A COURT OF COMMUNITY

How the Northwest Intertribal Court System helped create justice for the tribes, by the tribes.
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Anthony Jones is an attorney and a member of the Port Gamble S’Klallam tribe. He enjoys creating Native American arts, and carries the name K’qáx’ymx. His works are featured in installations for his tribe and on the state ferries. Next year, Jones will apprentice with artists Preston Singletary, Brian Perry, and David Franklin on an installation for the new Burke Museum.

ON THE COVER: Adaptation of a Salish Thunderbird design by Anthony Jones. The original giclée design is featured artwork on the Washington State Ferry Chimacum.
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ONE STEP IN THE WRONG DIRECTION?
Because I skim your publication each month during my waiting time in court, I have become used to the constant perfunctory references to the terms “inclusion” and “diversity” and your constant admonishments to us to embrace these terms. So it came as no surprise that Mr. Mungia in July announced that the adoption of GR 37 was a “step in the right direction” [“GR 37 and Bias in Jury Selection: One Step in the Right Direction,” by Salvador A. Mungia, July 2018 _NWLAWYER]. I don’t agree but I was particularly upset at his misleading characterization of the...
rule. He told your readers that “Doubts will always favor a finding of the lack of discriminatory intent ....” Nothing could be further from the truth. As section (e) makes clear, if the court finds that an objective viewer could view race or ethnicity as a factor in the use of the peremptory challenge, then the challenge “shall be denied.” In other words, discriminatory intent is presumed. It does not matter whether the lawyer trying to excuse the juror has a nondiscriminatory explanation that the judge believes. The judge is still obligated to deny counsel’s motion if they find that an objective person could possibly believe that race or ethnicity is even a minor factor.

Furthermore, the rule disallows the most common reasons that a lawyer would want to excuse any juror, such as a juror expressing distrust of law enforcement (a category of witnesses the state must call in almost every prosecution). It also requires corroboration to excuse inattentive jurors; jurors who cannot respond intelligently to questions; and yes, even sleeping jurors (section i). Apparently, the Supreme Court is prepared to endorse jurors sleeping through trials in order to make a dramatic point, which it can then label progressive. I personally want jurors in my trials to remain conscious during the trial.

I call this a cure which is far worse than the disease.

---

**The Quality of Mercy**

Our state Supreme Court’s recent decision in *In re Simmons* [190 Wn.2d 374, 414 P.3d 1111 (2018)], which allowed Tarra Simmons to sit for the bar examination, has engendered disquietude among members of the bar and some judges. [See July 2018 NWLawyer for factual background of the Simmons case.] Critics of the Simmons decision lament that someone with a criminal background would be accepted into the practice of law.

Such criticism addresses the nature of our profession, the Bar Association, our state’s criminal justice system, and our society. The case asks whether a person holds the capacity to change and whether an offender is worthy of redemption. It implicates whether our society is motivated by law, merit, reward, and punishment, or by love, grace, and mercy. One’s response to the Supreme Court ruling unveils one’s view of human nature. One’s reaction to *In re Simmons* discloses whether one recognizes the prevalence of human foibles, is humbled by one’s own shortcomings, and can forgive others their trespasses.

The reaction to Tarra Simmons’ admission to practice reminds me of Jesus Christ’s most famous parable, the Prodigal Son, recorded in Luke 15:11-32. (The Mahayana Buddhist Lotus Sutra contains a similar parable of a lost son.) Our Bar Association and our profession can benefit by a review of the parable in the context of Tarra Simmons. The Prodigal Son had better beginnings than Simmons.

I embrace Tarra Simmons’ acceptance into the Washington State Bar Association and to my profession. Simmons bears a background that permits empathy for abused women, drug users, and former offenders that I, with my naive background, cannot share. Simmons’ background will enable her to understand and advocate for the least in society, the quality that renders ours the noblest of professions.

---

**George Fearing, Spokane**

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WSBA RESTRUCTURE?
What we know about the Supreme Court’s “time out” to review the bar

THE WASHINGTON Supreme Court in September sent a letter to the WSBA Board of Governors directing the board to defer all action on proposed bylaw amendments until further notice as the Court undertakes a “comprehensive review of the structure of the bar.” The response from legal professionals was varied, some with keen interest in hands-on shaping of and participation in the process, but more with just a back-of-the-mind niggling: *How will any change affect me and my work?*

Hopefully we can shed some light on what we know about the structural review, and, perhaps more significantly, what we do not yet know. Chief Justice Fairhurst joined us at the September board meeting to answer questions about the letter. Because the background and legal factors here are complex, this column will undoubtedly be too much information for some and too little for others. If you are of the former mindset, the first bullet below may be all you need; if you are of the latter mindset, please consider this column a jumping-off point to reach out and join a conversation that is just beginning.

• **Quick takeaway:** The Washington Supreme Court is undertaking a comprehensive review of WSBA’s structure in light of recent case law with First Amendment and antitrust implications (explained further below). Chief Justice Fairhurst said the process will provide opportunity for all members’ voices to be heard. WSBA leaders have been looking at trends in bar restructuring at the national level for years; following a second U.S. Supreme Court decision this past June with potential implications for bars with mandatory memberships, we have held several preliminary meetings with legal practitioners and scholars, among other stakeholders. We will take what we learn in WSBA’s exploratory process to serve as a resource to the Court’s work group. Because the Court has plenary authority over WSBA’s activities, it also has decision-making authority over WSBA’s organizational structure—which might include bifurcation of functions between a regulatory entity and a voluntary association—although current and pending lawsuits have the potential to influence the Court’s options and timeline. In the meantime, Chief Justice Fairhurst has urged members to make no assumptions beyond what is explicitly stated in the Court’s September letter (available at wsba.org/bar-structure-work-group).

**STRUCTURAL REVIEW 101: WHAT, WHY, HOW**

• **What’s the Court’s process?** The Court in November outlined the composition and timeline for its work group on the WSBA structure. The Chief Justice will chair, and the other 10 members will comprise three representatives from the WSBA Board of Governors, three representatives from WSBA sections, three representatives from Court-appointed boards that WSBA administers, and one representative from the public (non-WSBA member). The work group’s charter is to review and assess WSBA structure in light of (1) recent case law with First Amendment and antitrust implications; (2) recent reorganizations by other state bar associations and their reasoning; and (3) the additional responsibilities of the WSBA due to its administration of Supreme Court-appointed boards. The work group will invite input from those with subject matter expertise on issues involved in review, assessment, and potential recommendations. The work group will make a recommendation to the Court as to the future structure (e.g., remain status quo, divide into mandatory and voluntary organizations, or some hybrid). The work group will begin meeting in January 2019 at the WSBA offices in Seattle, with meetings every three to four weeks for six to eight months. The meetings will be open to the public and webcast. When available, the meeting schedule will be posted at wsba.org/bar-structure-work-group.

• **What’s the impetus?** For several years, bar leaders nationwide have observed several cases significant to mandatory bar associations work their way to the U.S. Supreme Court. First was a 2015 ruling (North Carolina State Board of Dental Examiners v. FTC) that deprived regulatory boards of antitrust immunity when the boards are composed of active market participants that are not actively supervised by the state. Then this past June, the Court reversed long-standing precedent in public-sector labor union cases in Janus v. AFSCME. According to Janus, under the First Amendment, a state may no longer compel employees who are not union members to pay a percentage of full union dues to fund the union’s collective bargaining activities. While Janus does not directly relate to bar associations, it overturns case law relied on in Keller v. State Bar of California, a 1990 U.S. Supreme Court decision authorizing state bars to assess mandatory membership fees...
as long as those fees are not used in ways that violate objecting members’ First Amendment rights. After Janus, which did not explicitly overrule Keller, we do not know whether Keller is still good law. As this issue of NWLawyer was going to press, however, the U.S. Supreme Court granted certiorari and vacated the judgment in Fleck v. Wetch, 868 F.2d 652 (8th Cir. 2017),⁴ a bar membership case originating in North Dakota that directly challenges Keller as well as earlier case law (Lathrop v. Donohue); the Court remanded Fleck to the 8th Circuit for further consideration in light of Janus. Meanwhile, lawyers in some mandatory bar states have been quick to argue that the Janus ruling applies to bar associations. (See “Bar Membership After Janus” on page 18 for a deeper analysis.) In light of this shifting legal landscape, the Washington Supreme Court in September unanimously decided to review WSBA’s structure. Chief Justice Fairhurst referred to this period as a “time out” and made it clear that WSBA bylaw amendments are on hold until bigger-picture questions are answered.

**What’s the question at hand?**

Is WSBA’s integrated structure—and all its related functions—compliant with recent antitrust and First Amendment decisions and, if not, what needs to change? Bars across the nation are set up in various ways. Some are voluntary, with members choosing to join for professional services and the state supreme court overseeing all regulatory functions. Others are mandatory, with members required to join, and the bar may or may not administer regulatory functions (e.g., Wisconsin is mandatory but does not administer regulatory functions; Virginia and North Carolina are mandatory but only administer regulatory functions and there is a second voluntary state bar association as well in each of these states). WSBA is an integrated bar, which means members are required to join, and the bar administers both regulatory functions as well as professional-association services.

Unlike some other states with integrated bars, in Washington, the Supreme Court has delegated all regulatory functions to WSBA to administer on its behalf. Although WSBA administers these regulatory systems, the Washington Supreme Court retains final authority over regulatory decisions such as admissions or imposition of discipline. The aforementioned federal precedent has implications for both the regulatory and professional association aspects of an integrated bar.

**What is WSBA’s role?** As WSBA leaders, we have for years been closely tracking national trends in bar restructuring and reporting back to the Board of Governors and the Washington Supreme Court. After the Janus decision,

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Charles T. Conrad
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a loose assemblage formed that includes WSBA’s executive management staff, legal practitioners and scholars, Board of Governors members, section leaders, and other stakeholders. This group has grown as we have presented information to groups like section leaders and invited them to participate. Our focus has been twofold: (1) To develop appropriate legal lenses based on recent U.S. Supreme Court decisions to evaluate our bar functions; and (2) To apply those lenses to the full spectrum of WSBA functions, from regulatory duties like discipline to permissive functions like providing a practice-management discount program. Our preliminary lenses quickly came together:

1. Antitrust Immunity (North Carolina): To preserve state-action immunity, the Bar Association activity must be based on a clearly articulated state policy, and, if performed by active market participants (lawyers or other licensed legal professionals), must be actively supervised by the Washington Supreme Court.

2. First Amendment (Janus): To the extent that WSBA’s activities burden a member’s First Amendment right to freedom of speech and association, mandatory bar membership must (1) serve a compelling governmental interest (i.e., regulating the practice of law and improving the quality of legal services available to the people of the state (Keller)), and (2) that interest must be achieved through the least-restrictive means.

We also asked another critical question about each function: Is this something members should be paying for as part of a mandatory license fee? We know that’s top on members’ minds as well. As you can imagine, our conversations have been robust. The antitrust analysis has been more straight-forward, such as ensuring all regulatory boards are appointed and subject to active oversight by the Court. As for the First Amendment filter, that’s a harder nut to crack. Here’s an example: When you consider the impact of addiction on our profession, the counseling services provided through WSBA’s Member Wellness Program may serve a compelling state interest in ensuring competent and qualified legal professionals. But WSBA’s Member Wellness Program is a robust resource offering our members a full range of counseling, legal, personal finance, family care-giving, and convenience services. The tool can help you locate a pet sitter or provide travel advice. Does that service seem like the least-restrictive means of achieving the compelling interest it serves? Does the answer change when you consider that many lawyers starting their practice spend long hours in the office and need resources to maintain healthy home-life balance? These are complicated questions. As we move forward with the Court’s work group, we will use what we have learned in our own exploratory process to serve as a resource.

• Have any other bars recently bifurcated or changed from mandatory to voluntary? Several bars have changed or are investigating change, either through judicial or legislative means. Looking at the legal landscape, the California Supreme Court in 2017 issued an antitrust policy related to the state bar and, in other reform, transitioned sections into a separate organization. In 2013, the Nebraska Supreme Court bifurcated the regulatory and professional association functions and transitioned the bar to a voluntary association. Unrelated to recent case law, the Arizona, Wisconsin, and Michigan Supreme Courts have each recently investigated whether and how to de-unify or restructure bar functions.

LOOKING AHEAD
Uncertainty is always a lightning rod for fear and polarization. Our leadership priorities for the coming year are trust, relationship, and service, and we will rely on these tenets to guide us through conversations that include both challenges and opportunities. We may kick the tires and determine we are in a strong position to keep our bar association as is. Or we may discover opportunities we are not even aware of yet, which could serve legal professionals better by overcoming the limitations of an integrated mandatory bar. Several members have recently told us that the dual regulatory/association functions of the bar cause an inherent mission tension, and that tension holds back each interest.

If we can trust one another to come to this restructuring consideration with good intentions, if we can approach one another with respect and an open mind, and if we can remember that our role is to act in service beyond our own interests for the integrity of the profession … we can view the uncertainty that lies ahead as a great and hopeful opportunity.

It will take us all working together in trust, relationship, and service.

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NOTES
3. 496 U.S. 1, 110 L. Ed. 2d 1, 110 S. Ct. 2228 (1990).
Effective Sept. 1, 2018, a new comment, Comment 22, was added to Washington Rule of Professional Conduct (RPC) 1.7 that specifically addresses advance waivers of future conflicts. The new comment is based on its ABA Model Rule counterpart and had a somewhat unusual history. The comment clarifies an ambiguity that had crept into Washington practice concerning the use of advance waivers. The new comment generally permits them—subject to several limitations. In this column, we’ll first touch on the rather circuitous path that advance waivers took in Washington. We’ll then turn to their practical application. Finally, we’ll survey the limitations on their use.

A Brief History
The basic notion of advance waivers is not new. In fact, ABA Formal Opinion 93-372 discussed them at length 25 years ago. In a typical scenario, the client involved is prospectively waiving conflicts that may arise during a firm’s representation of the client. Advance waivers offer firms the ability to take on clients who might otherwise present conflicts with existing clients, and they offer clients access to firms that might not be available without the assurance of an advance agreement on conflicts. A ready example is a law firm with special expertise that primarily represents high-tech startups and routinely negotiates against an industry leader. If the industry leader approached the law firm about an unrelated project, the law firm would understandably be reluctant to take on the work without an advance waiver in place that would allow it to continue to represent its primary clientele in negotiations with the industry leader while also handling the unrelated project for the industry leader.

When the ABA comprehensively updated its influential Model Rules of Professional Conduct in the early 2000s, it added a comment to Model Rule 1.7—which governs current client conflicts—that generally authorized advance waivers. Notwithstanding the 1993 ethics opinion, the ABA commission that developed the amendments concluded that the additional clarity offered by a comment would be useful to lawyers and clients alike. The ABA followed with a new opinion in 2005—Formal Opinion 05-436—that replaced the 1993 opinion and specifically relied on new Comment 22 to ABA Model Rule 1.7.

In the wake of the ABA amendments, Washington appointed a special committee to make recommendations to the WSBA Board of Governors and the Washington Supreme Court. In 2004, the special committee proposed a number of amendments to the Washington RPCs based largely on the then-recently promulgated ABA Model Rule amendments.
One of the proposed Washington amendments was a new Comment 22 to RPC 1.7 that mirrored the change to the corresponding ABA Model Rule. The board approved the proposal and it went to the Supreme Court as a part of a broad package of potential amendments. In 2006, the Supreme Court adopted many of the amendments—but not Comment 22 to RPC 1.7. Instead, the Supreme Court struck the text and simply listed that comment as “Reserved.”

The Supreme Court’s action cloaked advance waivers in Washington with a degree of ambiguity. On one hand, trial courts continued to note their use in practice—for example, in *Avocent Redmond Corp. v. Rose Electronics*, 491 F. Supp. 2d 1000, 1006-07 (W.D. Wash. 2007). On the other hand, some questioned whether “reserved” effectively meant “prohibited” in light of the Supreme Court’s deletion of the text of the proposed comment.

To eliminate this ambiguity, the WSBA Committee on Professional Ethics last year recommended to the board that the ABA Model Rule comment be presented to the Supreme Court again. The board agreed and, after publication and a public comment period, the Supreme Court approved the new comment. It became effective as Comment 22 to RPC 1.7 on Sept. 1.

**PRACTICAL APPLICATION**

Because a client is being asked to waive a conflict that has not yet occurred, the key to an effective advance waiver is the client’s “informed consent.” Comment 22 puts it this way: “The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding.” This is also consistent with the general definition of “informed consent” in RPC 1.0A(e): “‘Informed consent’ denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.”

Although Comment 22 does not contain a “sophisticated user” requirement, the effectiveness of an advance waiver will often turn on the relative knowledge of the client involved due to the focus on the client’s informed consent. Therefore, what may work for a Fortune 500 corporation represented by an in-house legal department seeking assistance with a sophisticated intellectual property project, like our opening example, may not be appropriate for an elderly person with a recent diagnosis of the early stages of dementia who is looking for help with asset-planning. Comment 22 addresses these poles within the context of informed consent:

If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation.

Given their nature, advance waivers are most often discussed with clients when work is being initially considered, as in our opening illustration. They are sometimes incorporated into engagement letters for the matters concerned and in other instances are separate supplements to engagement agreements. Although conflicts waivers under RPC 1.7(b)(4) are simply required to be “confirmed in writing,” the emphasis on informed consent in Comment 22 suggests that the particular circumstances and scope should be incorporated into a contemporaneous writing for the benefit of both the client and the lawyer in the event either has questions later. Similarly, although RPC 1.7(b)(4) does not require a countersignature by a client, prudent risk-management practice for as important a document as an advance waiver suggests that the law firm obtain either a client signature or an equivalent electronic acknowledgment.

Many malpractice carriers have advance waiver templates available for their insureds that are based on the ABA version of
Comment 22. In using those forms, however, lawyers need to be attentive to the crux of Comment 22: effective informed consent often turns on the particular facts discussed (and documented) with the client involved, which only the firm handling an individual situation can incorporate into even the soundest template.

**LIMITATIONS**

Comment 22 suggests four principal limitations.

First, Comment 22 stresses that an advance agreement cannot waive a nonwaivable conflict. For example, a law firm could not use an advance waiver to represent both sides in the same litigation.

Second, Comment 22 notes that an advance agreement must also meet the general requirements for waivers under RPC 1.7(b). In particular, firms using an advance waiver also need to obtain matter-specific waivers from any other clients the law firm is representing on the other side of the client that granted the advance waiver. To return to our opening example, the law firm would need to obtain waivers from its other high-tech clients negotiating against the industry leader to complete the waiver process.

Third, the ABA ethics opinion on advance waivers—05-436 (2005)—that interprets the identical comment under the corresponding ABA Model Rule notes (at 5) that an advance waiver, “without more, does not constitute the client’s informed consent to the disclosure or use of the client’s confidential information against the client.” Because all multiple-client conflict waivers under RPC 1.7(b) must involve unrelated matters, the risk of confidential information being used inappropriately is likely low. In some circumstances, however, a law firm may wish to consider voluntary internal screening of the respective teams handling the matters on each side of an advance waiver to further lessen this risk.

Fourth, an advance waiver is limited to its terms. Therefore, if a conflict surfaces later that is beyond the scope of the advance waiver, that new conflict must be analyzed and addressed with its own waivers—assuming the conflict is waivable and the clients involved consent.

Mark J. Fucile of Fucile & Reising LLP handles professional responsibility, regulatory, and attorney-client privilege matters and law-firm-related litigation for lawyers, law firms, and legal departments throughout the Northwest. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. He can be reached at 503-224-4895 and Mark@frllp.com.
FORTY-EIGHT STATE BAR ASSOCIATIONS CAN’T BE WRONG

By Ken Pedersen

The Mandatory Malpractice Insurance Task Force’s recommendations are a costly solution in search of a problem. Forty-eight other bar associations have not seen fit to impose an individual insurance mandate on their members, and the Board of Governors should reject the proposal.

THE EXISTING CLIENT NOTIFICATION SYSTEM UNDER APR 26 IS SUFFICIENT

The Mandatory Malpractice Insurance Task Force’s interim report neglects to mention that for many years the Washington Supreme Court has required active lawyer members of the Bar Association to annually certify whether they are “engaged in the private practice of law” and, if so, to state whether they are “currently covered by professional liability insurance.” Admission and Practice Rule (APR) 26. The rule authorizes the Bar to make this information available to the public by any means it deems appropriate, “which may include publication on the website maintained by the Bar.”

Clients seeking to retain an attorney can readily determine whether their lawyer is or is not covered by insurance by accessing WSBA’s online legal directory, and can then make an informed decision whether to retain that lawyer. To go further than this, and to make expensive professional liability insurance mandatory, reflects a paternalistic attitude toward clients and their lawyers. As lawyers will inevitably pass the cost of insurance on to the client, the measure will increase attorney fees to all clients, the great majority of whom will never need professional liability protection.

ABSENT STATUTORY AUTHORIZATION AND A MEMBERSHIP VOTE, AN INDIVIDUAL INSURANCE MANDATE IS UNDEMOCRATIC

The interim report repeatedly references Idaho and Oregon, the only two bar associations in the United States that impose an individual insurance mandate on their members. The fact that only 4 percent of state bar associations have taken this action ought to give us pause. The Oregon Professional Liability Fund is a quasi-subdivision of the state Bar created in 1977 in response to “skyrocketing malpractice insurance premiums” in the commercial insurance market. Lawyers in Oregon currently pay $3,500 per year for coverage. The Task Force rejects the 40-year-old Oregon system in favor of what it terms the “Idaho model,” newly implemented in 2018. Idaho leaves the matter of obtaining malpractice insurance to what the Task Force optimistically terms the “highly competitive” “free market” system of commercial malpractice insurance. There is no firm estimate of the per-attorney cost of the “Idaho model.”

Nor does the report plainly identify what is broken in the current system. If there has been an explosion of uncompensated malpractice claims in Washington state, I am unaware of it. Certainly, there should be greater proof of need than the anecdotal testimony of an anonymous “legal malpractice plaintiff’s lawyer” and self-interested “insurance industry professionals.”

As far as procedure, it is noteworthy that the Oregon State Bar Board of Governors was authorized by statute to create the professional liability fund. Or. Rev. Stat. § 9.080(2)(A). I am aware of no similar statute in Washington authorizing the WSBA to impose an individual insurance mandate on Washington attorneys. The Washington Legislature should have the opportunity to determine whether all professional associations in Washington, including doctors, dentists, and accountants, should be authorized to require their members to obtain professional liability insurance, as this is fundamentally a legislative decision.

In addition to the statutory authorization, before imposing an insurance mandate on members of the Oregon Bar, its Board of Governors conducted a secret ballot vote of the membership. Similarly, members of the Idaho Bar were allowed to vote on their insurance mandate before it was implemented by the Idaho Supreme Court.

The Task Force’s interim report does not discuss the mechanism for imposing its recommended individual insurance mandate. The WSBA should seek legislation authorizing it to put such a mandate in place and should additionally establish a procedure for a secret ballot vote of the membership after notice and the opportunity for the entire membership to be heard. Assuming the resolution passed, it might then be submitted to the Supreme Court.

THE MEMBERS WHO WOULD BE MOST AFFECTED BY THE MANDATE ARE NOT FAIRLY REPRESENTED ON THE TASK FORCE

According to the Solo and Small Practice Section of the WSBA, “[s]olo and small practice firms comprise more than 60 percent of practicing lawyers in Washington.” Yet the Task Force doesn’t include a representative sampling of lawyers working as solo practitioners. In fact, most members of the Task Force would not be affected by its recommendations.

The report identifies categories of attorneys exempt from the individual mandate in Oregon, including “government attorneys, in-house private company lawyers, attorneys providing services through nonprofit entities, including pro bono services, retired attorneys, full-time arbitrators, and judges and law clerks.” At least nine of the 18 members of the Task Force fall within
A Great Man who will be missed

Patterson Buchanan Fobes & Leitch, Inc., P.S. wishes to honor and acknowledge Michael Patterson upon his passing after a courageous fight with cancer. We also want to express our deepest sympathies to his family.

As an attorney, Mike had a well-deserved reputation as a relentless advocate for clients. Over his 44 years of practice, Mike was a formidable litigator with a strong presence in the courtroom, whether before judge or jury. He looked forward to the courtroom and respected the role of litigation in concluding disputes as well as his responsibility to ably represent clients in that arena.

As a mentor, Mike encouraged each of us as reliable and unflinching advocates. In 2007, when our Firm was founded, Mike’s determination and vision provided a strong foundation for our long-term success. Our Firm grew over the years but his call for quality and support for advocacy never lessened.

All of us at Patterson Buchanan Fobes and Leitch, Inc., P.S. will continue to represent our clients in Mike’s tradition. We shall miss our partner, mentor and friend but we shall honor what he has always inspired in us.
one or more of these exempt categories or are exempt from the individual mandate as not currently engaged in private practice, or are non-attorneys.

Further, there doesn’t appear to be a single attorney actively engaged in solo private practice on the Task Force. This is significant, as the interim report is critical of those engaged in solo practice who choose to self-insure rather than pay premiums to an insurance broker.” The report includes the regretfully condescending statement that the Task Force reached “a consensus that uninsured lawyers pose a distinct risk to their clients and themselves.”

The report includes a “key finding” that “[m]ost attorney misconduct grievances and disciplinary actions involve solo and small firm practitioners” without explaining the relevance of that observation, nor the relationship between Bar disciplinary actions and professional liability insurance. In any event if, as earlier noted, more than 60 percent of Washington lawyers practice solo or in small firms, the “key finding” is unremarkable.

CONCLUSION
The Task Force failed to consider the utility of the existing system for notifying clients of lawyers’ insured status. It doesn’t discuss the fact that Idaho and Oregon, which it holds up as avatars, allowed the Bar membership to vote on the proposals and that an Oregon statute expressly allows creation of the Oregon Professional Liability Fund. There is no similar statute in Washington state. Recommendations as significant as imposing an individual insurance mandate on the more than 26,000 active lawyers in this state should be made with input from as broad a sampling of the WSBA membership as possible. Finally, by not including a representative percentage of small-firm and solo lawyers, the Task Force has undermined its recommendations. The Board of Governors should reject the proposed malpractice insurance mandate.

3. A market is not free if the malpractice insurance sellers are armed with the threat of Bar discipline should the lawyer choose not to buy.
4. Any solo practitioner with recent experience in procuring health insurance in the individual marketplace will be justifiably suspicious of sanguine claims about affordability in the “free market” for insurance.
5. Interim Report, at 3.
7. The task force appears to think that large firms are more responsible than small or solo firms because their lawyers are more likely to be insured through a commercial brokerage. But the fact is that most lawyers practicing in large firms carry liability insurance to protect themselves from the negligence of their partners, not to protect the public at large. Lawyers in solo practice don’t need protections from their partners because they have none. Yet the task force consistently refers to such solo attorneys as “uninsured” when it is equally likely that they choose to be self-insured.

ONE SIZE FITS ALL?
Ok for pajamas, not so OK for malpractice insurance

By Inez Petersen

Mandatory malpractice insurance is a one-size-fits-all, ONE-SIDED SOLUTION to a problem we don’t know really exists—namely (1) how often are legal malpractice judgments uncollectible because of lawyers who will not pay, and (2) how many additional meritorious legal malpractice complaints would there be if all lawyers had malpractice insurance.

CORE QUESTIONS REMAIN UNANSWERED
The Mandatory Malpractice Insurance Task Force has presented no facts or data to answer these two questions, nor were there any reliable facts and data to tell us how many attorneys would be impacted by mandatory insurance and in what manner. How just is that?

ANECDOTES ARE INADEQUATE
The Mandatory Malpractice Insurance Task Force in its Interim Report under Key Findings stated: “Malpractice plaintiffs’ lawyers report numerous instances of worthy claims that they must reject for representation because the defendant lawyer is uninsured, making recovery less likely.”

As the little old lady in the Wendy's commercial asked, “Where’s the beef?” Information on these “numerous instances of worthy claims” should have been gathered. How often are uninsured attorneys really without assets, “making recovery less likely”??
neys do not have insurance. There are valid business reasons for not having insurance. These reasons should have been considered but were overlooked in the one-size-fits-all ONE-SIDED SOLUTION represented by mandatory malpractice insurance.¹

**TWO-SIDED SOLUTION IS THE REASONABLE ANSWER**

The TWO-SIDED SOLUTION takes a wider, more flexible position. First, it adequately protects clients so they can choose for themselves whether to hire an uninsured attorney or not. Second, it adequately protects attorneys so they can choose for themselves whether to purchase insurance or not.

It embodies true “free market” choice by (1) eliminating clients as victims while at the same time (2) preserving the right of attorneys to decide what their cost of doing business will be.

• Those clients of private practice attorneys with insurance are already adequately protected. This would be the majority of clients.
• The clients of private practice attorneys without insurance would be adequately protected by full disclosure of the attorney’s uninsured status, which should include notice in those attorneys’ contracts for legal services. This would be a minority of clients.
• The insurance market would continue in the normal course because there would be no “captive” audience to possibly drive up the cost of insurance from among an unknown number of carriers.
• Informed clients would be able to choose for themselves whether they wanted to hire an insured or uninsured attorney.
• It accommodates the valid business reasons why 15 percent of active attorneys in private practice choose not to buy insurance.
• It is moral/ethical because when the client chooses an uninsured attorney, he does it of his own volition. (He might have his own reasons for doing so.)
• It is moral/ethical because it does not force uninsured active private practice attorneys into inactive status, taking away their right to practice law (which most likely will be considered a taking when the least restrictive means of protecting the public is not adopted).

The Washington State Bar Association, operating under the delegated authority of the Washington Supreme Court, must accomplish its work using the “least restrictive means.” The TWO-SIDED SOLUTION is the least restrictive means to adequately protect both clients and attorneys.

**NOTES**

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AG Ferguson: ‘Join Me in Giving Back to Those Who Have Served and Protected Us’

This year, Veterans Day commemorates the 100-year anniversary of the conclusion of World War I, called by some as “the war to end all wars.” [...]

Talking Football and the Law with Seahawks General Counsel Ed Goines

Even if you’re not a football fan, anyone within a roughly 3-million-mile radius of Seattle can recognize the telltale signs of football season [...]

Public Service and Change—Insights from a Government Attorney

A government law practice is a rewarding and challenging career filled with wonderful opportunities to serve the public and our communities. [...]

5 Reasons Why Vacations are a Must for Lawyers

How many times have you caught yourself staring at your computer screen thinking “I need a break” [...]
THE SUPREME COURT OF the United States recently released its long-anticipated opinion in Janus v. American Federation of State, County, and Municipal Employees, Council 31—an important constitutional case that focuses on freedom of speech and association. As lawyers begin to think about the reach of the Janus opinion, questions about state bar membership requirements are surfacing, and a lawsuit has been filed challenging mandatory membership laws in Oregon. What might Janus mean for lawyers in Washington?

THE JANUS DECISION
After many years of reviewing cases on the legality of public sector union agency fees, the Court in Janus issued a broad opinion holding that requiring union nonmembers to pay an agency fee to a public sector union violated the First Amendment. The Janus Court also expressly overruled precedent that had upheld agency fee arrangements in the past.

Plaintiff Mark Janus—a state-employed child support specialist in Illinois—challenged the Illinois law that required him to pay approximately $535 in annual agency fees to the American Federation of State, County, and Municipal Employees (AFSCME), the union that represented employees in his agency. Janus argued that the agency fee arrangement unlawfully compelled him, as a nonmember, to subsidize the union’s speech on matters of public concern, which Janus did not support.

The Supreme Court agreed with Janus and issued an opinion explaining that the state law requiring him to pay an agency fee to the union infringed on his constitutional rights because it compelled him “to mouth support for views [he finds] objectionable.” The Janus ruling is rooted in the First Amendment’s guarantee of freedom of speech and association:

“Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning,” the Court said, because it “[coerces them] into betraying their convictions.”

THE GRUBER LITIGATION
The scope of Janus is now being tested in Oregon. A few months after the Janus opinion was released, two members of the Oregon State Bar sued the bar in federal court alleging that an Oregon law requiring mandatory membership in the Bar violates their First Amendment rights under the reasoning of Janus. According to a press account, the lawyers allege that “[t]he requirement to be a member of the Bar violates our free speech and free association rights under the Janus decision.” They distinguish between the requirement to be licensed to practice law (which they reportedly support) and the requirement to be a member of the bar, because “[m]embership with the bar ... implies somebody speaks for you.”

The dust-up in Oregon stems from a statement made by specialty bar associations criticizing President Donald Trump in the Oregon State Bar Bulletin last spring. At the time of this writing, Gruber v. Oregon State Bar was pending in the United States District Court for the District of Oregon.

WASHINGTON’S STATE BAR ACT
Like Oregon, Washington has a statutory bar membership requirement. Washington law provides that lawyers who are admitted to practice law in Washington are “by that fact” active members of the state bar, and therefore required to pay the annual membership fee. Another statute provides that a lawyer may practice law in Washington only if he or she is an active member of the state bar.

THE WSBA PROVIDES MANY VALUABLE SERVICES TO ITS MEMBERS; IT ALSO ENGAGES IN SOME ACTIVITIES THAT COULD BE CHARACTERIZED AS SPEECH ON MATTERS OF PUBLIC CONCERN.
The WSBA provides many valuable services to its members; it also engages in some activities that could be characterized as speech on matters of public concern. To be sure, those services and activities may be customary, desirable, or longstanding, but the question after Janus is whether they are compatible with a mandatory membership system.

WHAT ABOUT THE KELLER DEDUCTION?
The WSBA is no stranger to constitutional questions about compelled speech. Indeed, since 1990 the WSBA has been required to offer a Keller deduction—named for the U.S. Supreme Court case of Keller v. State Bar of California—to members who object to a portion of their license fee being used for political or ideological activities.¹

But Janus is a different case that raises fresh questions. The Keller deduction rests on the premise that a bar association can distinguish between activities for which compulsory fees may be used and activities for which such fees may not be used. The Janus Court, on the other hand, rejected the union’s division of fees into chargeable and nonchargeable expenses as unworkable and insufficiently protective of nonmembers’ First Amendment rights. And the dissenting justices in Janus questioned whether the Court’s decision to overrule agency fee precedent would undermine other cases involving compelled speech subsidies outside the labor sphere, such as Keller.¹⁰

CONCLUSION
Janus is a landmark Supreme Court opinion that will probably influence the development of First Amendment jurisprudence for years to come. Whether it covers mandatory membership laws for bar associations, as asserted in the ongoing Gruber litigation in Oregon, is an important question for the WSBA and its members. ¹¹

Editor’s note: As this issue was going to press, the U.S. Supreme Court granted certiorari and vacated the judgment in Fleck v. Wetch, 868 F.2d 652 (8th Cir. 2017) (a bar membership case originating in North Dakota), remanding the case to the 8th Circuit for further consideration in light of Janus.

Editing
• 2. Janus, 138 S. Ct. at 2463.
• 3. Id. at 2464.
• 5. Id.
• 7. RCW 2.48.021, .130.
• 8. RCW 2.48.170.
A PATH TO TRIBAL JUSTICE
Northwest Intertribal Court System’s role in the creation and growth of tribal court systems

By Dan A. Kamkoff

ORTY YEARS ago, western Washington tribes came together to discuss the need for a tribal justice system. After United States v. Washington, commonly known as the “Boldt decision,” tribes were celebrating the affirmation and recognition of their fishing rights and jurisdiction over their natural resources. A proper forum to adjudicate these rights, however, was not yet established.

From 1977 to 1978, the Bureau of Indian Affairs (BIA) funded a research project to study the feasibility of establishing both a trial and appellate court system. In 1979, Indian tribes from Western Washington formed the Northwest Intertribal Court System (NICS) to fill the need for a tribal justice system. As a Lummi tribal member (Lummi was one of the original tribes to be a part of NICS), I have spent the last 24 years working in the tribal justice arena, the last 13 as executive director of NICS. During this time, I have had the great pleasure of working with fantastic people dedicated to the advancement of crucial importance to tribal self-determination is a fair and impartial justice system. NICS has helped to advance this goal by creating justice for the tribes, by the tribes.
of tribal justice, and I have watched as tribes have risen to the challenge of creating truly remarkable courts and justice programs. Compared with other formal forums of justice, such as the federal and state courts, modern tribal justice is relatively new. That sounds odd, given that tribes were here prior to both the federal and state systems, but this is not an article about historic or traditional forums of tribal dispute resolution. This is an article about some of the history of NICS, and some personal reflections on the development and growth I’ve witnessed in the area of tribal justice.

THE GROWTH OF TRIBAL JUSTICE
Having worked in tribal justice programs and with courts for the past 24 years, I have been a witness to tremendous growth and development in these areas. I have seen a tribe (Lummi) that at one time held court in a donated, dilapidated mobile home operate years later out of a beautiful, fully modern courthouse with all the conveniences and technologies found in the best courthouses in the country. The number of well-qualified and trained attorneys who practice Indian law has grown from very few to many. Tribal members are getting law degrees and going to work for their tribe or in some other part of Indian country. Indian law is now being offered in most law schools, whereas a few decades ago, only a few programs offered it. Tribal courts and justice programs
have grown in sophistication and experience. Tribes see every type of case come through their courts, from murder cases to complex civil litigation; if you can name it, it’s been tried in tribal court.

The greatest success, however, in my opinion, has been the impact on the lives of the people who come into contact with the court. I can remember when tribal members consistently complained about their court and how it wasn’t fair, or it had too much political influence. I’m not suggesting tribal courts don’t still have their challenges and are perfect institutions, but I see a greater appreciation of and confidence in the courts by the tribal members who appear before them. Tribal courts have become a place where people can get help and resolve problems. I’ve seen drug court clients get real help with addiction and heard family members thank the court for helping a loved one overcome serious problems.

I could go on and on with stories of how the courts have helped their people. That’s the point: it’s justice for the tribe, by the tribe. I believe tribal justice systems are growing into what the tribes were looking for when they were first seeking solutions.

THE HISTORY OF NICS
In 1854, the first tribal reservations were created in Washington territory. Tribes were removed from traditionally held lands and usual and accustomed grounds and stations … in common with all citizens of the territory.” Treaty of Point Elliott (1855).

In 1974, the federal courts recognized the tribes’ right to harvest salmon in common with citizens of Washington state, and the responsibility to manage their off-reservation fish resources. In addition, the courts, specifically the 9th Circuit Court of Appeals, in Settler v. Lameer, held that treaty tribes had criminal jurisdiction over their members’ off-reservation fishing activities. The result of those decisions meant tribes began to promulgate rules and regulations as a means to manage their fisheries. Once tribes began to exercise this jurisdiction, the immediate need was to enforce the new rules and to have a forum to adjudicate complaints. In addition to fishing-rights cases, tribes needed a forum to deal with family and social service cases, criminal cases involving Indians on their reservations, land use, water rights, and all the other areas in which tribes would exercise their sovereignty. Statutes and ordinances governing these areas were being developed and adopted by most of the tribes in Washington. The solution for this growing need was evident: expanded tribal codes, increased enforcement, tribal prosecution, and a strengthened court system.

But to complicate the situation, the 20 federally recognized tribes in Washington at the time were all independent sovereign nations. Each tribe had its own constitution and codes. Many of the tribes were small and remote. Funding and operating a court at each tribe was not feasible due to limited resources and a significant deficiency in competent and qualified personnel. The idea of sharing resources was quickly adopted as a way of servicing as many tribes as possible. The concept of a circuit court that would have both trial and appellate divisions seemed to be a natural solution. The lower cost of such a system, and the efficiencies in bringing justice to each tribe, would help establish a strong and accessible court.

NICS was founded in 1979 by a consortium of Indian tribes and incorporated on March 11, 1980. The organization was founded as a nonprofit corporation governed by representatives from its member tribes. Initially, 13 tribes formed NICS—Chehalis, Lummi, Muckleshoot, Nisqually, Port Gamble S’Klallam, Puyallup, Shoalwater Bay Court Staff 2017

LEGITIMACY AND TRUST OF TRIBAL COURTS HAS ALWAYS BEEN A GOAL, AND A STRONG JUDICIARY IS A KEY FACTOR IN REACHING IT.
The mission of NICS is to assist the member tribes, at their direction, in a manner which recognizes the sovereignty, individual character and traditions of those tribes in the development of tribal courts which will provide fair, equitable and uniform justice for all who fall within their jurisdiction.

To have a fully functional tribal justice system, NICS would need to provide certain professional services, including trial judges, prosecution staff, and appellate court judges and staff.

**JUDICIAL**

One of the very first resources NICS provided to its member tribes was a judge. NICS employed a full-time judge to administer the program and travel to each tribe to hear their cases. Today, NICS provides both trial and appellate judicial services with an active roster of 41 judges. Each tribe determines the eligibility and qualifications of its judges. NICS matches judges according to each tribe’s criteria and obtains a resolution from the tribe appointing them to serve for a term specified by the tribe’s code. Most of our tribes designate a chief judge, associate judges, and judges pro tem, in addition to appellate judges. Over half of the NICS roster of judges are tribal members; all but two are law trained and are licensed in at least one state bar association. Having access to highly qualified judges has enabled NICS to provide fair and equitable justice for tribes, which has inspired confidence in the tribal courts and resulted in an increased caseload and greater diversity of cases. Legitimacy and trust of tribal courts has always been a goal, and a strong judiciary is a key factor in reaching it.
TRIBES SEE EVERY TYPE OF CASE COME THROUGH THEIR COURTS, FROM MURDER CASES TO COMPLEX CIVIL LITIGATION; IF YOU CAN NAME IT, IT’S BEEN TRIED IN TRIBAL COURT.

PROSECUTION
NICS prosecutors are active participants in each tribe’s justice system. They work closely with law enforcement and other tribal officials to carry out the essential duty of representing the tribe in fishing, criminal, and Indian Child Welfare (ICW) cases. NICS prosecutors are constantly engaged with tribal ICW workers, police officers, and fisheries officers to ensure cases are handled properly. They also work closely with tribal councils and attorney offices to provide input on the justice system, tribal codes, rules, and procedures that enhance fairness and access to the courts. Perhaps most importantly, the prosecutor’s office strives to work with individual tribal members and families to help bring about positive changes in their lives.

APPELLATE
Another of NICS’ initial services was the coordination of appeals for tribes. Early on in the discussions regarding a tribal court system, it was agreed that a strong appellate system was required. People needed reassurance that decisions rendered by a trial court could be appealed to a fair and impartial higher court. The appellate courts have played a vital role in the administration of justice on reservations. When appeals are received, NICS assembles a three-judge panel to hear the appeal and render a decision on the case. Again, the judges are appointed as appellate judges for each tribe and apply that tribe’s codes to the case being appealed.

NICS has maintained a reporter of all relevant appellate opinions issued by NICS. The first 10 volumes of the NICS Reporter were published in hard copy and made available on CD. In 2014, NICS began publishing all opinions online, including the first 10 volumes. The database holds a complete library of NICS appellate opinions, which is updated as opinions are issued and includes full Boolean search capabilities. The NICS Reporter is free and accessible through the NICS website: www.nics.ws.

OTHER SERVICES
Through the years NICS has assisted tribes in a variety of ways and with many court-related services. To assist tribes with their regulatory needs and development of appropriate laws, NICS has provided code-writing services. NICS takes the approach that each tribe and its members are in the best position to know what laws are needed and will work best for them. NICS code writers provide research, drafting, and commenting on proposed ordinances and codes. NICS has also provided training for court personnel, court assessments, and, on occasion, we have provided public defenders in criminal cases. At this point, most tribes maintain their own roster of public defenders and list of attorneys who can assist their members.

NICS TODAY
Many of the original member tribes that formed NICS have left and now operate their courts independently. Others have stayed with the organization for a variety of reasons; for instance, they might only have court once or twice a month or they appreciate the separation and appearance of impartiality that NICS provides.

Today, NICS serves the remaining member tribes but also contracts with many other tribes for similar services. In addition to Washington tribes, NICS works with tribes in Oregon, California, Utah, and Colorado. Some tribes only request appellate services, while others request only pro tem judges, or use NICS for conflict cases. NICS is committed to serving the needs of tribes whatever and wherever they may be.

NICS has contributed immensely to the establishment of tribal courts in Washington and throughout the United States. The organization was created during a critical time for the advancement of tribal rights and the need for stable and effective courts. Of crucial importance to tribal self-determination is a fair and impartial justice system. NICS has helped to advance this goal by creating justice for the tribes, by the tribes. In doing so, NICS has become a valued and respected resource to tribes.
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"SO MUCH TO PROTECT"

The first Tulalip Tribes member to pass the bar draws on her past to help build the tribe’s future

By Colin Rigley

The Tulalip Tribes of Washington office sits in a small clearing surrounded by pine trees on the 22,000-acre reservation. A gust of wind in the right direction will carry briny air from below where fishing boats scuttle across the Tulalip Bay. On the southern edge of the building sits Michelle Sheldon’s office, along with those of the other attorneys of the Tulalip Tribes Office of the Reservation Attorney.

Not long ago, there was only one in-house attorney. Today, there are about 14. In roughly two decades, the Tulalip Tribes’ court system has grown from being virtually non-existent into a self-sufficient legal system for a growing tribe. Sheldon is not only a fresh addition to the tribes’ legal team, but the first member of the Tulalip Tribes to have passed the Washington State bar exam. (The Tulalip uses the plural “tribes,” as the Tulalip Tribes formed in 1934 under the Indian Reorganization Act from the Snohomish, Snoqualmie, Skagit, Suiattle, Samish, and Stillaguamish tribes in the region.)

Sitting in her office on a bright summer morning, Sheldon reflected on what it meant to pass the bar. Because as monumental as it can be for anyone to cross that line between law student and lawyer, for her there was more at stake. “You feel this immense pressure weighing down on you,” she said.

It’s the pressure of being a role model and a representation to her tribe of what’s possible, as well as a representative of her tribe to other legal professionals outside of tribal law. More than being the first member of the Tulalip Tribes to pass the bar, Sheldon is also the first Tulalip tribal member to work as an attorney in the Tulalip Tribal Court system, which in a matter of years has grown from what has been described as “lawless” into a court system that handled more than 800 criminal and civil cases last year. With more than 4,800 members, more than half of whom live on the reservation, the Tulalip Tribes is one of the largest of Washington’s 29 federally recognized tribes.

While other Tulalip members have pursued a career in law, none before Sheldon took and passed the bar and began practicing law. Before Sheldon, none of the lawyers practicing on behalf of the Tulalip Tribes had the first-hand experience of growing up Tulalip.

Sheldon got a taste for the law when she started working at beda?chelh, the tribe’s child welfare services program. She was in her early 20s, still unsure of what she wanted to pursue as a career. So she began exploring the things she could do for her tribe. It was at beda?chelh that
she remembers first working alongside tribal attorneys, which soon led her to take a position at the tribal courthouse as a tribal court clerk, where she saw the potential of the law to help her tribe.

Growing up on the reservation meant growing up as a part of a hugely interconnected community and being taught about Tulalip history and culture.

“It’s nice to get those teachings and know what your history is—those help shape and develop you,” Sheldon said. “It’s remembering where your roots are and remembering what your ancestors fought for so you could have today.”

Sheldon got her associate’s degree from Northwest Indian College, and a bachelor’s in criminal justice, at Columbia College. She earned her master’s in criminal justice from Boston University before pursuing her J.D. at Seattle University (SU). She spent nights making the hour-long commute each way to attend night classes at SU School of Law and days working as the manager for the Tulalip Tribes Office of the Reservation Attorney. Sheldon said she was the only Native American member of her class, which isn’t particularly surprising, given that there were just 262 self-identified American Indian/Native American/Alaska Native members of the Washington State Bar Association, as of the most recent membership count.

“You’re sometimes going to be alone,” Sheldon said of her experience as a Native American in law school. Among her law school classmates, Sheldon remembers, the thing that surprised them the most about Indian Law was, essentially, everything.

Indian Law was an unknown, and an intimidating unknown at that, combining elements of criminal, civil, federal, environmental, and just about every other area of law. Then in just a few decades, the Tulalip Tribal Court system and tribal bureaucracy have grown significantly. In the Tulalip Tribes of Washington office, just north of Everett, there are approximately 14 tribal attorneys; in the mid-’90s, there was only one.

SHELDON KNEW WHEN SHE BEGAN LAW SCHOOL THAT, WHEN IT WAS ALL OVER, SHE WOULD COME BACK TO HER TRIBE.
add a layer of sovereign nations existing under federal jurisdiction that abut local and state jurisdictions—all stitched together by treaties dating back more than 150 years (Treaty of Point Elliot between the U.S. government and tribes of the Puget Sound region was signed in 1855).

Sheldon knew when she began school that, when it was all over, she would come back to her tribe. But about 25 years ago, the notion of an in-house attorney was unheard of for Tulalip Tribes.

Mike Taylor was the first staff attorney for the Tulalip, which had previously contracted out its legal services. With a few decades spent working for other Native American tribes—primarily the Quinault, beginning in the late ’60s—Taylor began working with the Tulalip in 1994.

“Tulalip had become a no-man’s land where there was no law enforcement and there was no tribal code,” Taylor said. “So we put in place a criminal code.”

He served as the tribal attorney during the time when the early foundations of a more structured and powerful Tulalip Tribal Court were being established, and he said he helped create tribal codes that outlined how the court would handle employee disputes—a rising issue as the tribes’ economy boomed and brought in larger numbers of tribal employees.

“The most misunderstood thing about tribal courts is that they are real courts with law-trained judges,” Sarah Lawson, president of the Northwest Indian Bar Association and an appellate judge for the Northwest Intertribal Court System, said by email. “There is a common misconception that tribal courts will just do what the tribe wants, and many attorneys view tribal courts as illegitimate based simply on the court’s structure. As sovereign governments, tribes are entitled and empowered to create their own court systems, and frequently do not follow the traditional court structure either due to cultural differences, costs, or other factors.”

Particularly for the Tulalip Tribes, their sovereign status can be linked to a few key decisions: the Boldt decision of 1974, and the retrocession process beginning in the 1990s. The Boldt decision served as an affirmation of sovereignty for the tribes of the Puget Sound region, ensuring fishing rights for tribal members and putting a federal stamp on long-held treaties that state regulations “not discriminate against the Indians.”

In recent years, the retrocession process created the groundwork upon which the tribes’ legal systems evolved. In 1994, the Tulalip Tribes began the process of applying for retrocession “to take back jurisdiction on tribal lands due to the ever-increasing urbanization and population growth of the reservation” according to “Resurrection of the Tulalip Tribes’ Law and Justice System and its Socio-Economic Impacts” by Wendy Church, the former tribal court director.

For the Tulalip, retrocession was finalized in 2001, when the
Bureau of Indian Affairs accepted the retrocession of “partial criminal jurisdiction” to the Tulalip Tribes from the state of Washington. Before retrocession, Church writes, the Tulalip Tribal Government didn’t use the court system or provide ordinances that would establish the court as a place to resolve personal issues. And until the mid-’90s, the court only dealt in “the occasional fisheries violations and housing evictions,” as there was no “substantive” criminal code or established tribal police department at the time.

In her thesis, Church quotes Colville Tribal members Chief Judge Gary Bass and Judge Theresa Pouley as describing the pre-retrocession Tulalip reservation as a “zone of lawlessness.”

Tim Brewer, senior attorney at the Tulalip Office of Reservation Attorney, said that although the tribe has always had its own system of tribal law, lack of criminal authority led to gaps in law enforcement. “I came here right about the time retrocession was happening and the tribe started building its criminal justice system,” Brewer said. “Prior to retrocession, public safety was an issue but that has changed dramatically since [the tribes began] policing the reservation.”

Retrocession, as Church argues, was a turning point for the Tulalip Tribes, as it was for about a half-dozen other Washington tribes that took jurisdiction over their own legal matters, establishing law enforcement and courts that were independent from the state.

In the past three years, the Tulalip court became the first tribe to host the Indian Law and Order Commission, which advised the White House and Congress “so that Native Americans may finally receive the full protections guaranteed to all U.S. citizens by the Constitution,” according to the commission website. Tulalip was also one of the first tribes in the country to pilot the Violence Against Women Re-Authorization Act, which gave the tribe authority to prosecute non-Indians who committed acts of domestic
Michelle Sheldon graduated from Seattle University School of Law in 2018, going on to become the first Tulalip Tribes member to become a member of the Washington State Bar Association. During law school, she spent nights attending classes, commuting between Seattle and the Tulalip Reservation where she worked as the manager for the Tulalip Tribes Office of the Reservation Attorney.

violence against tribal members, Brewer explained.

Another sign of increasing sovereignty among Washington tribes is actually the decreasing dependency on the Northwest Intertribal Court System (NICS) (see “A Path to Tribal Justice” at page 20). Over time, the NICS has seen tribes discontinue its services as a wholesale court system, instead relying primarily on its appellate judges as they developed their own independent courts.

“I can just tell you that the tribe has grown in an exponential way in the past couple of decades and has a huge amount of visitors coming to the reservation,” Brewer said. “... To support that economic development, it’s been essential to have a good public safety system and criminal justice system, and the tribe has worked really hard at that and devoted a ton of resources to its court system and its police.”

One of the more recent issues for the tribes has been in collecting taxes to fund public safety and other services essential to the reservation community. The recently developed tribal municipality that fosters economic development, Quil Ceda Village, generates about $40 million per year in sales tax, but those revenues go to the state and Snohomish County. The tribes sued in Tulalip Tribes and the Consolidated Borough of Quil Ceda Village v. State of Washington (No. 15-CV-940 BJR), arguing that their customers in order to generate Tulalip-specific tax revenues. The U.S. District Court of the Western District of Washington ruled in favor of the state, but Tulalip is considering an appeal to the 9th Circuit Court of Appeals, Brewer said.

For Sheldon, now at the center of many tribal legal issues, the tribes’ hard-fought sovereign rights help drive her in her work. “I had always maintained that I wanted to help the people, help protect our tribal sovereign rights, and be involved in a manner that helps the tribe grow,” she said.

Along with independence of tribal courts, a different way of approaching legal matters also emerged. People interviewed for this article agreed that many tribal systems tend to favor rehabilitation and restoration rather than punishment of certain crimes. It’s partially the product of the deeply tied community on a reservation, where the end-goal of the court is to help people whenever possible, rather than sending them to jail or otherwise forcing them to leave the reservation.

For instance, pre-retrocession Tulalip was suffering from what Church in her thesis described as a “growing drug problem.” In 1994, however, the establishment of a Healing-to-Wellness Court began providing nonviolent drug offenders with an alternative to incarceration. Church wrote that the alternative court gave “more access to social service programs to address problems of drug and alcohol abuse, employment issues, parenting issues, and domestic violence problems.” Or, as a recent article by the University of Washington School of Law (“A Road to Recovery”) described it: “real help.”

The Tulalip also provides funding for tuition, books and supplies, stipends, and room and board to tribal members seeking certain degrees.

“It’s important and desired by most tribes to establish trust within the community,” said Tulalip Tribal Court Associate Judge Janine B. Van Dusen, who swore Sheldon in as a member of the Washington Bar. “Natives have historically not been treated fairly in state courts, and there is a level of distrust when a community member has to deal with a non-native attorney. ... Since the tribes get their sovereignty from the people, the land, and their relationships, working with tribal attorneys who are members of their tribe or another tribe reinforces their ability to self-govern and serves to strengthen their tribe as a sovereign nation.”

For Sheldon, there’s a personal stake in practicing law. “I know Tulalip tries to be an inspiration for other tribes, because we’ve definitely built ourselves from the ground up,” she said. “Now it’s like, wow, we have so much to protect for our future.”

COLIN RIGLEY worked as a print news journalist and editor in California, as well as a content strategist in the Puget Sound area, before joining WSBA as the communications specialist earlier this year. He can be reached at colinr@wsba.org.

NOTES:
1. https://www.tulaliptribes-nsn.gov/
2. https://www.tulaliptribes-nsn.gov/Home/WhoWeAre/AboutUs.aspx
THREE OF A KIND

Congratulations Felix Luna on your invitation to the American College of Trial Lawyers

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True Confessions of a Reservation Attorney
LIFE AMONG A PEOPLE

whose rich history and knowledge is personally conveyed to entrusted persons from generation to generation, rather than being written down in books or shared with outsiders, has left its mark on my family. According to rules of the Office of Superintendent of Public Instruction, Washington state history is required to be taught in public schools. In high school, my oldest son’s freshman class read the textbook chapter regarding the native inhabitants of the Pacific Northwest. As he read the paragraphs describing our people as possessing oval-shaped faces and a rudimentary language and organizational structure, and explaining how explorers such as Capt. James Cook, Juan de Fuca, Capt. George Vancouver, and Peter Puget discovered the region, he could not help himself. “This is bull****,” he muttered aloud under his breath. I was never more proud of him than when he received detention for this.
BETWEEN TWO WORLDS
When any of the young people of my tribe announce their plans to attend college, they are repeatedly told (as I was) by tribal members that they would be “walking in two worlds.” To which my response at the time was “oh puh-leez” (visualize my eyes rolling). However, now that I have been practicing law for many years, I must inform you that much of my time is spent serving as a translator between these two worlds.

MERELY PASSING THE BAR EXAM QUESTIONS ON FEDERAL INDIAN LAW DOES NOT PREPARE YOU TO PRACTICE IN OUR TRIBAL COURTS. THOSE PRINCIPLES ARE GENERAL. EACH TRIBE IN THIS STATE THAT OPERATES A TRIBAL COURT HAS ITS OWN LAWS, REGULATIONS, PRECEDENTS, AND COURT RULES.
In cases requiring the judiciary or a social services agency to place a dependent Indian child with a member of the child’s tribe or extended family, I sometimes find myself having to explain how, in our culture, a person can be a child’s aunt, uncle, sister, or brother even if they are not related by blood. In probate cases I must find a way to convey that a person is a child or grandchild of the decedent, and therefore an heir to the estate, notwithstanding that he or she is not a direct descendant or “issue” of the deceased Indian. My youngest son came home from preschool one day and informed me of how sad he felt for his classmates because they had only two grandfathers and grandmothers—unlike himself, who had at least 20 loving grandmas and grandpas.

During my career, I have had the honor of being one of the many counsel of record in United States v. Washington, under which I represented the Yakama Nation from 1990 to 1995 and now represent the Sauk-Suiattle Indian Tribe in some “sub-proceedings.” In this 1974 decision, U.S. District Court Judge George Boldt went to great lengths attempting to reconcile the beliefs of tribal people with the policies of the state of Washington in order to bring our two peoples together. Sadly, to this day our cultures remain vast distances apart. It is difficult for my elders and leaders, many of whose experiences with the state of Washington involved having their children removed by social service agencies, being jailed for hunting or fishing violations, or being recommended for “vocational” or special education classes rather than professions, to perceive the government as anything but an enemy.

Once during a deposition of a tribal elder I intended to have testify regarding the tribe’s usual and accustomed fishing grounds, the elder was asked where the tribe’s fishing grounds were located.

“I can’t tell you,” he answered, “because you are a white man.” “I can tell him,” he said, pointing at me, “but not you.”

There went my case. I was both proud of and frustrated with my expert witness. He was merely following the natural laws of his people. Such information is only to be passed on in our language through songs and stories taught in the longhouse.

THE DIVERSITY OF TRIBES
Since I have apparently been tasked by the Creator with attempting to bridge the communication gaps between the state of Washington and our people, I must disclose an open secret among tribal people. There are not less than 29 federally recognized tribes in this state. We are not all alike. Each is a separate sovereign with its own territory and laws. The language, culture, tradition, and laws of each tribal nation are unique. The Makah-, Yakama-, and Chinookan-speaking peoples are as different as night and day. Nevertheless, Washington state government routinely
foists upon us cookie-cutter compacts, agreements, and legislation as though one size fits all, rather than dealing with tribes independently. Please be informed that our people find this offensive.

And, by the way, fellow members of the Washington State Bar Association, merely passing the bar exam questions on federal Indian Law does not prepare you to practice in our tribal courts. Those principles are general. Each tribe in this state that operates a tribal court has its own laws, regulations, precedents, and court rules. We are offended when practitioners do not take the time to familiarize themselves with our particularized local laws before appearing in our court—just as one would before appearing in the court of another state.

Finally, I apologize for my harsh tone. Once one achieves a certain age, he or she is free to be who they are. Apparently, I am now an Elder. For too long, due to misunderstandings, our peoples have been uneasy inhabitants of the same region. We all want what is best for our future generations. Please join me in trying to bring our people together for the betterment of our precious region.

Nye! ♡

NOTES:
1. 384 F. Supp. 312 (W.D. Wash. 1974), aff’d, 520 F.2d 676 (9th Cir. 1975)
2. Similarly, in our culture, tribal names are hereditary property. I have therefore had to explain to a vintner why my people are not honored by naming a wine after Chief Kamiakin.
3. The word “nye” in native Sahaptin language roughly translates into “that is all I have to say.”
For decades, McKinley Irvin has helped clients navigate through some of life’s most difficult challenges. Our attorneys, like prominent family law attorney Jennifer Payseno, are known for their relentless pursuit of successful results, whether representing individuals in high-asset divorce litigation or negotiating complex property division. But perhaps our most noted distinction is our steadfast commitment to protecting what our clients value most.

**JENNIFER PAYSENO, PARTNER**
First Vice President, King County Bar Association, 2018-2019
Distinguished as a Washington Super Lawyer, 2010-2018
Treasurer, King County Bar Association, 2013-2015
Chair, King County Judicial Screening Committee, 2009-2010
behind the Washington State Bar Association’s (WSBA) many committees, boards, and sections that shape the legal profession in Washington state. The entities under WSBA’s umbrella are designed to run in partnership, combining the expertise and leadership of Bar staff and our diverse volunteers. Every year, WSBA relies on more than 1,400 volunteers who serve with more than 35 entities (see entity chart below) to perform its mandatory and regulatory responsibilities outlined by the Washington Supreme Court, as well as many other functions, including Continuing Legal Education (CLE) faculty and special projects.

“We work together to make sure critical processes and decisions align with WSBA’s mission and reflect real-world practitioners’ experiences,” said WSBA Executive Director Paula Littlewood. “I have an enormous amount of respect and gratitude for our volunteers. They safeguard and uphold the integrity of the legal profession for all of us.”

Last fall, the Bar launched its first Volunteer Satisfaction Survey—based on similar tools developed by nonprofit organizations like United Way—to better understand what motivates volunteers to serve and what challenges they face. We also wanted a baseline of data on which to judge the effectiveness of corresponding efforts that are aimed at improving volunteer engagement, satisfaction, recruitment, and retention. Almost 200 volunteers (16 percent) representing WSBA committees, councils, sections, special projects, and CLE faculty responded to the 14-question survey.
By Ana LaNasa-Selvidge and Sara Niegowski

WSBA is listening to its more than 1,400 member volunteers—thank you to those who give their time and expertise to support the legal profession.

IN A SURVEY OF VOLUNTEERS

76% STRONGLY AGREED / AGREED
they received adequate support and guidance to be successful in their volunteer role

78% STRONGLY AGREED / AGREED
their talents and skills matched the volunteer role

80% STRONGLY AGREED / AGREED
they would volunteer again

83% STRONGLY AGREED / AGREED
their volunteer role furthered the WSBA mission

96% WERE SATISFIED
with their overall volunteer experience

While these are great results, we did hear back from members in the open-ended questions about ways we can improve the volunteer experience. Here are the major themes from the survey:

- Respondents suggested solutions to improve onboarding, ongoing support, and recognition
- Respondents had unclear expectations around volunteer roles
- Respondents expressed appreciation for WSBA staff support
- Respondents expressed challenges with WSBA, including bureaucracy and tension in mission of serving both members and the public

ROLLING UP OUR SLEEVES

With results in hand, WSBA staff was ready for action. The survey was created and executed by WSBA’s Volunteer Engagement Team, with representatives from across the organization who have spent the last two years focused on improvements based on volunteers’ feedback. Top on the priority list from the survey results was the goal of standardizing and fleshing out the volunteer position descriptions to help potential volunteers understand the goals, responsibility, structure, and time commitment for each entity. We posted these new position descriptions to kick off volunteer-recruitment season in January 2018, and the response was positive; for instance, we had a 15 percent increase in applicants from the year prior.

Another area for improvement was streamlining and standardizing the onboarding process for volunteers. All of our volunteers need basic introductory training on logistical matters, such as expense reimbursement procedures; as well as mission-oriented expectations, including the scope and purpose of their roles.

“If our hopes of building a better and safer world are to become more than wishful thinking, we will need the engagement of volunteers more than ever.”
— Kofi Annan

“Volunteers don’t get paid, not because they’re worthless, but because they’re priceless.”
— Sherry Anderson

“Volunteers do not necessarily have the time; they just have the heart.”
— Elizabeth Andrews

“We make a living by what we get, but we make a life by what we give.”
— Winston Churchill
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WE NEED YOU

There are many opportunities for members to volunteer through WSBA to help shape the legal profession, from one-hour to one-year commitments, or from work groups with a specialized focus, to boards that have a wide-ranging lens. WSBA is always in need of CLE faculty; judges, jurors, and witnesses for its Trial Advocacy Program; mentors for ongoing mixers around the state; section executive committee members; and, of course, applicants for 2020 committee, board, and council positions. Please go to wsba.org/volunteer for more information.

Sara Niegoswki is the Chief Communication and Outreach Officer for the Washington State Bar Association. She can be reached at saran@wsba.org.

Anna LaNasa-Selvidge is the Member Services and Engagement Manager at the Washington State Bar Association. She can be reached at anas@wsba.org.

Volunteers are the only human beings on the face of the earth who reflect this nation’s compassion, unselfish caring, patience, and just plain loving one another.”
—Erma Bombeck

“Alone we can do so little; together we can do so much.”
—Helen Keller

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LEADING THE PACK

WSBA Young Lawyers Committee announces recipients of the Public Service and Leadership Award

By Emily Ann Albrecht

THE WASHINGTON STATE Bar Association (WSBA) Young Lawyers Committee (WYLC) recently asked the legal community to nominate new and young lawyers who are dedicated to serving their communities for the annual Public Service and Leadership Award. The WYLC’s Subcommittee on Leadership carefully considered each nominee’s long-term service and contributions to their community to select award recipients with a history of exemplary leadership and demonstrated commitment to public service.

Among the factors weighed by the committee were each nominee’s:

1. Leadership and service in the local community or within a bar association;
2. Mentoring;
3. Involvement in WSBA, American Bar Association and/or local bar association activities; and
4. Volunteer work with pro bono or public service programs. The committee balanced these factors in light of the award’s ultimate goal of highlighting the exceptional work of new and young lawyers around Washington, while promoting a culture of public service throughout the Washington bar.

Within this framework—and after deliberating over many qualified candidates—the committee selected the following five new or young lawyers to receive the Public Service and Leadership Award:
JEFFREY JOHNSON

Johnson has an impressive history of leadership at both state and local bar association levels, having served a three-year term as the Southeastern District representative on the Washington Young Lawyers Committee and as former vice-president of the Benton-Franklin County Bar Association’s Young Lawyers Committee. Beyond his dedicated involvement within the legal community, the committee particularly valued his commitment to the broader public, as evidenced by his work with Yakima County Volunteer Attorney Services, as a sponsor and supporter of fundraising efforts for Benton-Franklin County Boys and Girls Club and The Children’s Reading Foundation of the Mid-Columbia, and as a volunteer judge for the annual YMCA Mock Trial Competition at the Benton County Courthouse. In 2017, he also worked to raise funds to plan and build a new horse stable for Therapeutic Riding of Tri-Cities (TROT), which allowed TROT to house an additional horse to provide more therapeutic services for children with mental and physical disabilities in the Tri-Cities area. Johnson recently became a partner at Johnson & Johnson Law Firm, PLLC, in Yakima and Kennewick.

ANDRÉ PENALVER

Penalver’s nominator lauded his extensive pro bono work on asylum cases, employment cases, and at local legal clinics. In recognition of his hundreds of hours of volunteer work, he received the 2017 City of Destiny Award for Equity and Empowerment from the city of Tacoma and was named Volunteer of the Year by Yakima County. Since 2017, he has served as board president for the Campaign for Equal Justice, which is the largest private source of funding for civil legal aid in the state, funding groups such as Northwest Immigrant Rights Project, Columbia Legal Services, and various neighborhood clinics. He has also traveled around the state to raise awareness about civil legal aid, helping the Campaign for Equal Justice raise $1.6 million last year. The committee was particularly impressed with the positive impact he has had on the recipients of his pro bono efforts, along with his extensive involvement in his local community—including his work with Washington Trafficking Prevention (an anti-human trafficking organization); Puyallup Food Bank; Tacoma Philharmonic; and as a mentor for College Success Foundation, which pairs underprivileged high school students with professionals in preparation for college. Penalver is an assistant United States attorney with the United States Attorney’s Office in Tacoma.
CONRAD REYNOLDSON
Described by his nominator as “a prominent member in the community of people with disabilities,” Reynoldson—who has muscular dystrophy—makes it clear that his disability does not affect his work and, leading through example, encourages other attorneys with disabilities to overcome obstacles. In addition to being president of the Washington Attorneys with Disabilities Association, he founded Washington Civil & Disability Advocate, a not-for-profit committed to providing legal services to people with disabilities without charging attorney fees; increasing accessibility and inclusion in Washington state; and, in addition to litigation, assisting with disability education and awareness efforts, including informing the disability community on disability rights. He also shows his dedication to making the community more accessible and preventing people from taking advantage of persons with disabilities by advocating as a named plaintiff in class action suits, notably including *Reynoldson, et al. v. City of Seattle,* a case that resulted in the city being required to install or remediate over 20,000 curb ramps over the next 18 years. Reynoldson is founder and lead attorney at Washington Civil & Disability Advocate in Seattle.

TODD WILLIAMS
Applauded by his nominator for pro bono work that “has given voice to a group of individuals who otherwise would not have had access to the justice system,” Williams has demonstrated steadfast dedication in his commitment to assist people in need, including his involvement in ongoing litigation challenging, on Fourth and Fourteenth Amendment grounds, the policies and practices of the City of Seattle and the Washington Department of Transportation regarding sweeps of homeless encampments. In addition to the positive impacts he has had on the recipients of his pro bono efforts, the committee was impressed with his mentorship of younger associates, recently earning him a Mentorship Award from his firm. He also volunteers as a board member and provides pro bono legal services to the Evergreen Safety Council, a nonprofit organization that provides safety training and information for members of the public and businesses in the Pacific Northwest. Williams is an associate at Corr Cronin LLP in Seattle.

CYNTHIA ZETTS
It is no surprise that Zetts was nominated for this award, given her history of providing low bono basic estate planning services to the elderly, disabled, and folks who otherwise have limited access to transportation, or other barriers to traditional legal services; and her efforts to ensure that pro se litigants understand their options, the rules, and the administrative hearing process. She also founded the Seattle University Trusts and Estates/Elder Law Student Association; was selected as a member of the 2017 Seattle University Low Bono Incubator (which recognizes alumni whose mission is to provide access to justice by serving moderate-means clients); provides free lectures on basic estate planning; and mentors other attorneys who are interested in providing low-bono mobile legal services to clients in their homes and care facilities. In addition to her dedicated involvement within the legal community, the committee was particularly impressed with her commitment to public service, as demonstrated through volunteer work with Washington First Responders Will Clinics, King County Bar Association Neighborhood Legal Clinics, the Housing Justice Project, and Associated Counsel for the Accused. Zetts recently accepted a position as attorney advisor with the Social Security Administration.
PUTTING OTHERS FIRST

Notwithstanding the uniqueness of each nomination, these award recipients share many attributes that quickly elevated their submissions to the top of the committee’s pile. Among these commonalities were a profound public service ethic and a track record of putting the needs of others ahead of their own. The WSBA is fortunate to have such dedicated new and young members and looks forward to many more years of service from them.

For additional information about the Public Service and Leadership Award, or to learn about ways to volunteer with a pro bono or public service program, please visit www.wsba.org.

EMILY ANNE ALBRECHT is an associate with Betts, Patterson & Mines, P.S., in Seattle, where she focuses her practice on mortuary litigation and insurance defense, including product liability and professional liability. She can be reached at ealbrecht@bpmlaw.com.

JAMS Seattle is proud to have welcomed these distinguished neutrals to our panel this year.

Visit jamsadr.com/jams-seattle for a complete panel list.
From Trial Lawyer to Novelist

A conversation with Bradley Bagshaw on law, writing, the world of 19th-century fishing, loss, love, and resilience

By Robin Lindley

Bradley Bagshaw worked for 35 years as a trial attorney with the Seattle firm of Helsell Fetterman, representing individuals and families against fishing corporations. Now he’s left litigation behind and embarked on a new path as a writer with the publication of his debut novel, Georges Bank, a tale of love, greed, power, and hypocrisy set in late-19th-century Gloucester, Mass., a major fishing port.

Bagshaw captures not only life on the perilous seas of New England, but also the plight of those who were left behind when fathers, husbands, and sons died at sea. His resilient and feisty protagonist, Maggie O’Grady, an Irish immigrant, finds herself in a Gloucester brothel with a young son after she is cast aside and left penniless by the child’s father, a wealthy Boston merchant.

The novel chronicles Maggie’s struggles and charts her resilience and triumphs as she builds her business and seeks respectability. It also illustrates the grim machinations of a brutal legal system under which widows had virtually no hope of compensation for the deaths of their spouses at sea.

Bagshaw grew up in Gloucester, and his first job there was as a sailing instructor. For the novel, he drew on his rich experience in maritime law, his adventures at sea as a child, more recent sailing journeys as far as Tahiti, and his extensive archival research on Gloucester and the fishing industry of the 19th century.

Bagshaw has two more novels in the works. He just finished The Physicist, which also draws on his legal experience, as well as his knowledge of flying light aircraft, and he is working on a third novel, Don’t Look. He lives in Seattle with his wife Sally.

Bagshaw sat down at a North Seattle café to talk about his new career as a writer and his first novel.

LINDLEY: How did your years of trial work influence your novel about the people who fished in 19th-century America?

BAGSHAW: A big part of what inspired the book was a keen awareness of how badly, even today, fishermen are treated by the fishing companies. I had a number of cases representing crab fishermen and class actions involving guys who fished on big factory trawlers. A factory trawler typically has 140 crew members and most of them are processors who work in the bowels of the ship cutting fish and packing the fish. That really is a terrible job. It’s usually 12 to 15 hours a day or more, and they go out for 60 to 90 days. They work every single day, seven days a week. The conditions are really, really harsh. And a lot of the worker safety laws today do not apply at sea.

LINDLEY: What inspired this novel about 19th-century Gloucester?

BAGSHAW: I’d learned to sail as a youngster in Gloucester and [being a] sailing instructor was my first job. When I came out here, I sailed charter boats to the San Juans, but I’d never gone on
the ocean and I’d always wanted to. So when we had the opportunity to take time off—my wife, Sally, was concluding one job and I could take a sabbatical at my law firm—we got a 39-foot cutter, a sailboat, with the intention of taking a long sailing trip, and we wound up taking it out of Seattle, down the coast, off to the Marquesas Islands, to Tahiti and Bora Bora and then, eventually, back to Honolulu and back to Seattle—over about two years.

The sailboat trip and my early Gloucester years played a big part in determining what this story would be about.

**LINDLEY:** What are a few things you’d like readers to know about Gloucester and conditions in the 19th century?

**BAGSHAW:** Back in the 19th century, Gloucester was the biggest fishing port in the world. At any one time, at least 400 fishing vessels were sailing out to various banks. Fishing was so dangerous that it was almost a self-inflicted genocide. In 25 years, from 1860 to 1885, over 300 schooners sank on the banks out of Gloucester, and 2,400 men died. And I thought: what about all the women? In those days, there weren’t many things a woman could do to support herself. Basically, the main choice for a woman widowed in those days was to find herself a new husband right away or go back and live with her parents and take her kids with her. If you couldn’t do one of those two things, your life would be desperate.

Those are the people I write about, exemplified most by Maggie O’Grady. She meets obstacles and she has flaws, but she perseveres and triumphs.

**LINDLEY:** Was your protagonist, Maggie, based on a particular person?

**BAGSHAW:** Maggie isn’t based on anyone. I did have an Irish great-grandmother named Margaret. That’s where I got the name. I never met her, but she was well known in the family as a powerful woman. She and my great-grandfather established a small business and he died relatively young. She took over the business and ran it. And she was renowned for taking over a business and making it work. To that extent, Maggie is somewhat based on my great-grandmother.

For the Irish part, my dad was one-quarter Irish with the one grandmother, but if anyone asked his ethnicity, he said, “I’m Irish!” He was proud of that. I got a little of that, and I’m one-eighth Irish. So that was also in there.

**LINDLEY:** Your novel also details life in a brothel and the day-to-day lives of the prostitutes and the men who frequented the establishment. Does Gloucester have a brothel museum? We see these in some western towns like Wallace, Idaho.
**BAGSHAW:** In marked contrast to the archives on fishing back then, there is almost nothing on the brothels then. I had to research 19th-century brothels in other parts of America. There are studies of New Orleans at about that time and there’s statistical data out of New York. And then there’s semi-historical writing on the brothels of the Wild West.

**LINDLEY:** These women are overlooked in history and you’re making a place for them.

**BAGSHAW:** Yes, but not many brothels have been written about. There’s The Best Little Whorehouse in Texas, which is a light treatment of the situation with everyone having fun—not very realistic.

**LINDLEY:** You vividly describe the dangerous fishing and tremendous storms off Georges Bank. What is Georges Bank?

**BAGSHAW:** It’s a fishing bank off the coast of Massachusetts. And back then it was one of the most lucrative fishing grounds in the world. The Gulf Stream comes into it from the south, and it has a shallow bed. And cold water from the Gulf of Maine intersects with the Gulf Stream. That’s why it’s so dangerous. And that’s where a lot of fish come in.

**LINDLEY:** Did you go back to Gloucester and do archival research?

**BAGSHAW:** I spent a good amount of time in Gloucester on research. There’s a good local library and it has an excellent archive of local history. And there’s a maritime museum.

I also visited Mystic Seaport, Conn., and they have a Gloucester fishing schooner, the L.A. Dunton, in the water and [it’s] all made up the way it would have been when it was fishing. It was a little later and a little bigger than the schooners at the time of the novel, but otherwise typical of those ships. You can walk inside, see the bunks, see how the men would have lived.

**LINDLEY:** You also bring up 19th-century legal history, and stress that widows had no right to sue for compensation for the deaths of their husbands at sea.

**BAGSHAW:** The greatest injustice was the Harrisburg case [The Harrisburg, 119 U.S. 199 (1886)]. The court found there was no cause of action for wrongful death at sea under maritime law. It didn’t matter why somebody died. That was partially changed in 1920 when the “Death on the High Seas Act” was passed. Deaths that weren’t covered after that were then covered after an act in 1970. But even today, for mariners and others who die at sea, their wrongful death recovery is a shadow of what we get at shore.

When the Deepwater Horizon oil platform operated by Transocean and drilling for BP in the Gulf of Mexico had a big fire a few years ago, several people on the platform were killed. Congress was outraged to find that there were no punitive damages or pain and suffering damages that the widows could collect because of what was left of this old case. Congress proposed changing the law, but only for people working on oil platforms. All the other people who go to sea on fishing boats, merchant ships, and other vessels, never managed to get the attention of Congress, and in the end it did nothing, no relief even for the widows of men killed on oil platforms.

**LINDLEY:** Is there anything else you’d like to mention about Georges Bank or your writing?

**BAGSHAW:** If anyone wants to write, start. I just started. I wrote a first draft of Georges Bank straight through. Then I showed it to people who actually knew something about creative writing, and they gave me an education about everything I was doing wrong. But that was fixable. I then did a second and third and fourth draft, and every time I was making it better, and I felt really good. It’s very satisfying.

I love the process. It’s great to get a book published, but if it never happened, I’d still be working on my third book.

**ROBIN LINDLEY** is a Seattle-based writer and attorney, and the features editor of the History News Network (hnn.us). His articles have appeared in HNN, Crosscut, Salon.com, Real Change, Documentary, Writer’s Chronicle, Billmoyers.com, Alternet.org, and others. He has a special interest in the history of conflict and human rights. He can be reached at robinlindley@gmail.com.
Of the 689 candidates who took the Summer 2018 bar exam, 473 candidates passed. Congratulations! The full pass list is below.

| A | Acoba, Jameson, Shelton Adessa, Jonathan, Seattle Adkins, Jay, Spokane Adsero, Bruce, Des Moines Ahtut, Taliah, Seattle Aitchison, Sarah, Seattle Al Dhafer, Jawaher, Seattle Albertson, Bret, Bellevue Alcala, Angelita, Pasco Allen, Jacob, Spokane Almon-Griffin, Reina, Seattle Andersen, Robert, Vancouver Anderson, Stephen, Seattle Andken, Kerry Lee, Bellevue Andreve, Minta, Tacoma Archer, Maximillian, Yakima Arias, Coletta, Seattle Armstrong-Hann, Kelsey, Seattle Aronica, Anthony, Ellensburg Arora, Nitika, Seattle Asare, Benjamin, Spokane Ashby, Carly, Liberty Lake Ashmore, Sarah, Seattle Austin, Richard, Mill Creek Avery, Henry, Seattle |

| C | Callahan, Conor, Spokane Campbell, Kendall, Wilsonville Carlson, Keith, Seattle Carman, Jordan, Laguna Beach Carrico, Catherine, Seattle Carroll, Kevin, Sacramento Casas, Corlea, Seattle Chamusco, Bianca, Seattle Cheng, Justin, Cleveland Chiechi, Brittany, Seattle Chipman, Cory, Spokane Valley Christensen, Katie, Durham Cleary, Zachary, Seattle Cojulun, Leonel, Seattle Collado, Christopher, Renton Collier, Sarah, Mill Creek Conahan, Caitlin, Beca Raton Cooper, Akyah, Woodinville Corral, Dana, Spokane Corwin, Andrew, Spokane Cozza, Matthew, Spokane Croadock, Kathleen, Tacoma Cralpo, Betty, Spokane Crawford-Bernick, Maia, Olympia Crozier, Mark, Seattle Curda, Devin, Bellevue


| H | Hagen, Daniel, Seattle Hager, Chelsea, University Place Hall, Courtney, Spokane Halpern-Mekin, Ben, Shoreline Harn, Jason, Shoreline Harper, Alison, Seattle Haynes, Aaron, Yakima Haynie, Adam, Seattle Heins, Grady, Seattle Hendrick, Sarah, Seattle Hennessey, Taylor, Spokane Hernandez Bonezzi, Cesar, Seattle Hess, Meaghan, Lake Stevens Heydrich, Andrew, Bellingham Holroyd, Isabella, Seattle Hopkins, Ian, Los Angeles Houcens, Jesse, Wilmington House, Joshua, Yelm Howard, Theodore, Oak Harbor
Bar Exam Pass List

Howard, Alexis, Shoreline
Hur, Minjung, Lynnwood
Hyatt, Heath, Seattle

I
Ishihara, Matthew, Olympia
Itani, Wissam, Seattle

J
Jacobs, Britney, Spokane
Jahn, Ryan, Vancouver
Janjua, Harsimran, Seattle
Jusupovic, Meliha, Seatac
Jahn, Ryan, Seattle

K
Kadlec, Andrea, Kenmore
Kahn, Sheeri, Tucson
Kalpen, Konrad, Seattle
Kamezaki, Kinuko, Tokyo
Kaufman, Annika, Seattle
Kawabata, Brick, Kirkland
Kawahine, Masatoshi, Tokyo
Keene, Gavin, Seattle
Kelley, Megan, Maple Valley
Kennedy, Shanleigh, Greenbank
Killingsworth, Miles, Seattle
Kim, Jonathan, Federal Way
Kim, Danielle, Seattle
Kincaid, William, Spokane
Knapp, Aaron, Seattle
Knickmeyer, Donald, Saint Charles
Knight, Kathleen, Ann Arbor
Kohlmeier, Pamela, Spokane
Koo, Youngmo, Seattle
Kornegay, Lindsay, Pleasanton
Kreymer, Rita, Woodmire
Krzan, Corey, Pasco
Kuenzi, Rachel, Washington
Kurtz-Kreshel, Paula, Seattle

L
La Fronz, Kimberly, Cranford
Laboda, Nicholas, Seattle
Lamo, Madeline, Seattle
Langbehn, Janice, Seattle
Lange, Kristen, Kirkland
Langley, Ashley, Arlington
Laponte, Nicholas, Woodinville
Latus, Victoria, Bellevue
Lawler, Christian, Sammamish
Lee, Chi-Yun, Bellevue
Lee, Ryan, Seattle
Leighton, Zachary, Spokane
Lerner, Noah, Lake Forest Park
Liebertz, Matthew, Peoria
Lieu, Tiffany, Lynnwood
Lumia, James, Seattle
Luton, Emma, Mountlake Terrace

M
Mackert, Anastasia, Seattle
Magness, Natasha, Mountlake Terrace
Mahrt, Brandon, Seattle
Maldonado, Lucio, Spokane
Matella-Manker, Karen, Vancouver
Malpicca, Lauren, Seattle
Malvich, H Scott, Seattle
Manne, Benjamin, Houston
Mark, Jenna, Seattle
Mark, Jacob, Spokane
Marquez, Chad Joseph, Portland
Marsa, David, Mill Creek
Marshall, Rachel, Renton
Marshall, Lester, Woodinville
Martes, Erik, Seattle
Martin, Courtney, Vancouver
Matsumoto, David, Seattle
Matyas, Steven, Renton
McCabe, Cord, Spokane
McCarthy, Rose, Saint Louis
McClendall, Jack, Seattle
McClure, William, Tacoma
McClure, Corinne, Arlington
McCrillis, Erin, Olympia
McDonald, Nicholas, Washington
McGrath, Anthony, Bremerton
McGuire, Megan, Silver Spring
McKenna, Devon, Redmond
McNulty, Stephanie, Seattle
McPhee, Bryce, Seattle
Melendez, Jerri, Seattle

Mendes, Sara, Los Angeles
Mengistu, Eyob, Seattle
Merginger, Catherine, Iowa City
Metzner, Corey, Seattle
Michel, Julia, Seattle
Mikolas, Bethany, Portland
Miller, Olivia, Woodburn
Mills, Autumn, Lacey
Montgomery, Andrew, Mount Vernon
Moon, David, Philomath
Moore, Patrick, Seattle
Moore, David, Seattle
Moreno, Michael, Tacoma
Morris, Kymesha, San Diego
Morton, Kristopher, Spokane
Moy, Katherine, Salt Lake City
Mriglot, Colleen, Suquamish
Mulat, Zachery, Bellingham
Mullen, Michael, Seattle
Mutisya, Winfred, Seattle
Myers, Alisha, Nine Mile Falls
Myers, Joseph, Deer Park

N
Nagi, Sanan, Olympia
Nguyen, Christina, Seattle
Nibarger, Meagan, Ravensdale
Nolta, Caleb, Tacoma
Nordstrom, John, Seattle
Notari, Melanie, Bellevue

O
Obenberger, Emily, Omak
Ogramic, Ivona, Tukwila
Olarsch, Maxwell, Chery Chase
Olson, Kyle, Puyallup
Olson, Courtney, Shoreline
Olson, Lauren, Lake Forest Park
O’Neil, Brendan, Seattle
Opler, Mary, Seattle
Oshiro, Kelly, Waipahu
Outland, Katrina, Tacoma

P
Palardy, Ryan, Seattle
Panjani, Madhura, Lacey
Papiez, David, Seattle
Parashar, Aneil, Vancouver
Pardue, Crystal, Seattle
Parent, Seth, Seattle
Parisky, Elizabeth, Los Angeles
Park, Ronald, Bremerton
Patton, Benjamin, Springfield
Payton, Michael, Newcastle
Pazzooki, Reza, Olympia
Pearson, Alex, Seattle
Pera Cozlak, Paula, Seattle
Perry, Spencer, North Bend
Perez-Vargas, Maricarmen, Seattle
Pfeilie, Anne, Seattle
Phillips, Sydney, Lynchburg
Pilat, Corinna, Maple Falls
Pitsch, Samantha, Seattle
Platt, Toban, Seattle
Pooj, Jersey, Seattle
Prakasa, Tara, Bothell
Pray, Steven, Kent
Pritchett, Alexa, Fresno
Pyrat, Nicole, Tacoma
Puckett, Jessica, Seattle
Punsalan-Teigen, Peder, Seattle
Quartararo, Margaret, Seattle
Quijias, Nicholas, Seattle
Quillin, Tyler, Kirkland
Quintana, Nico, Eugene
Raj, Vivek, Eugene
Ramey, Rachel, Oregon City
Ratfield, Garrett, Edgewood
Raymond, Hollyanne, Seattle
Reasoner, Renee, Washington
Rebagliati, Michael, Bellevue
Reeves, Kendall, Saint Louis
Reifer, Francesca, Redwood City
Reinertson, Joshua, Seattle
Reynolds, Dalton, Spokane
Reynolds, Grant, Spokane
Ricci, Andrew, Normandy Park
Richards, Adison, Wauna
Richardson, Jamie, Kent
Riddle, Charles, Elgin
Riddle, Taylor, Sumner
Riehl, Shane, Sausalito
Ritchie, Alexa, Ridgefield
Robbins, Maia, Seattle
Robbins, Andrea, Seattle
Roberts, Adam, Tacoma
Robinson, Alison, Seattle
Rodenberger, Casie, Blaine
Roth, Tyler, James, University Place
Rubinstein, Carl, Seattle
Ruiz, Susana, Renton

S
Sajjadi, Parisa, Bonney Lake
Sakoi, Zachary, Seattle
Sato, Kazuki, Tokyo
Satterberg, James, Normandy Park
Schilling, Nicole, Mercer Island
Schilling, Kaitlin, Spokane
Schirmer, Jonathan, Seattle
Schirmer, Zapata, Kirkland
Schouwiler, Frederick, Renton
Schroeder, Kyle, Seattle
Schuler, Eric, Puyallup
Seartes, Cassandra, Seattle
Sellers, Robert, Eugene
Sena, Drew, Seattle
Shaikh, Priscilla, Henderson
Shattuck, Katherine, Seattle
Shepherd, Jacqueline, Anchorage
Shi, Jonathan, Shoreline
Sherman, Eric, Seattle
Sieck, David, Coeur d’Alene
Simpson, Gregory, Seattle
Simpson, Benjamin, New Orleans
Sisco, Zachary, Camden
Skahan, Kelly, Seattle
Silva, Todd, Seattle
Smith, Samuel, Spokane
Smith, Zachary, Seattle
Speck, Stephen, Lexington
Spens, Linnea, Seattle
Steichen, Ashley, Seattle
Stencel, Haley, Lake Forest Park
Stenchever, Nicole, Woodinville
Sterk, Evan, Bellingham
Stevenson, Christopher, Seattle
Stickney, Patrick, Olympia
Stock, Sebastian, Seattle
Stokes, Andrew, Seattle
Storey, Charlotte, Seattle
Storts, Lori, Seattle
Sugano, Julie, Portland
Sullivan, Joseph, Spokane
Surratt, Markus, Seattle
Sutton, Catherine, Seattle
Swanson, Gaites, Seattle

T
Tanner, Michael, Graham
Thacker, Dalton, Puyallup

W
Wagstaff, Russell, Bainbridge Island
Wang, Keyi, Bellevue
Ward, Nicholas, Spokane
Watry, Kelsey, Tallahassee
Waxing, Danny, Seattle
Weaver, Amy, Bremerton
Wei, Ning, Seattle
Weidner, Christina, Woodinville
Weiss, Robin, Mercer Island
Westermeyer, Derk, Seattle
Wheat, Jeffery, Mercer Island
Whelan, Tana, Spokane Valley
Whidbee, Paige, Pullman
Willard, Jacob, Renton
Williams-Hall, Vanessa, Seattle
Wilson, Alex, Spokane
Wittman, Joshua, Seattle
Wittmann-Todd, Charles, Seattle
Wojcik, Theodore, Seattle

Woo, John, Seattle
Wootton, Whitney, Seattle
Wright, Emily, Seattle
Wright, Robert, Spokane
Wroston, Alec, Tacoma
Wyco, Samuel, Silverdale

Y
Yager, Chance, Seattle
Yhann, Stephan, Seattle
Yi, Kyu-Hee, Spanaway
Yoshiwara, Emily, Seattle
Young, Cameron, Seattle

Z
Zaworski, Jonathan, Seattle
Zhang, Na, Richmond
Zhang, Amy, Seattle
Zhou, Evangeline, Seattle
Zwick, Kassandra, Pullman
MANDATORY MALPRACTICE INSURANCE TASK FORCE

The Mandatory Malpractice Insurance Task Force issued an interim report with a tentative conclusion that malpractice insurance should be mandated for Washington-licensed lawyers, with specified exemptions (in Oregon, for example, exempted groups include government attorneys, in-house private-company attorneys, and others). The task force’s preference thus far is to mandate a minimum level of coverage, purchased through the open marketplace. Before its final report is due in early 2019, the task force will focus on details (what exemptions? what minimums?) for rule drafting. Members are encouraged to read the interim report and provide comments to insurancetaskforce@wsba.org. (Please note: Limited License Legal Technicians and Limited Practice Officers are already obligated to show proof of financial responsibility, which is typically established by certifying malpractice insurance coverage.) To read the interim report and task force minutes and resources, go to www.wsba.org/insurance-task-force.

OPPORTUNITIES FOR SERVICE

VOLUNTEER CUSTODIANS NEEDED

The WSBA is seeking interested lawyers as potential volunteer custodians under Rule for Enforcement of Lawyer Conduct (ELC) 7.7. 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 or disbarred, or dies or disappears, and no person appears to be protecting the client’s interests. The custodian takes possession of the necessary files and records and takes action to protect the client’s interests. The custodian may act with a team of custodians and much of the work may be performed by supervised staff. If the WSBA is notified of the need for a custodian, the WSBA would affirm the willingness and ability of a potential volunteer and seek his or her appointment as custodian. Costs incurred may be reimbursed. Current WSBA members of all practice areas are welcome to apply. Contact Sandra Schilling at sandras@wsba.org, 206-239-2118 or 800-945-9722, ext. 2118; or Darlene Neu mann at dartenen@wsba.org, 206-733-5923 or 800-945-9722, ext. 5923.

IMPORTANT DATES

• DEC. 31, 2018: Licensed legal professionals in the 2016-2018 reporting period must complete required MCLE credits.
• FEB. 1, 2019: Deadline for requesting the one-time License Fee Hardship Exemption.
• FEB. 1, 2019: License renewal, payment(s), and MCLE certification, if applicable, must be completed online, postmarked, or delivered to WSBA.

WSBA BUDGET

WSBA’s 2019 budget is available at www.wsba.org/about-wsba/finances. The budget was approved at the Board of Governors September meeting before the end of the WSBA fiscal year. To learn more about the WSBA FY19 budget, and the programs and services that it supports, visit www.wsba.org/about-wsba/finances.

Need to Know

News and information of interest to WSBA members. Email nwlawyer@wsba.org if you have an item you would like to share.

WSBA NEWS

2019 LICENSE RENEWAL AND MCLE
Renew your license and certify MCLE compliance on my-wsba.org—it’s easy. License renewal must be completed by Feb. 1, 2019. A 30 percent late-payment fee will apply if the annual license fee remains unpaid after that date.

Certify MCLE Compliance. If you are in the 2016-2018 reporting period, then you are due to report CLE credits and certify MCLE compliance. The deadline for completing credits is Dec. 31, 2018. The certification must be completed online, postmarked, or delivered to the WSBA by Feb. 1, 2019. A late fee will apply if either deadline is missed. Visit wsba.org/MCLE to learn more.

Judicial Status. Please note that you are required to inform the Bar within 10 days of your retirement or your ineligibility for judicial status (and you must apply to change to another status or to resign). Visit wsba.org/licensing to learn more.
ACCESS TO JUSTICE CONFERENCE
Save the date for the 2019 Access to Justice Conference, to be held June 14–16, 2019, at the Spokane Convention Center. Information will be posted to the Alliance for Equal Justice website, www.allianceforequaljustice.org, as it becomes available.

WSBA 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 advance 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. To register, please log on to your myWSBA account, go to “My WSBA Profile” and select “CLE Faculty Database Registration.”

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.

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 are available to act as mentor. Mentorship programs that meet requirements are eligible for MCLE credits. 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.

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 Rules of Professional Conduct (RPC). 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/for-legal-professionals/ethics/about-advisory-opinions. 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 MEMBER WELLNESS PROGRAM
WSBA Connects provides free counseling in your community. All bar members are eligible for three free sessions on topics including work stress, career challenges, addiction and anxiety, as well as other issues. Upon calling 1-800-765-0770, a telephone representative will arrange a referral using KEPRO’s network of clinicians throughout the state of Washington. There is no need to let problems build up unnecessarily. We hope you make the most of this valuable resource.
CAREER CONSULTATION
Want someone at WSBA to take a look at your résumé? Or maybe you want to brainstorm approaches to networking. The job search requires a game plan. We are happy to set up a time to speak. Email wellness@wsba.org.

WEEKLY JOB GROUP
The Weekly Job Group offers strategy and support to unemployed or dissatisfied attorneys. This is a chance to upgrade your job search with trainings on networking, using technology in the job search, informational interviewing, identifying your ideal career, elevator pitches, and résumé review. The group meets for seven weeks at the WSBA offices on Thursdays at 9:30 a.m. beginning Jan. 1, 2019. Sign up at: tinyurl.com/ybhtrxc.

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 12:15-1:30 p.m. at the Skinner Building at 1326 Fifth Ave., 7th Floor, Seattle. If you are seeking a Peer Advisor to connect with and perhaps walk you to this meeting, the WSBA Member Wellness Program can arrange this; call 206-727-8268.

LENDING LIBRARY
The WSBA Lending Library is a free service to WSBA members offering the short-term loan of books on health and well-being as well as the business management aspects of your law office. You can view available titles and arrange for a book loan by visiting www.wsba.org/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.

GET DISCOUNTS ON NEW SOFTWARE AND SERVICES
Looking to build up your practice? Visit the Practice Management Discount Network for discounts on tools to help you improve your legal service delivery—featuring practice management software, credit card processing, and more. Visit www.wsba.org/discounts to get started.

FREE LEGAL RESEARCH TOOLS
WSBA offers resources and member benefits to help you with your research. Learn more and get started at www.wsba.org/legalresearch. You can conduct legal research for free using WSBA member benefit tool, Casemaker. In January, Casemaker is scheduled to upgrade to a new and enhanced platform! Stay tuned for more announcements and opportunities for training. In addition, over the next few months WSBA will be introducing a second member benefit tool: Fastcase. Fastcase is a next-generation legal research service that provides powerful data visualization to help you understand your research results. Watch for upcoming news in NWLawyer and a launch date coming soon!

USURY RATE
The maximum allowable usury rate can be found on the Washington State Treasurer’s website at www.tre.wa.gov/partners/for-state-agencies/investments/historical-usury-rates-archives/.
Resignation in Lieu of Discipline

**Michael John Siefkes** (WSBA No. 31057, admitted 2001) of Fairview, resigned in lieu of discipline, effective 9/20/2018. The lawyer agrees that he is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.5 (Fees), 8.1 (Bar Admission and Disciplinary Matters), 8.4 (Misconduct). Kathy Jo Blake acted as disciplinary counsel. Michael John Siefkes represented himself. The online version of NWLawyer contains a link to the following document: Resignation Form of Michael John Siefkes (ELC 9.3(b)).

**Paul H. Williams** (WSBA No. 31684, admitted 2001) of Yakima, resigned in lieu of discipline, effective 9/17/2018. The lawyer agrees that he/she is aware of the alleged misconduct in disciplinary counsel’s Statement of Alleged Misconduct and rather than defend against the allegations, he wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.15A (Safeguarding Property), 8.4 (Misconduct). Francesca D’Angelo acted as disciplinary counsel. Paul H. Williams represented himself. The online version of NWLawyer contains a link to the following document: Resignation Form of Paul H. Williams (ELC 9.3(b)).

Suspended

**William Clay Budigan** (WSBA No. 13443, admitted 1983) of Seattle, was suspended for 60 days, effective 10/22/2018, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.7 (Conflict of Interest: Current Clients), Natalia Skvir acted as disciplinary counsel. Kurt M. Bulmer represented Respondent. Andrekita Silva was the hearing officer. Douglas Vanscoy was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation to 60-Day Suspension; Stipulation to Suspension; and Washington Supreme Court Order.

**Harry Holloway III** (WSBA No. 2536, admitted 1971) of Port Townsend, was suspended for 30 Months, effective 9/19/2018, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 8.4 (Misconduct). Joanne S. Abelson acted as disciplinary counsel. Leland G. Ripley represented Respondent. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation to 30-Month Suspension; Stipulation to Suspension; and Washington Supreme Court Order.

**Robert Joseph La Rocco** (WSBA No. 42536, admitted 2010) of Bellingham, was suspended for two years, effective 9/19/2018, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 1.5 (Fees), 1.16 (Declining or Terminating Representation), 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), 4.1 (Truthfulness in Statements to Others), 5.3 (Responsibilities Regarding Non-lawyer Assistants), 8.4 (Misconduct). Benjamin J. Attanasio and Linda B. Eide acted as disciplinary counsel. Robert Joseph La Rocco represented himself. Randolph O. Petgrave, III was the hearing officer. Keith P. Scully was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Amended Decision; Disciplinary Board Recommendation; and Washington Supreme Court Order.

Interim Suspension

**Noel James Pitner** (WSBA No. 36158, admitted 2005) of Spokane, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 10/23/2018, by order of the Washington Supreme Court. This is not a disciplinary sanction.

Transfer to Disability Inactive Status

**Calli Lynn Hisey** (WSBA No. 49748, admitted 2015) of Vancouver, was by stipulation transferred to disability inactive status, effective 9/13/2018. This is not a disciplinary action.

**Stacy Kinzer** (WSBA No. 31268, admitted 2001) of Redmond, was by stipulation transferred to disability inactive status, effective 9/13/2018. This is not a disciplinary action.
Davies Pearson, P.C. is pleased to announce that Richard B. Keeton has become an Associate of the firm and will practice in the areas of employment law, creditor’s rights, commercial litigation, and general business. He comes to Davies Pearson after completing a two-year term clerkship with the Honorable Christopher M. Alston at the U.S. Bankruptcy Court for the Western District of Washington at Seattle. Mr. Keeton attained his J.D. at Texas Tech University School of Law and his LL.M. at University of Washington School of Law.

(253) 238-5146 | rkeeton@dpearson.com
920 Fawcett Ave | PO Box 1657 | Tacoma, WA 98401
Tel: 253-620-1500 | Fax: 253-572-3052
www.dpearson.com

Floyd, Pflueger & Ringer, P.S. is pleased to announce that Linnea Spens, M.D. has joined the firm as an Associate. Linnea Spens is board certified in general surgery and worked at a busy community-based high-level care center prior to attending Seattle University School of Law. She also worked at critical access hospitals on the Navajo reservation and volunteered abroad in Central America. In addition to completing a residency in general surgery, she also completed a general pediatric internship.

Floyd, Pflueger & Ringer’s diverse litigation team emphasizes defense of complex civil litigation matters, including medical malpractice and professional liability, retail and premises liability, construction claims (defect and injury), fire and catastrophic events response, employment law and transportation.

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Strata Law Group, PLLC is pleased to announce that Eliza Whitworth has joined our family law firm. Eliza began her legal career in 2016 after graduating with honors from Seattle University School of Law. Following graduation, Eliza completed a two year clerkship with Acting Chief Judge David S. Mann at the Washington State Court of Appeals, Division I. Eliza is passionate about pursuing a career in family law, and is committed to providing creative and practical advocacy for her clients.

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Bar No. 46124
Law School: Washburn University School of Law, Topeka, Kansas

I AM LAURA COUGHLIN.
I was born to an American mother and Mexican father, who was an illegal immigrant. I am a first-generation college graduate and lawyer. I am the managing attorney for Wright, Finlay and Zak, LLP. Our firm handles real estate and mortgage servicing litigation and compliance matters. For fun I like to bake and spend time with my Boston terrier, Loki.

I became a lawyer because I took a job in the mailroom of a law firm while still an undergraduate at UW and became hooked when I moved up to being a paralegal a few months later.

My greatest talent as a lawyer is trial advocacy.

My greatest accomplishment as a lawyer is becoming the managing attorney of my firm’s Washington location within five years of being licensed.

The best advice I have for new lawyers is NETWORK!

The most rewarding part of my job is reaching an amicable resolution to a litigated matter.

The most memorable trip I ever took was during law school, while I was studying abroad. I traveled with friends around the southern coast of Ireland for a week or so and was able to see where the Irish side of my family came from.

I look up to my grandmother. She is the most logical, no-nonsense woman and still going strong at 95!

I absolutely can’t live without Loki, my Boston terrier.

I have recently tried dragon boat racing—it was really fun!

I enjoy reading true crime.

My best recipe I make at home is chocolate chip cookies or cheesecake.

My favorite place in the Pacific Northwest is Cape Alava on the coast.

I grew up in Toutle, WA. (Yes, it still exists after Mt. St. Helens erupted.)

My fondest childhood memory is getting into a food fight with my mother and brother at a KFC.

Friends would describe me as funny, loyal, and stubborn.

I regret not doing a study abroad while I was pursing my undergraduate degree.

This is on my bucket list: To see the northern lights and to take my mother to Ireland.

This makes me smile: Spending time with my MANY nieces and nephews.

My idea of misery is being forced to listen to electronic dance music.

My motto is “Life is but a dream within a dream.” — Edgar Allan Poe.

My favorite restaurant is Din Tai Fung.

If I had a time machine, I would travel to the 1920s.

My favorite visual artist is Keith Haring.

My first car was a 1993 Toyota Tercel.

My all-time favorite movie is Dumb and Dumber.

If I have learned one thing in life, it is that there is no point in stressing over something you cannot control.

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