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Kurt comes to the firm after a distinguished career at the United States Attorney’s Office, where he focused on complex crimes involving securities, banking, accounting, tax, insurance, real estate, government contracting, health care, environmental matters and international issues. He is now using his trial and appellate experience to help individuals and businesses avoid prosecution, cooperate with authorities when appropriate, and defend them in litigation if charges are filed.

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Diversity — Left and Right
There have been recent letters and comment in NWLawyer about diversity. Diversity is not diversity these days but a code word for fidelity to left wing politics, the Democratic Party, the New York Times philosophy, whatever amalgam of left-oriented political views you would like to name. Real diversity is a frictional colloquy with Republicans, conservatives and federalists, whatever amalgam you like. This is a political issue, not a first amendment issue, so it isn’t necessary to say just how diverse the WSBA should be, looking both to the left and the right. We have now a deep schism today between people of the left and right. Real diversity means closing that schism and saving our country.

Roger B. Ley, Astoria, OR

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See your name in lights (well, in ink, anyway) in NWLawyer! If you have an article of interest to Washington lawyers or a topic in mind, we’d love to hear from you. Need a topic? We have a list of subjects we’d like to cover. For a how-to guide on writing an article for NWLawyer, email nwlawyer@wsba.org. NWLawyer relies almost entirely on the generous contribution of articles from WSBA members and others.

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Time flies

This year, we are celebrating WSBA’s 125th birthday. I would imagine the organization is flattered, but also worrying that it’s getting old. I can relate. I looked around the other day and realized I’m getting old, too. Everything around me is getting old. My car is about to hit 100,000 miles, my cat is on geriatric kibble; even my kids are getting old. I have a grandchild scheduled to appear this summer.

Seven years ago, I wrote a column in these pages about turning 50. Even with my age-added brain, I don’t need a calculator to figure out that makes me — uh — 57 or something. That’s nearly the lifespan of a woolly mammoth, and those things were almost indestructible.

Of course, I’m hardly the only prehistoric mammal in this profession. According to the 2012 WSBA membership survey, 51 percent of members were 50 or older. You know what that means, right? Over half the Bar either already owns or will soon buy a yellow Corvette. Seriously, the study also revealed that over half of the Bar’s members were planning to retire or otherwise leave or reduce their participation in the profession within the ensuing five years. I happen to agree with those who doubt that so many lawyers actually will leave that soon, as it is notoriously difficult to get a lawyer to leave anywhere. Nevertheless, a tremendous challenge and opportunity awaits you younger Bar members when the rest of us pack up our carbon paper and daisy wheel printers and hand this whole business over to you.

I was brainstorming with some people recently about topical themes to consider for future issues of NWLawyer. One person suggested elder law, an idea immediately met by a comment that the very term “elder law” is soporifically boring. I believe it is an increasingly important field of practice, not just because we all likely have clients in that category, but also because our own parents are affected by elder law issues right now, as we will be directly in a few years. I was reminded of this quite personally last fall, when my mom was involved in a car accident and needed my help to deal with the medical and financial consequences. The longer you live, the more you appreciate that life goes by in a flash and can vanish in an instant.

Speaking of life flying by, mine has flown by so far without my getting to experience something I’ve wanted to do since even before I became a lawyer: serve on a jury. I’ve been called for jury duty several times but I’ve always been bumped, as lawyers almost always are. I suppose the next best thing is to hear firsthand from a lawyer who made it on to a jury. You get to do just that in “A View from the Box” (p. 22) by Seattle lawyer Bennett Taylor, who served in the box recently for the trial of a domestic violence case. His observations are especially enlightening for trial lawyers wondering how to make their performances more effective for jurors.

As part of our year-long coverage of the Bar’s 125th anniversary, Seattle lawyer and WSBA Editorial Advisory Committee member James W. Gayton checks in with profiles of two extraordinary Washington legal pioneers: Carl Maxey (p. 33) and John T. Gayton (p. 32), to whom the author believes he is unrelated. The next time you feel like whining about the hardships you faced in getting to law school, consider the plight of Maxey, who grew up during the Great Depression and was abandoned twice as a child. He responded by winning the NCAA light-heavyweight boxing championship and becoming the first African-American in eastern Washington to pass the Washington bar exam. He went on to become a trailblazing civil rights lawyer. Or, looking even further back in history, consider the accomplishments of John Gayton, the son of slaves from Mississippi. He arrived in Seattle in 1889 as the coachman of a white physician. Although not a lawyer, Gayton worked his way up to employment in the federal courts, where he worked for 50 years, including 20 as the Federal Court librarian. Likewise, his descendants went on to stellar careers in law and other professions.

Meanwhile, of interest regarding more recent history is a heartfelt brief biography and personal tribute by trial lawyer and former WSBA President Paul Stritmatter to the late Washington Supreme Court Justice Robert Utter, found on page 24.

And finally, speaking of getting old, the publication you are holding can trace its roots back to 1888. Find out about “A Brief History of WSBA’s Official Publication” on page 40.
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Pitfalls of Colorblindness

As we celebrate Black History Month, with a backdrop of recent events around the country that challenge us all on the dynamics of being black in America, it is important to remember that the goal is race inclusion, not race invisibility. As such, I present to you an article from WSBA Governor Elijah Forde with a challenge for all of us. — A.D.G.

BY ELIJAH FORDE

Since moving to Washington state from the East Coast, I have had several well-meaning, intelligent people tell me they do not see color. This is always said in a way clearly intended to put me at ease, or establish that the speaker harbors no ill will towards me because of my color. While I appreciate the sentiment, I am always disturbed by this comment and those like it. There is nothing inherently wrong with noticing that I am black, because there is nothing wrong with being black. There is something wrong with assigning negative characteristics to me because of my race, or making assumptions based on my race. There is also something wrong with looking past my race and looking past all of the experiences I have had because of it. These experiences are part of what makes me, me. If you do not see my race, how can you even truly see me? Race nullification is not any better than racism.

I posit that there is in fact more harm done by looking away from race than by acknowledging and confronting it. If we understand that race is a social construct, rather than a biological construct, it can be socially deconstructed. However, deconstructing race, and the implicit bias that goes along with it, requires action; it requires us to see. Without seeing and acknowledging difference, we are unable to measure, assess, and correlate different experiences and different real-world problems. Being “colorblind” will also make you blind to racism, privilege, and institutional bias.

I know there are those who say they have diversity fatigue and they are tired of talking about race, as if we have achieved a post-racial society. To those people, I say I do not have the privilege to be fatigued, and there is no such thing as a post-racial America. I cannot, nor do I want to, look away from my blackness. I have had negative and sometimes scary encounters due to my race: at school, with traffic stops, at the workplace, in court appearances, and even during a simple trip to a gas station in an unfamiliar town. As a black man, I do not have the privilege or the luxury to be colorblind, because to do so would make me imprudently vulnerable. Being colorblind certainly does nothing to stop confrontations around race from happening. Stating that you are colorblind is the equivalent of burying your head under the covers and pretending that since you cannot see the monster, the monster somehow does not exist. So for those of you who have the privilege to look away, I implore you not to. People of color cannot, and should not, be the only ones bearing the burden of confronting and eliminating racism and implicit bias. We have been laboring under the weight of this struggle for generations. We need allies if this long-standing struggle against racism will ever be won. You can only be an ally if you see that the same privilege that allows you to be colorblind is the same privilege you can use in the fight against racism and bias.

So how do you become an ally? Well, here are three not-so-simple steps.

1. Do not handicap yourself with colorblindness. You will never be able to confront race/racism if you cannot see it. And seeing race is important for cultural competency as a professional who works with different peoples.

2. Acknowledge the power of privilege. Failing to acknowledge privilege enables the negative dynamics of implicit
bias to flourish. Furthermore, if you do not acknowledge privilege (your privilege and the privilege of others), you cannot use it effectively to help solve problems.

3. Use privilege in tangible ways that ensure that all people are treated fairly regardless of the color of their skin.

Looking at our own Board of Governors provides an excellent example of how progress is possible with consistent and deliberate effort. The State Bar has been in existence for 125 years. If you have ever been to the Bar offices, you probably have noticed that there are photos lining the walls documenting 125 years of WSBA leadership. One thing that always strikes me about these photos is how homogenous everyone looks and for how long this sameness lasted. There are decades’ worth of photos where everyone is the same race and gender. And then in the 1970s and 1980s, things began to change. Women and people of color began to appear on the walls as well. Within these last three to four decades (basically my lifetime), the Bar has seen tremendous change. Lem Howell became the first black person to serve on the Board of Governors, Ron Ward became the first black president, a diversity at-large position was created, and a diversity and inclusion plan was implemented. The Bar Association and the profession have been enriched by all of these changes.

In 2010, the Board of Governors convened and voted on a definition for diversity. According to the Board, “diversity” refers to meaningful representation of and equal opportunities for individuals who self-identify with those groups that are under-represented in the legal profession based upon, but not limited to, disability, gender, age, familial status, race, ethnicity, religion, economic class, sexual orientation, gender identity, gender expression, and geographic location. By defining diversity in this manner, the Board of Governors, and by extension the Bar Association, made a commitment to be an ally in diversity efforts. The Board acknowledged that historic under-representation of certain people in the profession remains a problem that needs to be remedied. This definition also demonstrates that the Board was aware that recognizing race is a critical step.

It has been only four years since the Board voted on that definition. Today, the Board of Governors has the largest majority of minority members in the organization’s history. In spite of the gains of the last few decades, one only has to look at the 2012 membership study to know that the Bar Association, and the legal profession as a whole, has a long way to go. However, the Bar is demonstrating a willingness to see that problems persist and to make tangible deliberate efforts to change. People of color like Lem Howell and Ron Ward were willing to be the trailblazers and clear a path for others like myself. Continued efforts from all parties will allow us to move that much closer to a society where, as Haile Selassie said, “the color of a person’s skin is of no more significance than the color of their eyes.” But as Ta-Nehisi Coates cautioned, the goal is not to eliminate race from our culture, but to eliminate race-based bias.

We have not yet achieved a society that can recognize, confront, and eliminate the bias that goes along with race, but I am hopeful that we eventually will. The Board’s process of confronting the effects of racism and making conscious decisions to strive for diversity is a process that can be replicated on an individual basis. If an organization as old as the Bar Association can make change and reject colorblindness in favor of inclusive color vision, then so can we as individuals. In a society where racial bias continues to exist, colorblindness is not a luxury we can afford. Change means challenge, and we cannot hope to successfully challenge that which we cannot see. So for this Black History Month, I challenge you to see. NWL.

Robert V. Boeshaar
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Elijah Forde is the managing partner at Atlas Law, PS, where he focuses on securing benefits for injured workers. In his spare time, he enjoys giving back to the community. He is currently the immediate past president of the Loren Miller Bar Association, WSBA governor for the Ninth District, and an Eagle member of the Washington State Association for Justice. Contact him at elijah@atlaslawps.com.
On the Right Course

by WSBA Treasurer Ken Masters

In this, my inaugural article, I want to first thank my fellow governors for honoring me with their unanimous support to serve as your treasurer. It has been my pleasure to serve on the Budget and Audit Committee of the Board of Governors for the past three years. And I particularly thank my immediate predecessor, Brian Kelly, for his outstanding leadership as your treasurer last year. I look forward to serving you for the remainder of the 2014–15 season.

During my term, the Board will make important decisions about WSBA facilities, CLE programming, and the FY16 budget, among other things. Throughout the year, I hope to provide insight and solicit your feedback on these and other fiscal issues that face the organization. This column summarizes our most recent annual audit results.

At the end of each year, the WSBA engages an independent certified public accounting firm to audit our financial statements. In addition to verifying financial statement accuracy, the auditors review, analyze, and test internal controls over reporting, management oversight, and various systems related to the WSBA’s finances and overall operations of the organization.

The Budget and Audit Committee reviewed the Fiscal Year 2014 year-end financial results at its January 2015 meeting. As in prior years, the WSBA received an “unmodified opinion” for the fiscal year ended Sept. 30, 2014. No adjustments were made, no material weaknesses were noted, and no management letter was issued. The results of this very positive audit indicate that the WSBA’s finances are well managed and accurate in all material aspects.

As you can see from the above audit and budget results, we have outstanding staff support at the Washington State Bar. Under the leadership of WSBA Executive Director Paula Littlewood and Chief Operations Officer Ann Holmes, and with frankly amazing support from our controller, Tiffany Lynch, and the rest of our staff, the Bar has weathered some difficult times and made fiscally responsible cuts to ensure our continued financial stability. We are not completely out of the woods — and we know that our members continue to struggle into full recovery in an ever-changing environment — but we are on the right course.

Thank you for reading this. I look forward to any questions or feedback that you may have. NWL
SHOULD CRANE SWING AGREEMENTS COST MONEY?

by John P. Ahlers and Lindsay K. Taft

The recent Pacific Northwest construction boom has caused our cities’ skylines to again be littered with tower crane booms. While some neighboring properties have sought to capitalize on this, demanding compensation or temporary “airspace use” agreements for the crane boom’s trespass into their airspace, such demands are not founded on a sound legal basis. This article addresses the legal positions and proposes responses to avoid unnecessary litigation or increased construction costs.

Temporary Crane Boom Swings Are Not a Trespass

A trespass is defined as an intrusion or invasion of tangible property, either real or personal, which interferes with the possessor’s interest in the right of exclusive possession of the property. Instead, the Supreme Court rejected vertically infinite. In 1946, however, the Supreme Court held the property owner “at least as much of the airspace above the ground as he can occupy or use in connection with the land.” Id. at 261. It is clear from the Causby decision that a landowner still owns sufficient airspace to erect buildings, plant trees, and run fences, but the U.S. Supreme Court has not defined an upper limit. Similarly, the Federal Court of Appeals Ninth Circuit stated, “[t]he owner of land owns as much of the space above him as he uses, but only so long as he uses it.” Hinman v. Pac. Air Lines Transp. Corp., 84 F.2d 755, 758 (9th Cir. 1936).

In the construction context, despite Seattle, Tacoma, and Bellevue’s numerous tower crane projects over the years, no Washington case directly addresses air rights with respect to tower cranes or other temporary invasions into a neighbor’s space. The case law from other state and federal jurisdictions is sparse at best. That said, there are two theories typically relied upon when asserting intrusions into another’s airspace: trespass and nuisance. Although similar (often an intrusion can constitute both a trespass and a nuisance), the primary distinction between the two is the legal right protected: 1) trespass law protects the exclusive possession of property, and 2) nuisance law protects use and enjoyment. Finally, without evidence of actual or imminent damage as a result of the crane’s presence, an injunction on either of these grounds is unlikely.

Historically, property owners have relied on the Latin legal maxim cujus est solum, which roughly translates to “for whoever owns the soil, it is theirs all the way up to Heaven and down to Hell”...

Ower cranes are a ubiquitous part of the Puget Sound metropolitan skyline. A visual barometer of the construction market’s health, the operation of crane booms poses an interesting legal question: When the crane’s jib (the horizontal boom) swings over neighboring properties, does this intrusion constitute a trespass or nuisance, entitled to the neighbor to compensation or perhaps a trespass or nuisance, entitling the properties, does this intrusion constitute a trespass or nuisance, entitled to the neighbor to compensation or perhaps even an injunction halting the project? The short answer is likely “no” — not in the Pacific Northwest.

Historically, property owners have relied on the Latin legal maxim cujus est solum, which roughly translates to “for whoever owns the soil, it is theirs all the way up to Heaven and down to Hell.”

The doctrine has no place in the modern world... Common sense revolts at the idea. To recognize such private claims to the airspace would clog these highways, seriously interfere with their control and development in the public interest, and transfer into private ownership that to which only the public has a just claim.

United States v. Causby, 328 U.S. 256, 260-61, 66 S. Ct. 1062, 1065, 90 L.Ed. 1206 (1946). Instead, the Supreme Court held the property owner “at least as much of the airspace above the ground as he can occupy or use in connection with the land.” Id. at 261. It is clear from the Causby decision that a landowner still owns sufficient airspace to erect buildings, plant trees, and run fences, but the U.S. Supreme Court has not defined an upper limit. Similarly, the Federal Court of Appeals Ninth Circuit stated, “[t]he owner of land owns as much of the space above him as he uses, but only so long as he uses it.” Hinman v. Pac. Air Lines Transp. Corp., 84 F.2d 755, 758 (9th Cir. 1936).

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causes ascertainable and demonstrable effects on the landowner). For example, in Causby, a chicken farm’s owners sought relief from the government for low-flying planes taking off from a neighboring municipal airport. Causby, 328 U.S. at 258–59. The farm owners claimed the noise and lights from the aircraft caused the couple loss of sleep, nervousness, and fright. Id. Additionally, the chickens’ egg laying declined and frightened chickens frequently killed themselves by flying into walls. Id. The Supreme Court, although recognizing that airspace is a public highway and private claims to airspace would interfere with the control and development of the public interest, held that the government’s use of the airspace rendered the farmer’s property uninhabitable. Id. at 261, 264. Notably, however, the Supreme Court declined
to assert a specific vertical demarcation of public and private airspace, stating “[t]he airspace, apart from the immediate reaches above the land, is part of the public domain. We need not determine at this time what those precise limits are.” Id. at 264.

In contrast to aircraft traffic, a crane’s occasional passing over a building during construction does not render the underlying property uninhabitable. Rather, these cranes typically pass over the building with no interference, significant noise, or impact whatsoever to the underlying building. Surely, the passing of cranes would not cause the neighboring buildings’ inhabitants vexation to the point of suicide. Therefore, unlike the planes in *Causby*, it is likely a court would find that a crane passing over a neighboring building does not interfere with the use and enjoyment of the land or render it “uninhabitable.” Therefore, under the “enjoyment and use” test, it is unlikely a court will find a crane passing an actionable trespass.

### Crane Passage Is Temporary and Fleeting

In the context of airborne pollution cases, relevant case law requires that the impacts of the trespass be permanent to be actionable. For example, although a Washington court has recognized a trespass cause of action where airborne pollutants are deposited on neighboring property, the court made a distinction between permanent and temporary intrusions, holding a temporary intrusion does not constitute a trespass.²

Similarly, in two analogous cases to cranes, two courts from other states have rejected a trespass claim for temporary scaffolding which allegedly was imposing on a neighbor’s air rights and property line during minor construction work. See *Geller v. Brownstone Condo Ass’n*, 82 Ill. App. 3d 334, 402 N.E.2d 807 (1980) and *Slotoroff v. Nassau Associates*, 178 N.J. Super. 292, 428 A.2d 956, (Ch. Div. 1980). In *Geller*, the Illinois appellate court distinguished the scaffolding and its lack of future impact from various other acts of actual and present intrusion, holding that “[d]efendants’ use of temporary scaffolding in the air and space above that residence cannot be deemed actionable.” 82 Ill. App. 3d at 337. Likewise, in *Slotoroff*, a New Jersey court held that a “defendant’s temporary use of the airspace for the purpose of resurfacing its neighbor’s wall is not a trespass and is not subject to restraints.” 178 N.J. Super at 292. The Court, however, cautioned that the scaffolding must remain temporary and that the “dropping of tools or materials, the falling of the scaffold and any other actual interferences with the actual use of the property are trespasses which may be the subject of damage claims and injunctive relief.” Id. at 295.

Here, construction cranes, construction scaffolding, and air pollution share some similarities. All three are utilized for limited time periods and have nominal impact on neighboring properties. Undisputedly, as in *Slotoroff*, should the crane drop tools, materials, or parts
onto the neighboring property, this type of actual interference constitutes a trespass. When the crane jib temporarily passes over the property, however, as it swings materials during the limited construction (again temporary) of the neighboring property without causing any damage or permanent invasion of the neighboring property, such an action is not a trespass and consequently not subject to restraint.

**Crane Passage Does Not Cause Substantial Damage**

The *Bradley* case also focuses on the third prong of the analysis, emphasizing that, under the modern theory of trespass, the plaintiff must prove “substantial damage to the res [i.e., property].” *Bradley*, 104 Wn.2d at 695. Accordingly, the Washington Supreme Court held that it was inappropriate in airborne pollution cases to follow the common-law rule that trespass entitles a landowner to recover nominal or punitive damages for invasion of property without proof of substantial harm. For example, in the case of airborne pollution, no useful purpose would be served by sanctioning actions in trespass to every landowner within 100 miles without those landowners demonstrating any damage. *Id.* at 692. Further, “[m]anufacturers would be harassed and the litigious few would cause the escalation of costs to the detriment of many.” *Id.* *Bradley* demonstrates the willingness of courts to refashion common-law trespass to accommodate unique factual issues and limit the scope of a defendant’s liability even in the case of an intentional trespass.

In Washington, one of the only examples of an award of nominal damages for trespass is *Keesling v. City of Seattle*, 52 Wn.2d 247, 324 P.2d 806 (1958). In that case, the Washington Supreme Court found that the six-inch overhang of a crossarm of a telephone pole constituted a technical trespass, but reduced the trial court award of damages to $1 because the plaintiffs were not damaged by the trespass. No reported Washington case has approved of imposing punitive damages in a simple trespass or nuisance action.

The requirement of substantial damage to the property will likely have significant bearing on a crane trespass because similar to the air pollution, there is, more often than not, no interference with the land over which it passes. Further, the *Bradley* case’s comment regarding the potential litigation impacts is highly relevant in the construction crane context. For a court to hold that a neighbor can, without evidence of any damage to its property, seek sanctions for trespass, the litigious few would cause the escalation of costs to the detriment of many. For example, contractors bidding on jobs which require crane usage in urban areas would be forced to incorporate the costs of obtaining air use agreements or potential litigation costs into their bids, to the detriment of the bidders and the owners of the property to be improved. Moreover, in the context of public works projects, these costs will undoubtedly be passed along to tax-

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Sanju received his J.D. from Stanford Law School, and his B.A. and M.A. from the University of California at Berkeley.

We would like to thank Dave Chen, Stephen Babson, Steve Hedberg, Henry Hewitt, The Honorable Judge Henry Breithaupt and Thad Grace for helping get Sanju to the Firm.

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payers. It is unlikely a court will agree to transfer these costs — which will be paid to a landowner who has notably not demonstrated any damage — to taxpayers or other entities. Instead, the only logical conclusion, as seen in Bradley, is to require property damage before the court is in a position to compensate the neighboring landowner.

The Crane’s Boom Swing Does Not Meet the Definition of Nuisance

In contrast to a trespass, nuisance law protects the plaintiff’s right to use and enjoy its property without an “unreasonable interference.” Specifically, Washington’s nuisance statute defines an actionable nuisance for which damages and other relief are available as “whatever is injurious to health or indecent or offensive to the senses, or an obstruction to the free use of property, so as to essentially interfere with the comfortable enjoyment of the life and property.” Thus, an action for nuisance requires the court to employ a balancing test: whether there has been an unreasonable inference versus whether that unreasonable interference impacted the owner’s use and enjoyment of the property. This, however, is a very fact-specific process, varying significantly on a case-by-case basis.

In Washington, there is a line of cases addressing the interference with a landowner’s use and enjoyment of his property caused by airports in the taking/inverse condemnation context. Generally, the courts treat these claims as nuisances (or condemnation-by-nuisance), rather than trespasses, and require proof of interference with the use and enjoyment of the plaintiff’s property or some tangible injury. For example, a structure’s interference with a view alone is insufficient to constitute an actionable nuisance. See Collinson v. John L. Scott, Inc., 55 Wn. App. 481, 485, 778 P.2d 534 (1989). Therefore, if addressed by Washington courts, the occasional blocking of someone’s view or passing over of property through the air (i.e., property that is not being used) by the crane jib will also likely not constitute a nuisance as there is no actual interference with the property.

Ultimately, the essence of a nuisance claim is proof that the defendant’s activities are “unreasonable.” The momentary passing of a crane jib for over a landowner’s realty during a limited
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Without Irreparable Harm, There Is No Basis for an Injunction

Finally, the most fear-inducing request for relief a property owner may make is for an injunction against further operation of the crane. This legal process can be fraught with legal costs and, more importantly, hold up critical and time-sensitive project work, potentially subjecting a contractor to significant time-related costs, including liquidated damages. Without demonstrating imminent damage will be caused by the crane, however, a neighbor’s attempt at obtaining an injunction, ejectment will be very difficult.

To obtain an injunction against the contractor’s use of a crane, a landowner must establish: 1) she has a clear legal or equitable right, 2) she has a well-grounded fear of immediate invasion of that right by the entity against which she seeks the injunction, and 3) the acts about which she complains are either resulting or will result in actual and substantial injury to her. See, e.g., Tyler Pipe Indus. v. Dept of Revenue, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982). The plaintiff must satisfy these three basic requirements regardless of whether the injunction it seeks is temporary or permanent.

Here, although the second factor will likely be met (the crane will likely be found to be invading space), the property owner must first overcome its burden to establish its clear right in the airspace. With the conflicting case law (cited above), such rights will likely be hotly disputed. Moreover, unless the crane has already caused identifiable damage to the neighboring property (e.g., dropped materials as it was passing over the property), the property owner will be hard-pressed to demonstrate the crossing of the boom over the property has caused or will cause substantial and irreparable in-
jury. Accordingly, similar to a party’s trespass or nuisance claims, a property owner’s request for an injunction will also likely fail.

**Recommendation to Contractors and Developers**

Without a sound legal basis for asserting a trespass or nuisance claim or in obtaining an injunction, neighboring properties have minimal leverage to rely upon in demanding up-front compensation or temporary “airspace use” agreements from contractors employing large cranes. Nevertheless, this practice of demanding compensation for the tower crane’s boom swing has become increasingly common. Contractors are routinely asked to enter into such agreements. Fearing legal action, which would inevitably delay already-tight construction schedules, some contractors are tempted to accede to these baseless demands, rather than risk a costly delay which attends a legal action to resolve the trespass or nuisance issue. Doing so, however, creates precedent and unnecessarily increases project construction costs. Moreover, in competitive bidding situations, these costs are often incurred after bids are awarded, forcing the contractor to foot the bill for this additional unexpected cost.

Rather than encouraging and furthering these unwarranted demands for compensation (for damage that will likely never occur), contractors should instead offer neighboring property owners insurance coverage (including additional insured coverage on the CGL policy which will likely have minimal financial impact on the contractor) and indemnity assurances in the event of an unexpected accident or occurrence. Such an offer should be amendable to both parties. The landowner will have assurances that, if damage does occur, it will be protected. In addition, providing neighborly, incidental services (e.g., lifting a replacement HVAC unit to the roof, street improvements, or other “fa-vors” to smooth over fears) often go a long way to ease the neighbor’s desire to extract concessions from the contractor. That said, to ensure the contractor is fully protected, without providing additional compensation, a written temporary “airspace use” agreement should be executed to set forth the terms of the parties’ agreement. NWL.

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NOTES
1. See Bradley v. American Smelting and Refining Co., 104 Wn.2d, 677, 690–91, 709 P.2d 782 (1985); see also Restatement (Second) of Torts § 158 (1965). “Liability for Intentional Intrusions on Land.” One is subject to liability to another for trespass, irrespective of whether he thereby causes harm to any legally protected interest of the other, if he intentionally (a) enters land in the possession of the other, or causes a thing or a third person to do so; or (b) remains on the land; or (c) fails to remove from the land a thing which he is under a duty to remove.
2. See Bradley, 104 Wn.2d at 691 (“When, however, the particles or substance accumulates on the land and does not pass away, then a trespass has occurred”).
4. RCW 7.48.010; see also RCW 7.48.120. RCW 7.48.120 provides a more specific definition of the elements of a nuisance action, which includes acts that annoy, injure, endanger the comfort, repose, health, or safety of others, offends decency, or unlawfully interferes with passage.
5. See, e.g., Ackerman v. Port of Seattle, 55 Wn.2d 400, 348 P.2d 664 (1960) (finding that landowner was entitled to recover for taking of easement by low flying planes); Cheskov v. Port of Seattle, 55 Wn.2d 416, 348 P.2d 673 (1960) (finding that airplane travel within the “public domain” is not a technical trespass); Martin v. Port of Seattle, 64 Wn.2d 309, 391 P.2d 540 (1964) (finding that no physical invasion of airspace is needed to prove taking by airport); Highline Sch. Dist. No. 401, King Cnty. v. Port of Seattle, 87 Wn.2d 6, 548 P.2d 1085 (1976) (finding that airport could give rise to a claim for taking).
The Sham Affidavit Rule

Looking at Loopholes and Techniques for Avoiding Exceptions

by Adam Starr

It is well settled that a party cannot contradict prior deposition testimony in a self-serving affidavit in order to create an issue of material fact and defeat summary judgment. This is the sham affidavit rule. What is less clear, however, is how the affidavit should be treated where the witness has some explanation for the contradiction. While a valid explanation is supposed to justify the admission of the affidavit, there is little guidance on how to measure the sufficiency of the explanation. What happens, for instance, when the witness claims that she did not understand the deposition question? In effect, crafty lawyers can create a self-serving “sham explanation” in order to defeat summary judgment. Accordingly, deposition examiners must take proactive steps to preserve and protect favorable admissions for later use. This article examines the loopholes in the sham affidavit rule and deposition techniques for guarding favorable admissions.

Washington’s Sham Affidavit Rule

The sham affidavit rule prevents deponents from contradicting clear deposition answers in order to create triable issues of fact and defeat a summary judgment motion. For instance, where the deponent plaintiff driver in a car accident case testifies that the light was green, Washington’s sham affidavit rule was adopted verbatim from the Eleventh Circuit Court of Appeals. In Marshall v. AC & S Inc., 56 Wn. App. 181 (1989), the court wrote:

When a party has given clear answers to unambiguous [deposition] questions which negate the existence of any genuine issue of material fact, that party cannot thereafter create such an issue with an affidavit that merely contradicts, without explanation, previously given clear testimony. Marshall, 56 Wn. App. at 185 (quoting Van T. Junkins & Assoc., Inc. v. United States Indus., Inc., 736 F.2d 656, 658 (11th Cir. 1984)).

In Marshall, the plaintiff stated in deposition testimony that he learned he had asbestosis in 1982, but in a later affidavit stated that the asbestosis was not diagnosed until 1983. Because of the clear contradiction between the plaintiff’s deposition and his later affidavit, the court ruled that the deposition controlled. The sham affidavit rule is sometimes referred to as the Marshall rule.

Clarifications and Explanations of Testimony

While it is clear that a deponent cannot “flatly contradict” prior testimony, an affidavit that merely “clarifies” prior testimony may be admitted. Safeco Ins. v. McGrath, 63 Wn. App. 170 (1991). In Van T. Junkins & Assoc., the Eleventh Circuit case incorporated by Marshall, the court explained: “There may be some occasions where a party may by affidavit clarify testimony given in his deposition and thereby create a material fact.” Van T. Junkins & Assoc., Inc., 736 F.2d at 656. Moreover, the court suggests that even contradictory testimony may be admitted if there is a “valid explanation” for the contradiction. Id.

The “valid explanation” exception to the sham affidavit rule creates a huge practical difficulty for movants for summary judgment. Arguments about whether an explanation is sufficiently “valid” to justify the admission of the affidavit often involve an evaluation of the credibility of the witness. Busy trial court judges will likely err on the side of denial of the motion when they are asked to weigh the credibility of a witness. For instance, when the witness contradicts testimony because she claims she did not understand the question, or she just remembered after the deposition, the court will have to assess the veracity of that explanation. The risk of these “explanations” can be reduced, however, by savvy deposition examiners.

Techniques for Preserving Deposition Admissions

A skilled deposition examiner must take proactive steps to protect admissions from later “explanation.” It is not always possible, or even recommended, to cement favorable deposition admissions as they occur. The increased attention to a favorable admission may cause the witness to back away from his or her answer. It could also highlight the answer for the defending attorney, providing him with opportunities for objection or coaching. However, there are steps that can be taken.

Most importantly, clear and concise questions are most likely to lead to clear and concise answers. Long and convoluted questions increase the possibility of confusion. Avoid double-negative and multiple-part questions that create the
In Memoriam

Daniel M. Caine
1942—2015
Dan’s friendship, professionalism and collegiality will be missed by all.

Adam Starr is a commercial litigator with Markowitz Herbold focusing on complex business and real estate disputes.

Adam joined the firm from the Bay Area, where he was a litigation associate with Miller Starr Regalia. He loves the Northwest and does not miss California traffic. He can be reached at 503-295-3085 or adamstarr@markowitzherbold.com.

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possibility that a “yes” really meant “no.” “Did you see the car crash?” is a better question than, “Isn’t it true that you didn’t see the car crash?”

Setting forth the deposition ground rules in plain English at the outset of the deposition and with reminders after breaks is also important, especially in the case of unsophisticated witnesses. For instance, the witness should audibly agree that she will only answer questions she understands, that she will ask for clarifications if she does not understand the question, and also that the examiner can assume that the deponent understands the questions she answers. This will weaken any later claim that the witness was confused by the question or did not understand it. Likewise, it is important to establish that the witness has no other information on the topic in question. For example, in the case of the car-crash witness, simple clean up questions may be effective: Did you give me your complete recollection of the car crash? Is there any other aspect of the car crash that you have not told me about today? It will be difficult for the witness to provide additional information in a later declaration if the witness previously admitted that she testified to the whole story.

While there is no iron-clad way of locking down witness admissions, deposition examiners should be aware of the exceptions to the sham affidavit rule in order to take proactive steps to protect favorable admissions from later explanations and clarifications that could disrupt a motion for summary judgment. NWL.
A VIEW FROM THE BOX

What Serving as a Juror Taught Me About Trying a Case

BY BENNETT TAYLOR
nocence of the defendant. We simply did not know what to look for. I wanted to learn more specific details about some of the information presented to us, but jurors are explicitly instructed not to do any extra research on their own outside of the scope of trial, and we abided by that instruction.

In law-school legal research and writing classes, we were taught to ask the court up front for what we want. Make it clear from the beginning. When I was serving as a juror, it would have been helpful had the charges and what exactly each side wanted been explained and reiterated from the start. Further, if technical terms had been explained early on, it would have made deliberating easier. What is a protective order? What is a restraining order? How do they differ? Who obtains them? Had these issues been explained succinctly, to the extent permissible, it would have been incredibly helpful for all of the jurors.

Only near the end of trial did the story make more sense. Unfortunately, by that point, you do not have the luxury of hearing testimony again. By then, you are left with your notes, the evidence, and the subjective notion of what “reasonable doubt” means. I then experienced first-hand how verdicts are decided.

We all had our differences of opinion, which I respected and used to encourage more discussion to reach a verdict. However, two issues came up that I had to address more than once: 1) That the defendant did not testify on his own behalf, and 2) that he did not have friends or family testify to his upstanding character and how the defendant had to be “innocent.” I cannot imagine how frustrating it must be for criminal defense attorneys and judges to explain these evidentiary considerations repeatedly. We were told more than once and instructed in writing by the judge not to consider those facts in our decision, and I still had to quash conversations about those issues during deliberations.

It also became abundantly clear that each juror had a different take on each witness, each piece of evidence, and the overall sequence of events. It was my job to make sure everyone stayed on track and focused on the evidence before us and on the jury instructions. We examined each piece of evidence and decided whether it fit an element of the crime. Most elements were relatively easy. A few were painstakingly difficult.

The concept of “reasonable doubt” was different for each juror and sent us into a tailspin at times. The fact that a man would likely be sent to prison, if we found him guilty, never escaped us. The gravity of the decision caused one juror to cry. We wanted to arrive at the right decision for the right reasons. The second-guessing, doubts, and mere possibility that we could send an innocent man to jail was a tremendous weight to bear.

Eventually, we unanimously reached a conclusion. As the foreman, I had to sign the verdict forms. Writing “GUilty” made me feel uneasy, only because I helped seal this person’s fate in this trial. This person has a family, friends, and a child and now they likely would not see him for a long time. We went back into the courtroom and as the judge read the verdict, my heart raced, knowing the implications of our verdict. Then it was over. And we resumed our lives again.

I now have a much deeper appreciation for how incredibly difficult it is to be a juror. Many of us have seen verdicts that made us scratch and shake our collective heads. As I learned, jurors do not have all the information that others involved may have. As a juror, you go off of the information and instructions presented to you even when the facts are not clear. You must collectively make a unanimous decision about those facts. You put on your thinking cap and leave it on. It is exhausting at times.

As a lawyer, I always knew trying a case involved a tremendous amount of hard work. Now having served as a juror, I understand the difficulty from inside the jury box. NWL
A Tribute to Justice Robert F. Utter

by Paul Stritmatter

Justice Robert F. Utter, retired, has sailed away at the age of 84, having completed his battle with cancer on Oct. 15, 2014. Utter was a giant of a jurist. He was a juvenile court commissioner (1959–64), a superior court judge (1964–69), a court of appeals judge from its inception (1969–71), a Supreme Court justice (1971–95), and served as the Supreme Court chief justice in 1979–81.

Utter was a man of deep and abiding faith. He brought that faith, and the moral principles embraced in that faith, to every aspect of his life. He once described his voyages through life as the “sacred sanctuary of the conscience.” He described his life’s work as wanting to be a man of faith and a judicious judge. He was appalled by hate, hunger, and injustice and was never able to find the answer to the question of why bad things happen to good people. But he devoted himself to righting as many wrongs as possible. He was engaged in judicial, civic, and political activism on multiple fronts around the world. He enjoyed a national reputation as a legal scholar and an international reputation as a teacher and expert on constitutional matters.

Life did not start easy for the young Bob Utter. His mother died in childbirth when he was five, also taking the life of his brother. He was shy and adrift in grade school and junior high. But in his senior year at West Seattle High School, he participated in the second annual Youth Legislature in Olympia, which opened a new world for him in learning how government was supposed to run. After two years at Linfield College, he transferred to the University of Washington, where he majored in English literature and political science. He had decided that a law degree would be a good background for a career of public service, and he opted for the early entry program of the University of Washington.
Law School. Upon graduation, he accepted the opportunity to become a law clerk for Justice Matthew Hill at the Washington Supreme Court. Like all Matt Hill clerks, his responsibilities included not only research and writing, but driving the justice to his many speaking engagements. The experience taught him not only about being a judge, but about a full range of commitment to public service.

After 18 months as a King County deputy prosecutor and three years in private practice with Short & Cressman, he accepted the position of juvenile court commissioner. Even at that opening level as a judge, his judicial philosophy quickly developed, leading to his long and distinguished career on the bench.

Utter became very active in community affairs. He was a co-founder and president of Job Therapy, Inc., a nationally recognized vocational and mentoring program for convicts and parolees. He was a deacon in the Seattle First Baptist Church. He was a co-founder of the Big Brothers chapter in Seattle, and later helped start the Thurston-Mason County chapter. He played key roles in the YMCA's Youth & Government program, serving as its state president for 13 years. He instituted the judicial portion of the Youth & Government program for high school students. The Jaycees named him “Seattle’s Most Outstanding Young Man” in 1964. He was the Washington News Council chairman for six years. He was the first Mental Health Task Force chairman. He was an active trustee of Landesa, which fosters land ownership in rural areas of the world. He served as chairman of the American Judicature Society.

Justice Utter was interested in our state constitution. He wrote several law review articles on interpreting our state constitution, and later taught a class at the UPS Law School on the Washington State Constitution. This led to co-authoring, with Hugh Spitzer, a University of Washington School of Law professor, a definitive reference guide on the Washington State Constitution. As a result, Utter became a frequent lecturer around the country in the interpretation of state constitutions.

Justice Utter made law in many areas, often supported by his unique application of state constitutional principles. In State v. Ciskie, he held that expert testimony on battered woman’s syndrome is admissible to counter arguments that a rape victim’s failure to report earlier instances of abuse shows consent in sexual assault cases.

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He ruled curfew ordinances unconstitutional. He helped force the state to fulfill its paramount duty to fund basic education, saying, “The Constitution meant what it said.” Justice Utter also wrote for a 6–3 majority in *Sofie v. Fibreboard Corp.*, in which the court upheld a constitutional challenge to the arbitrary cap on damages passed by the 1986 Legislature.

Most people remember Justice Utter’s stand on capital punishment as the essence of his career. He authored 24 dissenting opinions in death penalty cases while he served on the Supreme Court. But he could not sway enough of his colleagues. So in 1995, after 23 years on the Supreme Court, he resigned over the issue of capital punishment.

After leaving the Court, Utter dedicated himself to mentoring judges in emerging democracies around the world. He had begun volunteering with international judicial outreach programs during his later years on the high court, but upon leaving the court he found more time for this pursuit. In 1991, he lectured at a judge’s academy in Moscow, shortly before the collapse of communism. In 1992, the legal advisor to the Dalai Lama called Utter for help in drafting a criminal code for the Tibetan government in exile. Thereafter, as a volunteer with the ABA’s Central European and Eurasian Law Initiative, he worked with judges in Kazakhstan, Kyrgyzstan, Uzbekistan, Latvia, Serbia, Armenia, Moldova, Bulgaria, the Czech Republic, and both Outer and Inner Mongolia. He had worked with judges in Iraq, Cuba, and Haiti. He had been to China five times. He had also invited judges from around the world to Olympia to discuss constitutional issues and judicial reforms.

Utter’s reputation as a constitutional scholar and judicial reformer became worldwide. He was constantly called upon to speak, to draft constitutions, to train judges, and to influence judicial systems around the world.

Life, however, was not just all work for Bob Utter. He was an avid sailor and airplane pilot. After their marriage, Bob and Betty bought a sailboat before they bought a house. Bob liked to say, “We had our priorities straight.” His love of sailing and the sea also became a competitive drive. He captained three 2,500-mile Victoria-to-Maui races. With a crew of seven on the 41-foot sailboat, Utter experienced both great joy and fear. While he found solace in sailing the Pacific Ocean, catapulting down the face of one wave after another in stormy waters created a new sense of challenge, wonderment, and a renewed self-confidence.

Utter enlisted in the Air Force before he began law school, hoping to become a fighter pilot. But a shoulder injury ended those hopes. Later, he got his pilot’s license and went on to earn instrument ratings. He loved to fly, but the ups and downs of that endeavor proved extreme when he once made a
wheels-up landing on the main runway at the Olympia Airport in a rainstorm while flying a Cessna 210. He decided he liked sailing better.

And while this article is about Bob Utter, his story cannot be told without talking about his wonderful wife, Betty. They met in college, married in 1953, and raised three children. She was a highly regarded teacher, taught counseling at St. Martin’s College, and served as president of the Associated Ministries of Thurston County. She helped launch an ecumenical religious education program for people with mental disabilities. She worked with Bob in many of the civic organizations he has supported and accompanied him on his travels throughout the world where, while he was teaching judges, she was teaching English to children and adults.

Bob Utter will be long remembered, not just by loving family, but by lawyers and judges impacted by his work, by citizens of Washington who benefited by his decisions, and by judges around the world influenced by his teachings and by his humanity. He was a great man who accomplished a great deal in his life. For Bob, I would expect nothing but calm seas and smooth sailing in a peaceful dimension beyond.

I consider one of the great treasures of my life to be my friendship with Bob Utter. I, too, found purpose and direction in high school in the YMCA Youth & Government program, and worked with Justice Utter to establish the judicial arm of that program. I, too, clerked for Justice Matthew Hill and learned much from that great teacher and role model. I travelled with Bob and Betty on one of their trips to China and Tibet, and served on Justice Utter’s faculty when judges came to the United States for training. I was also one of the lawyers who argued the Soffe case to the Supreme Court. And it was Justice Utter who presided at my wedding. However, unlike Justice Utter, you will never find me sailing a 41-foot sailboat across 2,500 miles of open ocean water.

I wish to acknowledge that I have liberally borrowed from the excellent article by my friend John Hughes of the Washington State Historical Legacy project, for content and quotes. I thank him for his excellent work. NWL

Paul Stritmatter practices with Stritmatter Kessler Whelan in Hoquiam. He is a former president of the Washington State Bar Association and the Washington State Trial Lawyers Association (now Washington State Association for Justice). He can be reached at pauls@stritmatter.com.
I-502 and Lawyers
Guidance from the Supreme Court

by Mark J. Fucile

When Washington voters approved I-502 decriminalizing “recreational” marijuana in 2012, it focused a sharp light on RPC 1.2(d). Under that provision, lawyers are generally permitted to advise clients on the legal consequences of conduct, but are generally prohibited from assisting clients in committing a crime. Washington’s rule is patterned on the corresponding provision of the ABA Model Rules and nothing in the legislative history or the case law of either one suggests that these twin concepts are particularly unusual or controversial.

Although I-502 decriminalized marijuana (subject to regulation) at the state level, marijuana manufacture, sale, and possession remain federal crimes under the Controlled Substances Act. At the same time, many of the practical aspects of working with clients in marijuana-related businesses — such as land use planning, employment law and contract preparation — are clearly on the “assisting” side of RPC 1.2(d)’s divide. To add further uncertainty, although the Controlled Substances Act has been upheld as constitutional within the past decade by the U.S. Supreme Court in the “medical” marijuana context, the U.S. Department of Justice has an announced policy of generally not prosecuting marijuana-related businesses as long as they are complying with strict state regulatory systems. Finally (as I write this), Congressional proposals to limit federal funding for enforcement address “medical” marijuana, but do not include “recreational” marijuana.

Against this backdrop, the Washington Supreme Court recently approved a comment to RPC 1.2(d) that balances this jurisdictional dichotomy with the practical considerations that lawyers face in light of I-502. In this column, we’ll first look at the Supreme Court’s approach and then note some of the “unfinished business” remaining in this area.

The Court’s Comment
The Washington Supreme Court added a new comment — Comment 18 — to RPC 1.2 that specifically addresses I-502:

Special Circumstances Presented by Washington Initiative 502 (Chap. 3, Laws of 2013). At least until there is a change in federal enforcement policy, a lawyer may counsel a client regarding the validity, scope, and meaning of Washington Initiative 502 (Chap. 3, Laws of 2013) and may assist a client in conduct that the lawyer reasonably believes is permitted by this statute and the other statutes, regulations, orders and other state and local provisions implementing them.

The Supreme Court’s use of a comment is significant in a regulatory sense. Because comments are issued directly by the Supreme Court, they offer the Court’s own guidance on the meaning and application of the accompanying rules.

In this instance, the Supreme Court surveyed a variety of proposals and had the benefit of earlier debate before the Colorado Supreme Court on the identical issue. Nationally, proposals have ranged from the outright prohibition on any assistance to marijuana-related businesses in violation of federal law to blanket disciplinary immunity for assistance to marijuana-related businesses permitted by state law. The Colorado Supreme Court, too, ultimately opted for a comment similar to the one our Court adopted. In contrast to Colorado, however, the Washington formulation more explicitly acknowledges the current federal enforcement policy through its preface.

The new Washington comment reflects a pragmatic approach to a difficult issue that states around the country are wrestling with as the number of jurisdictions decriminalizing, or considering decriminalizing, “medical” or “recreational” marijuana continues to increase. Our Supreme Court’s accent on current federal enforcement policy effectively acknowledges that state law cannot nullify the federal government’s ability to enforce federal law. In Assenberg v. Anacortes Housing Authority, 2006 WL 1515603 (W.D. Wash. May 25, 2006) (unpublished), for example, the federal district court in Seattle found that Washington’s “medical” marijuana statute did not prevent the federal government from enforcing the Controlled Substances Act. In tying the comment to federal enforcement policy, the Supreme Court also effectively acknowledges that present policy may change depending on many unpredictable factors that are not within its control. Finally, the Washington comment recognizes that, having created a regulated industry under I-502, businesses in that industry will likely need the same kinds of routine legal services that their counterparts in more traditional businesses have long depended on lawyers to provide.

Although these same issues have in theory existed since the voters approved “medical” marijuana in 1998, the broad sweep of I-502 put these issues front and center for potentially a much larger spectrum of Washington lawyers.

Unfinished Business
However useful the Supreme Court’s comment is for lawyers working with marijuana-related businesses, the comment leaves some “unfinished business” in two particular areas: personal use of marijuana by lawyers and lawyers who invest in marijuana-related businesses.

On personal use, RPC 8.4(b) classifies as professional misconduct “a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects[.]” RPC 8.4(j) does the same for an “act which reflects disregard for the rule of law[.]” RPC 8.4(n) contains a general
prohibition on “conduct demonstrating unfitness to practice law.” RPC 8.4(k) also includes the violation of the attorney’s oath as professional misconduct. The oath contained in APR 5(d), in turn, includes the requirement that the lawyer concerned will — among other things — “abide by” federal law. In the context of alcohol, the Supreme Court has generally required a “nexus” between the conduct involved and the practice of law. In re Curran, 115 Wn.2d 747, 801 P.2d 962 (1990), addresses the “nexus” requirement in considerable detail. This traditional analysis suggests that discreet personal use at home would be treated differently in a regulatory context than a lawyer who habitually appeared in court under the influence.

On investing in marijuana-related businesses, RPC 1.8(a) sets a very high bar for lawyer investments in client businesses — particularly when the lawyer is also providing legal advice to the client concerned. The rule requires both that the client consent in writing after thorough disclosure and that the terms of the deal are “fair and reasonable to the client[].” Valley/50th Ave., L.L.C. v. Stewart, 159 Wn.2d 736, 153 P.3d 186 (2007), and LK Operating, LLC v. Collection Group, LLC, 181 Wn.2d 48, 331 P.3d 1147 (2014), discuss RPC 1.8(a) at length. Although violation of RPC 1.8(a) exposes a lawyer to regulatory discipline, deals gone bad are also a frequent source of civil damage claims against lawyers and their firms. Regardless of whether a lawyer is investing with a client in a marijuana-related business or simply running one as the lawyer’s own stand-alone side business, lawyer involvement would also need to be consistent with I-502 and its implementing regulations. A lawyer, for example, who is a participant in a criminal enterprise outside the scope of I-502 would likely find little regulatory solace in the Supreme Court’s recent comment.

As I-502 is implemented, other areas of sensitivity to lawyers may surface. The WSBA Committee on Professional Ethics is planning an advisory opinion addressing some of the “unfinished business” in light of the approach the Supreme Court took in the new comment. Although advisory opinions are just that — “advisory” — the Supreme Court’s comment provides useful insights to the Court’s approach in this area.

**Summing Up**
I-502 creates an unusual set of issues for lawyers in light of differing state and federal law. This area is unlikely to remain static. Although the Supreme Court’s recent comment provides very useful clarification today, lawyers practicing in this area will likely need to pay careful attention to continuing developments. NWL
Choice Quotes from Washington Court Cases

compiled by David E. Ortman

1. To swear or not to swear...

“...the Commission chairman finally stated: ‘We are not going to swear the witnesses. It is our decision. We want the facts in the case so that we can make an honest decision.’" 


2. Why won’t my attorney return my calls?

“Before sentencing, the court appointed new counsel for Flores because his trial counsel was incarcerated.”

State v. Andrew Michael Flores, Court of Appeals, Division II (27189-9-II, Docket No: 001010362), Nov. 1, 2002.

3. Why [questionable] federal district court judges want to be [unequatable] federal appeal court judges:

“Besides, a [Federal] District Court decision would be of questionable authority at any rate.”


4. What happened?

“As already noted, the question of what actually happened is irrelevant to the determination of this question.”


5. We apologize!

FN6. “We apologize for the convoluted English but this is the language of the UCC [Uniform Commerical Code].”


6. What time is it?

“Time is of the essence of a contract whenever it appears to have been the intention of the parties to make time of the essence.”


7. The Civil War only took four years.

“The plaintiffs sought damages on numerous grounds. Their cases were consolidated and discovery occurred from 1993 to 1998.”


BONUS: All-time favorite run-on sentence

“Appellants answered the complaint, alleging that they are the owners of eighty acres over which said Woods creek flows, and that the diversion of the waters at the place proposed would greatly damage them; that during the year 1891, said Hewitt went upon the land now owned by appellants, and marked out a right of way and constructed a ditch through the land for the purpose of diverting the waters of said stream, claiming to do so under and by virtue of the conveyance from Woods, heretofore mentioned; that shortly thereafter said Hewitt abandoned said right of way and ditch, and proceeded to construct water works at a point five miles distant from the Woods creek location, and that such works have ever since been used to supply water to the city of Everett; that since March, 1892, no attempt has been made to divert and use the waters of Woods creek until about August 1, 1902, when respondent, claiming as the assignee of the rights of Hewitt, attempted to lay out a new pipe line, which was separate and distinct from the line originally laid out by Hewitt, running through the land on a different route; that when the aforesaid instrument between Woods and Hewitt was executed, it was the intention of the parties that only sufficient water should be diverted from Woods creek to supply the town of Lowell, which then contained about one hundred inhabitants, is now a place of about five hundred people, and is entirely separate and distinct from the city of Everett; that the principal purpose of respondent in constructing the pipe line across appellant’s lands, and in diverting the water of said stream, is to supply the city of Everett with water; that if only such a quantity of water were diverted as would be necessary to supply the town of Lowell, it would not materially damage appellants, but that the diversion to supply the city of Everett will materially damage them and will render said stream valueless to them; that at the time this action was commenced, respondent had not acquired the riparian rights below appellants’ land, and that it has no right to divert the waters at that point alone or above their lands; that the instrument between Woods and Hewitt is void and of no effect, for the reason that it is indefinite in its description of the right of way as to its width and location and as to the amount of water to be diverted; that respondent seeks to perpetrate a fraud upon appellants in that it is pretended to proceed by virtue of the original conveyance from Woods to Hewitt which authorized the diversion of water for the use of the town of Lowell, whereas the principal purpose now is to divert water for the use of the city of Everett; that respondent has never acquired any right to construct a pipe line at said place, or to divert the water by means thereof, for the purpose of supplying the city of Everett; that appellants and their grantees have been in possession of said land under color of title, and have been in the open, notorious, and exclusive possession thereof ever since the 1st day of January, 1892, that neither said Hewitt nor his assignee has ever, since said time, attempted to exercise possession or ownership over said lands or waters, and that inasmuch as more than ten years have elapsed the respondent is barred.”


8. It’s never too late to change your mind.

“After the hearing of this case, it was assigned to me to prepare an opinion reversing the decision of the trial court. After an intensive study of the record, including the comprehensive and persuasive oral opinion pronounced by the trial judge at the close of the trial, I found myself unable to write an opinion to reverse, and accordingly prepared an opinion affirming the judgment appealed from. This opinion did not meet the approval of my associates, and the preparation of the opinion of the court was reassigned to another member thereof, which reassignment resulted in the foregoing opinion. I cannot concur therewith.”

King Co. v. Linn, 32 Wn.2d 116, 122–23 (1948) (Dissent, J. Robinson).

9. Scratch that.

“We reject the City’s argument that the scratch on Scout’s nose is proof of provocation.”

Morawek v. City of Bonney Lake, Court of Appeals, Division II (Docket No: 44542-5-II), Nov. 13, 2014.

10. It’s lucky we’re lawyers.

“Law is admittedly a highly technical field beyond the knowledge of the ordinary person.”


When he’s not collecting case quotes, David E. Ortman is a Seattle attorney who also runs masters track and field. He is shown here at the 2013 National Senior Games in Berea, Ohio. He won the M60–64 Long Jump (5.32m) and 400m (56.78), running the fastest M60–64 400m time in the world for 2013. Contact him at deortman@msn.com.
I want to branch out into a new practice area. What steps should I take?

Practice areas are very personal to the individual — it has less to do with what you’ve done before or what you know and more about your personality and what you want to get from life. I am a firm believer in the classic pro/con list. Make a pro/con list for each practice area you are considering. Give yourself a good hour to brainstorm this and be utterly honest. Eliminate any clear losers. Next, investigate the winners. Talk to a variety of practitioners about those practice areas (and practice in general). Do they have something you want? Or would you go running to the hills if you had their life? Cut anxiety-provokers and keep attractive options. If you still have several winners, try them out through pro bono, second chair, or associating with an experienced practitioner capacity. If you don’t know by then, it’s time for an intense reflection period — come talk to me, a career coach, or a trusted advisor.

I’m a new solo and I’m really busy, but nervous about bringing on an employee. How do I know I can afford to (and should) hire someone?

Most solo practitioners need more help than they hire. Hiring is eventually a necessity if you want to grow your practice past a certain size, but yes, it is also a huge step. It adds a whole new layer of complexity to the job of running the business, costs a lot, and can backfire on many fronts. So I understand the trepidation in making the leap. But here’s an action plan I can get behind: Make a list of every task you are completing yourself. Mark those tasks that must be done by the lawyer and those that could be done by a non-lawyer. On that list of non-lawyer tasks, highlight those things you wish you didn’t have to do and anything you suspect someone could do better.

What sort of position do they fit into? Ask if there are any independent contractors or vendors who can do those tasks for you. If there are, hire them to start. Make sure they are true independent contractors who have their own business, other clients, and a certain amount of autonomy. You don’t want to inadvertently become an employer! If there are no viable independent contractors or the role is too big for a person to come in a few hours a week or remotely access and resolve issues as needed, then look at the temporary agencies in your area. It may cost a little more to hire from a legal temp agency, but they take on the costs of being the employer — maintaining personnel file, taxes, payroll, etc. Best part is there is an easy return policy. Once you find someone you really love, email me again on how to hire them yourself.

I had a client lambaste me on a review site. It made me really mad and the stuff she said was totally false. I’m worried it’s going to hurt my business. What should I do?

Argh! I hate hearing about poor reviews, but they happen. First, take it from me that this is not going to ruin you. Business may take a hit at first, but if you deal with it well, it can even work in your favor. Second, remind yourself that it is always better to know what people think, so you can respond accordingly. Say something like: “I am sorry to hear you had a poor experience. Please call me so that we can discuss,” or, “I would like to address your concerns in a phone conversation if you are interested.” This is damage control. It shows you are reasonable and responsive. Do not — I repeat, do not — respond to the allegations in any way that discloses anything about the client or case. I don’t care if she announced endless confidences in her post. You must not be the source of that information. For example, do not say “I withdrew because you never paid me,” or, “This client lied to me repeatedly,” even if it is dead true. It doesn’t make you look good and it will get you in ethical hot water. Remember it is only one person’s view. The other 99 people in the room love you, so don’t dwell on the one you didn’t jive with. Move on and do good work.

APP CORNER

TimeClock

This is a handy timekeeping app. The free version offers two current clients and the pay version has unlimited clients. You can log time per client, pause that time or switch to another client, backtrack and manually enter time you forgot to add, and add notes that are relevant to specific time entries. You can leave the app or turn off your phone without the clock stopping, or you can enter client-specific expenses and mileage. The pay version permits reporting in three common formats and sending invoices to clients in PDF format. This application is $9.99. Now there is no excuse to not track the time, and you can do it on the fly on your phone. Try it. You might like it.

Any.do

Any.do is a simple to-do list app. I didn’t like Any.do at first. It had a hard-to-read black background and I didn’t understand how it worked. In other words, I hadn’t played around with it enough to see the value. Now, I feel like I can’t live without it. It breaks things into tailored lists, or Today, Tomorrow, Upcoming, and Someday. You can give firm deadlines, alarms, store notes, and move things around easily. I like that it leaves completed items on the list so I can gloat to myself about my accomplishments. I enjoy drawing my finger through completed items — it’s so satisfying. I also like how it asks me to plan my day — gives my day direction and makes my tasks seem accomplishable. The free version has all these capabilities and the new pay version (on sale currently for $4/mo or $27/yr.) lets you collaborate with others and access cool templates.

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John T. Gayton
Legal Pioneer

by James W. Gayton

Let me first say that I do not believe I am related to or descended from John T. Gayton (1866–1954). I say this only to make clear that I’m not writing this to promote my family name, but as an admirer of true pioneers. And Gayton’s impact as a pioneer has been felt in Seattle since he first arrived there in the late 19th century, and has continued through his children and grandchildren.

Born to former slaves in Benton, Mississippi, in 1866, Gayton arrived in Seattle in 1889 as the coachman of a white physician named Dr. Henry Yandell. After his arrival, he met and eventually married Magnolia (Maggie) Scott, a woman who moved to Seattle with her adoptive white parents from Nashville, Tennessee. Together, they raised four children, living both in Seattle and, for a period, on the eastside of Lake Washington. John and Maggie were active in the small community of African-Americans who had made it to Seattle in the late 19th century. They were founding members of both the First African Methodist Episcopal Church in 1890 and the (now named) Meredith Mathews East Madison YMCA in 1936, landmarks that stand to this day.

Gayton had very little formal education at the time of his arrival. As a result, after leaving the employ of the Yandell family, he was engaged in several manual labor jobs, including painter and bellboy. For a time, he also ran his own barbershop to take advantage of the Yukon gold trade moving through Seattle. He eventually became a waiter and then headwaiter at the Rainier Club. However, Gayton was not content to remain in those positions.

By the time he’d been promoted to headwaiter, he returned to school, taking bookkeeping classes from Wilson’s Modern Business School. Continuing up the ladder at the Rainier Club, he was eventually appointed the first African-American head steward of that club in 1901. While in that position, he began his study of the law. Although he never sat for the bar, this was the beginning of a legal career that would span five decades.

His first position in the legal field was as a messenger for the newly established Federal District Court of Washington in 1904. He eventually rose to bailiff and was appointed by President Franklin Roosevelt to the position of federal court librarian in 1933. In that role, he assisted many of Seattle’s earliest attorneys practicing before the federal court. New attorneys and immigrants sought his help for research and study.

He finally retired in 1953 after almost 50 years in the employ of the federal court. During his career, he had served every presiding federal court justice since Washington’s admission as a state and helped many of Seattle’s first attorneys in their practice before the federal bench. But John Gayton’s retirement was not the end of the Gayton family’s impact on Washington’s legal, educational, or political communities. The pioneering spirit embodied in Gayton has carried on through the generations.

One of Gayton’s grandsons, Donald Gayton Phelps, was appointed the first African-American school principal in Bellevue in 1963. Donald would later serve as the first African-American principal of Bellevue Junior High School from 1967–69, becoming the first black secondary school principal in the state.

Another grandson, Carver Gayton, was the first African-American from Washington appointed as an agent for the F.B.I. At the time, Carver was one of very few African-Americans in the Bureau nationwide, and the only African-American agent in his assigned territory.

Among a myriad of other professional accomplishments, Carver also served as commissioner of the Department of Employment Security, appointed by Governor Gary Locke in 1997. The first African-American to head a departmental library at the University of Washington was Gayton’s granddaughter Guela Gayton Johnson. She achieved that feat in 1969 when she was chosen to lead the library for the School of Social Work, a position she would hold for the next 23 years (although her association with the UW library system actually began in 1945, when she served as a library page while attending Garfield High School). During her time leading that library, she oversaw its expansion from fewer than 2,000 holdings to over 50,000.

Two grandsons followed Gayton’s path into the law. Thomas (Tomás) Gayton graduated from the University of Washington Law School and served as civil rights litigator and public defender. He is also an accomplished poet, with two books in print and has performed his poetry in the Los Angeles and San Diego areas.

Gary Gayton also became a lawyer and is a founder of the Loren Miller Bar Association here in Washington. His pioneering efforts began early, when he became the first African-American student body president at Garfield High School. His leadership continued as an
athlete at the University of Washington, where he became the first African-American captain of a varsity sport (track and field) at that school. In 1962, following his graduation from Gonzaga School of Law, Gary Gayton was appointed by Attorney General Robert Kennedy as the first African-American assistant U.S. attorney. In that role, Gary became the first AUSA to prosecute college basketball point fixing, and sued this state to win Native Americans’ rights to sell fish off their reservations.11 After leaving government service, he founded a law firm in Seattle, where some of his more noteworthy cases included fighting the suspension of African-American football players at UW who refused to take a loyalty oath to their coach. He also took on the WSBA, challenging it when it planned on moving its offices to a building that housed a discriminatory social club.12

In 1967, Gary successfully represented two individuals in important civil rights cases. The first was a female tennis player fighting, prior to the passage of Title IX, for her right to try out for the men’s tennis team at UW (no women’s team then existed). The second was the first African-American appointed as Seattle fire chief. His appointment “was challenged because it was based on the City’s selective certification program for women and minorities.”13 In 1977, Gary was appointed special assistant to the United States secretary of transportation, where he worked on drafting and urging the adoption of WMBE (women and minority business-owned enterprise) policies. He was appointed by President Jimmy Carter as the acting administrator of the Urban Mass Transportation Administration. Gayton also worked on transition teams for both Governor Gary Locke and President Bill Clinton.14

I’ve always felt that I had an uncommon last name. The first time I came across another “Gayton” was after my admission to the California bar association. I did a search for my name; the results included me and Tomás. When I moved to Seattle a few years later, I found Gary in the same manner. Prior to this project, I had no idea who they were, where they came from, or what they’d done. Now that I do, I realize I have a lot to accomplish to live up to the milestones in Washington history that bear the Gayton name.

The hard part about writing a brief profile for someone who accomplished as much as Carl Maxey (1924–97) is figuring out what to cut to fit it into a small space. He’s not simply the answer to a historical question, but to several. Possibly the most significant pioneering accomplishment of Maxey’s legal career: in 1951, he became the first African-American in eastern Washington to pass the bar exam. But given the readership of this magazine, I can focus on his career in the law. Unfortunately, this leaves out much of the details of his personal story.15

Maxey’s background as a boxer is likely something that had a profound influence on Maxey’s style as an attorney, as did his less-than-idyllic childhood. Maxey was born in Tacoma and abandoned at birth by his mother. He ended up being adopted soon thereaf-

In Memoriam

Ronald E. Beard

1956 - 2014

We are truly saddened at the passing of our friend, partner and mentor.

Ron’s guidance, humor, kindness and leadership through many years will be greatly missed.

Lane Powell

ATTORNEYS & COUNSELORS
Loving, Intuitive, Relentless.

Not necessarily the public’s idea of a criminal defense lawyer. Yet to me these qualities are essential. We’re all human. People make mistakes. My job is to tell the whole story, the human story. The law must be compassionate to be just.

I recently defended a young man. Terminally ill, with extensive criminal history, he’s the sole parent of a toddler. Facing a five year sentence on a four count felony, he likely would have died in prison. I fought for him, asserting that his life is larger than his mistakes. The Judge agreed. He and his family have a second chance.

- CHLOE ANDERSON
Attorney at Law

a very white part of the country, and growing up during the Great Depression, Maxey had simply quit. But he never did. It was at the mission that Maxey began to grow and thrive, academically and athletically. After a successful high school career and a stint in a non-combat role in the Army at the beginning of World War II, Maxey went to the University of Oregon and then to Gonzaga University School of Law, where he also participated on the boxing team.

With this background, it is not surprising that Maxey became known as a lawyer who seemed to relish confrontation and was unwilling to back down from a fight. And from the beginning, Maxey wanted to make a difference. The victim of racist and segregationist attitudes and policies, Maxey was committed to fighting, but now for civil rights and justice, and not in a ring.17

Maxey opened his own practice in Spokane in 1951, the same year he passed the bar. Needing to earn a living, much of his practice focused on criminal and family law. But he never wavered from his strong commitment to civil rights and fighting for underdogs. His first cases included suing the Washington State Liquor Control Board (LCB) to stop its practice of issuing licenses to African-American applicants that “restricted the license to the sale of liquor to Negroes.”18 The LCB settled and dropped the restrictive language.

Another of his earliest cases was representing Eugene Breckenridge, a black man, in his application to become a teacher in the Spokane school district in 1951. Breckenridge was an Army veteran with a bachelor’s degree in chemistry and a master’s degree in education from Whitworth College. He was deemed that school’s outstanding student teacher, but was not deemed good enough for a Spokane middle school. Maxey advocated on Breckenridge’s behalf behind the scenes and the district relented and hired him.19

From the earliest stages of his career, Maxey was focused on opening up white Spokane to its black residents. While the Jim Crow laws of the deep South may have been missing in the more progressive Pacific North-
west, there was still a de facto segregation keeping the two communities apart. During the 1950s and 1960s, Maxey successfully worked to remove these barriers in the housing market, in the Spokane social club scene, and in Spokane restaurants.

Two of Maxey’s most noteworthy cases occurred in 1963. In one, he represented Jangaba Johnson, a black Liberian student attending Gonzaga University as a Fulbright Scholar. Jangaba was denied a haircut by a white barber on account of his race. Other Gonzaga students tried to resolve the issue informally: the barber refused. Maxey was brought in to do the same. The barber again refused and Maxey filed the case with an administrative tribunal. The tribunal tried to resolve the matter as informally as possible. The barber refused. The case proceeded to a hearing, and after a three-minute deliberation, the tribunal ruled against the barber. He was ordered to provide haircuts to all races, to hang a poster stating the same, and to write a letter to Jangaba. The barber refused. The case was appealed to the Washington Supreme Court. The Court ruled 9–0 against the barber. Remaining faithful to his misguided principles, the barber refused to comply with the Supreme Court ruling upholding the original order from the tribunal, and chose to retire.

The other was a 1963 criminal case representing Charles Will Cauthen. Known locally as Bob Williams, he was a convicted killer and death row inmate who had escaped from a Georgia prison to eastern Washington. After years in hiding, he was located by law enforcement and the state of Georgia sought extradition. Maxey was hired to represent Williams in those proceedings. Usually a straightforward affair, this extradition did not proceed as Georgia had hoped. There were serious questions raised about the investigation of the crime and the fairness of Williams’s trial back in Georgia. Maxey and other attorneys argued that Williams should not be sent back under these circumstances and asked that extradition be denied. Governor Albert Rosellini agreed, finding that reasonable doubt existed as to Williams’s guilt, and refused the request for extradition.

Again, Maxey had prevailed.

Some of Maxey’s other notable work included providing legal support in Mississippi in 1964 for “Freedom Summer,” a black voter registration effort following the passage of the Civil Rights Act, and representing members of the “Seattle Seven.” Other accomplishments and accolades include serving as the state chairman for the United States Civil Rights Commission under five presidents, receiving the William O. Douglas Bill of Rights Award from the Washington ACLU (1982), being named to Best Lawyers in America (1983), and being honored with Goldmark Award for Distinguished Services from the Legal Foundation of Washington (1987), and the Gonzaga Law Medal (1993).

Toward the end of his career, Maxey expressed some concern that he had not been able to really accomplish anything or make any significant impact.
That may have been a contributing factor to Maxey tragically taking his own life in 1997. Maxey may have felt he didn’t make a difference, but clearly he did to many, both within and outside this state. NWL

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NOTES
2. www.blackpast.org/aaw/first-african-methodist-episcopal-church-seattle-washington-1886. The First A.M.E. Church has been located at the same site on 14th St. between Pine and Pike since official incorporation in 1891.
5. The first black attorney was Robert O. Lee, admitted in 1889 after serving as an attorney in Illinois. The first black attorney in Washington who was not admitted in another state was J. Edward Hawkins in 1895. Seattle’s Black Victorians, 1852–1901, Esther Mumford (Ananse Press, 1980).
10. www.sambajia.com/about.
12. “The College Club (est. 1910) was a so-
cial club for male college graduates. It had no specific language in its charter that excluded minorities or Jews, but none had ever been admitted. With the threat of [Gary’s] lawsuit, the College Club changed its policies—... www.historylink.org/index.cfm?displaypage=output.cfm&file_id=3714, by Alyssa Burrows.
15. Such as his NCAA light-heavyweight boxing championship. For a much fuller treatment of Carl Maxey’s life than presented here, I recommend Carl Maxey: A Fighting Life, by Jim Kershner (Univ. of Wash. Press 2008). And I’ll do my best to spare you some “boxer-lawyer—they’re both fighters” analogy. I’m sure you can get there on your own.
17. For example, before he even passed the bar exam, Carl became the president of the Spokane chapter of the NAACP. Kershner, p. 80. And I apologize for not making it more than a few paragraphs avoiding the “boxer-lawyer—they’re both fighters” analogy mentioned in endnote 15.
19. “Sixteen years later, Breckenridge was named the Washington Education Association’s Educator-Citizen of the Year, its highest honor.” www.historylink.org/index.cfm?displaypage=output.cfm&file_id=8015.
22. In Re Johnson, 71 Wn.2d 245 (1967).
23. In his acceptance speech, given in Seattle, after seeing the homeless population in downtown, he said “Don’t give me no god-damned award. Give those people some food.” Kershner, p. 231–232.
24. At the award ceremony, Gonzaga President Rev. Bernard J. Coughlin said about Maxey, “He has been a vigilant watchman—a pre-emptive presence who caused many a retreat before the battle was even engaged.” Kershner, p. 233.
Before the days of Excel, ledgers were the original spreadsheets. It wasn’t long ago that all important records were still kept in these now charmingly vintage registers. Surprisingly, the WSBA has intact ledgers dating back to the 19th century! The ledger pictured here, from January 1888, the same year the Washington Bar Association was formed, is one of the oldest items in the archives and is a record of some of the very first WSBA members and their yearly dues. Dues were either $3 or $5, depending on interpretation.

The term “ledger” has its roots in Middle English words meaning “to lie” or “lay” and is thought to be adapted from the Dutch word legger, meaning a book laying or remaining regularly in one place. Originally, a ledger was a large volume of Scripture kept openly accessible in a church. It later became the commonly used term for books of account in all varieties of business.

All entries in this ledger were transcribed in pencil — and after 126 years, most are still legible. Interestingly, 1888 is also the year the first patent on a ballpoint pen was issued; however, it wasn’t until 1943 that the first commercial models were available from Bíró Pens of Argentina, a business collaboration between Hungarian newspaper editor László Bíró and his brother, a chemist.

This ledger would have most likely resided in the first Capitol Building, a two-story wood-frame building overlooking Olympia’s Capitol Lake, where the Legislature met from 1854 to 1905.

Emily Wittenhagen is a freelance editor with a background in agriculture. She attended the University of Maine, where she earned a degree in creative writing and French. She holds an editing certificate from the University of Washington and is a certified community herbalist. Reach her at emily.wittenhagen@gmail.com.
The Columbia County Courthouse, located on 341 E. Main Street in Dayton, is the oldest working courthouse in all of Washington’s 39 counties. When the courthouse was completed in 1887, Washington was still a territory.

Columbia County’s Seat

Dayton, the county seat of Columbia County, was platted in 1871. Development of the town quickly followed. A square of land was reserved for county purposes in the 1870s, but the only building built on the square in its early years was a wooden jail. County officers were forced to use rented rooms in which trials were also held. Yet the citizens of Columbia County were slow to approve construction of a courthouse, twice voting down a building much less expensive than the one ultimately built.

At last, in February 1886, the Washington Territorial Council passed a bill authorizing the construction of a courthouse in Columbia County. The job was bonded for $40,000. Stone and brickwork contractor A. J. Dexter turned the first sod on June 1, 1886.

Building the Historic Building

The architect, William Burrows, created an attractive building with a large, ornate cupola (complete with an iron railing) atop the roof. Bronze statutes of Blind Justice, complete with sword and scales, graced the tops of both front and back entrances. Bronze eagles perched atop the roof peaks. In the front entrance, wide steps took a visitor up to a covered porch. Inside, a double stairway rose from opposite sides of the building to the second floor courtroom, which had a 19-foot ceiling. A new jail occupied the basement.

Altering the Building

With the exception of some minor modifications to the courtroom in 1906, the courthouse remained as it was originally built for nearly a half-century. By the mid-1930s, however, Columbia County commissioners felt the building needed to be modernized. This resulted in sweeping changes beginning in the mid-1930s. The entire look and feel of the courthouse was altered.

In 1935, the bronze Blind Justice statutes and eagles were removed (during World War II, they were melted for scrap metal). In 1938, the building got a more sweeping “face lift,” as it was then termed. The old exterior finish and Victorian detail was taken down, the cupola removed, and the building painted black and white. It was such a dramatic change that a Columbia Chronicle article in November 1938 remarked that the courthouse had taken on the appearance of an entire new building.

The modernization trend continued. In 1950, the building’s remaining ornamentation was stripped, and a new coat of stucco was applied on the remaining bare surface. Also in the 1950s, half of the indoor stairway was removed, partitions were built, and ceilings lowered. In 1952, the locust trees planted in the courthouse yard in the 19th century were chopped down.

Historic Restoration

During the 1970s, Daytonians began taking steps to preserve the town’s rich architectural history. In 1975, the courthouse was listed on the National Register. In 1984, a large-scale restoration program for the building began, with the goal of returning it to its 19th-century splendor. Restoration was completed in the summer of 1993. The cupola was returned to the roof and the scales of justice once again rose above the front entrance of the building.

Sources

What you are reading is the current version of the Washington State Bar Association’s official publication, something the Bar has provided as a member service since WSBA’s inception. Following is a brief history of the publication, based largely on information compiled over the years and appearing in the Editor’s Handbook, which was passed along to me when I took over this role in 2007.

From 1888 through 1927, the publication was unspectacularly titled Proceedings of the Annual Meeting of the Washington State Bar Association and published as a softcover book. It was a transcript of the year’s speeches, debates, and presentations of learned papers. “In 1928, this separate publication was abandoned and a section of the Washington Law Review...was devoted to Bar Association affairs,” John N. Rupp told the 1949 WSBA Annual Meeting in his Address of Welcome (24 Wn. L. Rev. & State B.J. 326, November, 1949).

With the creation of the integrated bar under the State Bar Act in 1935, the WSBA launched a small magazine, the State Bar Review. It carried general association news, obituaries, and ma...
materials from the Board of Governors. After a year’s publication, however, the Review merged with the Washington Law Review — described, in various issues, as having been founded in 1924, 1925, and 1926 — to become the Washington Law Review and State Bar Journal in November 1936. “With this issue the Law School joins forces with the Washington State Bar Association in the publication of a new and larger legal journal, the purpose of which is not only the dissemination of information upon matters relating to and directly affecting the bar of this state as an integrated professional organization but also the discussion of legal problems which are of prime interest to the individual members of the bench and bar in their daily practice of law. With circulation to the entire bar of the state the opportunities of the Law Review for the rendition of service in its home state are greatly enlarged.” (11 Wn. L. Rev. &
Copies of the new quarterly were mailed, free, to every member of the Bar. The sale price for any non-member who might wish to partake of the publication was 50 cents per issue, or a thrifty $1.20 for a year. Editorial responsibilities were divided between Law Review staff for the Law Review side, and WSBA staff and members for the bar journal portion. J. Gordon Gose was the first editor of the State Bar Journal, which had two associate editors, correspondents appointed for each congressional district, and a business committee of seven.

During World War II, the State Bar Journal evolved from a portion of each of the four issues of the Law Review to the November issue alone. In the 1950s, the Law Review began crowding even that issue, and the coverage of the annual meeting became more and more abbreviated. In March 1947, the WSBA launched the Washington State Bar News, a four-page, monthly tabloid newspaper. John N. Rupp was named editor. At the 1947 WSBA annual meeting, Bar President A.J. O’Connor told the membership that one of the two items of interest in his term had been “the introduction of the State Bar News. That is a project that has been under consideration by the Board of Governors for some time, but it has been successfully launched this year. We hope successfully. It is designed to be a news medium for members of the Association and the press… As you know that publication does not supersede the Association’s participation in the Law Review…The Law Review continues to be the official publication joined in by this Association, and, as I say, Bar News is intended to supplement it.”

For 10 years, Rupp gathered copy, recruited correspondents, wrote articles himself, and edited the publication. Rupp went on to serve as a member of the WSBA Board of Governors and as president of the association. Rupp was succeeded by Robert Elston in August 1957. In 1958, the Law Review announced that by agreement with the WSBA, the State Bar Journal would be omitted entirely that year to “alleviate a growing backlog of materials.”

In 1956, the Board of Governors approved a subsidy for the Law Review, in the amount of one dollar per Bar member. Joint publication continued for five more years. With the last issue of 1961, the Law Review became the Washington Law Review again. The State Bar Journal was merged into Bar News, which became the official publication of the Washington State Bar Association.

Robert Elston holds the record for service as editor of Bar News: when he resigned in July 1968 to become a King County Superior Court judge, he was one month short of 11 years as editor. Elston was succeeded as editor by Edmund B. Raftis, who took the publication in dramatic new directions. Under his leadership, Bar News evolved into a magazine format, and its editorial coverage was expanded to include many of the controversial social and political issues of the late 1960s and early 1970s.

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After a growing conflict with the Board of Governors over editorial content and operations, the Board dismissed Raftis in July 1972 and turned the production of Bar News over to the WSBA staff.

As a result of the controversy, the Board of Governors created a committee to try and repair the breach. That group evolved into the current Editorial Advisory Committee (originally Board), a standing committee of the WSBA. The committee was given a supervisory role with the official publication, including authority to recommend a choice for the editor to the Board of Governors subject to its confirmation.

After dismissing Raftis, the Board of Governors conferred the Association’s highest honor, the Award of Merit, on him in 1972. In 1975, Raftis was elected to the Board of Governors himself. Bar News was published under WSBA staff control into early 1973, when the Editorial Advisory Board selected Hugh McGough to be the fourth editor. He served for a year and was succeeded by Ed Huneke in 1974.

Huneke resigned in 1976, and EAB member Stephen Deforest served as acting editor through December. DeForest served on the WSBA Board of Governors from 1987 to 1990 and was elected president of the Association in 1992. Jay V. White was elected the seventh editor and took over the reins in 1977. During his tenure, the magazine expanded to the current conventional magazine dimensions. White turned the Editor’s Page into a widely read space for commentary and the familiar essay. White resigned in 1980. He served on the WSBA Board of Governors from 1986 to 1989.

Succeeding White was Steven A. Reisler. In his four-and-a-half-year tenure, Reisler expanded the size of Bar News and a number of its departments — particularly “The Board’s Work” — and maintained the lively commentary style of the “Editor’s Page.” After leaving Bar News in 1985, Reisler was elected to the Board of Governors of the Bar Association. During 1988, he was one of three former editors of Bar News to serve at one time on the Board of Governors.

Carole A. Grayson followed Reisler in 1985 and served until April 1988. She sharpened the focus of the magazine’s coverage of legal and social issues and blazed trails into emerging areas of lawyer interest, such as chemical dependency, stress, quality of life, and the role of women in the law. Grayson went on to become editor of the King County Bar’s Bar Bulletin, a monthly tabloid newspaper, in 1990.

Lindsay Thompson was appointed to succeed Grayson in 1988 and continued in his first stint as editor into 1995, when he was succeeded by Hal White (1995–97) and Sherrie Bennett (1997–2000). Under the direction of these editors, the publication embraced emerging computer technology, with typewritten manuscripts gradually replaced by text files stored initially on CDs and eventually transmitted from authors to staff primarily online. The magazine also grew rapidly, to an average of 64 pages per month in 1994, reflecting the growth and expanding
diversity of the WSBA. A 1993 Media, Inc., survey placed Bar News in the top 10 of the Top 25 Northwest Business and Trade Publications, and fifth in the state of Washington. The American Bar Association’s Division for Bar Services 1992 State & Local Bar Publications Survey listed Bar News as the 12th-largest state bar magazine in the country. Bringing the publication into the new millennium, Mark Panitch served as editor in 2000–03, followed by Lindsay Thompson, who returned after having served on the Board of Governors.

I became editor of Bar News in 2007. As I told the Editorial Advisory Board and the Board of Governors in the selection process, my priority was to make the publication as readable and personal as possible while retaining its traditional educational and informational functions.

Since 2007, the publication has undergone additional significant changes. I titled the traditional editor’s column “Bar Beat,” gave it a permanent place on the last page of the magazine in the fashion of old-time magazine columns, and focused on intensely personal issues that affect us all, not necessarily involving the practice of law. As an additional “anchor” feature, again aimed at bringing more human interest to the publication, we added a question-and-answer column (now called “Beyond the Bar No.”) highlighting the personal and professional lives of individual bar members.

Recognizing the importance of communications between WSBA staff, leadership, and members, we have invited the members of the Editorial Advisory Committee to become increasingly involved in planning for the publication, as well as solicitation and authoring of articles. This is especially important, given that the publication still relies almost entirely on submissions from staff and WSBA membership, rather than paid reporters or contributors. The staff and EAC have responded with contributions, making the publication more diverse and engaging than ever.

Hoping to create an even more modern, inclusive, and magazine-like presentation, in December 2013, the name of the publication was changed to NWLawyer (our first choice was “Washington Lawyer,” but the name was already taken by the Washington, D.C. Bar) and upgraded the design. We also have worked in closer collaboration with other communication functions of the WSBA, including the website (with a full-featured and searchable online version of the current NWLawyer issue with back issues) and the bar’s official blog, NWSidebar.

In 2014, NWLawyer received the 2014 Luminary Award for excellence from the National Association of Bar Executives, which voted the magazine as the best regular publication among large bar associations nationwide. NWL

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Michael Heatherly is the NWLawyer editor and can be reached at nwlawyer@wsba.org.
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Run for the WSBA Board of Governors!

Nominations/applications are now being accepted for five positions on the Board. The open positions are for District 1, District 4, District 5, District 7-S, and At-large — New and Young Lawyers. Deadline is Feb. 17, 2015, for 1, 4, 5, and 7S districts and April 17, 2015, for the at-large position. See p. 53 for more information.

UPCOMING WSBA CONFERENCES AROUND THE STATE

Senior Lawyers Section Annual Conference
May 1, 2015 • Seattle Airport Marriott • SeaTac

Environmental and Land Use Law Section Midyear Conference
May 7-9, 2015 • Alderbrook Resort • Union

Real Property, Probate and Trust Section Midyear Conference
June 12-14, 2015 • The Davenport Hotel • Spokane

Family Law Section Midyear Conference
June 19-21, 2015 • The Davenport Hotel • Spokane

Solo and Small Firm Conference
July 9-11, 2015 • Red Lion Inn at the Park • Spokane

Criminal Justice Institute
Sept. 24-25, 2015 • Regional Criminal Justice Training Center • Burien

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Questions? 1-800-945-WSBA or orders@wsba.org

Get involved!

Join a WSBA committee, board, or panel.

Learn about open positions on the WSBA website: www.tinyurl.com/WSBAvolunteers. Applications will be accepted until February 27. Most positions begin October 1.
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These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 3.5(d) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Active links to directory listings, RPC definitions, and documents related to the disciplinary matter can be found by viewing the online version of NWLawyer at http://nwlawyer.wsba.org or by looking up the respondent in the lawyer directory on the WSBA website (www.wsba.org) and then scrolling down to “Discipline History.” As some WSBA members share the same or similar names, please read all disciplinary notices carefully for names, cities, and bar numbers.

**Disbarred**

Meyrick-Aylmer Cortes (WSBA No. 35362, admitted 2004), of Bellevue, was disbarred, effective 11/21/2014, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.5 (Fees), 1.15A (Safeguarding Property), 1.16 (Declining or Terminating Representation), 8.4 (Misconduct). Francesca D’Angelo acted as disciplinary counsel. Meyrick-Aylmer Cortes represented himself. William Edward Fitzharris was the hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Order Declining Sua Sponte Review; and Washington Supreme Court Order.

**Suspended**

Selina Astra Davis (WSBA No. 37738, admitted 2006), of Portland, was suspended for six months, effective 11/04/2014, 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), 8.4 (Misconduct). Natalea Skir acted as disciplinary counsel. Selina Astra Davis represented herself. Craig Charles Beles was the hearing officer. Stephen J. Henderson was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Order Declining Sua Sponte Review; and Washington Supreme Court Order.

**Suspended**

Walter Marland Hackett Jr. (WSBA No. 1055, admitted 1968), of Bremerton, was suspended for 10 days, effective 12/12/2014, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 8.4 (Misconduct). Craig Bray acted as disciplinary counsel. Walter Marland Hackett Jr. represented himself. Stephen J. Henderson was the hearing officer. Craig Charles Beles was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Hearing Officer’s Decision; Disciplinary Board Order Declining Sua Sponte Review; and Washington Supreme Court Order.

**Reprimanded**

Neil Trygve Jorgenson (WSBA No. 17008, admitted 1987), of Vancouver, was reprimanded, effective 10/21/2014, by order of the hearing officer. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 3.2 (Expediting Litigation). Joanne S. Abelson acted as disciplinary counsel. Dayna Ellen Underhill represented Respondent. Randolph O. Petgrave III was the hearing officer. Lish Whitson was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Order Approving Stipulation; Stipulation to Reprimand; and Notice of Reprimand.

**Interim Suspension**

Christopher William Bawn (WSBA No. 13417, admitted 1983), of Olympia, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 12/09/2014, by order of the Washington Supreme Court. This is not a disciplinary sanction.

**Interim Suspension**

Brian Geoghegan (WSBA No. 33416, admitted 2003), of Tacoma, is suspended from the practice of law in the State of Washington pending the outcome of disciplinary proceedings, effective 11/19/2014, by order of the Washington Supreme Court. This is not a disciplinary sanction.
The Law Office of Paul Eklund

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- CLE instructor: Elder Law (“Alternatives to Guardianship”; Wenatchee: May 2013)
- Founder of Lightshine (charity for orphans): See article: NWLawyer, Nov. 2014
- University Professor (international business; ADR); In-house counsel (Hawaii & Washington)
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is pleased to announce that

Heidi Baxter

has joined the firm.

Heidi Baxter joins us from Baxter Law, PLLC. Prior to practicing law, Heidi proudly served in the United States Coast Guard. Heidi’s practice will continue to focus in the areas of estate planning, probate, guardianship, business law, maritime & admiralty law, and civil litigation.

Smith Alling, p.s.

is pleased to announce that

Thomas P. Quinlan

and

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have joined the firm as Shareholders.

Mr. Quinlan and Ms. Auter will continue to represent their clients in the areas of civil litigation, general business and family law, respectively.
Mills Meyers Swartling p.s.
is pleased to announce that

Eric W. Robinson

has become a shareholder in the firm.

Eric's practice focuses on the representation of individuals and business organizations in a variety of commercial contexts, including planning, organizing, and financing business entities, handling business and real estate transactions, advising on contract and employment issues, and litigating commercial disputes. He is admitted to practice in Washington and Oregon. Eric received his B.A. from the Honors Program at the University of Washington, where he rowed on the varsity crew team, and his J.D. cum laude from Seattle University. He has been named to the list of Washington Rising Stars in 2013 and 2014.

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Matt Parker joins as an Associate Attorney. Matt’s practice focuses on elder law issues, including estate planning, long-term care planning, Medicaid eligibility, special needs trusts, guardianship, and probate administration.

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Keating, Bucklin & McCormack, Inc., p.s.
is pleased to announce

Ruth Nielsen

has joined her practice with KBM and is now a Shareholder of the firm.

Ruth has practiced law in Washington for over 30 years. Ruth’s practice has a strong emphasis on sports-related personal injury defense, as well as outdoor product liability. An experienced trial attorney, Ruth also continues to focus on employee disputes for employment matters.

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News and information of interest to WSBA members

Opportunities for Service

Interested in Running for the WSBA Board of Governors?
Nomination/Application Deadline: Feb. 17, 2015

Five positions on the WSBA Board of Governors are up for election in 2015. The open positions are for the following congressional districts:

- District 1
- District 4
- District 5
- District 7-S
- At-large position — New and Young Lawyers (Deadline is April 17, 2015)

The three-year term of office begins Sept. 17, 2015. These positions are currently held by Ken Masters (District 1), Jerry Moberg (District 4), Paul Bastine (District 5), Barb Rhoads-Weaver (District 7-S), and Robin Haynes (New and Young Lawyers at-large).

Eligibility: Any active member (except one previously elected to the Board of Governors) may be nominated or run for the office of governor from the congressional district in which the member is entitled to vote. Any active “young lawyer” member may be nominated or run for the at-large governor position. Active members of the Bar shall be considered “young lawyers” until the last day of December of the year in which the member attains the age of 36 years, or until the last day of December of the fifth year after the year in which such member was first admitted to practice in any state, whichever shall last occur.

Becoming a candidate: To run for the Board of Governors, or to nominate another WSBA member, you must file a statement of interest and a biographical statement of 100 words or less. The required forms are available on the WSBA website at www.wsba.org/elections or by contacting Sue Strachan at barleaders@wsba.org or 206-733-5903. The WSBA Office of the Executive Director must receive the applications for district races by 5 p.m. PST on Feb. 17, 2015. Note: Biographical statements of nominated candidates will be published on the WSBA website. The deadline to run for the New and Young Lawyers at-large position is 5 p.m. PDT on April 17, 2015.

Voting: The four district-based positions are elected by active members from the district. Generally, an active member is entitled to vote in the congressional district in which he or she resides. All out-of-state active WSBA members are eligible to vote in the district of the address of their agent within Washington for the purpose of receiving service of process as required by APR 5(f), or, if specifically designated to the WSBA Executive Director, within the district of their primary Washington practice.

The WSBA uses an electronic voting system, and members will not receive a paper ballot unless they request one. Email ballots will be sent on March 16, 2015, and votes must be received by 5 p.m. PDT on April 15, 2015. Paper ballots will...
be mailed upon request, and completed ballots must be received in the WSBA Office of the Executive Director by 5 p.m. PDT on April 15, 2015.

The New and Young Lawyers at-large governor will be elected by the Board of Governors at its June 12, 2015, meeting in Wenatchee.

**BOG Candidate Forum:** A candidate forum is scheduled for Tuesday, March 3, 2015. All candidates for any of the open district seats are strongly encouraged to participate. The forum will be held at the WSBA Conference Center in Seattle beginning at 5:30 p.m. Members are encouraged to attend and bring questions for the candidates. The forum will also be webcast and accessible statewide for live viewing.

**Apply for a WSBA Committee, Board, or Panel**

**Application deadline: Feb. 27, 2015**

Applications are now being accepted through myWSBA.org from members interested in serving on WSBA’s committees, boards, and panels. Committee service gives you an opportunity to contribute to the legal community and your profession, a chance to get involved with issues you care about, and a way to connect with other lawyers around the state. There are openings on 22 different committees, boards, and panels, including the Court Rules and Procedures Committee, the Judicial Recommendation Committee, the Disciplinary Board, and the Hearing Officer Panel. Most positions begin Oct. 1. For more information, see the Committees application in myWSBA, email barleaders@wsba.org, or call Pam Inglesby, WSBA communications services operations manager, at 206-727-8226 or 800-945-9722, ext. 8226.

**Volunteer to Promote Professionalism**

**Application deadline: March 31, 2015**

The WSBA recently reinvented several of its professionalism initiatives and is now recruiting volunteers to help implement them. Opportunities include making presentations to law students, writing for the WSBA’s magazine and blog, leading discussions at bar association events, recognizing professionalism in the legal community, and reviewing the Creed of Professionalism. WSBA members and other interested individuals are encouraged to apply before March 31 via the Professionalism application in myWSBA. For more information, see www.wsba.org/legal-community/volunteer-opportunities/professionalism.

**Serve as the WSBA Chief Hearing Officer**

**Application deadline: Feb. 27, 2014**

The Board of Governors invites applications from WSBA members interested in serving as the chief hearing officer (CHO). The CHO is appointed by the Supreme Court based on recommendation from the Board of Governors in consultation with the Discipline Selection Panel. The CHO works with the Office of General Counsel to perform the duties set out in ELC 2.5(e), including: presiding over discipline and disability matters; assigning cases; training, monitoring and evaluating hearing officers; deciding motions for hearing officer disqualification, protective orders, and amendment formal complaints; deciding prehearing motions during grievance investigation or when no hearing officer has been assigned; approving stipulations to discipline not involving suspension or disbarment; responding to hearing officer requests for information or advice related to their duties; and performing other duties necessary for an efficient and effective hearing system.

Applicants must be active members of the WSBA and have been active or judicial members of the WSBA for at least seven years. Applicants must have no record of public discipline. Applicants should have significant experience adjudicating contested matters, experience with the lawyer discipline system, substantial administrative and managerial skills, excellent legal reasoning skills, appellate practice experience, judicial bearing, impartial demeanor, and commitment to public service. Candidates with recent WSBA hearing officer experience will be given the strongest consideration. The CHO is an independent contractor. The contract will begin on Oct. 1, 2015, for a term of one year and can be renewed for additional one-year terms. The compensation is $30,000 annually. Interested members should submit a letter of interest, a signed Authorization to Release Confidential/Non-Public Information Form, a résumé with references, and a writing sample to Allison Sato, Office of General Counsel, Washington State Bar Association, 1325 4th Ave., Ste. 600, Seattle, WA 98101-2539 by Feb. 27, 2014.

**WSBA News**

**Join the WSBA New Lawyers List Serve**

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

**Washington Young Lawyers Committee Meeting**

The Washington Young Lawyers Committee will meet on Feb. 28, 2015, in Olympia at a location to be determined. For more information or to attend, email newlawyers@wsba.org.

**Mark Your Calendars: New Lawyer Education Opportunities in 2015**

In 2015, WSBA-NLE will offer new lawyer education opportunities in March (probate fundamentals), April (advising your solo practice) and September (family law — marriage dissolution). To learn more, visit www.wsba.org/resources-and-services. To be notified when registration opens for a seminar, email newlawyers@wsba.org.

**2015 License Renewal, MCLE, and Sections Information**

**Deadline was Feb. 2, 2015**

If you have not completed all mandatory portions of your license renewal, including MCLE requirements, if applicable, you are delinquent and are at risk of suspension.

**Judicial members.** If you have not filed your renewal within 60 days of the date of the written notice, your eligibility to transfer to another membership class upon leaving service as a judicial officer will not be preserved. You may complete licensing requirements, including MCLE certification, either online at mywsba.org or by using the License Renewal and Mandatory Continuing Legal Education Certification forms. Visit wsba.org/licensing to learn more.
WSBA Board of Governors Meetings
March 19, Olympia; April 24–25, Spokane
With the exception of the executive session, Board of Governors meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated but not required. Contact Margaret Shane at 206-727-8244, 800-945-9722, ext. 8244, or margarets@wsba.org. The complete Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/bog.

Volunteer Custodians Needed
The WSBA is seeking interested lawyers as potential ELC 7.7 volunteer custodians. An appointed custodian is authorized to act as counsel for the limited purpose of protecting a client’s interests whenever a lawyer has been transferred to disability inactive status, suspended, disbarred, dies, or disappears and no person appears to be protecting the clients’ interests. The custodian takes possession of the necessary files and records and takes action to protect clients’ interests. The custodian may act with a team of custodians and much of the work may be performed by supervised staff. If the WSBA is notified of the need for a custodian, the WSBA would affirm the willingness and ability of a potential volunteer and seek their appointment as custodian. Costs incurred may be reimbursed. Current WSBA members of all practice areas are welcome to apply.

Contact Sandra Schilling at sandras@wsba.org, 206-239-2118 or 800-945-9722, ext. 2118 or Darlene Neumann at darlenen@wsba.org, 206-733-5923 or 800-945-9722, ext. 5923.

Legal Community
Ashbaugh Beal Win 2014 Seattle Lawyers Basketball League Title
Ashbaugh Beal won the 30th annual Seattle Lawyers Basketball League (LBL) title (9–3), recapturing the hardware it last held more than a decade ago in 2001. Team captain Rich Skalbania remains as the only player left from the Cinderella 2001 squad, a No. 8 (out of 8) seed team that finished the season with a 6–7 record after a triple OT Championship win against Cozen O’Connor. Franklin High School hosted the championship in May 2014. Ashbaugh Beal (9–3), the No. 2 tourney seed, avenged 2 regular season losses to defending champs and the No. 1 tourney seed, Foster Pepper (10–2). A combination of stifling defense and poor shooting gave Ashbaugh a 22–11 halftime lead. Two of the LBL’s oldest veterans, Rich Skalbania (28 years) and Mayor Mike McGinn (23 years), squared off and exchanged three-pointers halfway through the first period. Top scorers Aaron Thompson and Aaron Jeide led Ashbaugh to a 39–19 lead with 11 minutes remaining. Although in foul trouble, Ryan Rourke and George Jordan willed Foster back in it inspiring a 13–1 run, making it 34–40 with 90 seconds left. However, both Rourke and Jordan fouled out and Ashbaugh made its free throws. Final score: Ashbaugh Beal 46, Foster Pepper 34.

Ashbaugh Beal team members and their respective law schools are Dan Hunt (Seattle U.’10), Aaron Jeide (Seattle U.’03), Mike Lee (Seattle U.’07), Rich Skalbania (UW ’87), Joe Stockton (UW ’12), Aaron Thompson (UW ’07), Ian Warner (UW ’11), and Chris Williams (U. of Iowa ’03). Congratulations!

The Legal Foundation of Washington’s 29th Annual Goldmark Award Luncheon will be held Feb. 27, 2015, at the Sheraton Seattle Hotel. The 2015 Charles A. Goldmark Distinguished Service Award will be presented to Bill and Rita Bender. Rita was the Foundation’s first treasurer and was elected its president in 1987. The 2015 President’s Award will be presented to Kirsten Barron of Barron Smith Daugert, in recognition of her commitment to the Access to Justice Board and Alliance for Equal Justice community through fundraising, pro bono participation, chairmanship of the ATJ Board, and leadership.
Access to Justice Board Supreme Court Forum Is Feb. 27
The Access to Justice Board will host a Supreme Court forum following the Goldmark Luncheon on Friday, Feb. 27. Justices will participate in interactive discussions on a variety of topics pertinent to civil legal aid. The forum will conclude with a reception where individuals can continue the conversation and learn more about the exciting work of the Access to Justice Board. For more information about the Supreme Court forum topics, contact Bonnie Sterken at bonnies@wsba.org. To register for the forum and the reception, visit http://goo.gl/forms/LJNY9C6tGF.

Legal Foundation of Washington Announces Board of Trustees
In November 2014, the Board of Trustees of the Legal Foundation of Washington unanimously elected attorney Loren S. Etengoff its 2015 president. Laurie Flynn Connelly of Eastern Washington University, Spokane, was reappointed to the Board by the Supreme Court and elected vice president; Kara R. Masters, an appointee of the Supreme Court from Masters Law Group, was elected secretary, and Gerald T. Schley, a wealth management advisor recently re-appointed by the governor, was re-elected treasurer.

Judge Frank E. Cuthbertson of Pierce County Superior Court, Judge Johanna Bender of King County District Court, Russell M. Aoki of Aoki Law in Seattle, and Peter J. Grabicki of Randall Danskien in Spokane are returning to the Board of Trustees in 2015. The Foundation supports legal aid and law-related education through the Interest on Lawyers’/Limited Practice Officers’ Trust Account (IOLTA) program. The Foundation is a supporter of the Alliance for Equal Justice, a statewide network of organizations providing legal aid to those with nowhere else to turn.

Lawyers Helping Hungry Children Fundraisers Earn Nearly $40,000
In November 2014, Lawyers Helping Hungry Children, a non-profit dedicated to ending childhood hunger in Washington, held joint fundraisers in Seattle and Tacoma. The King County Chapter of Lawyers Helping Hungry Children held its 23rd annual fundraiser at the Grand Hyatt in Seattle. The luncheon featured a keynote address by Hunger Warrior award winner Rep. Jim McDermott. Also honored at the lunch was Raul Ibanez, who accepted the Hunger Warrior Award and donated several items to the live auction. The Hawthorne Elementary School Choir entertained the biggest crowd to date, and attendees had the opportunity to bid on donated items, with all proceeds benefiting hungry children in King County and beyond. The event was one of the most successful to date, raising almost $24,000 (after expenses) to assist beneficiary organizations, including Northwest Harvest, the City of Seattle Summer Food Program, the Emergency Feeding Program, WithinReach, CARE and the Children’s Alliance. The Pierce County Chapter of Lawyers Helping Hungry Children held its sixth annual breakfast fundraiser the same day. The breakfast was attended by over 120 Tacoma attorneys and judges and raised over $15,000 for emergency food programs in Pierce County. Learn more about Lawyers Helping Hungry Children at www.lhhcwa.org or by contacting Julie Schisel at julie@lsand.com. For information about the Pierce County Chapter, contact Todd Carlisle at toddc@nwjustice.org.

Save the Date: Access to Justice Conference, June 12–14
The Access to Justice Board invites you to the 18th Access to Justice Conference from Friday, June 12, through Sunday, June 14, 2015, at the

Perkins Coie attorney Jared Hager is the proud winner of these auction items donated by baseball player Raul Ibanez at the LHHC fundraising event.

Wenatchee Convention Center. The conference theme, “Working for Justice: Our Journey Continues,” builds on the Access to Justice Board and Alliance for Equal Justice’s 20-year history of bringing together attorneys, judges, and other community leaders to address the challenges and opportunities of advocating for civil equal justice for our state’s poorest and most disadvantaged communities. Lateefah Simon, a nationally recognized civil rights leader and program director for the Rosenberg Foundation, will be the keynote speaker. Learn more and register at www.wa-atj.org. The Access to Justice Board is collecting nominations for multiple awards to be presented at the conference, recognizing the efforts of individuals or organizations that have played strategic, significant, and courageous leadership roles in improving access to the justice system. To see the award descriptions and past recipients, visit http://bit.ly/1vExSQ8. Submit your nominations by March 15, 2015, to Terra Nevitt at terran@wsba.org.

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

Seeking Peer Advisors
Would you like to provide support to another lawyer in your community addressing topics such as mental health and self-care, alcoholism and addiction, or guidance in one’s practice? Lawyers are often uniquely able to

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

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

WSBA Law Office Management Assistance Program (LOMAP)
Casemaker Online Research
Casemaker is a powerful online research library provided free to WSBA members. Read about this legal research tool on the WSBA website at www.wsba.org/casemaker. As a WSBA member, you already receive free access to Casemaker. Now, we have enhanced this member benefit by upgrading to add Casemaker+ with CaseCheck+ for you. Just like Shepard’s and KeyCite, CaseCheck+ tells you instantly whether your case is good law. If you want more information, you can find it on the Casemaker website, or call 877-659-0801 and a Casemaker representative can talk with you about these features. For help using Casemaker, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

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

Usury Rate
The average coupon equivalent yield from the first auction of 26-week treasury bills in January 2014 was 0.112 percent. Therefore, the maximum allowable usury rate for February is 12 percent.

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

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

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

Animal Law Section Annual Seminar
Mar. 13, Seattle and webcast. CLE credits pending. Presented by WSBA CLE in partnership with the WSBA Animal Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Disability Planning and Probate
Feb. 6, Sequim. CLE credits pending. Presented by Clallam-Jefferson County Pro Bono Lawyers with the Clallam and Jefferson County Bar Associations; 360-452-9137, ext. 202. ariels@njjustice.org.

Boot Camp: Probate Fundamentals
Mar. 10, Seattle and webcast. 6.25 CLE credits. Presented by WSBA NLE in partnership with the WSBA Real Property, Probate and Trust Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org/NLE.

Ethical Negotiations
Feb. 10, Seattle. 1 CLE ethics credit. Presented by WSBA CLE in partnership with the WSBA Corporate Counsel Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Intellectual Property Institute
Mar. 6, Seattle. CLE credits pending. Presented by WSBA CLE in partnership with the WSBA Intellectual Property Institute; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

Alternative Fee Arrangements

Professionalism
Mar. 31 webcast. CLE credits pending. Presented by WSBA CLE; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.
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Stephen C. Smith, former Chair of the Washington State Bar Association Disciplinary Board, is now accepting referrals for attorney disciplinary investigations and proceedings in Washington, Idaho, Hawaii, and Guam.
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RATE INCREASE: Classified advertising rates will change starting with the JUL/AUG 2015 issue of NWLawyer. WSBA members: $50/first 50 words; $1 each additional word. Non-members: $60/first 50 words; $1 each additional word.

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Before law school, I played tennis! I was a ranked junior in the Intermountain region, and went to college on an athletic scholarship. Tennis enabled me to develop discipline, focus, competitiveness, determination, sportsmanship, problem-solving skills, and a willingness to take risks. I rely on these skills every day in running my law practice.

My greatest talent as a lawyer is my skill in communicating with clients. I can explain complex legal concepts in an understandable way. I truly enjoy my clients, and my authenticity comes through in the relationships I develop with them.

My career has surprised me by everything! When I graduated from law school, I envisioned using a legal career as a platform to be involved in politics either as a candidate, lobbyist, or a high-level campaign strategist or staff professional. I never imagined that I would be living in Seattle, running my own law firm, and not even slightly interested in pursuing politics as a career. It’s fortunate that my life turned out in such an unexpectedly fun and perfect way!

This makes me smile: My much-loved brown tabby cat, Roger. He’s very amusing. I brush his teeth twice a week with a cat toothbrush and malt-flavored toothpaste, and he actually likes it.

The most rewarding part of my job is being the “captain of the ship.” I absolutely love the freedom of running my own small business, and wearing the dual hats of lawyer and small business owner.

During my free time, I love to go to movies. I have a passion for Star Trek, and many of the Marvel-comics based movies. My all-time favorite movie is Rocky — it’s so inspiring!

I absolutely can’t live without chocolate, red wine, and salsa. And Peet’s French Roast coffee.


I care about climate change. It’s impacting people and wildlife, right now, through weather extremes and fire hazards. That’s one reason why I run my law firm virtually, to minimize paper and car trips. It’s a way to be a part of the solution rather than contribute to the problem.

I give back to my community by serving on the Board of Directors of Tennis Outreach Programs. We operate a nonprofit tennis facility in Kirkland, the Eastside Tennis Center, which introduces many children to tennis on a reduced fee or no-fee basis. Our mission is to “empower youth for lifetime success through tennis, education, fitness and character development regardless of economic circumstance.”

My first car was a Chevrolet Sprint, affectionately known as the “Urban Warrior.” I remember graduating from law school in Idaho, passing the bar, packing everything I owned into that two-door Chevrolet Sprint, and driving cross country to my new job with the U.S. Senate in Washington, D.C. I still only drive manual cars — automatic transmission is for wimps!

If I could get free tickets to any event, it would be Centre Court, Wimbledon, men’s final, a Nadal–Federer rematch. Front row seats. Strawberries and cream. I can see it now...

If I have learned one thing in life, it is to put first things first. Even if I’m completely swamped, and can’t imagine how I can make time for a workout, I work out anyway. I always make sure to sleep, eat salads, and drink water. I won’t be effective for my clients unless I’m taking good care of myself.

My name is STACEY ROMBERG and I have practiced law for over 25 years. My North Seattle law firm focuses on business law, estate planning, and probate. I am a frequent speaker at continuing legal education courses, for radio broadcasts, live webinars, and for a variety of organizations. In my spare time, I enjoy serving on the Board of Directors for the nonprofit Tennis Outreach Programs, helping youth build a foundation for lifetime achievement through tennis, education, and character development.
“After years of giving to Washington’s Campaign for Equal Justice and King County Bar Foundation, I realized that additionally giving to WSBA’s Foundation was the best way to complete my philanthropic goals to support access to justice in our state and promote diversity within Washington’s legal profession. Giving to the Foundation rocks!”

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