their crimes. The trial left me exhausted. But even then, I knew I had it easy compared to colleagues working on other cases.

The Srebrenica “Megatrial”
In June 2010, a trial chamber convicted six military and police officials of genocide, war crimes, and crimes against humanity for their part in the Srebrenica genocide. It was one in a series of what prosecutors called “megatrials,” designed to save time and money by trying large groups of connected defendants all in the same trial. The magnitude of both the crime and the case was mind-boggling. Over the course of a few days in July 1995, Bosnian Serb forces expelled as many as 40,000 people from the Srebrenica enclave in far eastern Bosnia, and killed more than 8,000 of the men and boys who had fled from the U.N.-protected safe haven as the attacking forces closed in.

The men convicted at trial were mid-to-high-level military and police commanders involved in the expulsions and massacres. Their trial required 425 court days spanning more than 46 months. The body of evidence included 5,383 exhibits and the testimony of 329 live witnesses. The trial transcript ran to 34,956 pages. The judgment consumed 867 pages, published in two volumes. Three of the men were convicted of genocide or aiding and abetting genocide. All were convicted of crimes against humanity and war crimes. They got sentences ranging from five years to life in prison.

By the time this case made its way to verdict, I was a prosecuting appeals counsel. This became one of 13 appeals I helped litigate at the ICTY. Five of the commanders convicted at trial filed appeals; my team was assigned to handle all arguments related to one of them. We briefed our case (we appealed his acquittals for murder, something prosecutors can do at the ICTY) and responded to his appeal in a frenzy of brief-writing in 2011, although we didn’t argue the case until the end of 2014.

Bar Exam Revisited
Preparing for the five-day appeal hearing was like cramming for the bar exam. It required mastery of both the lengthy trial record and the hundreds of pages of briefing submitted by both parties. We and the other prosecution teams subjected ourselves to hours of “murder board” practice before our colleagues — to make certain we were prepared for every possible question the bench might ask, for every possible new argument that might arise from the other side. The result was delivered 14 months later in a 792-page appeal judgment: the commander subject to my team’s arguments was guilty, on appeal, of aiding and abetting 3,000 murders. All genocide convictions and sentences were largely upheld for each man.

From the filing of the first notice of appeal to the delivery of the appeals judgment in that case, the appellate proceedings had lasted four years, four months, and 22 days; the war in Bosnia itself lasted just over three years and nine months.

The complexity and pace of these cases has fostered understandable impatience among some in the international community, who have exerted growing pressure on the ICTY to conclude its proceedings as expeditiously as possible and end its mandate. Both the prosecutor and the president of the tribunal (a judge) told the Security Council in November that they expect the tribunal’s final trial and appeal judgments to be delivered this fall, in time for the tribunal to shut its doors for good at the end of the year. Critics point out that this comes a bit late; back in 2003, the ICTY reckoned it could meet that goal by 2010.

There’s no denying that the pace and complexity of these trials are a source of frustration, and that there are lessons to be learned from the conduct of trials at the ICTY, which was the world’s first international criminal tribunal since World War II. That longest trial in ICTY history I mentioned above resulted in the full acquittal of an infamous, outspoken ultranationalist Serbian politician who returned to a hero’s welcome in Belgrade. He’s now a candidate for president of Serbia. Slobodan Milošević, the ICTY’s most famous indictee, died in prison during his case-in-chief, 49 months after his trial had started. Certainly, even complicated criminal cases should be conducted as efficiently as possible without either violating the rights of the accused or rushing justice.

A Pioneering Legacy
But there’s also no denying the ICTY’s legacy as a pioneering institution in a world that needs international criminal justice more than ever. As the tribunal’s website notes, the ICTY
“was among the first courts of its kind to bring explicit charges of wartime sexual violence, to define gender crimes such as rape and sexual enslavement under customary law,” and to “enter convictions for rape as a form of torture and for sexual enslavement as crime against humanity.”

Though Slobodan Milošević died in prison, he was also the first sitting president ever indicted for crimes of war before an international tribunal. There have been two since then: Charles Taylor of Sierra Leone, who was convicted of 11 counts of war crimes and crimes against humanity before the Special Court for Sierra Leone; and Omar al-Bashir, president of Sudan, who has been charged before the International Criminal Court with 10 counts of genocide, crimes against humanity, and war crimes. This puts heads of state on notice that they cannot commit crimes of war without the possibility of an indictment before an international tribunal.

By trying individual defendants, the ICTY sought to shift blame from entire ethnic groups onto the specific perpetrators most criminally responsible. Though trials can be an imprecise way of revealing truths broader than those necessary to decide the guilt or innocence of an accused person, the trial and appeals judgments at the ICTY make it more difficult for leaders of the different ethnic groups to continue to deny fundamental historical facts. And now, one of the world’s busiest war crimes court is in Bosnia, where lower-level perpetrators are finally being charged and tried in the communities in which they committed their crimes. We were ultimately not able to charge the Bosnian general with those 12-year-old murders, but prosecutors in Sarajevo used some of the evidence we had gathered to convict four local leaders and police officers most directly responsible for the disappearances. That would not have been possible without the help and support of the ICTY and the larger international community.

Lessons Learned
Some of the lessons learned at the ICTY have already made their way into the Rome Statute signed in 1998, which established the International Criminal Court (ICC) across town from the ICTY in The Hague. The ICC is filled with ICTY alumni, who now work there as judges, court officials, defense attorneys, and prosecutors. Former ICTY investigators and prosecutors are helping to gather evidence for use in future criminal prosecution of crimes committed in the breathtakingly brutal conflicts in Syria and South Sudan. Others are working to investigate and prosecute massive crimes committed in Lebanon, Kosovo, Cambodia, and Sri Lanka, among other places.

I have no doubt prosecutors at the ICC and at future ad hoc tribunals will face, and have faced, some of the same obstacles and criticisms we faced at the ICTY. These cases are always complex, the trials are always long, and the outcomes always controversial. They can be frustrating, exhausting, and sometimes futile. But I also know that as prosecutors and defense attorneys, we are specially placed to be able to affect real, global change through our participation in these proceedings. And that’s a goal worth a few late nights, moments of frustration, and rides over bumpy roads.
the greater part of the last decade, the Department of Education’s (DOE’s) Public Service Loan Forgiveness program (PSLF) has served as a beacon of hope and stability for thousands of public sector professionals struggling with the burden of educational debt.

The PSLF was enacted in September 2007 with overwhelming bipartisan congressional support. It was a response to drastic increases in the cost of education and the amount of debt that students incurred as a result of educational investments. As part of the larger College Cost Reduction and Access Act, the PSLF would first and foremost function as an incentive for students to pursue long-term, full-time careers in public service and public interest law. Though not limited exclusively to the legal profession — the PSLF covers a broad range of occupations including health professionals, teachers, and first responders — new lawyers have relied on the PSLF to pursue careers with organizations that engage in important public interest work.

At its inception, the PSLF offered a straightforward promise to law students and new lawyers. First, work in a qualified public service job for a term of 10 years. The DOE issues certifications at the start of the term based on an individual's eligibility for the PSLF. Second, make timely monthly payments, capped at a percentage of the borrower's income, for the entirety of that term. Then, at the end of the 10-year period, the remaining balance of your loans will be forgiven and discharged.

Under the original PSLF program, “public service” was defined broadly to include organizations that provide public education services, public interest legal services, public service for those with disabilities, and public service for the elderly. The broad language demonstrates the legislature’s intent to not only incentivize work in traditional government jobs such as prosecution and public defense, but to incentivize careers in a number of nontraditional legal organizations that provide services to an underserved and often indigent clientele.

Over the last several years, law students and new lawyers have relied on the incentives provided by the PSLF to make crucial and far-reaching decisions about the direction of their legal careers. Students are leaving law school with more debt than ever before. Because of that, many young lawyers face a distressing career crossroads: They can either pursue a job that pays the most, regardless of their interest in the job itself, or they can pursue a lower-paying job that fits their career objectives, but then watch as the balance on their law school debt continues to skyrocket. It is important to note that not every public interest lawyer is put in this position. There are many who would spend their entire careers in public service regardless of salary. But having to make this choice is a reality that many new lawyers do face, and a reality that the legislature aimed to alleviate through the PSLF.

The value of the program is not just a one-way street for young lawyers. The PSLF is critical to the public sector’s ability to recruit and retain top talent. Acknowledging a sizable gap between the salaries at private firms and those at government institutions and non-profit legal organizations, employers often rely on PSLF to incentivize prospective employees to join their organization. It becomes mutually beneficial. Employers are able to attract top talent, while employees are able to engage in extremely valuable public interest work with the financial peace of mind that their loans will be forgiven after a specified period of time.

CHANGING TIDES

In 2016, nearly 10 years after PSLF was enacted, the DOE narrowed its definition of public service and excluded a number of organizations from qualification for the PSLF. Despite previously issuing promissory certifications to lawyers who worked in those organizations acknowledging that their employment qualified, the DOE has now issued a rescission of those promises and is refusing to honor them.

Applying its new interpretation retroactively, the DOE has informed lawyers who have worked up to nine years in qualifying PSLF organizations and who were set to have their loans forgiven that they no longer qualify. Their previous payments towards PSLF no longer count. These lawyers, many of whom are still six figures in debt, have essentially been “shown the door” by the very same
DOE they entrusted their legal careers to nearly a decade ago.

The DOE’s recission was given without notice, without explanation, and without time for public comment. Lawyers who relied on the PSLF to engage in important public service work have been denied loan forgiveness on the grounds that this work no longer qualifies as “public service.” All of the time they have spent in public interest work and the previous PSLF agreements count for naught in the eyes of the DOE.

**THE ABA’S LAWSUIT**

On December 20, 2016, The American Bar Association (ABA), through pro bono counsel from the Washington, D.C., office of Ropes & Gray, filed suit against the DOE. The suit, filed in the U.S. District Court for the District of Columbia, alleges that the DOE engaged in arbitrary and capricious agency action and failed to make required information available to the public. In addition to alleging violations of the Administrative Procedures Act, the suit alleges violations of due process under the Fifth Amendment.

To give an example of the kind of work that no longer qualifies, attorney Michelle Quintero-Millan, a named plaintiff in the suit, provides legal services to unaccompanied immigrant minors on the U.S.-Mexico border. Attorney Jamie Rudert, another named plaintiff, provides legal services to disabled Vietnam-era veterans and their families.

**WHY IT ALL MATTERS**

This issue is deeply rooted in notions of fairness, estoppel, and government accountability. If we as law students and lawyers are bound by the contracts that we sign and the promises that we make, shouldn’t the federal government be held to that same standard?

Changing legislation to reflect budgetary concerns is one thing. But to apply it retroactively without explanation, without notice, and at the expense of hardworking public interest lawyers, can only be described as inequitable and deceitful. PSLF lawyers made life and career decisions based specifically on a promise made by an agency tasked with protecting the educational interests of students. This administrative action is not in accordance with the law, nor is it in accordance with the principles of good faith that students, lawyers, and student loan borrowers rightfully expect from the federal government.

Maintaining a broad and sustainable PSLF program is crucial to the future of public interest law in our state. Washington prides itself on being progressive, diverse, and inclusive. With that said, our diverse communities necessitate diverse resources in order to meet their needs. This means supporting the sustainability of organizations that provide valuable non-traditional legal resources to our citizens. Whether it’s broad access to counsel in housing disputes, or more specified access to immigration or veteran’s resources, we have an expansive need for broad access to justice.

Reliance on the PSLF is not only one of the main incentives for a lawyer to pursue public interest work after graduating, it’s a main reason many students go to law school in the first place. The University of Washington, Seattle University, and Gonzaga University all pride themselves on producing high-quality lawyers who dedicate their professional lives to careers in public service. Without a broad definition of public service that allows lawyers to qualify for loan forgiveness in a wide range of public service organizations, these organizations’ ability to attract and retain the resources that they need will suffer.

Protecting PSLF and supporting a broad definition of public service not only provides young lawyers with a semblance of financial relief, but it protects the sustainability of the vital public service organizations for whom they work. Supporting the PSLF program and these organizations is imperative to protecting the rule of law and providing broad and diverse access to justice for the people of our state.

**NOTES**

1. www.americanbar.org/content/dam/aba/uncategorized/GAO/pslf_onepager_authcheckdam.pdf
4. www.americanbar.org/content/dam/aba/images/abanews/PSLF_filing_122016.pdf
5. Id.
6. Id.
media images of the 1999 World Trade Organization (WTO) demonstrations in Seattle, helmeted police officers in black body armor and baton-wielding National Guard troops were pitted against peaceful environmental protesters, sign-carrying union members and labor activists, and a small number of anarchistic vandals. WTO delegates shuffled hurriedly between their hotels and meetings at the Washington State Convention Center within the 25-block “limited curfew” downtown area — the city’s no-protest zone. The images also captured law enforcement pepper-spraying and arresting hundreds of citizens, many of whom later received settlements for civil rights claims.

The tumultuous “Battle in Seattle” illustrates the complex relationship between activism and the rule of law. Activism seeks to drive legal and political change by relying on activists’ rights of free speech, assembly, and association. When the law provides a public forum for activism — streets for marches, public squares for gatherings and speakers — it fosters the exchange of ideas necessary for democracy. But the law may also suppress activist speech based on security concerns, ideology, impacts on private interests, and the raw might of those in power. Following vigorous activism, courts have recognized fundamental civil liberties on constitutional grounds; yet dissenters, including the late U.S. Supreme Court Justice Antonin Scalia, have argued that a constitution is meant to “impede” change, not facilitate it.

For activists, each era, decade, or election cycle may legitimze or delegitimize their actions. Their legitimacy depends on the activist’s message, means, and ends weighed against societal views on issues such as economic prosperity, nationalistic fears, and peace or war. The tyranny of the majority may bury the activist’s message with the passage of time. Or that message may manifest in a successful judgment in the courts, an activist elevated to public office, or the will of the electorate resulting in an initiative that becomes law.

Washington has a long history of activists facing off with the rule of law. The free speech protections conferred by our state constitution are broader than the First Amendment. But the exercise of such rights may become theoretical when criminal statutes are strictly enforced and restrictions are threatened against the populace by governmental action.
The following Washingtonians’ perspectives show the relationship between activism and the rule of law through the eyes of a top federal prosecutor, a religious protester convicted for an act of civil disobedience, and the executive of a large nonprofit organization. Although disagreements with the particular message of an activist or governmental actor are inevitable at times, these stories ultimately illustrate important societal checks and balances at work.

**PROTECTED SYMBOLIC SPEECH**

1989 was the “year that changed the world” according to *Time* magazine. The year saw the massacre of student protesters in Tiananmen Square, the fall of the Berlin Wall marking the end of the Cold War, Poland’s first free election in 40 years, and the death of Iran’s theocratic leader, Ayatollah Khomeini.

While these monumental geopolitical events took place abroad, a small American flag burning demonstration in Seattle may have gone unnoticed in 1989. But a new federal law criminalizing flag desecration had potential national significance when it became the focal point of protesters.

On June 21, 1989, the U.S. Supreme Court held in *Texas v. Johnson* that state criminal prohibitions against desecration of the American flag violated First Amendment free speech, including the symbolic act of flag burning. In his dissent, Justice John Paul Stevens cited the “soldiers who scaled the bluff at Omaha Beach” to support his nationalist view that the flag was “worthy of protection from unnecessary desecration.”

As an alternative to a constitutional amendment proposed by Republicans, the Democrat-controlled Congress passed the bipartisan Flag Protection Act, signed by President George H.W. Bush to criminalize desecration of the American flag as a federal offense. The law would take effect at midnight on October 28, 1989.

Mike McKay, U.S. Attorney for the Western District of Washington, had been in office only three months when the Flag Protection Act took effect. Protests were staged across the country. At 12:01 a.m., McKay sat in a parked car with federal agents watching a rowdy demonstration outside a small brick post office in Seattle’s Capitol Hill neighborhood. News reports described the crowd as including members of Vietnam Veterans Against the War and “skinhead youths.”

Chants of “burn, baby, burn” alternated with the singing of the national anthem. One thousand paper flags were distributed to protesters, “who threw them into two fires burning in baking pans.” McKay recalls that some protesters burned other American flags they had brought to the demonstration.

As McKay and the agents watched, a small group climbed onto the post office roof. Whether by mistake or not, the post office’s American flag had been left up that night. The group “lowered the flag from its 20-foot pole” before one protester doused the flag with a flammable substance, “ignited it and raised the burning emblem up the pole.” A television news crew filmed the event, and the footage was later obtained by federal investigators.

McKay and top assistant U.S. attorneys from his office, including Criminal Division Chief David E. Wilson, subsequently reviewed the investigation reports for potential charges. Before approving the two misdemeanors filed against four protesters who took part in burning the post office’s flag, McKay reached a consensus with the assistant prosecutors that the new law probably would be held unconstitutional under *Texas v. Johnson* and the First Amendment. “We took the First Amendment considerations very seriously,” recalls McKay.

Although it is a federal prosecutor’s duty to enforce federal laws despite anticipated courtroom challenges, McKay was also guided by a fundamental principle of prosecutorial discretion: “It’s not what you can charge, but what you should charge.” Thus, many other protesters who violated the new law by burning American flags they brought to
the demonstration never faced charges. For strategic reasons, the flag desecration count filed against the four co-defendants was accompanied by a general misdemeanor count of destruction of government property. And after another demonstration involved the burning of protesters’ flags at the University of Washington, no federal charges were brought under the new law.

When McKay reflects on his approval of the flag desecration charge in *U.S. v. Haggerty*, he adds that the decision of his office was compelled by processes involving two of the three branches of government to enact the new law. In his view, it was not the role of the U.S. Attorney’s Office to undermine such a duly enacted law. He directed, however, that his trial prosecutors Robert G. Chadwell and Mark N. Bartlett make “a good record for appeal.”

The third branch of federal government then had its say. The U.S. District Court for the Western District of Washington dismissed the flag desecration count on First Amendment grounds, and a unique provision of the new law triggered direct review by the U.S. Supreme Court. On the day of the District Court’s dismissal, McKay was in Washington, D.C., and he made an appointment to visit U.S. Solicitor General Kenneth W. Starr regarding the anticipated appeal.

McKay recalls Starr welcoming him into his office where their discussion turned to McKay’s assessment that his team had worked to make “a tough case for the government as easy as possible to argue” before the U.S. Supreme Court. Starr invited a young Deputy Solicitor General named John G. Roberts to join them. While Roberts, who would later become Chief Justice of the U.S. Supreme Court, quietly took notes for the briefing he would draft, Starr remained bullish on the government’s prospects of prevailing over the First Amendment challenge.

A lifelong Washingtonian and Republican, McKay today feels privileged to have served the government’s role in response to the flag-burning events that led to the Supreme Court’s ultimate determination of First Amendment protections. He also believes the Department of Justice may have an uphill battle attempting to defend many of the current administration’s unilateral actions and executive orders — especially if President Trump seeks to codify his view that: “Nobody should be allowed to burn the American flag — if they do, McKay sat in the audience with Chadwell. During oral argument, Starr’s reliance on the “content neutral” nature of the flag desecration law was met with skepticism by several justices, including initial interruptions by Justice Scalia, who asked, “General Starr, I don’t understand this line of argument. Is . . . it that you’re saying that somehow the expression ‘I hate the United States’ is entitled to less constitutional protection . . . ?”

Civil rights lawyer William M. Kunstler argued on behalf of the protesters that the law effectively was a content-based statute. He noted the diverse viewpoints behind the symbolic flag burnings: “One didn’t like the treatment of Mexican-Americans. One didn’t like the treatment of women. One didn’t like the United States military involvement abroad. There were many.”

In a 5-4 decision handed down less than a month later, Scalia was in the majority when the Supreme Court invalidated the federal flag desecration statute on First Amendment grounds. The *Eichman* majority held that while “desecration of the flag is deeply offensive to many,” the law’s criminalization of such a symbolic act “dilutes the very freedom that makes this emblem so revered, and worth revering.” For the Seattle defendants, *Eichman* was only a partial victory, albeit an important vindication of their rights. Their choice to burn the post office’s flag — instead of their own flags — became the basis for their guilty pleas to misdemeanor government property destruction on remand.
there must be consequences — perhaps loss of citizenship or year in jail.  

**ACTIVISM AS INDICTED CIVIL DISOBEDIENCE**

“An individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for the law.”

Martin Luther King, Jr., “Letter From a Birmingham Jail” (April 16, 1963)

Sister Maureen Newman chuckles when she recalls the “Irish guilt” her mother used to discourage her from participating in civil disobedience in her early years as an activist for social justice. Sister Maureen’s mother told her that her first responsibility was to the elementary school children she taught, and cautioned her not to jeopardize her duties as an educator.

Sister Maureen was a different kind of ‘60s radical from the hippies of her generation. She entered the Sisters of Providence in 1964, embracing the social, philosophical, and political movements of the civil rights era. She pledged solidarity with the poor through her religious mission to perform compassionate works and provide education to those most in need.

After graduating from Seattle University in 1972, she taught elementary school for the next three decades. Over the years, her activist works included providing summer daycare for the children of migrant workers, tutoring Hmong immigrants, and attending peaceful demonstrations against construction of the U.S. Navy’s Trident submarine base and military installations on farms surrounding Bangor on the Kitsap Peninsula. She found inspiration in the religious activism of Seattle Archbishop Raymond G. Hunthausen, who challenged the U.S. government over nuclear arms and challenged the Catholic orthodoxy on the role of women in church leadership and the rights of gays and lesbians. The assassination of human rights proponent Archbishop Oscar Romero during mass in El Salvador shaped her evolving views on the need for social justice. She and fellow sisters formed the Seattle chapter of Witness for Peace, a grassroots organization committed to nonviolent support of human rights and peace in Latin American countries. She led a Witness for Peace delegation to Nicaragua during the war there and later participated in a relief operation to provide food and supplies to the poor and war refugees from El Salvador.

While working in Central America, Sister Maureen heard firsthand accounts from women survivors of brutal acts of political repression by the government and military. She joined a growing chorus of activists protesting the School of the Americas (SOA) located at the U.S. Army’s Ft. Benning near Columbus, GA. Officially, the SOA trained pro-democracy government personnel from allied countries in Latin America to thwart communist insurgencies. The military school had existed since the beginning of the Cold War. But following the lead of activists, the media and certain congressional leaders accused the SOA of training Latin American soldiers and police who became “notorious torturers, mass murderers, dictators and state terrorists.”

For three years, Sister Maureen traveled to Ft. Benning to participate in annual SOA protests. The protests included a remembrance of the 1989 massacre of six Jesuit priests, along with their housekeeper, and her daughter, in El Salvador by Salvadoran military members whose counterinsurgency unit reportedly had been created at the SOA. The growing scrutiny of

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the SOA included a close congressional vote that nearly closed the military training facility.

In 2002, Sister Maureen attended a Seattle University forum sponsored by Catholic Relief Services where she heard Colombian speakers describe human rights violations supported by U.S. government funds in their country. “The same human rights violations in Nicaragua and El Salvador,” she learned, were escalating in Colombia.15 She heard reports of rapes, kidnappings, and executions of Colombians — including the slayings of Archbishop Isaias Duarte Cancino, several priests, and other religious workers. She later recalled that as she listened to the presentation, “the memory of the women of Nicaragua and El Salvador haunted me. Their eyes are always with me, as I remember how they spoke of being raped, their children kidnapped, and their husbands disappeared.”16

Although fellow activists had been arrested for many of the causes she supported, including at certain Bangor nuclear protests, she had followed her mother’s advice to refrain from civil disobedience and eventually became vice principal of St. Therese School in Seattle’s Madrona neighborhood.17 But she returned to Ft. Benning on an annual sabbatical, where she protested with a heightened awareness of human rights issues in Latin America. She considered participating in group civil disobedience by entering the military base without permission to send a greater message. It was a decision that weighed heavily on her conscience, but one that would not impact St. Therese students as in prior years. After making sure the protest would be non-violent, she and some 90 other protesters stepped through a hole in the fence and onto the base.18 Because of the recent Sept. 11 terrorist attacks, she had a pretty good idea that the protesters would be arrested.

Young soldiers took the non-violent protesters into custody, binding their hands with plastic ties, before processing them and leading them to the county jail in leg chains. Sister Maureen spent two nights in a cold holding tank before her arraignment. In U.S. v. Newman, the government charged her with the petty offense of entering a military installation for any purpose prohibited by law in violation of 18 U.S.C. 1382. After rejecting personal recognizance release typically granted to SOA protesters in the past, the judge set a $5,000 bond as “necessary in these times” — a reference Sister Maureen believed to be related to a post-Sept. 11th mindset. Her defense team was led by New Orleans public interest lawyer and Loyola Law professor William P. Quigley. The judge denied subsequent motions by the defense team for a jury trial and a defense based on international law.

To protest her arrest, Sister Maureen released a statement reminiscent of Martin Luther King’s words regarding arrest for an act of conscience:

“If you want to say that I did break a law, I would not take breaking a law lightly. If a bad law such as segregation oppresses or endangers or limits the right to livelihood of a large group of people, one may be called to do more than just picket or write letters to Congress. In the time of segregation, letters and legal picketing did not change the laws of segregation. Actions of civil disobedience did change these oppressive laws.”19

A one-day bench trial took place three months later. Sister Maureen’s impression was that the judge “rubber-stamped the government’s case” before rendering a guilty verdict and sentencing her to 90 days of confinement. At the Federal Correctional Institution in Dublin, CA, Sister Maureen was housed with women convicted of embezzlement and drug offenses. She taught reading skills to her fellow inmates and suffered through the indignities of work on the bathroom detail, pat-downs, and hearing insults by the guards.20

After her release, she returned to her activism against the SOA, which had changed its name after purportedly closing. As reported by the activist organization, SOA Watch, she traveled to Chile with an international delegation and presented Freedom of Information Act records to a human rights commission to show that the Chilean government was continuing to utilize SOA-based military training.21 Her delegation’s work reportedly drew the attention of investigative journalists there. Despite her arrest and prosecution, Sister Maureen today does not feel the law has chilled her lifelong social justice activism. As noted by SOA Watch, her arrest and conviction were “self-directed.” Instead, she contrasts her relative expressive freedoms in the United States with her view of the corruption of the law in Central and South America and atrocities suffered by the poor and disenfranchised there.

Resolute as ever today, she speaks plainly about the value of political speech. “Right now our country needs activism as much as possible. I think people realize that’s what we have to do — with immigrants, the refugee ban, not supporting women.” As Sister Maureen
helps train newcomers to the Sisters of Providence, she remains optimistic that they will carry their mission forward on behalf of the poor.

Nonprofit Activism From the Middle
At a rally before the Womxn’s March on Seattle the day after the 2017 presidential inauguration, Christine Charbonneau waited anxiously to speak to the burgeoning crowd at Judkins Park. The affable and normally gregarious CEO of Planned Parenthood of the Great Northwest and the Hawaiian Islands (PPGNHI) held written talking points prepared with the help of an assistant. Given the magnitude of the Womxn’s March to the mission of her organization, Charbonneau sought to deliver a clear message to supporters.

She spoke about the new administration’s threat to many women’s health services offered by PPGNHI: “They intend to not worry a lot about the lack of pap smears, the affordable contraceptive care, cancer screenings, birth control, sexually transmitted diseases... and they must be stopped.”

The media noted later that Charbonneau “drew the biggest roar from the crowd at the pre-march rally Saturday just by saying where she worked.” Her rousing but hopeful speech on a platform in the park shared by prominent women leaders warned sympathetic listeners that a Republican-controlled Congress and the new administration could defund the vital services provided by Planned Parenthood. Bedecked in a pink Planned Parenthood scarf and hat, she and fellow marchers, including U.S. Senator Maria Cantwell, later walked Seattle’s streets behind a banner promoting an action network to fight back against attacks on reproductive health and rights. In Charbonneau’s view, the millions of participants in women’s marches across the country sent a loud and clear message to the President and Congress.

In her activism for the women, men, and youth served by Planned Parenthood, Charbonneau is well aware of the concept of the rule of law as both a sword and a shield. After more than 80 years of care and activism as cited in a 2016 press release, PPGNHI currently offers programs including reproductive health services, sexual education for men and women, and providing information on sexual orientation and gender. To advance and maintain legal protections for these programs, Charbonneau believes it is critical to interact with all three branches of government.

After the 2016 elections, Charbonneau anticipates a need to lobby Congress against new bills threatening to eliminate Planned Parenthood’s Medicaid reimbursements for the poor, which could deprive millions of patients of their health care choices and clinics in underserved rural and suburban areas. “It’s incredibly important for women across the country to say that is unacceptable,” Charbonneau told The Seattle Times.

Yet at times, the law has been at cross-purposes with Charbonneau’s activism. For example, PPGNHI supported Washington’s promulgation of rules in 2007 to require pharmacists to deliver all prescribed medications, including the Plan B emergency contraceptive, to patients without discrimination based on any pharmacist’s religious beliefs. After an Olympia pharmacy obtained a preliminary injunction against enforcement of the rules in a federal lawsuit based on a First Amendment religious challenge, the Ninth Circuit Court of Appeals reversed the injunction as overbroad, holding the rules were neutral and generally applicable. Based on development of the factual record on remand, however, the District Court for the Western District of Washington, applying a constitutional strict scrutiny standard, found the rules violated the Free Exercise Clause. In a final twist, however, a further Ninth Circuit appeal
saw the pharmacy rules again upheld as constitutional and the U.S. Supreme Court denied review.\(^{27}\)

Similarly, Charbonneau found herself despairing after the U.S. Supreme Court’s 2014 decision in *Burwell v. Hobby Lobby Stores*, which held that a for-profit corporation was a “person” entitled to Free Exercise rights violated by a contraceptives mandate of the U.S. Department of Health and Human Services.\(^{28}\) PPGNHI and other Planned Parenthood affiliates prepared for an onslaught of businesses opting out of employer health insurance coverage for contraceptives. But since *Burwell*, Charbonneau’s impression has been that the marketplace is reluctant to broadly assert corporate Free Exercise rights that could negatively impact employee hiring and retention, among other considerations.

By contrast, a Washington law supported by PPGNHI that requires the teaching of “medically accurate” information in sexuality education classes has stood the test of time. Charbonneau credits this legislative change with eliminating fear-based misinformation designed to scare young people into certain choices.

In the recent past, Charbonneau has found the U.S. Department of Justice and courts generally to be staunch defenders of pro-choice rights and the safety of Planned Parenthood clinics. Buffer zones have been enforced around clinics for the protection of patients and staff. Threats and attacks against clinics have been investigated as serious criminal offenses, including the FBI’s investigation of a 2015 arson attack on a clinic in Pullman.\(^{29}\)

But what about the equally vocal opposition to PPGNHI’s advocacy of pro-choice rights? “I actually support the right of people who don’t agree with me to picket,” Charbonneau says. “That part doesn’t bother me.” She is quick to add, however, that circumstances matter. For example, she recalls a clinic on the second floor of a building above a movie theater where moviegoers, including young children, were subjected to a picketer’s graphic anti-abortion images.
After attending West Seattle High School and the University of Washington, Charbonneau began her work at Planned Parenthood with administrative tasks related to cervical cancer screenings. Since her career began in 1982, she has seen PPGNHI grow to serve more than 100,000 clients each year in 28 health care sites across four states, including Washington, Idaho, Alaska, and Hawaii.30 “Planned Parenthood is undeniably a very activist organization, even if it didn’t start out that way,” she says. The organization serves an important public health function far beyond providing abortions — which represents only 3% of PPGNHI’s services — by offering low income patients cancer screenings, HIV testing, and reproductive health care. Charbonneau’s most successful activism along the way has been based on an approach to the rule of law from the middle ground, not the extremes.

For Charbonneau, the Womxn’s March provided an incredible public forum to advocate many issues uniquely impacting women. The march gave PPGNHI the opportunity to “broaden how we are approaching these issues” through a message that crossed cultural, economic, and ethnic lines. Regardless of how that approach evolves, Charbonneau intends to continue her activism to further her organization’s mission through the rule of law. “I find myself having a hard time believing people in government who purport to protect me from my own decision-making,” she says.

CONCLUSION
From the dirty office windows of the fifth floor of the King County Courthouse, I saw a long chain of WTO protesters, hand-in-hand, encircling the nearby King County jail. This was as mesmerizing as it was unsettling to me and my former colleagues in the King County Prosecutor’s Office. We had never seen anything like this in Seattle. We did not know what would happen next. The WTO demonstrations had run headlong into the rule of law through police crackdowns, hundreds of arrests, and the possibility of scores of prosecutions in the face of First Amendment challenges. Ultimately, the protesters and their advocates, prosecutors, police leadership, the mayor, City Hall, and the judiciary were among the legion of shareholders who reached resolutions. This brought needed reforms in the ensuing weeks and months after the WTO protests.

Washingtonians have experienced unprecedented post-presidential election activism in 2017. Many, or perhaps most, of us again do not know what will happen next — in our cities, counties, state, and nation. But as the stories of activism above illustrate, a balance may be struck with the rule of law that
respects individual rights, promotes the exchange of ideas necessary for democracy, and provides the framework for a stable social order. NWL

The author thanks Mike McKay, Sister Maureen Newman, and Christine Charbonneau for their interviews and the information they graciously provided for this article.

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The opinions expressed are those of the author and do not necessarily reflect the views of the firm, its clients, or the WSBA. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

NOTES
1. See “WTO: HistoryLink.org webcam of protests and a slideshow of each day (November 30-December 3, 1999), Seattle,” HistoryLink.org (http://www.historylink.org/File/7117); Bob Young, City to pay $1 million to settle lawsuit over WTO arrests, The Seattle Times (April 3, 2007) (www.seattletimes.com/seattle-news/city-to-pay-1-million-to-settle-lawsuit-over-wto-arrests/).
4. Id. at 439.
7. Id.
8. Id.
11. Id.
14. George Monbiot, “Backyard Terrorism: The U.S. has been training terrorists at a camp in Georgia for years – and it’s still at it.” The Guardian (Oct. 29, 2001) (www.theguard-
IAN.COM/WORLD/2001/OCT/30/AFGHANISTAN.TERRORISM19).
18. Id.
19. Id.
24. Id.
25. See Stormans, Inc. v. Selecky, 586 F.3d 1109 (9th Cir. 2009).
27. Stormans, Inc. v. Wiesman, 794 F.3d 1064 (9th Cir. 2015), cert. denied, 136 S. Ct. 2433 (2016).
Washington’s Solicitor General Noah Purcell was propelled into the legal spotlight recently after his successful oral argument in Washington v. Trump. Here, in an exclusive for NWLawyer readers, Mr. Purcell shares his thoughts on that landmark case, fascinating insight into his legal team’s preparation, and the dynamics of litigating for Washington’s Attorney General Bob Ferguson. NWL
When people think about the states most affected by immigration policies, states such as California, Florida, New York, Arizona, and Texas probably come to mind before Washington. How did Washington come to take the lead in challenging the current administration’s travel ban in Washington v. Trump, and why did you feel it was important for our state to do so?

Washington is home to a large and vibrant immigrant community, and we began to feel impacts from the President’s executive order immediately. We had families that were separated and could not reunite, students and faculty at our universities who were stranded overseas, and employees of many of our major companies who immediately lost their ability to travel for work or to visit family. Because of those very real impacts, Attorney General Bob Ferguson quickly decided that there was no time to waste. The order was issued on a Friday afternoon, we decided on Saturday that we would bring the case, and we then had a team of lawyers working all weekend long with essentially no sleep to draft our complaint and motion for a temporary restraining order, to gather evidence from a variety of sources, and to work with our state agency clients to identify the harms that they were suffering because of the order. Other states quickly expressed support or filed their own cases, but my sense is that none made up their minds quite so quickly or had quite such an outpouring of help from throughout their AG’s office over that first critical weekend.

What do you feel are the most important takeaways from the Ninth Circuit’s decision in Washington v. Trump, and what do you think the decision says about the separation of powers in our government?

I think the single most important takeaway is what Attorney General Ferguson said from the beginning of this case: No one is above the law, not even the President. President Trump’s legal argument was essentially that he has unreviewable authority to make immigration policy if he simply claims that the goal is to protect national security. The Ninth Circuit correctly held that there was no precedent to support that position. As I said in my argument, it has always been the judiciary’s role in our democracy to say what the law is and to serve as a check on the other branches of government, and I am very heartened that the courts have exercised that role here.

Do you think the decision in Washington v. Trump will affect the current administration’s policymaking going forward? If so, how and why?

I hope that it will. I think the evidence and arguments we presented in the case showed the public how little thought and care the administration had put into a policy that dramatically affected thousands of people’s lives. And I hope the administration’s loss in this case has taught them that they need to take greater care to follow the law and consider how their actions will impact people.

In contrast to the usually stately pace of appellate practice, oral argument in Washington v. Trump occurred only eight days after the underlying suit was first filed in district court. How do you typically prepare for this type of action? From the moment of filing the case, how much time was spent putting together the case? How did the accelerated timeline affect your preparation and presentation to the panel?

I have joked since the Ninth Circuit argument in this case that it was the most important argument I’ve ever done and the shortest amount of time I’ve ever had to prepare, which is not a combination I recommend for minimizing stress! We decided to file this case on Saturday, Jan. 28. We immediately put together a team of lawyers in our office who worked all weekend (including Anne Egeler and Kelly Paradis in my office and Colleen Melody, Patricio Marquez, and Marsha Chien in our Wing Luke Civil Rights Unit). And because of the diligent work of that group, other attorneys, and a number of professional staff (Kristin Jensen, Chamene Woods, and
Wendy Scharber, among others), we were able to file the complaint and motion for TRO on Monday, Jan. 30.

Judge Robart ordered the federal government to file its response by midnight that Thursday, Feb. 2, and the argument took place at 2:30 p.m. the next day. So we had basically 14 hours between when the government filed its brief — which contained a range of arguments that we had never had the opportunity to address in writing — and the hearing.

I knew that I would need some sleep if I was to be coherent at the hearing, so we divided up the issues we expected the federal government to raise and different members of the team stayed up all night preparing notes for me on suggested responses and lines of argument. I was able to sleep for about four hours before nerves woke me up, and then I immediately dove into what others had prepared. We had a moot court at around 11:30 Friday morning, and then I went back to my office for some final prep before heading over to the courthouse for the argument.

While that pace seemed ludicrous, things only got crazier from there. Judge Robart ruled in our favor at around 4 p.m. Seattle time. Later that night, the federal government filed a notice of appeal. I had committed long before that to judge a high school competition at the University of Washington that Saturday, so I spent the day at UW with a lot of high school students, including some from refugee families. Their enthusiastic support for the case and our work helped re-energize me — that was also the first time anyone asked to take a “selfie” with me, which has since become a regular occurrence that I am still not at all used to.

Saturday afternoon, I got emails and phone calls from the Ninth Circuit clerk’s office notifying me that they expected to receive the federal government’s emergency stay motion later that evening, and they told me that there would be an extremely expedited deadline for our response. Sure enough, the federal government filed its brief at 9:15 p.m., and the Ninth Circuit quickly set our response deadline for midnight the next day (Sunday night). Our team had a conference call at about 10:30 p.m. on Saturday and divided up tasks in terms of who would write what for the response. Some people decided to stay up late and start right away while others slept briefly and woke very early to pick up where others had left off in the morning.

I stayed up for a while working on my sections and then woke early to head into the office Sunday morning — with a large carafe of coffee and some pastries for the team — to finish my parts and to start stitching together and editing the sections that others had drafted. Later in the day, my assistant realized that the Ninth Circuit electronic filing system was supposed to be offline for a few hours later that night, including the hour from 11 p.m. to midnight, so we called the clerk’s office and they told us that the system would be back online at midnight and we had to file between midnight and 1 a.m.

Oral argument had been set for Tuesday at 3 p.m. — roughly 38 hours after we filed our brief. Monday morning we began preparing for oral argument. I reread the briefs, read as many of the cases as I could, and started writing down possible questions and answers. All of that is typical for argument preparation, but the timeline was much more compressed.

In the AG’s Office, we typically have at least three moot courts for any significant appellate argument. Usually those are spread out over the course of two weeks, with the first one roughly 10 to 14 days before the argument. That process normally works very well, and I think it is one of several reasons why appellate advocates from our office consistently present strong oral arguments. But in this case there was of course no time for that normal process — I needed nearly every minute just to read the materials and cases, prepare the themes I wanted to present, and develop a list of likely questions and possible answers. We were able to have one moot court on Tuesday around 11 a.m., and we decided to do it by phone, in part because that was how the actual argument would be conducted. As usual, the moot was extremely helpful, but because of the time constraints there were still a number of questions I wished I had more time to think through.

“I THINK THE EVIDENCE AND ARGUMENTS WE PRESENTED IN THE CASE SHOWED THE PUBLIC HOW LITTLE THOUGHT AND CARE THE ADMINISTRATION HAD PUT INTO A POLICY THAT DRAMATICALLY AFFECTED THOUSANDS OF PEOPLE’S LIVES.”
As for the argument itself, I was immediately struck by how thoroughly the Ninth Circuit panel had digested the facts and legal arguments in the very short time that they had the briefs, and I thought that their questions for both sides were probing and thoughtful. After any argument, there are always things that you wish you had done differently, and that was certainly the case in this argument, but overall I was pleased with how the argument went. When it ended, I did not know what the outcome would be, but I felt like a giant weight had been lifted from my back. It was amazing to see the nice emails and phone calls start pouring in from across the state, around the country, and around the world thanking our office for our work on the case.

Your oral argument in Washington v. Trump had extensive media coverage and 100,000+ people listened live on the internet. Are there other cases you’ve been involved in that you think should have received similar attention?

I don’t think any other case I’ve been involved with necessarily should have received that much attention. But I do often wish that the public knew more about the important work that the AG’s Office does every day. We have hundreds of attorneys who do everything from protecting children from abusive parents to protecting our state’s environment to handling workers’ compensation claims. That work makes a real difference in people’s lives, but it rarely gets the attention it deserves.

Luckily, one unexpected upside of this case is that I have heard from many of my colleagues in our office that because of this case, they have received praise or kind words from family, friends, or even opposing counsel thanking us for our work. I wish my colleagues got more public recognition for the important work they do every day in less attention-getting cases, but in the meantime, I’m glad that this case has made so many of us even more proud to work in the AG’s Office.
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Do you feel that your Seattle upbringing has shaped your approach as solicitor general, and if so, how?

I think it has significantly shaped my work and life. I was lucky to grow up in a diverse community in Seattle (Beacon Hill) where I had friends whose families were from all over the world. I learned early on how lucky I was to have loving parents, a roof over my head, and to never have to worry about where my next meal was coming from. I also had great teachers who pushed me to excel and who also exposed me and my classmates to some elements of our local and national history that I think are sometimes glossed over in other communities. For example, I distinctly remember reading several novels about the internment of Japanese-Americans that I know are not required reading in many parts of the country.

I first learned about the law from a Seattle legend, Rick Nagel, my mock-trial coach at Franklin High School. Mr. Nagel led Franklin to many mock trial state championships, often competing against schools where most of the kids’ parents were lawyers (whereas we rarely had any lawyer parents). He and other teachers taught me that hard work and persistence could overcome a lot of challenges. But I also saw that many of my classmates who were smart and motivated were not able to fully pursue their dreams because their parents either couldn’t afford to help them with college or didn’t know exactly what their kids needed to do to get the prerequisites or experiences needed to go to college.

Of course, many other experiences helped shape my work as solicitor general — including clerking for two great judges and learning from a number of outstanding mentors at Perkins Coie and in the AG’s Office — but my early years in Seattle definitely played a role. In particular, I often think about our office’s work in terms of what we can do to help Washingtonians who need help most. Whether that is working on consumer protection actions, pushing for decisions that protect children in dependency and termina-
tion proceedings, or trying to protect taxpayer dollars so that they can hopefully be used where most desperately needed, much of our work can play a part in improving people’s lives. Our most recent case against the Trump executive order may be the most prominent recent example of that, but one great joy of working in the AG’s Office is that we get to do work on behalf of the people every day.

What are your hobbies or interests outside of your legal work?

Spending time with my family — my wife and I have two young kids, we live down the street from my parents, my mother-in-law is just a short drive away, my siblings both live in Seattle, and we have tons of cousins nearby — cooking, and eating. I used to play soccer, go hiking, and I enjoy reading for fun, but work and the kids have mostly sidelined those hobbies for now.

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Autism is a disorder that causes difficulties in communication and social interaction. Autism can be treated, but unfortunately the most effective treatments for autism are frequently restricted despite mental health parity laws that prohibit singling out any particular mental health treatments for restrictions. The labyrinthine path to treatment and lack of support for families mean many people with autism never receive care. Medicaid patients face even further struggles in finding treatment, as they are often trapped on multiyear wait lists due to a limited provider network.

What is Autism?
Autism spectrum disorder (autism) is a neurodevelopmental disorder described under the Diagnostic and Statistical Manual of Mental Disorders V (DSM-V) diagnostic criteria as causing deficits in social interaction, verbal and nonverbal communication, and maintaining and understanding relationships. Those affected by autism also show behavior such as repetitive movements; inflexible routines; highly restricted, fixed interests; and hyper- or hypoactivity to sensory input. Although autism is defined by the impact it has on social skills, it can be identified at a surprisingly early age. Typically, infants respond to voices and gaze at faces at two to three months, but babies with autism often fail to adopt even these basic social behaviors. These early difficulties build, and by eight to 10 months of age, infants with autism may not babble, respond to their names, or show interest in people. By the time they are toddlers, children with autism often tend to shun social situations, even failing to seek comfort from their parents.

Autism eventually affects virtually all aspects of everyday functioning. Many children with autism engage in behaviors that jeopardize their safety and health, such as self-injury, pica (ingesting inedible items), running away, aggression, sleep disorders, and severely restricted eating. While there is no “cure” for autism, all of these challenges can be successfully mitigated through applied behavior analysis (ABA) and other neurodevelopmental therapies such as speech therapy, occupational therapy, and physical therapy. Moreover, due to the very basic nature of the skills taught – speech, listening, observation, and self-care – early intervention is crucial, since failure to learn those essential skills severely hinders future learning capacity.

This article focuses on autism, but people with other developmental disabilities encounter similar difficulties, and many of the same treatments and legal arguments apply.

What is Applied Behavior Analysis
ABA is a scientific discipline that uses applied learning theory to change behavior. In practice, ABA uses positive reinforcement to encourage positive behaviors and reduce negative or harmful behaviors. ABA has been demonstrated to bring about gains in cognition, language skills, and adaptive behaviors in children of all ages with autism. Following decades of research, ABA has become the standard of care in the treatment of autism.

Using ABA, a child without speech might be encouraged to make any noise whatsoever, then rewarded for successful vocalizations. A child with speech could be asked questions, then provided guidance on how to answer to form good habits. For example, an ABA therapist might say, “What would you like for lunch? Say, I would like…” Children with autism often also need to learn elemental skills such as speech and listening, as well as capabilities often not thought of as requiring training, such as curiosity, sitting still, and awareness of one’s own emotions. Given both the depth and
breadth of the skills those with autism may need to learn, it should come as no surprise that ABA is time-intensive. Most children receive 25 to 40 hours of treatment per week. The importance of such mental health treatments, along with patients’ difficulties in obtaining coverage for those treatments, led both the Washington and federal legislatures to pass mental health parity laws.

**DOES MENTAL HEALTH PARITY ASSURE ACCESS TO AUTISM TREATMENT?**
Mental health parity laws were enacted to ensure that mental health conditions are covered at parity with medical/surgical conditions. This means that if a plan provides coverage for mental health conditions, it cannot pick and choose among the types of services that it will cover for those conditions. Parity applies to financial requirements as well as quantitative and nonquantitative treatment limitations placed on mental health benefits which, under both state and federal parity laws, can be no more restrictive than the predominant financial requirements and treatment limitations placed on substantially all medical/surgical benefits offered by the plan. In addition, plans cannot impose financial requirements or treatment limitations that apply only to mental health services. However, many insurance plans continue to limit or exclude treatments for autism despite mental health parity laws.

Courts consistently hold that mental health parity applies to treatments for autism, yet there continues to be some residual debate over this question. Plan sponsors and administrators have argued that treatments for autism, including ABA and other neurodevelopmental therapies, are medical treatments and not required to comply with parity laws. Yet both laws define the term “mental health benefit” by looking to the condition being treated. Washington’s Mental Health Parity Act defines mental health services as “medically necessary outpatient and inpatient services provided to treat mental disorders” and the federal

**WASHINGTON AUTISM ALLIANCE & ADVOCACY (WAAA)**
WAAA connects people with autism and other developmental disabilities to resources, and helps parents navigate the complicated insurance landscape surrounding autism. It was founded by the mother of a child with autism in 2012. Last year, WAAA provided services to 10% of all children with autism in Washington — 2,800 families — completely free of charge.

**GET INVOLVED**
- Be aware that it is the employer’s decision whether to cover autism and autism treatments.
- Instruct your own insurer to cover autism and ABA.
- Contact your representatives and request autism support.
Mental Health Parity and Addiction Equity Act (MHPAEA) describes mental health benefits as “benefits with respect to items or services for mental health conditions.” RCW 48.44.341(1); 29 U.S.C. §1185a(e)(4). As a DSM-listed condition, autism is a mental health condition. Therefore, treatments of autism should be considered mental health benefits for purposes of mental health parity determinations.

Furthermore, narrow interpretations of “mental health benefits” that would enable discrimination against medically necessary mental health services are disfavored by the courts. In October 2014, the Washington Supreme Court ruled unanimously in O.S.T. v Regence BlueShield that blanket exclusions of medically necessary mental health services violate state law. 181 Wn.2d 692, 335 P.3d 416 (2014). One of the named plaintiffs in it was a child with autism and the other was a child with other developmental disabilities. Both had been prescribed neurodevelopmental therapies to treat their conditions and both participated in insurance plans which excluded neurodevelopmental therapies. The court found that the blanket exclusions in the plans violated Washington’s Mental Health Parity Act and were void and unenforceable. Following this ruling, Washington’s insurance commissioner issued a directive to health insurance issuers in the state instructing them to administer their plans in accordance with the law and to no longer use blanket exclusions to deny services to treat mental health conditions. That was great news for families participating in individual and small-group plans that were seeking treatments for autism.

Unfortunately, many plans offered by large employers in Washington continue to limit or exclude treatments for autism. These self-funded plans are not subject to Washington’s Parity Act, but are required to comply with the federal law. Families facing these treatment limits and exclusions have the right to appeal the denials of coverage under the Employee Retirement Income Security Act (ERISA). However, before challenging the denials in the courts, families must first exhaust the plan’s internal...
appeal process. This can be lengthy and time-consuming and many families just don’t have the capacity to follow it through. One case that did make it to federal court involved the challenge of a plan’s “developmental disability exclusion” which had been used to exclude coverage of ABA therapy to treat the named plaintiff’s autism. In that case, the court held that because the exclusion was a treatment limitation that applied specifically and exclusively to mental health conditions, it violated the MHPAEA and was invalid. See A.F. v. Providence Health Plan, 35 F. Supp. 3d 1298 (D. Or. 2014). Based on the finding in A.F. v. Providence, it is clear that exclusions of treatments for autism cannot stand.

Plans that improperly exclude and limit treatments for autism are not only running afoul of mental health parity requirements, they are also denying these individuals, many of whom are children, access to medically necessary care prescribed by their doctors. Excluding ABA therapy, the primary treatment for autism, can have major implications for a child’s long-term welfare and increase the likelihood of needing extensive social services in the future. Treatment caps that fail to recognize the intensive nature of treatment required by patients with autism result in denials and treatment delays, also impacting an individual’s ability to become a productive member of society.

WHAT PREVENTS MEDICAID PATIENTS FROM RECEIVING TREATMENT?

Prior to 2012, children participating in Washington’s Apple Health (Medicaid) program did not have access to ABA therapy. Washington Autism Alliance & Advocacy joined with three young boys with autism to file a lawsuit against Washington’s Medicaid administrator, the Health Care Authority (HCA). HCA settled the suit by agreeing to provide coverage for ABA therapy for children up to age 21. However, ABA coverage was only the first step. Apple Health members still face significant challenges in receiving treatment. The low number of ABA providers that accept Apple Health means that even once treatment is approved, parents of children with autism report waiting up to three years before actually receiving treatment.

Initial investigation reveals the primary complaint among ABA providers is low reimbursement. For example, supervisors are required to observe 5% of training, and while private insurance pays for the supervisor’s time, Apple Health pays $0. Where Apple Health does pay, rates are as low as 33 cents on the dollar compared to private insurance. In some fields, Medicaid reimbursement does not cover the cost of providing services, and only access to the profitable Medicare population allows providers to accept Medicaid patients. However, since most ABA recipients are children, there is no Medicare population to counterbalance the costs of accepting Medicaid. Thus there are currently only 34 ABA providers in Washington who accept Apple Health fee-for-service (FFS). Meanwhile almost 1,900 children with Medicaid wait for an opening to receive treatment.

Long waitlists are more than just an inconvenience. The delay in services causes long-term harm to some children waiting for access to care. For example, as children age, they rapidly lose the neural plasticity that allows easy language acquisition. As a result, a child who spends two years on a waitlist and receives language training at five years old instead of three years old may have a more difficult time learning and using language, resulting in diminished outcomes. In a case involving Regence BlueShield, the court recognized that the delay in
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medically necessary services caused by Regence BlueShield’s denials could cause irreparable harm to the children who were waiting. The court granted a preliminary injunction ordering Regence BlueShield to begin providing benefits. K.M. v. Regence BlueShield, No. C13-1214 RAJ (W.D. Wash. 2014).

Recently, the traditional avenue of private enforcement was limited by Armstrong v. Exceptional Child Center, Inc., which held that providers do not have standing to challenge payment adequacy. 135 S. Ct. 939 (2015). Because providers cannot enforce payment adequacy statutes, the Centers for Medicare and Medicaid Services (CMS) is moving into its new role as sole enforcer, requesting state agencies to document adequate provider networks and payment rates via access monitoring review plans. However, former U.S. Department of Health & Human Services (HHS) officials filed an amicus brief in Exceptional Child stating that the agency does not have the resources to enforce network adequacy, raising the specter that CMS’s enforcement regime will be anemic. More generally, CMS’s blunt instrument of withholding payments seems poorly suited to the task of improving payments.

AFFORDABLE CARE ACT UNCERTAINTY
At the time of this writing, uncertainty surrounds the planned repeal of the Affordable Care Act (ACA). People with autism are more exposed than most, as a repeal of the ACA will render many of them uninsurable. Prior to passage of the ACA, autism was a pre-existing condition sufficient to merit complete disqualification from coverage. In other words, people with autism could not purchase health insurance for any amount of money. If the ACA’s prohibition on denials for pre-existing conditions is repealed, the autism health law landscape will change dramatically because those with autism will again be uninsured and uninsurable. Moving forward, it
will be vital that pre-existing conditions and the extension of coverage to dependents up to age 26 be included in any national health care law.

MORE WORK TO BE DONE
While coverage for autism treatment is improving, there is more work to be done. Washington’s HCA is obligated to provide ABA for Medicaid patients, and merely offering to pay does not fulfill that obligation. Waitlisted patients must encourage the HCA to fulfill its duties, either by contacting the agency directly or, if necessary, through legal action. In addition, the Medicaid benefit should be expanded to cover medically necessary services for individuals with autism at any age. For the privately insured, contrary to popular belief, employers have a great deal of control over their health insurance policies. In most cases it is the employer, not the insurer, that decides which treatments are covered. Employees can ask their human resources department to instruct their insurer to cover autism, developmental disabilities, and ABA.

To increase education and access to resources for families with a new diagnosis, a legislative bill is circulating to require that patients be provided contact information for support services that can provide insurance navigation assistance and information about social support networks.

Autism can be treated, but while people with autism may have health insurance, that does not guarantee they will have access to treatment. Mental health parity requires equal treatment of patients with mental health needs, but people with developmental disabilities are left on waitlists, or must pay out of pocket for much-needed treatment. Adequate autism coverage requires increased education for new patients, improved compliance with mental health parity requirements, and a healthy enough reimbursement to bring providers into the Medicaid system. NWL.

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We work as a team on your urgent care cases. Medical malpractice; it’s all we do.
I grew up in Detroit where my mother, Virginia Nunneley Bates, was a high school biology teacher – not a lawyer. We did at times discuss legal matters, though. The first significant discussion I recall was on a beautiful spring Saturday morning, when I was perhaps 12 years old. Mom arrived home from her Saturday morning swim at the YMCA, absolutely infuriated. She had a traffic ticket in hand declaring a left turn was performed in a no-left-turn zone. A Detroit police officer had issued it to her after she exited and incorrectly turned left from the Y parking lot. Make no mistake about it – she was livid.

My father, my siblings, and I quickly established that my mother agreed, upon reflection, that she indeed did make the illegal left turn. However, she was already preparing her defense. At the time she exited the parking lot, she stated loud and clear, there was no other traffic in sight, and the day was (and still was, for that matter) a “clear, crisp day.” The sun was shining and the traffic was non-existent, so why could one not make a normally illegal left turn? After all, the day itself was both “clear” and “crisp.” Mom always did believe in the general goodness of people, and that their pure intentions should certainly count for something as they made their way through life.

During her long life, we never allowed my mother to live down her adamant “clear, crisp day” defense, bringing the subject up over the years every time any of us received a traffic ticket. A new discussion would ensue, asking her whether she thought her “clear, crisp day” defense might work in the latest incident such as a family member speeding, making an illegal turn, failing to yield, having malfunctioning equipment, or parking illegally. My entrance into law school simply sparked the flames further. At the conclusion of each semester, a family member likely as not might wish to know if any of my recently completed classes covered the “clear, crisp day” defense in any of the cases we reviewed. Criminal law? Have they covered traffic offenses yet? If so, what about the “clear, crisp day” defense? Con law? Is there something in the constitution about “clear, crisp days?” Property law? Does the clearness or crispness of the day make a difference when transferring land? Tort law? Surely the clearness or crispness of the day might factor into any number of torts?

Following law school, there were of course some interesting discussions my mother and I had regarding law and the legal system. One year, Mom served for nearly a month on a jury (and ultimately as forewoman) for a trial in which the defendant was acquitted of murdering his wife and two of his three children. Following the acquittal, she managed to avoid the media at the front entrance of the courthouse, who were loudly yelling to interview the jury forewoman. She was in the court clerk’s office instead, straightening out the $11 of jury pay she was owed from the prior week.

Another year, my mother was heading up those same courthouse steps when she encountered a man – she said she thought he was called “The Candyman.” It turns out it was the rap singer Eminem. Eminem was being interviewed by the media following his court appearance for discharging a firearm into the air. My
mother temporarily delayed her entrance into the courthouse to observe the interviews. Mom later noted that Eminem was wearing a nicely tailored, pressed suit, with an “interesting” necktie, along with stylish shoes and closely matching belt. Mother always did appreciate a neat and well-dressed appearance. She made a point that Eminem stated several times that he was sorry, which seemed good enough for her. Mom’s positive outlook on mankind perhaps showed through in a bit with her declaration that she believed this was probably just a matter of “a nice, polite, well-behaved young man who maybe just temporarily took up with the wrong crowd.”

No, my mother was not a lawyer, but she introduced me to a legal defense in which she truly expressed her beliefs. In doing so, she taught me to be persistent, be convincing, be articulate, be resolute, perhaps a bit creative, and most of all, to show belief in what you advocate. And she taught me perhaps to assume people’s good intentions and to give them the benefit of the doubt if at all possible.

**Charles Bates** is an Everett attorney enjoying semi-retirement following careers in the private, public, and non-profit sectors, including the Washington State Administrative Office of the Courts. He is the new daddy of his recently deceased mother’s companion animal, Precious the Cat. He can be reached at charleybates@mindspring.com.

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MY mom never takes credit for any of her or her children’s successes, so she will be surprised to know that she inspired me to pursue a career as a lawyer. My mom is a silent warrior who has dedicated her life to helping children and families in not only her career, but also in her church, and her home, and through her actions.

My mother has worked in children’s services for the state of Oregon for over 25 years. She has worn many hats while working for the state. She has helped children find emergency placement in foster homes, helped children get adopted into safe and supportive homes, and most recently, she has worked tirelessly until the early hours of the morning supervising the “hotline” to identify life-threatening situations for children. When I was a child, watching my mother and listening to her stories cemented my desire to find a career where I, too, could help people when they could not help themselves. As my mother acted as a voice for children, I wanted to be a voice in our legal system for people who needed an advocate.

I have always admired my mother’s ability to stand up for what is right, to stand by her ethics and beliefs, and to admit when she is wrong – something I struggle with. I have watched my mother bring her sometimes minority opinions to her superiors, knowing that it may affect her career, but also knowing that it was the right thing to do. I have watched her face bullies and critics with understanding and compassion. When faced with conflict, my mother never loses who she is to accommodate the strongest voice. It is largely because of my mother that I have not lost my voice as a woman attorney in an area of law dominated by men.

I know that my mother wore many more hats than those in her career. She not only worked a second job doing the bookkeeping for our family business, but she also cleaned our home every Saturday, made our breakfast, lunch, and dinner every day, did all our laundry, did all our shopping, and still found time to make sure we were loved and nurtured.

Now I am the mother of an opinionated, spirited, and loving two-year-old girl. Every morning, as my daughter and I debate the appropriateness of wearing pajamas to school, I honestly cannot fathom how my mother literally did it all. As we await the arrival of our second daughter, I hope I, too, can inspire my daughters to find careers that make them happy, to speak for others who cannot speak for themselves, and to never compromise their beliefs or ethics.
Almost 20 years, during which time she and my father raised me and my brothers Kelly and Kerry. She also managed to put a delicious dinner on the table every night within 60 minutes of arriving at home — no small feat. She found time to cantor at the weekly Mass my family attended, and also at the Gonzaga Red Mass where she shared her love of music — and an impressive coloratura soprano vocal range — with members of the legal community.

When I was in college in the 1980s and trying to figure out a career to pursue, Mom asked me, “Why not go to law school?” I answered that there are so many attorneys already. Mom replied, “There is always room for another good one.”

I graduated from Gonzaga University School of Law as the proud member of a class in which the top three grade point averages belonged to women. One of my first supervisors after I started working as an attorney was a woman. I have worked with so many smart, capable, and often inspiring female attorneys during the past 30 years. It is difficult to imagine a time when my mother, with a law degree in hand and after putting herself through law school, was initially only offered positions as a legal secretary. I tell young female attorneys in my office now about the challenges my mother overcame to become an attorney. I see in their expressions a deep admiration for my mother’s determination to practice law at a time where there were few female role models for her.

I have had many opportunities during my legal career to apply the wisdom and ethics my mother taught me. When I was a young attorney being reminded daily of how much I did not know, I would repeat something she told me, “If you did the best you can do, take satisfaction in that fact.” As I matured and took on additional responsibilities, I would hear my mother’s voice telling me, “One should always leave a person with his or her dignity.”

So thank you, Mom, for not giving up on your goal of becoming an attorney despite hurdles in your path that one hopes few women face today. Thank you for working with Dad to raise me and my brothers to love words and to respect the law. Thank you for teaching your children that the greatest risks often bring the greatest rewards.

Kevin Curran is the managing director of PricewaterhouseCooper’s National Tax Services’ U.S. Tax Controversy and Regulatory Services Team in Washington, D.C. www.pwc.com.
HOW DOES SHE DO IT?

by Hillary Madsen

I am an avid runner. My favorite station on Pandora for my longer runs is “Pop Music Radio,” and there is one song, “Wake Me Up” by Avicii that I really appreciate. In the song, the singer croons, “All this time I was finding myself. And I didn’t know I was lost.” To me, that lyric captures the essence of mothering. People talk about losing oneself in becoming a mother. But for me, when my son was born, I was found. And I did not know, until his tiny, wet, impossibly soft screaming body was placed on my chest, that I had been lost. For my child, I would do anything. For my child, I do everything. In this way, I realized that mothers do not give life to their children – children give life to their mothers.

Growing up as the eldest daughter of Washington State Supreme Court Justice Barbara Madsen, I often heard the question, “How does she do it?” I am asked this question even more frequently as a practicing lawyer. After all, my mother can claim almost 40 years of devoted marriage, four adult children who have each experienced their own successes, and the most perfect grandson in the entire world. At the Supreme Court, she has served as the chief justice for seven years and associate justice for 24 years. She also served as a judge, prosecutor, and public defender in King and Snohomish counties for years before that.

And my mother has been more than a judge. She has been a reformer of the legal system in Washington – working towards justice by combating institutional sexism through chairing the Gender & Justice Commission, leading the development of the Tribal State Court Consortium, establishing the Initiative for Diversity, spearheading uniform standards for death penalty cases and reducing criminal caseloads for public defenders, and founding the legal technician movement nationally to help poor people meet their civil legal needs. This is to name just a few of my mother’s accomplishments.

I have usually answered the question of “How does she do it?” by explaining that in 1992, she audaciously ran for the highest bench in Washington from the lowest bench, the Seattle Municipal Court, because she was outraged by the Senate confirmation hearings for Clarence Thomas for the United States Supreme Court. When Anita Hill was called as a witness to share what she had experienced when Clarence Thomas was her direct supervisor, she was attacked mercilessly by the Senate Judiciary Committee. Ms. Hill was belittled and demeaned. She was told that she was a liar and had no character. The testimony of Ms. Hill rang so true to my mother because, like Anita Hill and so many other women in America, my mother had been sexually harassed and demeaned in the workplace. At that time in the United States Senate, there were only two women out of 100 senators. Neither woman served on the Judiciary Committee. My father tells the story that just a few days after the hearings, during one of their rare date nights, my mother announced, “I just can’t let this go.”

My parents were both middle children in working-class families. Each of them were the first to attend law school. They had no money and no political contacts of significance. When my mother began law school, my older brother was 10, I was eight, my sister was five, and my little brother was just six months old. For my mother’s first campaign, my parents took out a second mortgage on their home ($25,000 was the most they could get) and assembled cardboard yard signs and campaign pamphlets by hand. There were no TV, radio, or billboard ads and not a single editorial board endorsement in support of my mother. There were just a lot of county fairs and picnics where my little brother’s stroller was decked out in yard signs and we children were told to hand out fliers to everyone – and not to take “no” for an answer. Washington had never elected a woman to the Supreme Court. It may have seemed hopeless, but what mattered to my mother was that women were necessary in leadership. So my usual answer is true. My mother’s first campaign, and the four that followed, were dominated by her vision of equal justice. If you ask her, my mother can tell you vividly about her impressions of those Senate hearings and the work that still must be done.

But now that I am a mother, I have fresh insight. When someone asks, “How does she do it?” I can say that Justice Madsen does it because she wants our justice system to be fairer for her children, and for everyone’s children. She does it because she draws courage and inspiration from the lives of her children. She does it because she must. And finally, she does it because she desperately wants her children to be proud of her. And we are, Mommy. We’re so very proud of you, yesterday, today, and tomorrow still.
My mother, Judge Marie Palachuk, has been a judge for well over a decade. She began law school at Gonzaga University School of Law while her two young children began preschool. She worked mornings, and would often pick me up and take me to her evening classes. I remember a class on taxation — I was too young to understand tax law at the time. Actually, I still don’t really understand tax law.

Fast forward a decade, and my mother was working at the Attorney General’s Office (AGO) in Spokane. She traveled constantly. She flew to Olympia, Tacoma, or Seattle almost weekly. Yet, she always came home and helped me with my math or science homework. She told me, “Do well in science so you can become an orthodontist.” It’s funny now when I complain about a complex trial or a frustrating opposing attorney, she just laughs and says, “I told you to be an orthodontist!”

My mother single-handedly raised two small children while working as a trial attorney in the Torts Division of the AGO office. She told me stories about depositions, motion practice, and strategies for trial. She won case after case, and she loved the courtroom. So in high school, I took AP classes in literature and history rather than biology. I began reading John Grisham by choice. My mother transitioned to the bench while I was in college, where I was studying philosophy instead of chemistry. Like it or not, she knew I was probably heading to law school.

After college, I worked as a bank teller, bartender, and retail manager while I studied for the LSAT. My mother housed me for free. Yes, I was a millennial living at home after the recession. She also calculated the fair market value of rentals in the area multiplied by the number of months I lived in her basement, and simply “suggested” that I pay the would-be rent after law school. She still jokes about it… she has to be joking, right?

When it came time to pick a law school, our Cuban-Catholic roots reemerged. My mother taught Sunday school when I was a kid. She always dreamed of attending Notre Dame. We watched the Irish on Saturday and attended mass on Sunday. Naturally then, her first-generation son chose Notre Dame Law School. I still cheered for Gonzaga, and I still rooted for UW against USC or Michigan. And I came back to the Pacific Northwest upon graduation. In fact, I decided to start my career in Spokane. Our dinners transformed into discussions of impending summary judgments or upcoming depositions. I knew she missed litigation.

My mother is now a federal administrative law judge. I think she will be a professor of civil procedure someday — or else she will retire and work as a librarian. For my part, I moved to Seattle and joined Jameson Babbitt Stites & Lombard as a construction litigation attorney. I am three years into practice and loving every minute of it.

She taught me a great deal. She challenged me, set high expectations, and provided support. I know that without my mother, I never would have gone to law school. Yet, I have to wonder — what if I never read John Grisham? What if I never studied philosophy? What if I became an orthodontist?

Alas, I chose the law. Now I can thank — or blame — my mother. Thanks for everything, Mom.

Geoff Palachuk is an associate at Jameson Babbitt Stites & Lombard (JBSL) in Seattle. Before joining JBSL, Geoff worked as an insurance defense attorney in Spokane. He can be reached at gpalachuk@jbsl.com.
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I am a staff attorney with the Northwest Justice Project (NJP), which provides free legal services to low-income and elderly Washingtonians. The overwhelming focus of my practice is representing people facing debt collection issues. This practice area serves a client base desperate for assistance and sometimes targeted by organizations who, for a monthly fee, make claims and sell promises they do not and cannot keep. I have represented many clients who paid hundreds or thousands of dollars in enrollment fees to organizations offering protection from collection harassment but in reality provide only a dangerous false sense of security. In many cases, such organizations rarely, if ever, provide actual legal services beyond recommending submission to a judgment because a person is “judgment proof.” This of course is always dangerous advice.

Though some income may be exempt from post judgment collection remedies other assets may not, a person’s estate is not, and a judgment debtor may still be forced into court on threat of arrest twice a year to testify about assets in supplemental proceedings. The harm can be irreversible and the opportunity to assert valid defenses lost forever.

It is important to remind the Bar about Washington’s established network of free and reduced price legal services available to the poor and elderly. For example, each year NJP (nwjustice.org) provides critical civil legal assistance and representation free of charge to thousands of low-income people in cases affecting basic human needs, including problems with debt collectors. Thousands more find assistance at washingtonlawhelp.org, where they can find publications and videos covering a wide range of legal needs. If your low-income elderly clients need help with debt collectors, they can be referred to the NJP CLEAR hotline at 888-387-7111, Columbia Legal Services, the Moderate Means Program, the Northwest Consumer Law Center, local volunteer lawyer programs, or any of the other established legal aid providers across the state for legal help about a debt collection problem. Please, be diligent when referring your low-income clients for help with debt collection issues to ensure they receive the meaningful representation they deserve and don’t end up paying for illusory services. NWL

Scott Kinkley is a staff attorney with Northwest Justice Project in Spokane. He can be reached at scottk@nwjustice.org.

Where you used to be, there is a hole in the world,
Which I find myself constantly walking around in the daytime,
And falling in at night.
Edna St. Vincent Millay
The Access to Justice (ATJ) Board works with many equity and justice partners across the state to organize a biennial conference that brings together judges, legal professionals, law students, civil legal aid lawyers, WSBA leaders, and community members to learn, network and collaborate around equity and justice. This year’s conference, “Racing to Justice: Community Lawyering to Bend the Arc,” is being held in Yakima on June 2 - 4.

This will be the 19th ATJ conference. Planning for this year’s conference is well underway with something for everyone, whether you practice in the civil or criminal field, or whether you are a community partner or member of the judiciary. Given the new political landscape, this year’s conference will not be business as usual. We will have opportunities to discuss issues affecting our marginalized communities including immigrants, LGBTQ, Muslims, and low-income people. We intend for this conference to be a game changer – not only in terms of how it can impact you as an individual but also as a way for the legal community to come together to protect and stand for justice.

Go to http://wa-atj.org/ for details and to register. If you have any questions, contact Diana Singleton, WSBA Access to Justice Manager, at dianas@wsba.org. NWL

FROM AN ATJ CONFERENCE PARTICIPANT

When I think about the ATJ Conference, I think of a number of things that have significantly impacted my career and the work I do every day. I went to law school with the dream of being a public interest attorney. I found out about the ATJ Conference through my internship at the Center for Justice, and I attended as a 2L. I met great people and discovered a wealth of information. Relationships I formed during that first conference set the stage for my being part of a panel on veterans benefits at the ATJ Conference the following year. I believe my experience played a part in getting my dream job as a Northwest Justice Project attorney.

After I began my legal career, I again had the opportunity to attend the ATJ Conference, where I listened to a presentation by attorney Scott Crain, who was discussing a new way of delivering legal aid – Medical-Legal Partnerships (MLP). His presentation rocked my world. I felt an MLP would be a great fit for Spokane and began working toward that goal. As a result, Spokane now has the Health & Justice Initiative, which works with fantastic partners like Providence Healthcare and on-site at locations such as the Spokane Teaching Health Clinic and Eastern State Hospital to address health-harming legal needs, which reduces the cost of care and improves outcomes.

The ATJ Conference has also informed my work by discussing concepts like implicit bias. We all know that racial disparity exists in the justice system; however, it is often difficult to form the ideas and find the right vocabulary to discuss this challenging topic. The ATJ Conference provided me with concrete examples in unique ways, such as a presentation on the shocking statistics of the school to prison pipeline that included accounts from men and women with firsthand experience of the problem.

There have been countless fun and informal interactions that have allowed me to get to know my colleagues better. I have enjoyed the fellowship of being in a conference center full of people that share my passion for equal access to justice — not to mention getting the chance to bend the ear of an expert to help me with my cases. If you attend, maybe you too can have the experience of meeting someone nice at breakfast and not realizing, until several minutes into the conversation, that the nice person is a member of the Washington Supreme Court.

Barry Pfundt is a staff attorney with the Center for Justice in Spokane. He can be reached at barry@cforjustice.org.
The WSBA Board of Governors met on Mar. 9-10 for its annual meeting in Olympia.

Thursday, Mar. 9

Honoring Local Heroes Anne Egeler and Cailen Wevodau
The WSBA presents its Local Hero Award to WSBA members and local community members who have made noteworthy contributions to their communities. The Thurston County Bar Association selected Anne Egeler for the award, in recognition of her dedicated service to Thurston County’s legal community. The Government Lawyers Bar Association selected Cailen Wevodau, in recognition of her commitment to survivors of domestic violence in Thurston County. WSBA President-elect Brad Furlong presented the awards at the luncheon during the Board meeting in Olympia on Mar. 9. As always, the turnout by the local bar and bench was outstanding!

Generative Discussion Topics – We Need MEMBER Input!
The Board discussed both the goals and topics of the generative discussions that have been incorporated into Board agendas since last year. Generative discussions focus on significant policy issues so that the Board and the WSBA can proactively and thoughtfully engage with developments of importance to the profession. Generative topics may represent the beginning of a continuing Board and WSBA dialogue among members, stakeholders, and others. Suggestions from Board members for possible topics included how to better connect with members, the future of LLLTs in the profession, and exploring regulatory reform per the current strategic goals. The Board would like to hear your ideas about potential topics for discussion! Please send your suggestions to questions@wsba.org.

President Haynes and Executive Director Littlewood also sought topics for the Bar’s new forum series for the general public and the legal community, Decoding the Law. This new series launched in March with the topic of the death penalty. Please help us grow this series by sending your topic ideas to questions@wsba.org.
Legislative Report
At-large Governor Mario Cava and Legislative Affairs Manager Alison Phelan described the bills being considered in the Legislature. WSBA Legislative Affairs has referred 655 bills to relevant WSBA entities for review and potential action. Cava and Phelan also reported on the status of two Bar request legislation proposals: Senate Bill 5011, which amends the Business Corporations Act to make Washington more business-friendly through process efficiencies and the modernization of outdated statutory provisions; and Senate Bill 5012, which would create a non-judicial process for amending or replacing irrevocable trust documents. The 2017 regular state legislative session began on January 9 and is scheduled to adjourn Sine Die on April 23.

Friday, Mar. 10

Annual Meeting with Board and Supreme Court
On Friday morning, the Board had its annual meeting with the Supreme Court. WSBA President Robin Haynes updated the Court on various WSBA initiatives, including an updated and more user friendly website for the WSBA and process involved in implementing the updated Bylaws. The new wsba.org is scheduled to go live in August. The Court and Board also discussed the recent license fee petition; the Court confirmed that when it issued its Order, it was only related to the reasonableness of the license fee and not whether the Board should hold the referendum vote. WSBA staff also presented the next iteration of a coordinated discipline system, the goal of which is to streamline and improve the current lawyer, LLLT, and LPO discipline systems.
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WSBA Presidential Search
Application Deadline: April 10, 5 p.m.
The WSBA Board of Governors is seeking applicants for the position of WSBA president for 2018–19, who will serve as president-elect in 2017–18. The WSBA member selected will have an opportunity to provide a significant contribution to the legal profession.
Applications for 2018–19 WSBA president will be accepted until 5 p.m. on April 10, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no fewer than five or more than 10 references. The Board of Governors will consider endorsement letters received by May 3. Applications and endorsement letters should be sent to the WSBA Executive Director, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101.
Direct contact with the Board of Governors is encouraged. All candidates will have an interview with the full Board of Governors in an open session scheduled for the May 18-19 Board of Governors meeting in Seattle. Following the interviews, the Board will select the president. Although prior experience on the WSBA Board of Governors may be helpful, there is no requirement that one must have been a member of the Board of Governors or had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being a positive representative for the legal profession. The position is unpaid. Some expenses, such as WSBA-related travel, are reimbursed.
The commitment begins in May 2017, following selection. A one-year term as president-elect will begin at the APEX Awards Dinner on Sept. 28. The president-elect is expected to attend two-day Board meetings held approximately every six to eight weeks, as well as numerous subcommittee, section, regional, national, and local meetings. In September 2018, at the WSBA APEX Awards Dinner, the president-elect will assume the office of president. During his or her service, the president-elect and president will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar’s legislative activities. Appropriate time will need to be devoted to communication by letter, e-mail, and telephone in connection with these responsibilities.
The duties and responsibilities of the president are set forth in the WSBA Bylaws. The Bylaws can be found at www.bit.ly/bylawswsba. For further information, contact Margaret Shane at margarets@wsba.org or 206-727-8244.

Call for Applications for WSBA Board of Governors At-Large Position
Application Deadline: April 20, 5 p.m.
One of the three at-large positions on the WSBA Board of Governors is up for election. Under WSBA’s Bylaws, the purpose of this position is to increase diversity and representation on the Board, and the position is to be filled by a WSBA member who has “the experience and knowledge of the needs of those lawyers whose membership is or may be historically under-represented in governance, or who represents some of the diverse elements of the public of the State of Washington.”
The Board of Governors will interview candidates and elect the at-large governor at its meeting scheduled for May 18-19, in Seattle, and the governor’s three-year term will begin at the end of the Sept. 28-29 Board meeting. For more information about the position and how to apply, see our website at www.wsba.org/elections. The WSBA Bylaws are posted at www.bit.ly/bylawswsba. Applications will be accepted until 5 p.m. on April 20. Letters of endorsement will be accepted through May 3. If you have questions, please contact WSBA Diversity and Inclusion Specialist Dana Barnett at danab@wsba.org or 206-733-5945.

ABA House of Delegates
Application deadline: June 1
The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving on the American Bar Association (ABA) House of Delegates representing the WSBA. Three positions are available for two-year terms beginning in August as well as one alternate. The control and administration of the ABA are vested in the House of Delegates, the policymaking body of the ABA. The House, composed of approximately 550 delegates, elects the ABA officers and board, and meets out-of-state twice a year. Delegate attendance is required (to ensure full voting capacity exists at all times, an alternate will attend if one of the delegates is unable to attend a meeting). The WSBA provides an allowance of $800 per year per delegate. Members may serve a maximum of three consecutive terms. Those serving on the ABA House of Delegates must be ABA members in good standing throughout their terms. Please submit letters of interest and résumés by June 1 to the WSBA Communications Department, 1325 Fourth Ave., Ste. 600, Seattle, WA 98101-2539; or email barleaders@wsba.org.

WSBA News
Announcing the WYLC’s Public Service and Leadership Award
Nomination Deadline: May 5, 5 p.m.
Do you know an outstanding new or young lawyer? Nominate a new or young lawyer for the Washington Young Lawyers Public Service and Leadership Award by May 5! Long-term service or an extraordinary contribution to the community will be considered. Awardees receive recognition in a WSBA publication and a free WSBA CLE of up to 6 CLE credits. Learn more by emailing newlawyers@wsba.org or at: http://tinyurl.com/jtkvmn7. A young lawyer is any WSBA member younger than 36 or with five or fewer years of practice experience.
**WSBA Launches CLE Faculty Database**
If you are currently serving as CLE faculty, or are interested in working with the WSBA as a future CLE faculty member, we encourage you to register in our CLE faculty database. Serving as a faculty member provides you with the opportunity to engage with other attorneys across the state, give back to your profession, and expand your professional growth. Whether it's upcoming changes in the law, emerging hot topics, or substantive content, our goal is to ensure we are engaging with the right faculty at the right time, matching practice expertise and knowledge to our educational programming needs. We hope to capture the information of all those who plan to teach — both current CLE faculty and those interested in future opportunities. Please log on and register in the CLE faculty database today at www.mywsba.org/ClefFacultyApplication.aspx.

**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 (WYLC) Meeting**
June 10, Tri-Cities
The WYLC is meeting in the Tri-Cities on Saturday, June 10, from 9:30 a.m. to 2:00 p.m. All new and young lawyers are encouraged to attend and learn about the WSBA and the projects of the WYLC. Email newlawyers@wsba.org for details on the meeting agenda and location.

**ALPS Attorney Match**
Attorney Match is a free online networking tool made available through the WSBA-endorsed professional liability partner, ALPS. This resource allows attorneys to set up a profile and indicate whether they are looking for or available to act as a mentor. Mentorship programs that meet requirements are now eligible for MCLE credit. The WSBA provides information and links to the ALPS Attorney Match online system as a service to the legal community. For more information, email mentorlink@wsba.org.

**Community Networking in Bellingham**
April 13, 5 – 7 p.m.
The WSBA invites you to a Community Networking Event in Bellingham. This is a great opportunity to meet and mingle with other attorneys in and around Bellingham. Light appetizers will be served with a no-host bar. RSVP at diversity@wsba.org.

**2017 Licensing and MCLE 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 by April 25, a recommendation for suspension will be submitted to the Supreme Court.

**MCLE Suspensions.** If you were due to complete MCLE requirements for 2014–2016 and have not done so by April 25, 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 by April 25, 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.

**Access to Justice Conference**
The Access to Justice Board is pleased to invite you to the 19th Access to Justice Conference, June 2–4, at the Yakima Convention Center. Our conference brings together attorneys, judges, and other advocates and community members working within the civil, criminal, and juvenile justice systems to build collective knowledge, participate in discussion, and work toward identifying and removing barriers to justice. Congresswoman Pramila Jayapal will keynote the conference. Programming is pending CLE credit. Learn more and register at www.wa-atj.org.

**WSBA Board of Governors Meeting**
May 18 – 19, Seattle
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Margaret Shane at 206-727-8244, 800-945-9722, ext. 8244, or margarets@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/bog.

**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 client’s interests. The custodian takes possession of the necessary files and records to act as custodian. Costs incurred may be reimbursed. Current WSBA members of all practice areas are welcome to apply. Contact Sandra Schilling at san-dras@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.
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)

Work & Wellness Day
Apr 25, 11 a.m.-2:30 p.m.
This year’s theme is “Resisting Stigma by Asking for Help.” Research shows that stigma is the number one reason attorneys are reluctant to seek support and treatment. For the Legal Lunchbox, attorney Wil Miller will share his journey from hiding his problems as an attorney to asking for help in recovering from addiction. He will team up with attorney and social worker Frances Schopick who will describe how sharing one’s dilemmas can forge closer connections. Attorney and psychologist Duncan Holloman will review some of the assumptions we make in “hiding our cards,” and he will promote ways we can resist similar assumptions in communicating with our clients. For those who would like to attend in person, there will be a presentation at 11 a.m. about one lawyer’s road to recovery from alcoholism. This will be followed by a lunch. Three CLE credits are available. You can sign up on the www.wsbcle.org website.

WSBA Connects
WSBA Connects provides free counseling in your community. All WSBA members are eligible for three free sessions on topics as broad as work stress, career challenges, addiction, anxiety, and other issues. Call 800-765-0770 and a telephone representative will arrange a referral using APS’ network of clinicians throughout the state of Washington. We encourage you to make the most of this valuable resource.

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/tx-heb8b. If you’d like to participate or schedule a career consultation, contact Dan Crystal at danc@wsba.org or 206-727-8267.

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 on the 6th floor of the WSBA offices in the LAP group room from noon to 12:45 p.m. For more information, contact Greg Wolk at greg@rekhiwolk.com.

The “Unbar” Alcoholics Anonymous Group
The Unbar is an “open” AA group for attorneys that has been meeting for over 25 years. Meetings are held Wednesdays from noon to 1:30 p.m. at the Skinner Building at 1326 Fifth Ave., 7th floor. If you are seeking a peer advisor to connect with and perhaps walk you to this meeting, the LAP can arrange this and can be reached at 206-727-8268.

Stress Reduction
Sometimes it’s tempting to reduce stress by over-doing alcohol, prescription drugs, food, sex, gambling – even work. These methods usually provide short-term relief and long-term pain, effectively giving you another problem to cope with down the road. Learn to reduce your stress without self-harm. If you’d like help, call WSBA Connects at 1-800-765-0770 to schedule a confidential consultation.

WSBA Law Office Management Assistance Program (LOMAP)

LOMAP Lending Library
The WSBA LOMAP and LAP Lending Library is a service to WSBA members. We offer the short-term loan of books on health and well-being as well as 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. 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 or 206-733-5914.

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+. Just like Shepard’s and KeyCite, CaseCheck+ tells you instant-ly 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 representa-tive can discuss these features with you. For help using Casemaker, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

Learn More about Case-Management Software
LOMAP maintains a computer for mem-bers 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.

Usury Rate
The maximum allowable usury rate can be found on the Washington State Treasurer’s website at www.tre.wa.gov/investments/historicalUsuryRates.shtml.

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These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(c) 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**

Artis C. Grant, Jr (WSBA No. 26204, admitted 1996) of Tacoma, was disbarred, effective 01/18/2017, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.5 (Fees), 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records), 3.2 (Expediting Litigation), 3.3 (Candor Toward the Tribunal), 8.4 (Misconduct). Erica Temple acted as disciplinary counsel. Artis C. Grant Jr represented himself. Keith P. Scully was the hearing officer. The online version of NWLawyer contains links to the following documents: Disciplinary Board Order Approving Stipulation; Stipulation to Suspension; and Washington Supreme Court Order.

Paul Hurley (WSBA No. 38282, admitted 2006) of Seattle, was disbarred, effective 01/20/2017, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 8.4 (Misconduct). Sacha Stonefeld Powell acted as disciplinary counsel. Paul Hurley 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.

**Suspended**

Joshua B. Locker (WSBA No. 38719, admitted 2007) of Seattle, was suspended for 60 days, effective 01/26/2017, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.16 (Declining or Terminating Representation). Jonathan Burke acted as disciplinary counsel. Joshua B. Locker represented himself. The online version of NWLawyer contains links to the following documents: Disciplinary Board Order Approving Stipulation; Stipulation to Suspension; and Washington Supreme Court Order.

James N. Turner (WSBA No. 16199, admitted 1986) of Lakewood, was suspended for 60 days, effective 01/25/2017, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.5 (Fees), 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation), 8.4 (Misconduct). Erica Temple acted as disciplinary counsel. Ephraim William Benjamin represented Respondent. The online version of NWLawyer contains a link to the following document: Washington Supreme Court Order.

**Interim Suspension**

Ernest Saadiq Morris (WSBA No. 32201, admitted 2002) of Seattle, is suspended from the practice of law in the State of Washington pending the outcome of supplemental proceedings, effective 2/02/2017, by order of the Washington Supreme Court. This is not a disciplinary sanction.

Catherine Gwynne Noonan (WSBA No. 30765, admitted 2000) of Seattle, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 01/20/2017, by order of the Washington Supreme Court. This is not a disciplinary sanction.

Douglas Allen Stratemeyer (WSBA No. 21638, admitted 1992) of Redmond, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective January 17, 2017, by order of the Washington Supreme Court. This is not a disciplinary sanction.

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**George Ahrend**
(Former Co-Coordinator of WSAJ Foundation Amicus Program)

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**George Ahrend**
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I became a lawyer because I have a passion for learning. When I found out about Seattle University’s evening law program, I couldn’t pass up the opportunity to study law while at the same time continuing my career and making meaningful contributions at my workplace.

Before law school, I earned a Bachelor of Science in Business Administration from USC (Go Trojans!), and spent my early career working for large companies in the commercial insurance and aerospace sectors.

My greatest talent as a lawyer is perseverance. The path to becoming a lawyer and practicing as a lawyer is not always easy. I’ve had my fair share of obstacles and difficulties to overcome on this path, but because it is such a rewarding path, I keep calm and carry on.

My greatest accomplishment as a lawyer is reducing risk, and ultimately, maximizing company revenue. When things don’t go as planned, this is often when an attorney’s work is truly appreciated.

My career has surprised me by taking so many interesting turns. Because I’ve had the opportunity to work at small to very large companies, and even set up my solo practice, I learned a great deal about the varying complexities of company culture and risk tolerance.

During my free time, I can’t sit still. I enjoy exploring the surrounding area with my husband and two daughters.

The most memorable trip I ever took was to Costa Rica. I’ve been on many memorable and enjoyable trips, but Costa Rica stands out in my mind because it got me out of my comfort zone. Costa Rica’s beauty is indispensible, but what was unforgettable was zip-lining through the tree-tops, listening to the rumblings of Arenal Volcano, watching a huge python slither across the road in front of my jeep while driving through the Monteverde Cloud Forest, and getting up close and personal with a spider the size of my hand.

My fondest childhood memory is taking trips to Budapest, Hungary, with my mom, dad, and sister. Almost all of my relatives live in Budapest, so whenever we visited, we were welcomed by a large family. It was nice to be surrounded by so many loved ones. Also, Budapest seemed like an entirely different world, so I was constantly in awe during my time there.

This is on my bucket list: The Northern Lights. I did catch just a glimpse of them from an airplane flying over Iceland last fall. However, I’d like to go on a trip dedicated to watching this awe-inspiring natural phenomenon.

My greatest fear is not having enough time to learn all of the things I’d like to learn. Our time is limited, yet there is an infinite amount of interesting and wonderful things to learn. This fear has even led me to use my commute time to listen to language tapes on the way to work.

My first car was a 1988 Chevy Spectrum Hatchback, which reached a max speed of about 60 mph. One time, its hubcaps popped off and rolled away when I crossed some train tracks. So it wasn’t the best car ever, but as a teenager, I was just so happy to have the freedom that came along with having a car — any car.

I would like to learn how to play the guitar. While I love to listen to music, it would be even better to be able to play that music myself.

My favorite app for fun is Quora. It’s essentially a knowledge-sharing app. I love the idea of being able to connect with people from all over the world, share different perspectives, and benefit from that knowledge.

My name is MERCEDES PARADISO. I am corporate counsel for a Silicon Valley-based technology company. As an in-house attorney, I structure, draft, and negotiate a wide variety of complex commercial agreements. My husband Isaiah and I enjoy traveling to exciting destinations with our two lovely daughters, Nora and Izabella. I can be reached at mercedeszparadiso@gmail.com.

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