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The WSBA’s Official Members’ Magazine

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

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

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

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

Postmaster: Send changes of address to:

NWLawyer
WASHINGTON STATE BAR ASSOCIATION
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539
Value of Diversity

I read with interest Brian Brunkow’s letter, “Diversity Fatigue” (DEC 2014 NWLawyer). While I agree we have made progress on diversity, I disagree we should “give ourselves a rest on the diversity dialogue.” All of us are saddled with implicit biases. Many are reinforced by television, movies, and the news. We have only to look at recent headlines to be reminded how our perspectives can diverge. I am often struck by how two people from different backgrounds can experience the same world in such dramatically distinct ways.

We must challenge ourselves to listen to all the voices around us, not just those we agree with. Besides, diverse perspectives bring immense value to the workplace. They help us solve problems more efficiently and represent our clients more effectively. They help ensure that our offices are respectful and inclusive. As Attorney General, and leader of the largest law office in our state, I believe we should renew and expand the diversity dialogue, and not give it a rest.

Bob Ferguson, Olympia

Overvaluing Diversity

Kudos to Brian Brunkow of Pacific Beach for his letter re: our obsession with diversity. I agree that we are over-saturated with discussion on this issue. It is long past time to move on. We are all lawyers and we are all members of the WSBA. It doesn’t make any difference if we are male or female, gay, straight or transgender, Asian, Indian, Vietnamese, a Veteran, young or old,
African American, Middle Eastern, Latino or Slavic, or disabled. It doesn’t make any difference of whether or not we are a mother. After I read his letter, I went to the WSBA website and discovered how many [Washington] bar associations are listed there. Please note, I fall into three of the categories. The only thing that seems to be lacking is the white European male bar association (which I am not eligible to join as I am a woman). And for those of you that might find the idea of a white male bar association offensive, stop a moment and be logically consistent. Some may consider the idea to be discriminatory, however, given the list [on the website], it obviously should not be considered such. I think it should be open to any lawyer without regard to creed, race, ethnicity, disability, gender, sexual preference or anything else. So, let’s move forward as lawyers and act as such without reference to ethnicity, race, gender, sexual orientation, country of origin or status as mothers, etc. Personally, I think it is long past time.

Kathy Rall, Seattle

All Bars Have Nice Guys

The title of Douglas Pierce’s article, “All Bars Have Bastards,” (NOV 2014 NWLawyer) and the opening paragraph proclaiming that certain lawyers see collegiality as a weakness, had me expecting a satirical pronouncement of obnoxious trial lawyers. Instead, Mr. Pierce seems to promote the notion that a lawyer has an obligation not to cooperate with opposing counsel. He reasons that since clients pay us hundreds of dollars an hour, we are obligated “to do battle for them” and our relationship with opposing counsel should be akin to old-school warriors. Mr. Pierce advises to maintain professionalism with opposing counsel, but never cross the line into cooperation.

Juxtapose this against the guest article authored by my colleague in Whatcom County, Rajeev Majumdar, where he takes a more pragmatic view of the relationship between opposing counsel. He reminds us that, “there is a lot of incentive to be cordial, respectful, and professional” with opposing counsel. Merriam-Webster defines cordial as “politely pleasant and friendly.” I would add that being cordial, respectful, and yes, cooperative with opposing counsel is the preferred behavior of most judges. Attorneys ought to be problem solvers, not part of the problem. In my view, non-cooperating “warriors” tend towards the latter.

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A s some of you may recall, in the 1980s the news of the day was printed on paper derived from tree fiber and delivered directly to citizens’ porches every 24 hours by 12-year-olds on bicycles. I was too lazy at age 12 to deliver newspapers, but for several years after college I wrote for them, which paid about the same. What I enjoyed covering most as a reporter were criminal trials. Perhaps nothing portrays the human condition more poignantly than the testimony in a good criminal trial.

I was once assigned to cover the trial of a prominent businessman charged with rape. Coincidentally, under way down the hall was a first-degree murder trial being covered by other reporters. During breaks in the rape trial I would pop out to catch testimony in the murder case. The murder trial had been going on for some time and the case went to the jury while the rape trial was still in progress. One afternoon, I got word that the jury in the murder trial had returned and was handing down its verdict. As soon as I had a break, I headed down the hall, hoping to experience the consummate drama that begins with “Have you reached a verdict?”

The door to the courtroom had a small window above the door handle. Knowing this might be a sensitive moment, I peeked in before trying to enter. To my disappointment I saw that the proceedings had ended and the courtroom was empty, except for a lone soul. The lead defense attorney was still sitting in his chair at the counsel table, motionlessly staring at nothing in particular across the room. That tableau alone gave me a good idea of what had happened, and I confirmed later that the jury had indeed found the defendant guilty. We didn’t have cellphones in those days, but if we had, I would have been tempted to take a photo through that window. The snapshot would have described the despair of losing more eloquently than I can do with words.

Although I wouldn’t have traded places with that defense attorney for anything at that moment, the dedication and humanity I recognized in him was one of the things that compelled me to attend law school and join this profession. As it has turned out, my entire legal career has been in civil law. I have never handled a scintillating criminal case, or even a boring one. Of course I’ve lost my share of times in civil litigation: lost motions, verdicts, time, and money — clients have been disappointed and I’ve embarrassed myself — but I’ve never sometimes life-threateningly unpopular causes.

Of course the death penalty is the ultimate punishment, but we as a society still don’t know what to do with it. In “A Brief History of the Death Penalty in Washington” (p. 48), Shelley Simcox, a retired federal lawyer and member of the WSBA Editorial Advisory Committee, outlines the history of the on-again/off-again death penalty in Washington (currently off by virtue of Gov. Jay Inslee’s moratorium). She points out that while the Legislature has kept coming back with the death penalty each time it has been overturned by the courts, few people have actually been executed in recent history, and Washington might one day join the 18 states that have abolished executions.

Also following our year-long historical theme at NWLawyer in honor of WSBA’s 125th anniversary, is “Legal Notable: Lelia Josephine Robinson” (p. 43), by Olympia literary scholar Erin Gayton. Ms. Robinson (1850–91) was the only female in her 150-member class at Boston University School of Law. Although she graduated fourth in the class, her petition to sit for the Massachusetts bar exam was denied because the right to practice law was not allowed to women at the time. Meanwhile, our “From the Barchives” feature (p. 46) this month spotlights another historical theme at NWLawyer.

Editor Michael Heatherly practices in Bell- ingham. He can be reached at 360-312-5156 and nwlawyer@wsba.org. Read more of his work at nwsidebar.wsba.org.
How to be a rock star.

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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As a leader in the Spokane immigrant community, and as an African who immigrated to the United States, Francis Adewale introduces us to some insightful case studies of the immigrant experience in the legal system. This article delivers a compelling and personal reminder that while immigrant members of our community face similar legal challenges, sometimes the hardest cultural competency lesson is that the clients do not fall neatly into the usual legal boxes. Often the solutions are found in cultural details of human interaction for the attorney and the client. — A.D.G.

By Francis Adewale

Refugee’s story is not just a single story1 — the story of war, deprivation, and pain. More often than not, the refugee’s story is deeper and richer than their lucky escape. Our challenge as attorneys is to dig deeper to learn our refugee clients’ stories. A few examples will illustrate how to put this into practice.

There was a couple who met at the United Nations Refugee Camp in Guinea Bissau. She was from Sierra Leone. He was from Liberia, a child soldier recruited by the notorious warlord and dictator, Charles Taylor. Following traditional African customs, they were married in the presence of the elders. They both applied for refugee visas and resettled in Spokane. Despite vehement opposition from her husband, she started attending classes at Spokane Community College. There was comfort in education and it helped her overcome some of her fears.

One day, there was an altercation over his sexual demands. She told him she had to be in class, but he tried to force himself on her. She pushed him away. He picked up the car keys, and as she reached for the keys in his pocket, his pants tore. He called the police. She was arrested and charged with malicious mischief.

The prosecutor looked only at the fact that she tore his pants; therefore, she was guilty of malicious mischief. The stakes were very high; she faced potential jail time, the fear of deportation, or worse yet, losing the opportunity to become a naturalized citizen.

One line item in the police report stood out. The officer stated that during questioning, the defendant refused to look the officer in the eye. To the officer, only familiar with Western culture and behaviors, this was a tell-tale sign of guilt. As an African, I know it is not a sign of guilt to look down when you are telling your story. In fact, it is a sign of disrespect to look an elder or an authority figure straight in the eye. The jury absolved the wife of all charges. The case was won purely on explaining with clarity the complexity of an African woman dealing with a new life in America. This illustrates the fact that cultural competency, like other legal skills, requires a disciplined approach to viewing the world from different perspectives.

“An effective lawyer must possess skills for cross-cultural engagement by developing cultural competency.”2 We cannot effectively advocate for our client when we know little to nothing about where they are coming from or what drives them. Culture encompasses a person’s ethnicity, race, gender, nationality, age, economic status, social status, language, sexual orientation, physical attributes, marital status, and a variety of other characteristics.

Many African refugees cannot understand a “no-contact order” that restrains them from their residence. In African culture, a man’s very essence is tied up with his house. When you take him away from his “house,” you diminish him. In 2011, a Sudanese refugee was charged with a misdemeanor violation of a no-contact order stemming from a felony assault–DV conviction.

Through the interpreter, we learned that the client had no formal education, was illiterate, and understood only basic Arabic and a smattering of English. It was extremely difficult
for him to grasp the meaning of the no-contact order. He did not understand why he could not go home if his wife wanted him there and they were not having problems. How could a court keep him out of his own home? “Where am I supposed to go?” he asked. “What if I want to see my children?” The arrest was a culture-shock moment for him. The plea, taken through the help of a telephone translator with little or no understanding on the client’s part, was later challenged. The felony guilty plea was withdrawn due to ineffective assistance of counsel for lack of meaningful representation based on the use of an Arabic interpreter. This case was later used to effectively solicit the assistance of the state Legislature in procuring funding for training interpreters in Eastern Washington through Refugee Connections Spokane.

Cultures, no matter how resilient, are not static. The next example concerns the parents of a seven-year-old refugee boy who could not understand why they were charged with reckless endangerment when they left their child in the car on a hot summer day. When counsel tried to explain the law to the parents, they couldn’t comprehend that a shopping mall is not equivalent to an African market. Every adult in an African village has the responsibility to care for all children, regardless of their biological parentage. This particular Congolese family was connected with other African parents and grandparents living here. This led to a community effort that enabled refugee elderly grandparents to care for young children while their parents took breaks.

In another case, a Burundi refugee girl was involved in an auto accident, triggering a severe case of PTSD. As an 11-year-old young girl, she had walked through a dense jungle in the night to escape the holocaust in her land. Her recent auto accident brought back those six months of trying to elude the gendarme. Our phone conversation with the insurance adjuster helped the company understand the need for mental health counseling, which may have been denied without knowing her story.

Cultural competency is an essential skill set for the 21st-century attorney who seeks to deliver effective advocacy and serve justice. These examples are just a few reasons why we recently established the American Law and Justice Workshop in Spokane. This annual workshop which has been widely celebrated by many, including the Association of American Law Schools, will hold its next session in April 2015. As lawyers and legal practitioners, it is our responsibility to familiarize ourselves with our clients’ cultural backgrounds while helping them understand American laws and culture. A single story does not define our clients — it’s our duty to dig deeper. NWL.

Francis Adewale is an H. George Frederickson honors graduate of Eastern Washington University and a 2009 graduate of the WSBA Leadership Institute. He has served as assistant public defender for the City of Spokane since 2001. He is currently the lead public defender at the newly established Spokane Community Court. In addition to his work as city public defender, Adewale serves on several community-serving organizations and is the current board president of Refugee Connections Spokane. He provides free limited legal clinics to seniors, minority businesses, and low-income citizens in Spokane. He can be reached at fadewale@spokanecity.org.

NOTES
3. Refugee Connections Spokane is a non-profit organization that promotes refugee resettlement success and long-term health and wellness through community collaborative projects and activities; www.refugeeconnectionsspokane.org.
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HAND IN HAND

Tying Together
Estate Planning and
Care Planning
by Cheryl C. Mitchell and Ferd H. Mitchell

Recent rule changes by the Washington State Medicaid program have strengthened the linkage between estate planning and planning for long-term care. Planning for the handling of an estate has long raised issues about how possible future needs for care would be met. And applying for long-term care assistance from Medicaid has long required looking back at how estate planning has been handled in the past. But due to recent Medicaid actions, estate planning and care planning are even more strongly tied together today.

Estate Planning and Long-Term Care

There is often a close relationship between estate planning and planning for possible long-term care needs in the future. Actions taken by clients before care is needed are likely to affect the care options that are later available.

In many cases, long-term care needs may require eventual qualification for Medicaid assistance to help pay for care at home, in an assisted living facility or adult family home, or in a nursing home. The costs of such care often cannot be met with personal assets alone. In order to receive assistance in paying for long-term care, extensive financial requirements must be satisfied. Changes in the Medicaid program under the Affordable Care Act do not apply to long-term care.

Legal Planning

This linkage can affect how legal documents are prepared in advance. Married couples may attain a degree of protection by preparing reciprocal special needs trusts (SNTs) in their wills. When the first spouse dies, some of the assets of the couple can pass into a SNT for the survivor — funds and property in the SNT will be protected and not countable for Medicaid purposes.

Detailed durable powers of attorney (DPOAs) are essential. They may include special powers that will be needed if the principal becomes unable to act for himself or herself and requires long-term care. Health Care Directives (HCDs) are important to make sure that care facilities understand the wishes of anyone needing care.

Another aspect of estate planning occurs when clients decide to make gifts (often to their children) to help protect assets against possible care needs. Until recently, transfers made over five years before care is needed have protected assets when a Medicaid application is later submitted for long-term care. Now, such transfers may not be protected.

Medicaid Requirements

The Washington State Medicaid program (now also called Washington Apple Health) has introduced new interpretations of regulations and application procedures that will have broad impacts. All lifetime transfers of assets (resources) from a donor (perhaps a parent) to a donee (perhaps a child) may become an issue if a donor later needs to obtain assistance in paying for long-term care. The revised regulations and procedures affect both estate planning and efforts to obtain long-term care assistance.

Prior Regulations and Procedures

A Medicaid applicant must disclose all transfers of assets (resources) within the past five years and all sources of income. In addition, applicants must disclose all trusts that are in effect, no matter when they were established. Over the years, one strategy for Medicaid qualification — accepted by the program — has been for an applicant (or spouse) to transfer some assets to another person (perhaps a child) so that the program limitations on resources can be met. A penalty or waiting period due to gifting restrictions has typically been associated with such transfers made in the previous five years, although there are a number of important exceptions to this general rule.

The gifting options accepted by the Medicaid program have been steadily narrowing over the years. Since 2006, the penalty period assessed when a client (or spouse) has made gifts to qualify for Medicaid has involved adding together all gifts made in the previous five years and dividing by the average monthly private-pay cost of nursing home care to obtain the penalty period in months.

After making a gift (for example, from a parent to a child), an applicant would then be under resource limits and could apply for Medicaid. If the program found the applicant eligible but for the gift, a penalty period would be assessed. After the penalty period, the applicant could reapply and begin to receive assistance.

In many cases, this would only be feasible if the recipient of the gift (the child) used some of the gifted funds to help pay for the care received by the maker of the gift (the parent) during the penalty period. This would typically not work out for institutional care, since the payments for care would likely exhaust the gifted funds before eligibility could start. But it could sometimes work for alternative care, and some gifted funds might be left over to pay for the parent’s needs in the future.

New Rules and Procedures

Under a 2013–14 reinterpretation of the gifting rules, based on the results of administrative appeals, DSHS now does not treat a transfer as a gift if some of the funds are subsequently used to help pay for care provided to the person who is transferring the funds (the donor). Instead, such a transfer is treated as a constructive trust, with funds still available to the donor. DSHS is also considering whether such transfers might constitute exploitation of a vulnerable adult.

The changes in the gifting rules have been based on the results of two Fair Hearings, and have been in process over 2013–14. By emergency rule on Sept. 30, 2013 (WSR 13-20-096), the Health Care Authority (HCA) stated that if transferred funds were to be used to help pay for an applicant’s care during a penalty period, a “constructive trust” had been established and no gift had been made (WAC 182-512-0250, changing the “ownership and availability” of assets).

Based on this change, all assets that are transferred for the purpose of obtaining Medicaid eligibility, and are partially used to help pay for the donor’s long-term care services during the pen-
ally period, will be considered to be an available resource for the donor. DSHS will inquire into the sources of all funds used to pay for care in order to determine if some of them are coming from a constructive trust — regardless of when such a trust was established.

It was then decided by the HCA that more detail was required for the revisions to the rules. The changes were deleted by further rule change on March 14, 2014 (WSR 14-07-059). New materials are now being prepared to expand on the explanation of these rules (under WSR 14-11-049, dated May 15, 2014). However, the HCA has taken the position that the new procedures are adequately supported by the Fair Hearings, other WAC sections, and the State Medicaid Manual prepared by the federal Department of Health and Human Services (HHS), and remain in effect. (Related federal requirements support this interpretation under Section 32598.1 of the generic State Medicaid Manual.)

It will be difficult to document that a transfer of resources is a gift for which proceeds are not intended to be later available to pay for any needed care. A letter prepared by an attorney at the time may — or may not — provide adequate proof. Another possible alternative is to prepare a gift tax return at the time as a proof of intent.

**Practice Impact**

Under these rules, a gift within the five-year lookback period can only be made to qualify for Medicaid long-term care assistance if the cost of care for the applicant (parent) is less than the income of the applicant, so that none of the gifted funds are used to pay for care. This situation may occur rarely for some types of alternative care. Such a situation is highly unlikely to ever occur for institutional care. (For the latter case, if an applicant has such a high income, other private-pay strategies for care would be available, so a Medicaid application would not be appropriate.) However, as another concern, there have been suggestions by HCA that all current transfers to qualify for care might be considered to be exploitation of a vulnerable adult, which would likely end all transfers.

If care assistance is later required, all transfers that might have established constructive trusts (including those before the five-year lookback period) may be examined for intent. Proving that the transfers did not establish constructive trusts may be difficult. The key consideration will be whether any of these resources are traceable to later payments for the long-term care needs of the donor.

When an applicant for Medicaid assistance applies for long-term care, the application often takes two to three months for processing by DSHS. For nursing home care, if eligibility is established, coverage can be retroactive for up to 90 days, back to the date of application. However, for alternative care, coverage is not retroactive and will start as of the date of the award letter.

This raises a question: How is a
single applicant to pay for care during the processing period? Before the recent changes, some funds owned by the applicant could be gifted, to reduce countable resources below $2,000; an application could be submitted and approved but for the gift, leading to a penalty period and reapplication when the penalty period ended. Some of the gifted funds could be used to help pay for care during the penalty period.

According to DSHS, a different strategy is now required. An alternative care facility may be paid in advance for two to three months. Other countable resources may then be reduced to less than $2,000 and an application submitted. The advance payment will be considered a potentially available resource. However, if the prepayment is not too long, DSHS will process the application, and establish coverage as of the date the prepayment ends.

Conclusions
Tighter linkages between estate planning and qualifying for long-term care will affect many attorneys. From the estate-planning point of view, actions to be taken by clients will need to be considered in terms of the later potential impact on Medicaid assistance to pay for long-term care. And from the long-term care point of view, earlier estate planning may have a significant impact on efforts to obtain assistance in paying for long-term care. NWL

Further information on these topics may be found in volumes 26 and 26A of the Washington Practice series: Washington Elder Law and Practice: Basic to Advanced and Washington Elder Law Handbook, and in postings to the web page at www.blog.legalsolutions.thomsonreuters.com, under the tag “Washington Elder Law Report.” This discussion is also based on personal communications with the Division of Home and Community Services in the Department of Social and Health Services (DSHS), which is now an organizational unit of the Health Care Authority (HCA).
ETHICS ISSUES for In-House Transaction Counsel

by Paul Swegle

For many in-house counsel, working on transactions is the best part of the job — debt and equity financings, mergers and acquisitions, reorganizations, joint ventures, and commercial transactions of every kind. In-house counsel often help negotiate, document, and close key deals. But where there’s action, there’s also risk. And those risks can survive well past closing. Fortunately, by minding a few key ethics obligations, in-house counsel can reduce and nearly eliminate their potential disciplinary, malpractice, and civil liability risks. Here are some things to keep in mind:

COMPETENCE

Meeting the obligation of competence under Washington Rule of Professional Conduct 1.1 can be tricky in transactions given the range of potential issues — tax, intellectual property, securities law, contracts, regulatory and compliance, employment law, and so on.

In-house counsel should define their role in every transac-
Never give up, for that is just the place and time that the tide will turn.
~ Harriet Beecher Stowe

I became a class representative to fight Sprint PCS for charging illegal taxes to its customers. Victory came eight years later.

Real Justice for Real People

Christopher Hesse
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advice to other employees, (e.g., how they might fare in a given M&A deal, how their options might accelerate in a transaction, or how a benefit or bonus plan might apply to them in a transaction). Whether or not such information constitutes legal advice, all that matters is whether it creates a “subjective belief” in the listener.

Sometimes employees demand information regarding their rights under an official company document like a stock option plan, a retention bonus plan, or even an employment agreement. You can confirm that they have the correct documents and you can direct them to someone else to answer their questions. But if a constituent asks you for legal advice, the only advice you can give under RPCs 1.13(f) and 4.3 is that they should consult independent legal counsel.

CONFIDENTIALITY
In-house counsel spend much of their work life among colleagues and other “constituents.” Office banter can sometimes veer toward questions like, “How’s the XYZ deal going?” Keep in mind comment 2 to RPC 1.13:

This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

In-house counsel must quickly decide whether a requested disclosure is “explicitly or impliedly” authorized under RPC 1.6. And as we know, the phrase “information relating to the representation of a client” is construed broadly. So if a colleague asks about a pending deal, unless he or she is a senior officer or participant in the deal, respectfully reply that you cannot discuss company legal matters and, if appropriate, suggest an officer he or she can talk to.

COMMUNICATION
Timing expectations for commercial deals and financial transactions are
usually ambitious. In-house counsel need to stay current and maintain communication with key constituents. The following excerpts from RPC 1.4, Communication, are critical mandates for transaction counsel:

A lawyer shall... (2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter....

The most deadly sin is to delay communicating bad news. Promptly communicate the news and the best solution.

MULTI-JURISDICTIONAL PRACTICE ISSUES
Companies large enough to need in-house counsel are also usually “multi-jurisdictional,” extending across state lines with physical locations, governance structures, transactions, and ongoing commercial relationships. Some questions to help frame the issues:

Is it unauthorized practice of law (UPL) to:

• Maintain a regular call into another state to advise organizational constituents?
• Attend negotiations or other meetings in another state about matters governed by the laws of that state?
• Maintain a schedule of visiting company locations in multiple states to provide legal advice to constituents?
• Advise client constituents about another state’s laws?
• Receive calls about FDA rules and regulations from organizational clients located in many states?

The answers are mostly found in RPC 5.5 and ABA Model Rule 5.5. And an increasing number of states, including Washington, now have new “house counsel” admission options.

Temporary Practice Exemptions Under RPC 5.5 and Model Rule 5.5
RPC 5.5(a) prohibits violating the practice of law rules of any other jurisdiction and RPC 5.5(b) prohibits the unlicensed practice of law (UPL) in Washington. RPC 5.5(c) and (d) provide five temporary practice exemptions allowing out-of-state attorneys to legally perform certain types of work in Washington. The most important of these for in-house transaction counsel is RPC 5.5(d). It’s almost a blank check to represent an organization’s constituents in Washington as long as that representation is 1) temporary and 2) does not require pro hac vice admission.

All of the activities described in the five questions above would seem permissible on a temporary basis under RPC 5.5(d), with the caveat that UPL rules don’t explicitly prohibit counseling a client about another state’s laws. The real question is whether the attorney can competently advise the client about the other state’s laws — a question that doesn’t always receive proper consideration.

Unfortunately, the word “temporary” is a major limitation within RPC 5.5(d) and Model Rule 5.5(d). It prohib-
its in-house counsel from establishing a part-time office in the jurisdiction. (See comments 4 and 17 to RPC 5.5). But what other work-related routines should be considered non-temporary?

RPC 5.5(d) and its comments do not resolve this ambiguity. In-house counsel relying on RPC 5.5(d) or any other “temporary practice” exception should avoid establishing permanent offices and may want to also avoid overtly fixed work routines outside the home state. In states without a variant of Model Rule 5.5(d), counsel must carefully review the other available temporary practice exemptions and see if their anticipated legal work can fit under one or more of them.

House Counsel Registration
Fortunately, many states are adopting non-temporary solutions that free in-house counsel to serve their multi-jurisdictional clients without these ambiguities, and to do so from a part-time office with family pictures and other personal touches.

In Washington, in-house counsel have two options: 1) Admission by Motion (whether in-house counsel or private practice) as a fully licensed attorney under APR 3(c) if the attorney has practiced three out of the last five years or 2) a “limited house counsel license” under APR 8(f). Oregon has a similar program, Attorney Admission Rule 16.05.

The license fees and MCLE requirements for “house counsel” admission are the same as for fully licensed attorneys and, unfortunately, not all house counsel admission rules are equally useful. California’s In-House Counsel Rule 9.6, for example, requires the attorney to be a California resident.

CONFLICTS OF INTEREST
In-house counsel working on transactions must recognize the trips and traps lurking in conflicts rules RPC 1.7 and RPC 1.8. Conflicts can arise 1) between clients, 2) between clients and non-clients who “subjectively believe” they are clients, and 3) between the attorney and the client.

Multiple Representation Conflicts
Regarding potential conflicts between organizational clients who both want the attorney to represent them in a transaction, a key question will be whether the clients’ interests are “antagonistic” or “fundamentally aligned.” See comments 28 and 29 to RPC 1.7. In general, affiliated clients are more likely to be aligned where one owns the other outright or they are under common ownership. Conflicts between such entities are more likely to be “consentable.”

Trickier conflicts issues arise between affiliates where there is not 100 percent ownership alignment. As comment 29 to RPC 1.7 says, “In some situations, the risk of failure is so great that multiple representation is plainly impossible.” Where antagonism is possible, the risks must be acceptable; where it’s already present, representation is unwise. If clients with a consentable conflict want to go ahead, all risks must be clearly detailed in a thoughtful written consent per RPC 1.7(b)(4).

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Conflicts Arising from Mistaken “Subjective Belief”
As we’ve been reminded, the existence of an attorney-client relationship can be based on subjective belief. When held by an organization’s officer, director, employee, or shareholder who’s had a falling out with the organization, this can end badly. Perils include loss of employment due to forced withdrawal, malpractice claims, civil liability, and professional discipline.

Personal Interest Conflicts
Under RPC 1.7(a), a “material limitation” conflict exists where there is “a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.” And RPC 1.8(a) contains this prohibition: “A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless...” RPC 1.8(a) goes on to require that the terms of such a transaction be “fair and reasonable,” that the client must be advised of the desirability of seeking independent counsel, and that there be informed consent in writing.

When an organizational client asks its in-house counsel to draft a stock option plan, compensation plan, retention bonus plan, or other document that will benefit the attorney, the restrictions and requirements of RPCs 1.7 and 1.8 must be considered. More often than not, RPC 1.7 is probably the governing rule for issues relating to compensation plans and the key question is usually whether the in-house lawyer can provide the representation “competently” to the client, notwithstanding the lawyer’s personal financial interest in the transaction.

If financial resources are not an issue, it’s best to punt compensation-related projects to outside counsel. Regarding conflicts under RPC 1.8, comment 4 notes that “the fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.”

...the existence of an attorney-client relationship can be based on subjective belief. When held by an organization’s officer, director, employee, or shareholder who’s had a falling out with the organization, this can end badly.

If resources are tight and the client wants you to do the work, the client must agree to the conflict in a written consent fully disclosing all risks, including that counsel may draft the plan for her own benefit and to the client’s disadvantage. Counsel can also reduce their risk by requiring the CEO or another officer to fully outline all material terms before drafting begins.

Lastly, there is little authoritative literature on taking an equity stake in a client, whether through stock options or otherwise. A good article on the subject is “Investing in Your Client’s Business,” by Dale B. Ramerman, from the August 1987 issue of the Washington State Bar News. I have a copy from the WSBA to share electronically — feel free to email me to request a copy.

DEALING WITH THIRD PARTIES
Several ethics issues relating to third parties commonly arise during transactions: 1) communications with persons known to be represented, 2) dealing with unrepresented persons, and 3) truthfulness in statements to third parties.

Persons Known to Be Represented
In-house counsel must be vigilant about not inadvertently communicating with any party known to be represented by counsel unless that party’s counsel is present. Under RPC 4.2, only opposing counsel can waive this requirement, not even a party’s CEO.

Constituents often invite in-house counsel to attend teleconferences and other meetings without realizing or remembering that the other lawyer must also be present. Scan every invite for the issue and flag it quickly.

More challenging still are unexpected contacts from third parties. Quick thinking is required to immediately cut off improper communications initiated by a party known to be represented — whether by email, telephone, in person, or otherwise. Third parties sometimes do this innocently and sometimes because they hate their own attorney. Either way, any attempt to exploit the contact by undercutting the attorney-client relationship, seeking confidential information, or otherwise gaining advantage would be an egregious ethics violation and could provoke the vengeful ire of opposing counsel.

Unrepresented Persons
Contacts with unrepresented persons can also occur frequently. Many small companies simply lack the resources to hire outside counsel for every project. RPC 4.3 is intended to protect unsophisticated non-lawyers from overreaching.

When interacting with unrepresented persons, first confirm the absence of counsel and then gently remind the third party that, as counsel for your organization, you do not and cannot represent them or provide them with legal advice, and that they should consider consulting with independent legal counsel. Repeat if confusion persists.

Truthfulness in Statements to Others
Lastly, when negotiating, counsel must know their truth and candor obligations under RPCs 4.1 and 8.4. RPC 4.1, Truthfulness in Statements to Others, states:

In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

All 3 of RPC 4.1’s comments are recommended reading, but 1 and 2 are important enough and brief enough to warrant full reproduction here (emphasis added):
Misrepresentation

[1] A lawyer is required to be truthful when dealing with others on a client’s behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

Statements of Fact

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party’s intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

And under RPC 8.4, Misconduct, counsel must not “engage in conduct involving dishonesty, fraud, deceit or misrepresentation....” If in-house counsel observes RPC 4.1 and avoids most criminal offenses, this catchall shouldn’t be an issue.

The takeaways: 1) negotiation puffing is fine, but never lie about statements of fact; 2) there is no obligation to raise issues or concerns that have not been asked about; 3) avoid half-truths or omissions of material information that would bear on the truthfulness of statements made; and 4) avoid adopting or affirming statements of liars. And remember that any disclosures to third parties must always be consistent with counsel’s confidentiality obligations under RPC 1.6.

Correcting or disclaiming a constituent’s potentially false statements is trickiest during face-to-face negotiations. Sometimes constituents talk too much, sometimes well beyond when an issue is won. In doing so, they might make ill-advised statements intended to make the other party feel better. It is awkward to correct a colleague, and even worse to correct a boss, but sometimes it has to be done. One option is to have the colleague correct the error himself after a break. Another option may be to correct the error later in a deal document.

Conclusion

In closing, if you mind your ethics fundamentals, the other risks should take care of themselves. So, as an opposing lawyer signed off recently in a demand letter, “Please govern yourself accordingly.”

Paul Swegle is general counsel of Numera, Inc. and is the immediate past chair of the WSBA Corporate Counsel Section. He serves on the WSBA Securities Law Committee and has previously served on the WSBA Rules of Professional Conduct Committee. In the course of several in-house counsel roles, Swegle has worked on deals totaling more than $11 billion. He is a former SEC Enforcement and Corporation Finance attorney and he served two appointments as special assistant United States attorney. Contact him at pswegle@gmail.com.
Rebel Girl

In 1909, at the age of 19, labor leader, activist, and feminist Elizabeth Gurley Flynn traveled to Spokane from Butte, Montana to participate in a “free speech” fight on behalf of the Industrial Workers of the World (IWW), an organization of unskilled laborers better known as the “Wobblies.” She traveled across two states to end up in Spokane, in response to a municipal law passed by the Spokane City Council that was in violation of First Amendment free-speech rights. That law banned citizens from organizing street meetings to voice their grievances that were being ignored in the traditional media outlets. In response, activists came from near and far to make speeches, perched on their respective soap boxes, fully expecting to be thrown in jail.

Thirty-one employment agencies lined Stevens Street in Spokane. These labor companies sold prospective employees jobs. For one dollar, workers were supplied with employment at a local business in trades such as those befitting transient or casual workers. The labor companies’ customary practice was to allow the new employee to work for one to three days at a lumber camp, construction site, or on a railroad section gang, and then fire him in exchange for a new employee, who would then pay the one-dollar fee to work the short amount of time. The result was a windfall to the employment agencies and anti-union employers, but egregious labor conditions for the now-destitute manual laborer/wage earner. During one winter, for example, the Somers Lumber Company hired 3,000 workers to maintain a crew of only 50 men. The laborers’ voices went entirely unheard. The newspapers ignored them and, in the days before radio, there was no method for vindication. It was impossible for unions to organize workers passing through for only a day or two and lacked the viable resources necessary to organize and mobilize.
No Victory Without a Fight

In the winter of 1908, the workers began holding protests and demonstrations outside the labor agencies in downtown Spokane. The workers called the agencies “sharks” and “leeches.” In response, the Associated Employment Agencies of Spokane persuaded the City Council to pass an ordinance that prohibited street meetings. This ordinance was in clear violation of the First Amendment to the U.S. Constitution. The mayor of Spokane, N.S. Pratt, did not object to enacting the unconstitutional law and it was enacted post haste.

This was the mood and context when the IWW asked Elizabeth Flynn to travel to Spokane in 1909 to speak out against the law. The speakers were stopped at once by the police. The IWW members persisted and were promptly arrested and sent to jail. Because of Ms. Flynn, the battle was publicized and made headlines in newspapers across the country. She rallied the citizens and they were arrested in such great numbers that the jail was overflowing. On the first day, 103 Wobblies were arrested, beaten, and incarcerated. Within a month, arrests mounted 500, including Ms. Flynn. The Spokane free speech fight ended on March 4, 1910, when the City revoked the unconstitutional ordinance that attracted nationwide attention with a unanimous vote.

This event is still considered one of the most significant battles to protect free speech in American history. In the end, the IWW was supported by the Spokane Press, local women’s civic groups, AFL craft union affiliates, various socialists, and German societies. The IWW’s own union history gives this account of its successful conclusion:

The constant arrests; the police brutalities; the appearance of men in court matted with blood; the disrepute into which Spokane had fallen in the more enlightened portion of the nation’s press; the widely-known evil practices of the employment sharks; the mounting cost to tax-payers; the boycott on Spokane merchants by men in many camps—all these made it harder for city fathers to continue. Feeling was for the prisoners. On the rare occasion when they were marched through the streets to where they could get a bath, citizens showered them with Bull Durham, apples and oranges. (Thompson and Murfin, 49.)

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The Harpman Hatter Street Music Show

Approximately 100 years later, Rick Bocook, who goes by the moniker “Harpman Hatter,” engaged in a similar free-speech fight of his own on behalf of the buskers and panhandlers known all too well to the residents of Spokane, the Lilac City. Bocook was a man who saw a need for change and so he took it upon himself to be an agent of that change.

Bocook performs on the streets of Spokane and has suffered for over a decade with chronic unemployment and homelessness. In an attempt to collect some extra money on the side, he decided to start performing in the streets. He created a character and a small movement around this, “The Harpman Hatter Street Music Show.” His goal was to collect donations through performance, not panhandling, adding a New Orleans-esque street music feeling to Spokane. Though he received much public support, he was not welcomed warmly by police and many local businesses, most notably River Park Square.

After being harassed by police time and time again, Bocook decided it was time to see what the law had to say about street performers. At the time, entertainers were required to obtain a business license to perform in the streets. After researching the law, and contacting the Gonzaga University School of Law, it was determined that this was unconstitutional. It was also found that there was no set decibel level for above-ambient level noise. Bocook gained support for his cause from the Center for Justice and the Peace and Justice Action League of Spokane. With the help of Gonzaga law and audio departments, tests were conducted to set standards. Laws were changed which not only required police to use decibel meters when responding to noise complaints, but also ended the requirement for business licenses for street musicians in Spokane.

The amendment made to SMC 10.40.010 of the Spokane Municipal Code now reads:

A person who engages in constitutionally protected expressive activities in the public right-of-way shall not be required to obtain a business license unless the person engages in business activities. Constitutionally protected expressive activities conducted in the public right-of-way shall include, but is not limited to, street performers. For the purposes of this section, a street performer means an individual, including street musicians, who performs any form of artistic expression. The voluntary contribution of money by members of the public to the individual in association with the expressive activity shall not result in the requirement of obtaining a business license. A person who engages in constitutionally protected expressive activities in the public right-of-way must still comply with all other regulations regarding conduct in the public right-of-way.

Action and Reaction

Around the same time Rick “Harpman
Hatter” Bocook was fighting for the rights of street musicians, the City of Spokane was enacting laws restricting the homeless. Currently, the City of Spokane approves restrictions on panhandling as a result of laws approved by the City Council. One set of regulations prohibits begging within 15 feet of building entrances, ATMs, pay phones, fuel pumps, bus stops, taxi zones, self-service car washes, and any parked car when someone is entering or exiting it. (SMC 10.10.027)

The other ordinance prohibits lying or sitting on the sidewalk throughout most of downtown. (SMC 10.10.026) A third regulation that would have prohibited begging along arterial streets was pulled before a vote, because city attorneys responding to testimony questioned whether it would meet constitutional requirements on free speech. The other panhandling rules, plus changes to the city’s existing aggressive-panhandling ordinance and rules that lessen restrictions on street musicians, were approved unanimously.

Both laws were supported by downtown business leaders who argued that panhandlers deter customers and that money made by begging would be better spent on charity. A new anti-panhandling campaign by the City and Downtown Spokane Partnership will promote “Give Real Change,” meant to direct people’s money away from panhandlers and into area charities. Hank Valder, who often testifies at City Council meetings and who is formerly homeless, said the panhandling problem is caused by a shortage of affordable housing. He said a program should be started to allow homeless people to sell newspapers where they now ask for money, like Seattle’s Real Change newspaper program. Nationwide, the ACLU has taken anti-panhandling laws to court saying they are unconstitutional. The ACLU of Washington says that since there are no actual restrictions on panhandling being proposed now, this isn’t something the union would comment on (www.spokanepublicradio.org).

In Washington state, our First-Amendment rights are marked by over 100 years of great debate which has sparked imprisonment, regional movement, national media attention, the arts, and political and judicial action. Who knows where the Hatter’s First Amendment arguments will take him and the citizens of this state and country? NWL
This is the second in a series of articles related to professionalism at the WSBA — see also “Sunset to Sunrise: A New Dawn in Professionalism” from the OCT 2014 NW-Lawyer.

by Sims Weymuller

Lawyers must see color; we must see culture. We must know both. Representing clients in a diverse world requires it. The practice of law is a privilege, a monopoly granted by the public in exchange for a sacred trust to permit access to justice for all. I would expect that most of us agree with this principle, and many work to embody it. But how hard do each of us work to ensure that we know and understand what justice means for our clients? To do so, requires that we know them. To know our clients requires that we know their culture.

Where We Are and Where We Are Going

Virtually every lawyer in Washington will have clients from different backgrounds. The Washington state population includes 29 percent racial minorities.1 Meanwhile, according to the 2012 WSBA membership survey, racial minorities make up only 12 percent of WSBA membership.2 This is a significant gap, and as we’ll discuss further, it likely impacts our ability to adequately represent our clients. The WSBA Diversity and Inclusion Plan, adopted in 2013, brought positive steps on the path to cultural competence, as discussed in the 2014 report, “From the ‘Inside-Out’: WSBA’s Journey of Inclusion.”3 One element of the plan to improve legal services to diverse communities is to increase diversity among members of the Bar.

There is merit in this premise. Though sparse data is available from the legal field, data from the medical field has shown that increasing diversity among practitioners improves care to diverse populations. A recent report found that “evidence demonstrates that greater diversity among health professionals is associated with improved access to care for racial and ethnic patients, greater patient choice and satisfaction, and better patient-provider communication.”4 Racial and ethnic minority providers have been found to be more likely than non-minorities to serve minority populations, thereby improving access to healthcare.5 There is little reason to think that our profession is any different. Ethnic and cultural diversity among members of the Bar improves the likelihood that the Bar will serve minority populations and fosters a broader understanding of the issues facing these communities. We need to close that gap, and the “Inside-Out” effort takes meaningful steps to do so.

The Dual Core Competencies of Culture and Empathy

While improving diversity in the Bar is a long-term goal, no matter how diverse we are, we will each represent clients from different backgrounds. Regardless of your race, ethnicity, or culture, if you are a lawyer reading this, you are unlikely to intuitively know and understand the culture of all of your clients. But it is your job to learn. It is your job to achieve cultural competence, and it will make you a better lawyer.6
What is cultural competence? Let’s begin with culture. The National Institute of Health describes culture as:

The combination of a body of knowledge, a body of belief and a body of behavior. It involves a number of elements, including personal identification, language, thoughts, communications, actions, customs, beliefs, values, and institutions that are often specific to ethnic, racial, religious, geographic, or social group.

Cultural competence, then, is “the ability to accurately understand and adapt behavior to cultural difference and commonality.” It is simply knowing another’s culture well enough to communicate and connect.

In a way, cultural competency is a form of empathy. Some scholars argue that empathy is a core attorney skill — on par with logical reasoning — when it comes to the service of our clients. Empathy is not sympathy; it is not compassion. It is the act of projecting one’s personality into the object of contemplation in order to fully understand it. It is morally neutral, but it is critical for lawyers as it allows us inside the heads of our clients. Ethic and cultural differences — language barriers, customs, beliefs, dress — can at best hinder our communication with clients, and at worst, impair our ability to empathize. Cultural competency directly impacts lawyer competency. A failure to understand or empathize with your client owing to a difference between your backgrounds is a failure of cultural competence and empathy.

Steps We Can Take in Our Own Practice
For most of us, this is not easy. Our culture is our comfort zone. Treading out of that zone can be uncomfortable and sometimes painful. But in our work as lawyers, we need to soldier on to ensure that we provide equally professional services to all of our clients and the public in general. There are many approaches to improving our cultural competency; I offer six below.

First, and by far most difficult, attorneys need to confront their own biases and assumptions about other cultures and ethnic groups. Be honest with yourself. For starters, explore why you think that cultural issues may be implicated with a given client in the first place: Did you have an initial reaction to the client because s/he is different? Or, alternatively, do you consider yourself “color blind” when it comes to race and ethnicity? Or is that just something you tell yourself because it makes you feel good? It may help to admit that you do see color, and that is all right. But do you have biases that go along with your views? Do you react differently on the street to people of a certain race or culture? Or people that are dressed a certain way? Why? These are hard questions, and they should be. If you are not at least a little uncomfortable when you are thinking about your own biases, you are probably not digging deep enough.

Second, if language is an issue, get an interpreter even — indeed, especially — if you are not sure you need one. If your client speaks a little English (and you cannot speak their native tongue), you may be worse off than if your client speaks none at all. If there was no way to communicate, you would have certainly obtained an interpreter, but with some measure of conversation you may assume that you are communicating when, in fact, you are not. Get an interpreter, even if the person is a client’s friend or relative who speaks English. Also consider the language “register” that the client uses; the register is the form or level of language (i.e., intimate, casual, consultative, formal, or frozen). “Lawyers ordinarily speak in the consultative register, but many clients do not. An effective lawyer adjusts to the client’s register, not the other way around, because register is closely connected to hidden rules and cognitive practices within various cultures.”

Third, explore your client’s culture. There is no armchair empathy. You cannot learn a culture strictly from Wikipedia. It is unrealistic to travel to the home country of each client, but perhaps you can visit their neighborhood. Go to the shops, meet the people, and attend their celebrations to know more about them. Ask your client to show you around. If at all possible, share a typical or traditional meal with your client and her family or friends. There are few better ways to learn about an individual or a culture than by breaking bread.

Fourth, explicitly consider cultural factors in your assessment of the client and the case. Drawing again from medicine, note that the Diagnostic and Statistical Manual of Mental Disorders, Fifth Ed. (DSM-5) — the latest diagnostic tool for psychologists — contains a detailed discussion of the role of culture when diagnosing patients. The DSM-5 recognizes that trained psychologists or psychiatrists may completely misdi-
agnose someone, solely due to cultural incompetency. Think, then, how we (with no such training) are vulnerable to misinterpreting the needs and goals of clients from other cultures. The DSM-5 admonishes clinicians to be aware of ethnic and cultural considerations when reaching a diagnosis and contains a chapter on cultural formation that includes an outline for cultural formation and a “Cultural Formation Interview” (CFI). The outline and interview ask clinicians to consider:

- The cultural identity of the individual;
- Cultural explanations for the individual’s illness;
- Cultural factors related to the psychosocial environment and levels of functioning;
- Cultural elements of the relationship between the individual and the clinician;
- Overall cultural assessment for diagnosis and care.

A similar approach should be applied by attorneys. As they assess their diverse clients, they should consider: cultural identity; cultural explanations for the legal issues or problems the client faces; cultural factors that exacerbate or ameliorate the legal problems or their impact; what cultural factors impact the client’s view of lawyers; and an overall cultural assessment of the proposed legal services.

Fifth, ask specific questions. Borrowing again from the medical field, an insightful book titled The Spirit Catches You and You Fall Down is about, among other things, a culture clash between a Hmong family with an epileptic child and the American medical system. The Hmong culture teaches reverence for epileptics owing to a belief that they enter the spirit world in the midst of a seizure. Moreover, the culture eschews the drawing of blood, cerebral spinal fluid, or other bodily fluids for spiritual reasons. The book details the misunderstandings, mistrust, and human tragedy detonated by cultural incompetency. The author explores what would have happened if the physicians used a specific set of questions developed by psychiatrist and medical anthropologist Arthur Kleinman. Adapted for the legal
field, I suggest these questions:

1. What do you call the problem or issue?
2. What do you think has caused the problem or issue?
3. Why do you think it started when it did?
4. What do you think our legal system does? How does it work?
5. How severe is this problem or issue?

6. How long do you expect it to take to resolve?
7. What kind of legal services do you think you should receive?
8. What are the most important results you hope to receive from these services?
9. What are the additional problems this issue has caused?
10. What do you fear most about the problem or issue?

Sixth, remember that many members of other cultures, especially those who have recently emigrated from other countries, are still learning American culture. Lawyers have an equal responsibility to educate these clients about American legal culture. Ultimately, these clients will be judged by this culture, so they ought to be given a peek into how it works. Candidly discuss, for example, what biases your client will likely face from a jury in your jurisdiction.

**Keep the Dialogue Going**

This is an ongoing process for all of us. As an association, a profession, and more importantly, as individual attorneys, our duty is to open our eyes to these issues and resolve to improve them. Cultural competence is not a problem to solve; it is a polarity to manage over time. Diversity is a strength in our community and, with any luck, our Washingtonian culture will only increase in complexity and richness. We cannot shy from the still-extant prejudices in our communities, or in ourselves. Our profession will truly serve our citizens — the public that gave us the keys to the kingdom — only when we seek to understand their path, not through our eyes, but theirs. NWL

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**Sims Weymuller** is an attorney at Schroeter, Goldmark and Bender where he litigates professional negligence, product liability and catastrophic injury cases in both state and federal courts. With a particular interest in birth injury and legal malpractice matters, he frequently writes and lectures on trial practice and legal ethics in civil litigation. Weymuller is an adjunct trial advocacy professor at the University of Washington School of Law. He is the 2014–15 chair of the WSBA Character and Fitness Board. He can be reached at sims@sgb-law.com.
We would appreciate the opportunity to work with you to help your client.


**NOTES**

1. According to the U.S. Census Bureau. See http://quickfacts.census.gov/qfd/states/53000.html. Race is but one of the components of culture. Yet it is the only readily available measure of diversity we have and must suffice for comparison here.


5. Id.


10. Moreover, if you blind yourself to your own biases, you cannot protect your clients against the biases they will invariably face in the justice system.

11. Be careful to maintain the attorney-client privilege. Confidentiality can extend to interpreters in certain circumstances, but be sure the interpreter knows and understands the privilege and its importance.


13. Id.


**Supreme Ambitions**
by David Lat (2014; American Bar Association; 281 pp.; $22.95 print/$9.99 ebook)

**Reviewed by Venkat Balasubramani**

*Supreme Ambitions* is David Lat’s first novel. Set largely in the chambers of the Ninth Circuit Court of Appeals, the book traces the clerkship path of Audrey Coyne, who is clerking for the fictional Judge Christinia Wong Stinson. Coyne wants what every appeals court clerk with a stellar resume wants: a clerkship with a Justice of the United States Supreme Court. I won’t give away whether Ms. Coyne becomes one of the “chosen,” but the book gives a glimpse into the process, as well as the mindset of the clerk, aspirations, insecurities, questions, and all. There’s even a bit of intrigue involved. Of course, Ms. Coyne also has co-clerks, who are also shaped in the mold of typical clerks that must cycle through judicial chambers, and much of the book deals with these interactions.

Lat draws on his own experience as a (Ninth Circuit) law clerk in telling the story, and the drawn-from-life details add a rich color to it. Ms. Coyne is, like Lat, an American of Filipino descent and a Yale grad. Her character is vaguely reminiscent of the voice of Lat’s own popular blog “Underneath Their Robes”, which he started writing while working as a federal prosecutor. (The book name checks several well known blogs and bloggers.) The judges are molded after real life judges, with vague similarities in their names and biographical attributes. Readers, and even judges, have enjoyed playing the game of identifying which character correlates with which particular real life judge. Most prominently, judge Polanski is immediately identifiable as the fictional version of Ninth Circuit Judge Kozinski.

Into this mix, Lat adds a timely and relevant case that plays a key part in the storyline: one involving gay marriage. It’s one that Audrey’s judge and Audrey both struggle with, and the twists and turns of the case as it wends its way through the court process adds a layer to the story that “law nerds” will enjoy. This aspect of the story also delves into the politics of judicial decision-making and the trading of votes that surely goes on behind the scenes. In this respect, the book feels like a more lighthearted version of “The Brethren”.

*Supreme Ambitions* is a fun read; it’s even a bit of a page-turner. If you’re willing to stomach reading a law-related book while on vacation, this probably makes a perfect book to read while relaxing on the beach. Former law clerks, appellate lawyers, and judges are likely to get the most out of the book’s narrative details, but it’s a book that anyone with an interest in the law will enjoy.

Venkat Balasubramani is co-founder of the boutique law firm, Focal, PLLC, which focuses on tech/Internet clients. He can be reached at venkat@focallaw.com.

**The Boys in the Boat — Nine Americans and Their Epic Quest for Gold at the 1936 Berlin Olympics**

**Reviewed by Todd Timmcke**

I have never read a book about rowing before, so Daniel James Brown’s *The Boys in the Boat* was my first. The book chronicles the quest of the University of Washington’s eight-oar crew for Olympic gold at the 1936 games held in Nazi Germany. The book tells the story of crew member Joe Rantz, who overcame incredible hardships and abandonment through sheer determination to make his way in rowing and in life. I was stunned as I read about what this man went through during his youth. You can’t help but root for him. The book also tells the story of George Pocock, master shell builder, who emigrated from England without a dime and established an eventually successful business in Seattle. The book vividly tells the story of Seattle during the Great Depression. The book tells the
story of the rivalries between east coast and west coast universities and Washington versus California. The book tells the story of the building of the Grand Coulee Dam. The book tells the story of the rise of Nazism, the Olympic preparations, and the work of Leni Riefenstahl, the propagandist film maker, known for her epic The Triumph of the Will. The book tells the story of the UW crew coaches and their quirky personalities.

The book tells a lot of stories.

Which I didn’t mind so much. I learned rowing was a big, big deal back in the earlier part of the last century, attracting huge crowds of spectators. Joe Rantz and his wife were portrayed as such upstanding citizens; I would have liked to have known them in real life. I admired George Pocock for his talent, craftsmanship, and knowledge of Northwest woods. I learned who was able to go to college back then and who wasn’t. I learned that transporting a finely crafted 60-foot long shell was not an easy thing. How this boat made it across the country on a train and over to Europe on a ship without breaking in half is remarkable. I learned rowing terms that I have started to incorporate into my everyday conversation.

What I did mind was the retelling of too numerous races. I was befuddled trying to distinguish one from another. I am also not a fan of books that are written like movie scripts. I could hear the theme from Chariots of Fire playing in the background with each race. (But if I were to write a book, this is the way to go. Movie rights!) The author does a good job of drawing on the boys’ diaries, journals, photos, and interviews with family members, but I couldn’t help pondering how generously artistic license was applied in telling the tale.

I did enjoy the book and delighted in rooting for the UW team. I was so fascinated with this sport that I knew little of, that I had to see the now-nearly 90-year-old gold-medal-winning boat for myself. The Husky Clipper is well-preserved and hangs from the ceiling of UW’s Conibear Shellhouse. And it is impressive! And really long! How did they get it on that train? I loved poking around the memorabilia in the building and seeing how the modern fiberglass shells downstairs still bear the Pocock name.

All in all, I would recommend this book. I learned a lot.

Todd Timmcke is the graphic designer and managing editor of NWLawyer and can be reached at toddt@wsba.org.

Literary Lawyer provides a venue for WSBA members and others to discuss law-related books and books not-so-law-related. Your book reviews are welcome. Email nwlawyer@wsba.org with your review or to request a guide on how to write one. This column is edited by WSBA Communications Specialist/Writer/Editor Stephanie Perry who can be reached at stephaniep@wsba.org. NWL
At the end of December, my law office ran out of time.

No, I did not miss a pre-trial deadline. My date stamper ran out of years at the end of 2014 — literally. It is an old-fashioned mechanical device, hand-powered with cogwheels and pinions that rotate a stamp that impresses a red date and the blue word RECEIVED onto the front page of your pleadings. In fact, it’s rare that I get pleadings hand-delivered anymore. I am slightly nostalgic for that era when, in a race against the clock, oddly attired bicycle messengers, fueled by caffeine and adrenaline, barreled down the streets and sidewalks, leaped dozens of stairs at a time and slammed the stack of affidavits and briefs on the reception desk. Panting for breath, they would manually shhh-TAMP shhh-TAMP shhh-TAMP the two-color proofs of service onto their copies as the wall clock ticked off the seconds to 5 p.m. that delineated the difference between just-in-time and you are SOL! It was not a video game, but a physical experience in real time. The pleadings had raindrops (or drops of sweat) on them, and real hand-scrawled signatures that said your opponent thought you worthy of the personal attestation.

Today, everything is delivered by email and digitally signed. The pleadings still arrive at the last second, but now they are electronically date-stamped. It was more precarious in the age of the manual stamp machine for opposing counsel to wait until the absolute last minute to serve the responsive pleadings on Friday afternoon just before your offices closed for the weekend. One traffic jam, a local police incident, a protest event downtown, or a freakish snowstorm in July could delay the malicious last-moment service of process just enough to make it untimely, thus encouraging everyone not to wait until the last minute. Now, however, index fingers hover over the “send” button, while lawyer Grinches sip lattes and coolly watch the seconds count down, waiting for the very last nanosecond when electronic service of process can slip under the wire and ruin opposing counsel’s evening.

If the paper pleadings delivered at the front desk used to be massive, with volumes of exhibits and attachments, at least you could muscle them back to a work table, lay them out article by article and cross-reference them, highlighting, annotating, and yellow-stickering as you licked to make your finger sticky to flip through the pages. Today, you still get the same volumes of exhibits, but they are bloated gigabyte-sized attachments to the email. Your stare at the screen as you open multiple tabs of attached PDF and JPEG files. Yes, whole forests died for our pleading excesses in the pre-digital law days. But now, ultimately, when your pixillated eyes start to pinwheel after reading hundreds and hundreds of electronic pages on eye-straining back-lit computer screens, you print the whole mess out anyway, so nary a twig is saved in the long run.

Do judges really like reading PDF files all day long or was it an opticians’ plot to force us all to buy “computer glasses” to add to our bifocals, trifocals, and prescription sunglasses?

I realize it was an economic necessity — the clerk’s offices were bursting at the seams storing all of our massive documents. So we were told. In my imagination, I can see the documents bulging out the courthouse walls like in an old Looney Tunes cartoon while M.C. Escher-esque lines of clerks wheelbarrow the documents into the basement like coal heavers feeding the boilers. The real economizing, of course, was that clerical “labor” could be laid off or just not hired, and it is always in wages and benefits not paid that “economizing” makes sense. Or cents... just so long as you are not the one being “economized.”

I realize it’s handy to be able to digitally search documents, catalog, and scroll through them at your fingertips. But the barrister’s touch has been attenuated. There was more panache waving an incriminating document at a witness on the stand than there is waving an iPad, and actually handing up to the judge a hard-copy of the seminal, game-changing case had more éclat.
than merely calling out the web citation for the judge to look up on her desktop.

It’s 2015 and my front-desk date-stamper has run out of years.

These days, when cursive handwriting is a dying art form, I leave the laptop in the office and take pen-and-paper notes at depositions. True, my grammar school penmanship grades were abysmal and my handwriting, to this day, resembles cryptography more than calligraphy. Still, my script looks better than the shaky cryptocurrency I sometimes see on hand-addressed envelopes sent to me from millennials.

I like old-fashioned Rolodexes, the kind you scroll around with your thumb and forefinger to look up an address. I like paper. Lawyers and paper go together like books and libraries. But what’s a “book,” you ask? Is it something like a dog-eared primitive e-reader that you actually “own” and don’t “rent” from a corporate gatekeeper who logs what you read and sells your reading habits to marketers?

These days, every vendor exhorts me to “go paperless.” Every organization I have ever joined wants me to renew my membership online. I refuse. I do not like being pestered. I do not want my membership data sold or laid out on a platter for hackers, data pirates, and spammers. My computer is configured to disable most of the usual application programming interfaces (APIs) and scripts. Why would I, a lawyer, agree to allow those APIs and scripts to intrude upon my digital privacy just for the convenience of renewing my membership online rather than spending 49 cents for a postage stamp?

In an age of conformity, I almost always “opt out” when given the choice. It’s not just a matter of stubbornness (although there is some of that). It is a matter of exercising the few real choices we have left in these days of coerced uniformity. The Internet’s potential for educating and democratizing was enormous, but it has been corrupted by unbridled commercialism and government Peeping Toms. Can I at least keep them out of my law practice?

I routinely opt out of marketing lists, customer satisfaction polls, and full-body scanners at the airport. I do not have a transponder on my dashboard that tracks where I am, where I’m going, and how I’m going to get there. I avoid using GPS because, as it simultaneously tells me the shortest route from Point A to Point B, a record is simultaneously created that I went from Point A to Point B. Poet Robert Frost did not write that “two roads diverged in a yellow wood, and I took the one Google Maps told me to take…”

I do not want my “likes” and my email, address book, photographs, and web searches, and especially not my client files harvested by Big Data. I do not want to be data-mined. I do not tweet with twits, nor do I book my face. I do only anti-social networking. I do not want my shopping receipts emailed to me. I avoid banking and bill-paying online notwithstanding the supposedly secure hypertext transfer protocols (HTTPs) that can only make data heists more difficult, but not impossible.

I carry a cellphone, but it is almost always off unless I absolutely need to make or receive a call. I have office hours, and after hours you simply cannot contact me. That is why they are called after hours. Why should anyone, other than close family or friends, be able to find me anytime and anywhere like a servant? Truly important people are literally unreachable; and though I am certainly not important, I can, at least, minimize the wireless shackles of being forever “on call.”

I like signing documents with a pen. Your hand-endorsed signature is like a very personalized work of art, even if it is nearly illegible. Ink has a certain gravitas that clicking an “OK” button on an interactive screen will never have. I do not think that everything must yield to economies of a few cents and the instantaneousness of an Uber app. I do not want my digital persona to be stored in some nebulous cloud maintained by an enormous mega-corporation and simultaneously co-filed in various three-letter agencies’ virtual dossiers. Most cloud data service contracts that I have seen disavow any responsibility if your supposedly “confidential” law client files are stolen, compromised, or irretrievably scrambled. I inherited from my parents some old wax cylinders that I can no longer hear because the steel-needled gramophones are extinct. I still possess vinyl LP records that I cannot listen to without a phonograph, seven-inch magnetic tape I cannot play without a reel-to-reel tape recorder. I have eight-inch disks, floppy disks, eight-track music cartridges, VCRs, video cassettes, and microfiche that have become unreadable because the media-players are now obsolete. So, too, will inevitably be the fate of every memory stick, flash drive, USB device, and, of course, the cloud. I keep paper files as insurance against that inevitability; if, eventually, they fade away, so will I, and probably at the same time.

My mechanical date-stamper has become a paperweight.¹

I considered fudging a time warp by rolling it back to 2005. Would anyone notice that your motion papers will have arrived 10 years before you filed suit? I considered ordering a truly customized stamp. It might say, REJECT-ED instead of RECEIVED; RECYCLED, Regurgitated, DECEIVED, NEVER-MORE, REALLY? or FUGETABOUTIT. I toyed with ordering a stamp with the “i” before “e” even after “c,” and wait for the pedagogues to ream me out for having a misspelled “RECEIVED” stamp. Could I fill the stamp reservoir with disappearing ink, just for the fun of it?

I looked at catalogs to order a new date-stamper. Of course, the catalogs were online. I called to talk with a customer service specialist who could personally place my order. But once I worked my way through the automated answering systems with multiple dead-end menus, there were no customer service specialists available. Many of the new models are plastic, not metal. Others have an antimicrobial antibiostic embedded in the handle. They now put antibiotics (often a type of Triclosan under various trade names) in athletic shoes, stockings, baby diapers, toothpaste, mops, and now date-stampers. Soon, perhaps your jury instructions, briefs, and briefcases will be impregnated with antibiotics. Is it a good idea to put this stuff all over the place willy-nilly? Does this really cut down on disease or make the infectious agent triply potent? Do people really have gobs of evil germs growing in their hairy palms such that I need to wear latex gloves and a surgical mask just to shake hands? If the antibiotic is in their shoe insoles, socks, and underwear are

³⁵
A Hospital Mistake . . .

“After my husband checked into a hospital ER with a blood clot in his leg, the nurse failed to give him prescribed blood thinners before a scheduled procedure. He died the next morning of a pulmonary embolus. I feel my path led me to CMG’s office and Tyler Goldberg-Hoss. Not only is Tyler personable, but he went above and beyond to ensure the process was not a burden to me and to achieve the final result. The settlement will take care of my daughter’s needs for the rest of her life.”

~ Jessica H.

Tyler Goldberg-Hoss
Partner

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Thomas Fitzpatrick
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Member of the Commission that wrote the CJC,
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Philip Talmadge
Sponsored CJC law in 1981, served on Supreme Court Rules Committee that addressed ethics rules, handled In re Niemi, In re Marshall

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They traipsing the stuff all over my office whether I want them to or not?

I found and ordered a classic mechanical date-stamper. It is handmade, probably by Santa’s elves in North Pole ice caves. In this age of computer games and virtual reality, the elves build office machines for lack of work making wood and metal toys. The new stamper is made of steel and has heft. It was not made by a 3D printer. It has no antimicrobial in the handle. Beware — when you drop off a pleading at my office, the “bugs” might get you! My new machine has cog-wheels and pinions that rotate a stamp that impresses a red date and the blue word RECEIVED onto the front page of your pleadings, just like the old one. It feels antique. I feel antique.

I bought a date-stamper with a 10-year life cycle. When this device runs out of time it will be the year 2025. I assume by then that there truly will be no papers to stamp or shuffle. By then there may be no more date-stamping machines built or sold. Or ice caves at the North Pole. Or North Pole elves. They may be obsolete. So might I. And you. And so, too, the practice of law.

NOTE
1. For those who have never seen a “paperweight,” it was a heavy device, made of metal, stone or glass, whose sole purpose was to keep the stacks of papers on your desk from being swept away by the wind blowing through the window. What do I mean by “wind blowing through the window?” How can wind blow through a sealed window in a climate-controlled office? But the tale of openable windows and fresh air versus HVACs is a story for another day.

A former
Bar News
editor
(1981–85)
and former
WSBA
governor
(1985–88), STEVEN A. REISLER earned his J.D. from George-town University Law Center and practices in Seattle. He can be reached at sar@sarpllc.com.
Member Benefits with ALPS — WSBA’s New Endorsed Malpractice Insurance Carrier

BY CHARITY ANASTASIO AND CHRIS NEWBOLD

The WSBA strives to help lawyers navigate law practice and serve the public by offering resources and benefits with wide-reaching appeal and superior services for lawyers. To that effect, we are pleased to announce an exciting new relationship in 2015. The WSBA has identified ALPS as the endorsed lawyers’ professional liability (LPL) insurance carrier. ALPS, a malpractice carrier formed for attorneys by attorneys, is unique in its commitment to loss prevention and risk management resources. As the nation’s largest direct writer of LPL insurance, ALPS has the distinction of being endorsed by more state bars than any other LPL carrier. A variety of new benefits and programs will be coming to members through the WSBA partnership with ALPS. Here are the top 10:

1. Competitive Pricing
ALPS provides an affordable, uniquely personalized pricing (the risk exposure of each attorney in the firm is analyzed individually) and a transparent rate structure that reflects Washington-specific risk exposures.

2. WSBA Practice Transition Opportunities and ALPS Attorney Match
In 2014, ALPS identified the retirement of the baby boomers from law practice as a major risk management issue. In response, it launched ALPS Attorney Match (www.alpsattorneymatch.com), an innovative, free web-based service designed to connect lawyers slated to exit the profession soon with incoming lawyers facing weak job prospects, facilitating the introduction of the two bookends of our profession who most need to know each other. Think of the dating website Match.com and apply it to attorneys. Successful matches protect clients, secure jobs, ensure access to justice in rural areas, and prevent claims. The WSBA Practice Transition Opportunities Program is collaborating with ALPS Attorney Match to ensure WSBA members can access this powerful network and ease member transitions to and from the practice.

3. Law Practice Information
Management Information and Practice Pointers
As a leader in malpractice prevention, ALPS develops and maintains an industry-leading library of resources, newsletters, blogs, and practice pointers intended to help lawyers of all types. The centerpiece of ALPS’s risk management commitment is ALPS 411, a law practice blog (www.alps411.com). ALPS National Risk Manager Mark Bassingthwaigte and national risk experts post useful information and advance dialogue on emerging risk areas.

4. Access to Practice Forms
Also on the ALPS 411 website is a healthy library of sample forms to aid practitioners — everything from engagement letters to law-firm split notices, termination letters to conflict waivers. ALPS can become a starting point for referencing law practice forms reviewed by practice professionals and helpful in mitigating risks.

5. Premium Credit for Risk Management Education
Lawyers insured by ALPS who regularly engage in continued professional development via ethics, risk management, loss prevention, and/or office management education are stronger underwriting risks. To that end, Washington insureds of ALPS earn a 10 percent credit for each attorney in the firm who receives three CLE credits in these areas annually.

6. Risk Management CLE Webinars
ALPS is nationally known for producing convenient, high-quality webinars on trending law practice management topics. ALPS risk management webinars will be made available to WSBA members on an accredited CLE basis at a special rate. The ALPS 2015 CLE calendar will include topics such as the virtues of cyber liability insurance, getting started as a solo practitioner, best practices in conflicts checks, best practices in file documentation, malpractice traps, the risks inherent in fee disputes, and emerging technology traps for everyday practitioners. Additionally, ALPS will offer a series of free, non-accredited webinars highlighting key coverages in insurance policies, the dollars and cents in applying for LPL coverage, understanding tail coverage, and tips for increasing law firm revenue.

7. Law Firm Audits and Risk Assessments
ALPS risk experts routinely travel the country performing on-site, informative law firm audits and risk assessments. Firms opting to invest in a risk assessment at a nominal cost receive a confidential report that provides recommendations on how to better manage risk exposures. Additionally, ALPS-insured firms are eligible for an office management assessment at a nominal cost at no additional expense. ALPS risk experts routinely travel the country performing on-site, informative law firm audits and risk assessments. Firms opting to invest in a risk assessment at a nominal cost receive a confidential report that provides recommendations on how to better manage risk exposures. Additionally, ALPS-insured firms are eligible for an office management assessment at a nominal cost at no additional expense.

ALPS continually examines the merits of coverage innovations to protect law firms. With client data and case files at risk, the repercussions of a cyber-security breach could cause financial devastation and reputational harm, both to the firm and its clients. The ALPS Cyber Response policy was designed specifically for ALPS policyholders at a flat per-attorney rate. Additionally, ALPS offers...
We are pleased to announce that Daniel Richards has joined our firm as an associate. Daniel was a 2014 Order of the Coif graduate from the University of Washington School of Law.

In addition, we are proud to present Abigail Caldwell and Reuben Schutz, recently advanced to Senior Associate status.

Please join us in congratulating them on their marked success!

9. A Commitment to Work with the WSBA on Emerging Malpractice Needs

Law Firm Protect, a policy available to ALPS insureds designed to protect law firms subject to claims arising out of employment practices complaints.

Over time, insurance needs within the legal profession evolve, and ALPS’s position as a direct writer enables it to work with the WSBA as an insurance solution provider. For instance, ALPS is currently working with the WSBA to craft a first-in-the-country Limited License Legal Technician (LLLT) professional liability policy, as well as a flat-rate, affordable policy designed for new lawyers going into solo practice.

10. Industry-Leading Malpractice Coverages

As important as the benefits that come before is the access to peace of mind protection in the event one is accused of a malpractice error. The ALPS policy is among the most-lawyer friendly policies in the country.

Visit the ALPS website to learn more at www.alpsnet.com. ALPS staff can also be contacted at 800-367-2577 or via email at learnmore@alpsnet.com.

1. If you have a policy through Kibble & Prentice, your existing policy and right to continue with Kibble & Prentice coverage does not change with this new endorsement.
Why did you want to serve on the WSBA Board of Governors?

I’m a power-hungry board junkie! Kid-ding. I had served in local Spokane County bar leadership and in the former WYLD/current WYLC. I joined the Board right after the referendum and saw it as an opportunity to make some positive changes. As attorneys, we have so much privilege and much more power than we think. I think it’s our obligation to give back beyond our practices.

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

It amazes me the broad range of issues that members find important. I had no idea how much people love Casemaker (I have, admittedly, never used it). WSBA members are paying attention to what the Bar is doing, and you never know what might spark interest or debate. I am always surprised when a member reaches out to me about an issue that I had perceived to be relatively unimportant.

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

I’m proud to have served on the MCLE Task Force. As a governor, we serve on a variety of committees, task forces, work groups, sections, and outside entities as a liaison to the Bar. I always take my role very seriously and I try to attend those meetings and participate. I begged to be on the task force, as I think that the way CLEs are delivered, provided, and required needs some work. As someone who works virtually paperless within a large traditional firm, the delivery of CLEs alone was something I believed needed change. Ironically, a couple of my law firm partners have said that I “work in the future,” but so many other attorneys are leaps and bounds ahead of where I am with technology.

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

The first vote I took as a governor was a nail-biter. I took over a vacant spot early, so I will actually serve three years plus 2.5 meetings. That makes me the most senior member of the current Board. The first vote I took after getting sworn in was whether or not to keep my seat when we added the new 10th District seat. Thankfully, my spot was unanimously kept. Other votes are challenging because you can’t please everyone. I represent all the new and young lawyers across the whole state — about 7,000 people. I have to make decisions that affect the entire Bar. As a leader, I think it’s important to know what your constituency wants, but to also have the interests of the greater organization in mind.

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

Hard to choose one: I have two rescued cats named for characters on The Wire (Omar Little and Wee Bey). I’m newly obsessed with CrossFit, and I’ve hit 300 lbs. on a deadlift. I have a master’s degree in English literature.
I sometimes encounter outside lawyers contemplating a transition inside. Their comments and questions reveal various assumptions, fears, and dreams. Here are eight examples, along with some myth-busting commentary by past and present in-house lawyers.

8 MYTHS ABOUT IN-HOUSE COUNSEL

1. **Companies only hire very experienced big-firm lawyers**

Big-firm lawyers build valuable experience and relationships that can facilitate the move in-house. But are several years of experience, particularly at a big law firm, a requirement? Paul Swegle, general counsel at Numera, and immediate past chair of the Corporate Counsel Section, sees a trend. “Big law firms historically produced a high percentage of in-house lawyers,” he says. The legal field seems to be diversifying as startups bring different perspectives to choosing lawyers and law firms — many of them care more about ‘fit,’ passion, and cost and less about pedigree.


In contrast, Karl Ege, senior counsel at Perkins Coie, who spent 16 years as chief legal officer at Russell Investments, was a partner at a large firm for nearly 15 years before going in-house. When he joined that firm more than 40 years ago, it had fewer than 50 attorneys, so he had an opportunity to work on a variety of legal matters before ultimately settling in to a corporate finance practice. “Those early years working on real estate matters, employment issues and litigation were invaluable when I assumed responsibility for a wide variety of legal matters for a global investment firm,” he says.

Jeff Christianson, general counsel at Nintex, says that some associates at big firms get pigeon-holed in a narrow practice area. Recalling his own exposure to a wide range of matters as an associate and partner in a mid-size regional law firm, he says, “No matter what your background, try to get a broad base of experience early in your career. You never know what particular experience will get you that first in-house opportunity.”

2. **You will work fewer hours**

On balance, you will probably work as many hours in-house,
You will not need to do business development

Whether inside or outside, lawyers are hired to provide a service, and client perceptions regarding quality of service are highly personal. Obtaining and retaining the opportunity to be of service takes effort and skill. Diannah Linear, director–corporate compliance at Nordstrom, Inc., says, “In-house attorneys need to have many of the same skills necessary for effective business development, including the ability to effectively network and build strong relationships of trust. Business relationships must be developed whether you are in-house or at a law firm.”

Jeff Christianson puts it more strongly, saying, “If you are not interested in or willing to do client development, frankly, you should get out of the legal profession, in-house or otherwise. Nothing pleased me more than to see one of our new in-house attorneys develop a loyal following of internal clients.”

There will be less stress

Jolene Marshall identifies one area where in-house lawyers may possibly be more stressed, saying, “Outside counsel only needs to deal with the issues presented by the client and once the client is satisfied, the matter goes away,” but not so for the in-house lawyer. Lam Nguyen-Bull, associate general counsel at Saltchuk Resources, Inc., says, “In-house, your antennae have to be on all the time. Yes, people bring me things to work on, but I’m also responsible for identifying potential or actual issues on my own. So in some ways, I’ve never ‘done.’”

Paul Swegle offers his view on how to minimize stress in-house: “I believe stress usually comes from doing something you don’t enjoy or that you’re not good at. Any workplace can involve stressful politics or personalities — choose your work carefully.”

The pay is lower

“I was part of a very small practice but you may have a more predictable schedule. You certainly will not have any financial incentive to work more hours to ramp up billables and you will still need to do what it takes to get the job done. Miller Adams, managing director of Triad Capital Partners and president of The Rainier Club, recalls his stint as EVP/General Counsel at a publicly traded company: “I found the workload to be demanding but generally consistent with the rhythm of the business. The occasional M&A transaction was more in line with private practice and called for evening and weekend work in order to keep the deals moving forward.”

Sherman Helenese, formerly in-house at Microsoft and now a partner at Karr Tuttle Campbell, adds, “No matter where you work, something is wrong if you are not busy. Although there isn’t the ball and chain of billable hours that you experience at a firm, you will likely be the sole designated resource for several business units. I would say the workload ends up being about even.”

Karl Ege found the workload to be “equally demanding in-house, particularly in a highly-regulated firm with far-flung operations that required significant domestic and international travel.”

Your skills will deteriorate

You may be a recognized expert in a narrow specialty at your law firm. Even if you are planning to go in-house to practice that specialty, chances are the company will also ask for legal advice on things you know almost nothing about or, at some point, ask you to take on non-legal management responsibilities. You will learn new areas of law and become an expert in some of them. According to Eric de los Santos, assistant general counsel at TrueBlue, Inc., “It’s not that your skills will deteriorate, but you will likely gain new skills.” Although Edmund Burke unluckily cautioned that “The law sharpens the mind by narrowing it,” Miller Adams firmly believes that, “The role of a lawyer can be very broad. We should not feel limited to a narrow focus. Our training makes us unique in a corporate setting.”
Dan Menser, vice president of legal affairs at T-Mobile USA, believes that career stability should be distinguished from job stability, saying, “Rather than focusing on finding a job with an employer that appears to have long-term stability, focus on growing your skills, maximizing your value to your employer, and adapting to changing business and legal environments.

prior to going in-house, so I found this not to be true,” says Eric de los Santos. Whether you will be better off financially depends on where you are coming from outside and where you go inside. If you are a senior associate or partner at a big law firm, for example, you may take a pay cut initially, but you may find that your total compensation package over your entire in-house career is comparable (or far exceeds) what you would have earned outside, depending on your position, equity compensation, other fringe benefits, and the success of your company. Jim Rupp, former general counsel at Fluke Corporation and now back in private practice, says, “It depends on the company, but a V.P. general counsel can do as well as a law firm partner. Associates of big firms will do better than many of their in-house peers on base pay, but stock options can be a positive in the long run.”

7 You will have more career stability

Law firms are keenly aware of the risks of relying too heavily upon a few big corporate clients, so they hedge their bets. As an in-house lawyer, you will be all in. Even if you are happy in-house and your company comes to wonder how it ever got along without you — good luck with that by the way — stuff happens. “I merged myself out of four jobs, so be prepared for change,” notes Jeff Christianson.

“Businesses are always growing and changing, which can result in acquisitions, mergers, or downsizing. Legal departments are not immune to these changes,” adds Brian Bean, corporate counsel at Ecova. The flip side is that you may have more upward career mobility if you are willing to move over to move up. Once in-house, should you decide to transition to a different company, you will have a leg up on outside lawyers seeking the same in-house positions.

Dan Menser, vice president of legal affairs at T-Mobile USA, believes that career stability should be distinguished from job stability, saying, “Rather than focusing on finding a job with an employer that appears to have long-term stability, focus on growing your skills, maximizing your value to your employer, and adapting to changing business and legal environments. If you end up with an employer to retirement, great — but no matter how stable your employer seems, growing your career will pay dividends should stuff happen.”

8 You can easily go back to private practice

Do not count on being able to return to a law firm. After he left Microsoft, Sherman Hellenese transitioned back to private practice, but cautions: “Unless you have a book of business, most law firms won’t touch you with a 10-foot pole. Migrating to a firm that has an existing work stream relationship with your company will help with the development of a book because you will already understand the business, have existing relationships, and know what is expected of outside counsel.” Jim Rupp stresses the benefit of his in-house experience to his law firm’s clients, saying, “Many business people recognize that a background of dealing with management questions often results in lawyers who are better able to answer client questions and address issues in a more relevant and concise fashion.”

So how do you find a job in-house?

Know thyself. Assuming you have determined that you want to remain in the legal profession, what are your marketable strengths as a potential in-house lawyer and what are your goals?

Network. Join the WSBA Corporate Counsel Section, for starters, which is open to any active WSBA member in good standing, and to law students. Be sure to build a network outside the legal profession as well.

Do your homework. Research the industries and companies that interest you. Find a socially responsible company with a business model you understand, respect, and that will support your professional development.

Be humble. Remember that a law firm is successful when its lawyers are successful.

The WSBA Corporate Counsel Section can provide answers to many more questions and guidance in your career decisions. Consider joining the Section, attending a CLE, or participating in an event. See the sidebar on page 41 for more information. NWL

JAMES DOANE is chair of the WSBA Corporate Counsel Section. He recently celebrated his 10th anniversary as corporate counsel at Costco Wholesale Corporation. He was in private practice for over 20 years in Seattle and Tokyo before moving in-house. He can be reached at jdoane@costco.com.
In 1884, attorney Lelia Robinson arrived in Seattle with an opportunity and a problem.

The opportunity was to open the kind of legal practice that had been closed to her in Boston, where she had been largely limited to the shadows of trial work. In Washington Territory, by contrast, women were voting and serving on juries, and a prominent local judge encouraged Robinson to argue her own cases in court. The problem, however, was navigating the deeply entrenched masculinity of courtroom culture. Robinson, who had a background in journalism and a penchant for activism, shared her experiences with a small but determined national community of female lawyers. When she returned home to Boston, Robinson credited her time in Seattle with giving her the confidence to do trial work in the less-welcoming Boston courtrooms.

Lelia Robinson was born in Boston on July 23, 1850. At 17, she married Rupert Chute, a tinsmith, and began writing for several Boston newspapers. Ten years later, she divorced Chute, resumed her maiden name, and enrolled in the Boston University School of Law, where she was the only woman in a class of 150 students. Refusing to hang about the edges of the classroom and separate herself from her peers, Robinson adopted a friendly and outgoing “social attitude” and was eventually accepted as a “good fellow” by her classmates.

One of only a handful of women attending law school in the 1870s, Robinson was keenly aware of her pioneering position in a masculine field. She understood that women who separated themselves from their law school classmates, often in an effort to maintain a sort of propriety, actually reinforced the idea that they were out of place in that setting. Similarly, she felt strongly that women who studied law had an obligation to practice it in a visible way: “More women must come into the actual field of practice, and the eyes of all must become accustomed to the sight, then will the path grow easier to tread.” Robinson encouraged her fellow female lawyers to cultivate connections among themselves and with their male law school classmates. These connections, she argued, would allow women both to grow their practices and to normalize their presence in a traditionally masculine legal culture.

In 1881, after graduating fourth in her class, Robinson’s petition to sit for the Massachusetts bar was denied. In Massachusetts and across the country, male judges, lawyers, and legislators insisted that women were intellectually and physically unfit for legal work. While some argued that women’s intrinsic virtue and sensitivity would put them at a disadvantage, others worried that women would use their feminine wiles on the judge and jury, disempowering male attorneys too chivalrous to attack a woman. Women, it seemed, were either too innocent or too devious for the courtroom.

In her petition to the state Supreme Court, Robinson ignored arguments about female “nature” and focused on the word “citizen” in the Massachusetts statute governing admittance to the bar. Robinson argued that “citizen” was a gender-neutral term, but Chief Justice Horace Gray disagreed: “A woman,” wrote Gray, “is not, by virtue of her citizenship, vested by the Constitution of the United States or by the Constitution of the Commonwealth, with any absolute right.” The Court, Gray made clear, had no intention of liberally construing women’s rights as citizens, particularly when it came to allowing women to hold public office. Well aware that the Massachusetts Supreme Court had ruled decisively that a woman could not serve as justice of the peace because it was a public office, Robinson insisted that the role of an attorney was primarily administrative. Gray rejected this, asserting that the role of attorney is “very near” that of a public officer, and that since women were prohibited from taking part in state government, they “could not take part in the administration of justice,” as judges, jurors, or attorneys.

In 1882, the Massachusetts Legislature amended the law to allow women to practice law in that state, and Lelia Robinson became the first woman admitted to the Massachusetts bar. Though fresh out of a relatively positive law school experience, Robinson was unsure how to navigate Boston’s legal community. Writing several years later to fellow female lawyers, Robinson remarked that “[b]usiness came in very slowly during the three and a half years that I had my office [in Boston]...and consisted mostly of small and rather hopeless claims for collection. In the rare cases of my bringing suit on them, I engaged another lawyer to take them into court; thus, of course, reducing my own profits very considerably.” Robinson was greatly frustrated by the challenges of growing a legal practice. And while she was pragmatic in her willingness to do paperwork or stenography, her later writing implies that she felt called to trial work. She mused that while most new lawyers must begin as generalists, Robinson was greatly frustrated by the challenges of growing a legal practice. And while she was pragmatic in her willingness to do paperwork or stenography, her later writing implies that she felt called to trial work. She mused that while most new lawyers must begin as generalists, “when circumstances have developed them in some particular direction [a] specialty chooses them, rather than they the specialty.” She had chosen transactional work, “but it didn’t choose me in any encouraging degree.” After scraping by for three years, “[a]t last, shortly before go-
ing west, I did go into the probate court in person to claim separate maintenance and custody of children for a deserted wife, and, though the case was hard fought, I won it.” Lelia Robinson wanted to go to court.

Moving to Seattle in 1884 gave Robinson the opportunity to build a profitable legal practice and get the courtroom experience she wanted. Seattle was a strategic choice. Robinson had heard of “the liberality of western views on the ‘woman question,’ and other issues of the day,” and likely knew that women had been granted the right to vote by the Territorial Legislature in 1883. Judge Roger Greene, who would become Robinson’s advocate and the source of much of her work, had campaigned passionately for women’s suffrage and was the force behind empaneling mixed juries of women and men in Washington Territory. Labor activism and the enfranchisement of women created a unique political culture in Seattle that drew the attention of suffragists across the country. Though suffrage wasn’t the focus of Robinson’s activism, she understood that being admitted to the bar was not the only hurdle female lawyers faced. Robinson was looking for a community that welcomed women’s public participation, and she hoped to find it in Seattle.

She was not disappointed. In stark contrast to Boston, her colleagues in Seattle encouraged her to take on court work: “All united in urging me to undertake it, and [Judge Greene] started me in earnest by appointing me as counsel for a prisoner at the opening of the first term after my arrival. So I made the attempt, with fear and trembling, and shall always be glad, for besides finding I could do the work, I had the invaluable experience of going more than once before a mixed jury of men and women — something that I suppose no other woman attorney has ever done.”

Indeed in 1884, Washington and Wyoming territories were the only regions of the country where women served on juries. Robinson, herself, arrived in Seattle worried that female jury service might be carrying women’s political participation “a little too far,” but came to believe that women were exemplary jurors, “ladies to whom any one might gladly entrust the settlement of any question, civil or criminal, that must be carried into a court of justice.” Robinson also noted that having women in the courtroom changed behavior: “[W]hen women jurors came in, smoking jurors went out — or rather the cigars and pipes went out. Men found that they must be gentlemen in the jury room as in the drawing-room.” Yale Law School Professor Cristina Rodriguez has argued that experiments with women jurors in Washington and Wyoming Territories presented “radical challenges to nineteenth-century legal culture,” a challenge that Robinson herself seemed to welcome.

It’s worth noting that while Robinson appreciated Judge Greene’s help and benefited from his eagerness to get women into the courtroom, their goals were not precisely the same. Robinson wanted to work, she wanted to practice law, do trial work, and be accepted by her professional peers. She wanted to be financially secure. Greene, on the other hand, was on a personal crusade to combat gambling, alcohol, and prostitution in the rapidly growing city of Seattle. An unapologetic activist, Judge Greene believed that placing virtuous women in ballot booths and jury boxes would combat these “social evils.” Empowered by what he considered divine authority, Greene was widely considered a “religious crank” who punished prostitutes more severely than violent criminals. It’s not clear how Robinson felt about these issues, but we do know that she took the professional opportunities Greene offered her and made good use of them.

In the courtroom, Robinson’s focus was on creating a space for herself in a legal culture unused to professional women. If male jurors had to marginally adapt to the presence of women in the jury room, female attorneys had to carefully consider almost every aspect of their comportment in law school, private practice, and the courtroom. Robinson noted that throughout her early career she was “often in great doubt and perplexity” about how to interact with her male colleagues and how best to present herself in order to be taken seriously in her field. Robinson and her female peers debated what a woman should wear to court, particularly on her head. Respectable women in the 1880s wore hats in public, but male attorneys always removed their hats in court. Some of Robinson’s peers insisted that female lawyers must also remove their hats, while others argued it would be an irreparable breach of propriety that would compromise the women themselves. Robinson decided that she would “wear a small hat which set back from the face,” not so much for the sake of propriety but to make herself more comfortable, and thus more confident. She also argued, “When our object is to accustom judge, jury, and clients and the public to the presence of women attorneys in court, there should be as few minor variations from the usual customs and appearance of women in public places as may be.” Robinson understood that her choices could impact how other women were received in the profession.

Robinson had come to Seattle with the intention of staying. She was “delighted with the place, climate, people, and the bright, new civilization.” She was successful in Seattle, doing work that paid well among colleagues who supported her ambitions. But when Robinson’s parents and sister were unable to join her in Seattle as planned, she left Washington Territory and returned home to Boston, “fully expecting to return” to Seattle later in her career. Back with her family, Robinson published her first book, Law Made Easy: A Book for the People (1886) and ultimately decided that Boston was her home. She recognized, however, that her time in Washington had changed her: “[I] became so broadened and liberalized by my experience in the...West that I look out from more comforted eyes, and that my own greater self-confidence helps people more readily to place confidence in me.”

Back in Seattle, the experiment of woman suffrage and jury service was short-lived: the Territorial Supreme Court declared the original bill unconstitutional in 1887. Washington’s women would not see the inside of a polling place again until 1910. But for a brief moment in Washington legal history, women were invited to participate in legal and political processes largely closed to them elsewhere in the country. It wasn’t a utopian moment; special interests assumed they could control the “female vote” and the supposedly virtuous sympathies of female jurors, and when that didn’t happen, they no longer supported their presence in public life. But Lelia Robinson made use of the opportunity to build a successful legal practice and argue her own cases while writing for a national audience.
of female lawyers. When she returned to Boston she reopened her practice, wrote two books about the law for general readers, and became a mentor to female attorneys in Boston and beyond. In this way, Lelia Robinson’s Seattle experience helped shape an emerging national community of female lawyers.8

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NOTES
1. Lelia J. Robinson to the Equity Club, April 7, 1888, in Virginia G. Drachman, Women Lawyers and the Origins of Professional Identity in America: The Letters of the Equity Club, 1887–1890 (Ann Arbor: University of Michigan Press, 1993), 126–127. The Equity Club was founded in 1886 by a group of women lawyers from the University of Michigan Law School. The first professional organization for women lawyers, the club connected otherwise isolated women through correspondence.
3. Robinson to the Equity Club, April 7, 1888, in Drachman, Women Lawyers.
6. By the end of the century, most states had removed legal barriers to women practicing law, but female enrollment in law schools remained low and women remained at the margins of the legal profession. As Michael Grossberg reminds us, “[i]nformal constraints continued to decree the law a man’s profession” (148).
7. Robinson to the Equity Club, April 7, 1888, in Drachman, Women Lawyers, 121.
8. Robinson to the Equity Club, April 7, 1888, in ibid., 121.
11. Robinson to the Equity Club, April 7, 1888, in Drachman, Women Lawyers, 121–122.
15. Robinson to the Equity Club, April 7, 1888, in Drachman, Women Lawyers, 127. In the same 1888 letter, Robinson asserts that “the idea of a woman in the law is no longer an uncomfortable novelty,” but much of her advice to younger women entering the field suggests that women must still tread carefully as legal culture adapts to their presence. In later article, Robinson remarks that “the novelty of [the woman lawyer’s] existence has scarcely begun to wear off, and the newspapers publish and republish little floating items about women lawyers along with those of the latest sea-serpent, the popular idea seeming to be that the one is about as real as the other.” Lelia J. Robinson, “Women Lawyers in the United States,” 2 Green Bag, 1890.
16. Robinson to the Equity Club, April 7, 1888, Id., 122.
17. Robinson to the Equity Club, April 7, 1888, Id., 125.
18. Robinson remarried in 1890 and died of an accidental overdose in 1891. She was 41 years old.
Women’s History

by Emily Wittenhagen

In celebration of Women’s History month, I wanted to show this photograph of Othilia Gertrude Carroll Beals, who appears to the far right. Beals was the first woman to graduate from the University of Washington School of Law in 1901, one of her earliest accolades in a lifelong campaign for social justice. After earning her degree, she attended a women’s suffrage meeting in her hometown of New Orleans, crossing paths with Susan B. Anthony, in whose footsteps she was already following.

Beals’s many accomplishments include being elected the first female Justice of the Peace in Seattle, being awarded France’s “Officer de l’Instruction Publique” medal for her aid in obtaining employment for French war brides coming to the United States, and serving as vice president of the American Legion Women’s Auxiliary for the Western Division.

As a true advocate of civil liberties, Beals fought not only for the rights of women, but for the rights of all to freedom and peace. In 1919, just after WWI ended, she played a large role in organizing and speaking at a parade held by the Women’s Non-Partisan Committee for the League of Nations, which involved powerful women from across the country giving speeches all over New York — from cars, libraries, and street corners. The parade aimed at petitioning the U.S. Senate to immediately ratify a covenant put forth by the League of Nations, whose principal mission was to maintain world peace and prevent war. In 1927, she was part of General John Pershing’s party on a goodwill tour of Europe, serving as official hostess.

As a February 1920 issue of Good Housekeeping noted: “Seattle has two women jurists, Judge Othilia G.C. Beals and Judge Reah M. Whitehead, both regularly elected Justices of the Peace who handle all kinds of civil cases without discrimination as to sex. Judge Beals, a beautiful woman of what is generally termed the society type, is a magnetic public speaker as well as a judge of fine discernment.”

Beals stands alongside an inspiring history of powerful female pioneers of the ever-changing legal landscape of Washington state, including, but not limited to, Betty Fletcher, Muriel Mawer, Reah Whitehead (as mentioned above), and, also in the photograph, Carolyn Dimmick.

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Captain Robert Gray landed at the ancient Indian Village of Chinookville on the north shore of the Columbia River in 1792 on the southern edge of what was to become Pacific County. Lewis and Clark camped in the same area and saw the Pacific Ocean from Cape Disappointment in 1805. Pacific County was established by the Oregon Territorial legislature on Feb. 3, 1851. It was the third county created north of the Columbia River.

The first county seat was located at Pacific City on Cape Disappointment. In 1852, the Federal Government set aside 640 acres on the cape (including Pacific City) for a military reservation. The occupants of the town were ordered to vacate. The activities of the county government were then transferred to Chinookville in 1852. County Commissioner sessions were held there until March. A vote of the electorate in May 1855 officially designated the settlement of Oysterville as the new county seat. For nearly two decades the County Commissioners held their sessions in whatever building was available. A courthouse was finally erected there in 1875 and served for nearly 18 years.

In the meantime, South Bend was growing in population and demanded a vote to move the county seat. A vote was taken in 1892 designating South Bend as the county seat, but it resulted in a lawsuit which temporarily delayed moving day. South Benders, agitated by the apparent reluctance of county officials, took two steamers to Oysterville and forcibly moved the records in 1893. South Bend officially became the county seat and has remained so.

The present courthouse, dubbed “The Gilded Palace of Extravagance,” was designed by C. Lewis Wilson and Company of Chehalis in 1909. The first bids for construction were opened in August 1909, and a local contractor bid $87,730. He was to be given the job until he discovered that he had made an error of $10,000 in his estimate. Because of the error, the total cost of the building was found to exceed the limit the Commissioners had allowed for construction. The bid was withdrawn, and the Commissioners revised the plans and issued a call for new bids.

The new bids were based on the original design submitted by Wilson with a few alternations. The exterior remained the same but interior marble and other costly materials were eliminated. Later in the 1940s, the Commissioners made up for the lack of interior detail by assigning a county jail inmate, who happened to be an artist, the task of painting the panels in the foyer with scenes from the early history of the county. He also painted the cement columns on the second floor of the rotunda to look like marble. At a distance, visitors still mistake the fake marbling for the real thing.

The building opened in 1911. The final cost, including the art-glass dome, totaled $132,000. The building was entered into the National Register of Historic Places in 1977.
Although Washington’s death penalty predates state status, the penalty’s vulnerability to changing political tides and legal challenges has led to repeated abolitions followed by re-enactments. With each resurrection, the death penalty statute emerges as more narrowly circumscribed to hold up against legal, political, ethical, and moral challenges. A current moratorium by Governor In-slee and introduction of bills to abolish the death penalty, along with recent renewed pushes by various organizations to end the death penalty, render the penalty’s status uncertain.

Early Years

The first record of a hanging goes back to 1849, when the territory that is now Washington state hanged two Native Americans for murder. In 1854, the Territorial Legislature first enacted the death penalty statute. In 1858, Nisqually Chief Leschi was executed on a gallows at Fort Steilacoom for the murder of American soldier Colonel A. Benton Moses (History Link File 5145, www.historylink.org). Leschi had signed the Medicine Creek Treaty of 1854 under protest. He had probably led about 300 troops against the United States and settlers in the 1855 and 1856 Indian Wars.

Washington Becomes a State

Washington became a state in 1889. The State Legislature changed the statute in 1901 to require executions to take place at the State Penitentiary in Walla Walla. Previously, executions took place publicly in the counties where defendants had been convicted. Historical records disagree on what constituted the state’s first execution. Wikipedia lists it as Jan. 31, 1902, when Lum Yu, an immigrant Chinese cannery worker, was hanged for the murder of Oscar Bloom, a white bully who had assaulted and robbed him while playing cards. However, historylink.org reports that Washington carried out its first execution on May 6, 1904, hanging Zenon “James” Champoux for the murder of Lottie Brace in Seattle on Nov. 5, 1902 (Seattle Post-Intelligencer, May 6, 1904, “Champoux Pays Penalty Today”). Champoux was a French Canadian prospecting in Alaska when he met entertainer Brace who was 18. After promising to marry him, Brace left for Spokane and Seattle, working as a dance hall girl. Champoux found her at a theater with her sister. When she rejected his advances, he stabbed her with his knife in front of witnesses. She died later that day.

Between 1904 and 1911, Washington executed 15 people. In 1911, the State Legislature became swept up in a wave of liberal reform and Seattle State Rep. Frank P. Goss offered a bill to abolish the death penalty as reported in the Seattle Post-Intelligencer article “Goss Wins Fight Against Hanging.” It was narrowly defeated.

On Again, Off Again

In 1913, the bill was filed again, and after hot debate, Washington abolished the death penalty. In 1919, a more conservative Legislature re-enacted the death penalty. In 1932, Washington conducted its first double execution and executed its youngest person when it hanged 17-year-old Walter Dubuc and his 35-year-old co-defendant Harold Carpenter (Seattle Daily Times, April 14, 1932, “Double Hanging at Walla Walla Set for Tonight”). A third defendant, a mother of two, received a life imprisonment sentence. The three robbed an 85-year-old Thurston County farmer, Peter Jacobson, at his home, fleeing after Carpenter budgeoned Jacobson to death with a rifle butt. The only other double execution took place in 1953, when brothers Turman and Utah Wilson were executed for kidnapping and murdering 18-year-old Jo Ann Dewey of Battleground.

In 1972, the U.S. Supreme Court in Furman v. Georgia invalidated the death penalty, finding that its discriminatory imposition and carrying out constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. In 1975, Washington abolished its death penalty statute. Thereafter, voters passed an initiative to reinstate the penalty, making it mandatory for aggravated murder in the first degree. U.S. Supreme Court rulings in Woodson v. NC and Roberts v. Louisiana invalidated laws that mandated death sentences. In response, Washington modified its statute to give detailed procedures for imposing the sentence. However, Washington Supreme Court decisions in State v. Martin, 94 Wn.2d 1, 614 P.2d 164 (1980) and State v. Frampton, 95 Wn. 2d 469, 627 P.2d 922 (1981), found the new statute unconstitutional because of guilty plea issues. In 1981, the current law was passed to correct constitutional defects.

1990s

On Jan. 5, 1993, Washington resumed the death penalty by hanging Westley Allan Dodd (Seattle Post-Intelligencer, Jan. 5, 1993, “Appeal Falls: Dodd Hanged”). A Clark County jury convicted Dodd of molesting and stabbing to death 10-year-old William Neer and his brother Cole, 11, in a Vancouver park in 1989. It was the state’s first execution since 1963. Dodd confessed to those crimes and to strangling and raping four-year-old Lee Isli. He kept a diary of his crimes documenting more than 50 acts of child molestation. Dropping his appeal, he requested hanging, saying he deserved to die the same way he had killed his third victim.

The American Civil Liberties Union (ACLU) sued to stop the execution, opposing hanging as an execution method. The State Supreme Court upheld the law. However, a Thurston County Superior Court judge granted some concessions. The state was ordered to conduct the hanging in full view of witnesses instead of having a curtain.

The Death Penalty in Washington
obscure the body at the end of a rope. Appellants were given the right to have their own witness present. However, another death row inmate’s motion to videotape the execution for evidence in his appeal was denied. Outside the prison, death penalty supporters and opponents demonstrated.

Washington conducted its last execution by hanging (unless a convicted defendant chooses hanging) on May 27, 1994 (Seattle Times, May 28, 1994, “Homemade Weapons Found by Guards in Campbell’s Cell”). Charles Rodman Campbell, 39, was hanged for the 1982 murders of two women and a child. Because Campbell refused to choose between hanging and lethal injection, the applicable law then provided for hanging. In 1996, the law was amended to require lethal injection unless defendant requests hanging.

In March 2004, both Houses of the Washington State Legislature passed resolutions stating that Chief Leschi had been wrongly convicted and executed in Washington territory in 1858 and asked the state Supreme Court to vacate the conviction. According to the Death Penalty Information Center (DPIC), the court’s chief justice said that was unlikely to happen because it was unclear whether the state court had jurisdiction in a case decided 146 years prior in a territorial court. On Dec. 10, 2004, a unanimous vote by a Historical Court of Inquiry, composed of seven present and former State Supreme Court justices, exonerated Chief Leschi because he was a legal combatant of war.

2000s


On Feb. 11, 2014, Governor Jay Inslee issued a moratorium on the death penalty, stating he would grant a reprieve for any case that reached his desk. Technically, his actions do not constitute clemency. The Washington Constitution, Article 111, Sections 9 and 11, grants the governor significant non-delegable authority to pardon convicted murderers. Further, RCW 10.01.120 authorizes the governor to commute death sentences to life imprisonment at hard labor and to grant reprieves. Statutes also provide for a Clemency and Pardons Board to make recommendations to the Governor concerning petitions for pardon and clemency.


Until recently, according to the DPIC, all counties except King had abandoned the penalty. However, in November 2013, Kitsap County prosecutors indicated...
they might seek the death penalty in a Port Orchard, Washington murder case (Kitsap Sun, Nov. 18, 2014, “No Decision on Death Penalty in Woman’s Slaying”). The decision appears to rest on applicability of an appropriate “aggravating factor.” Revised Code of Washington 10.95, applies only to aggravated murder in the first degree. Premeditation and a statutorily defined “aggravating factor” must be proven. Among the now numerous factors are contract killing, killing a law enforcement officer in performance of duties, and committing the crime while fleeing from prison or already serving time. Washington disallows the death penalty for a felony in which one was not directly responsible for the murder (“felony murder doctrine”). It prohibits the penalty for minors and those with intellectual deficits. A jury determines the sentence.

Attorneys must be on the state Supreme Court’s list of attorneys qualified to represent defendants facing capital charges. This requires an annual class and extensive experience defending serious felony cases or having served on a legal team for a death penalty defendant.

Recent Attitudes
As Washington defense lawyer Mark Larrañaga observes in his web-based article “Are We Moving Away from the Death Penalty?” Oct. 10, 2014, historically, Washington has taken an active role in defining evolving standards for the penalty. For example, in 1993 Washington concluded that a mature society can no longer tolerate the execution of juveniles or individuals with intellectual deficits. Seven Washington Supreme Court justices since 2006 have concluded that the death penalty has failed.

Recently, various groups, such as civil rights and religious-based organizations, have announced renewed pushes to end the death penalty. However, polls still show support for the penalty. (“Can the Death Penalty Be Abolished?,” by Sandhyn Sonashekhar, Washington Post, Dec. 9, 2014, citing a poll showing 50 percent of Americans still support the death penalty, down from 80 percent in 1994.)

On Jan. 26, 2015, House Bill 1739 and companion Senate Bill 5639, which would abolish the death penalty in Washington, were introduced. On Feb. 19, 2015, the bill died when Rep. Laurie Jinkins, D-Tacoma, chairwoman of the House Judiciary Committee, decided not to address the bill on the last day to do so, saying it was not the right time because public support remained lacking. However, Rep. Reuven Carlyle, D-Seattle, who introduced the bill, expressed confidence the bill would progress next year. Considering the bill’s introduction, moratorium, recent election results, interconnected federal issues, medical and ethical issues, and the volatility of the political environment, the future of the death penalty in Washington is uncertain. NWL

VOICES OF THE BAR

Shelley K. Simcox is a retired federal lawyer who lives near Silverdale. She is a member of the Editorial Advisory Committee. Reach her at shelleyron@wavecable.com.

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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
Ronald E. Beard died on Nov. 18, 2014, at the age of 58.

**Carroll C. Bridgewater**

Carroll “C.C.” Bridgewater was born in 1944 in Muskogee, Oklahoma. He received his undergraduate degree at Stanford University and his law degree from the University of Texas School of Law. After law school, Bridgewater moved to Kansas City, where he was a hearing examiner for the Federal Trade Commission. In 1972, he moved to Longview, Washington, and practiced for many years at Walstead-Mertsching, where he became a partner. In 1986, Bridgewater was elected Cowlitz County’s prosecuting attorney and served two terms. Before retiring in 2010, he was chief of the state’s Appellate Court, Division II, where he served for 16 years; in retirement, he was a volunteer lawyer for Court Appointed Special Advocates (CASA). Active in his community, Bridgewater served on the Legal Aid Board, as president of the local bar association, and with the Youth and Family Link program. He enjoyed playing dice games and dominoes, anchovy pizza, and cherry pie.

Carroll C. Bridgewater died on July 20, 2014, at the age of 70.

**Daniel M. Caine**

Daniel Caine was born in 1942 and grew up in the Los Angeles area. He received his undergraduate degree from Loyola University of Los Angeles and his law degree from UCLA Law School. Caine served as a Navy JAG, and for two years was the legal officer of the aircraft carrier U.S.S. Kitty Hawk. After moving to Seattle in 1974, he worked in private practice until 2014, retiring from Ryan, Swanson & Cleveland, where his practice focused on commercial lending and bankruptcy. Caine was a past chair of the King County Bar Association’s Bankruptcy Section and the WSBA Creditor-Debtor Section. In the 1970s and 1980s, he served for several years as the secretary of the Seattle Committee on Foreign Relations. He published several articles and poems in publications such as the Washington State Bar News. Caine was recently presented with the Hon. Sidney C. Volinn Award for a lifetime of distinguished service to the WSBA Creditor-Debtor Section. In his free time, Caine enjoyed hiking, visiting historic sites, playing tennis, and reading.

Daniel M. Caine died on Jan. 6, 2015, at the age of 72.

**Warren T. Chapman**

Warren Chapman was born in Chicago in 1944 and grew up in northern California. He received his undergraduate degree from Stanford and his law degree from Columbia Law School, after taking a leave from law school to teach English to Puerto Rican immigrants in New York. After more than a decade practicing law in New York, Seattle, and San Francisco, Chapman turned his efforts to entrepreneurship in the technology sector. With his family, he enjoyed exploring the Pacific Northwest, hiking, skiing, and sailing in the San Juan and Gulf islands. A lifelong learner, he studied piano and photography, and for many years taught celestial navigation with the Seattle chapter of the United States Power Squadron.

Warren T. Chapman died on Sept. 18, 2014, at the age of 70.

**George W. Colby**

George Colby grew up on the Yakama Reservation. A Vietnam War veteran, he went to law school at Willamette University on the GI Bill. Colby was instrumental in building the Yakama Nation’s tribal legal system, starting his career as the tribe’s first public defender in 1974 and helping the tribe take on its own child welfare cases after the Indian Child Welfare Act passed in 1978. He established the children’s court, worked to transfer cases involving Yakama children to the tribal court, and was responsible for what is today known as the Yakama Nation Revised Law and Order Code. Colby spent 13 years as a Yakima County District Court judge and worked in private practice before opening his own Toppenish practice. He was also instrumental in organizing the annual Heritage Cup Polo Tournament in White Swan, which attracted polo players from several states away and raised funds for scholarships for Heritage University students.
George W. Colby died on Oct. 9, 2014, at the age of 69.

William J. Cruzen
William Cruzen was born in 1942 in Detroit, Michigan. He received his undergraduate degree from Seattle University and his law degree from University of California Hastings College of the Law. Cruzen joined Karr Tuttle Campbell in 1967, and was chair of its Trust and Estates Department until he retired. For many years, he published articles, presented, and chaired seminars to the legal and accounting professions on estate planning. Over the years, Cruzen served as a board member and president of Senior Services of Seattle/King County, on the Community Home Health Care Services board of trustees, and on the Bastyr University board of trustees, as well as the planned giving advisory boards of the American Cancer Society and Seattle University.

William J. Cruzen died on Oct. 29, 2014, at the age of 72.

Robert W. Denomy
Bob Denomy was born on Chanute Air Force Base in Champaign, Illinois, and spent his childhood in Japan, Germany, Hawaii, and Tacoma. He received his undergraduate and law degrees from the University of Puget Sound. His law firm focused on real estate law, and he was also a licensed real estate broker and CPA. Denomy enjoyed spending time at the family cabin in Packwood year-round. An avid skier, he regularly traveled to ski resorts with his ski club. An active member of the Tacoma community, Denomy volunteered with boards including the Tacoma Chamber of Commerce, Master Builders Association, UPS Alumni, UPS Trustees, and Rotary 8.


Sheldon S. Frankel
Sheldon Frankel was born in 1938 and grew up in Connecticut. He received his undergraduate degree from the University of Connecticut and his law degree and LL.M. in taxation from Boston University Law School. After working for the American Trial Lawyers Association in Boston, Frankel moved to Ohio to begin his lifelong career of teaching law. He moved to Tacoma when the University of Puget Sound was founded and taught there until the law school was transferred to Seattle University, where he then taught until his retirement. In his free time, he played bass fiddle with Bob’s Garage, Riverbend, Swinging Strings, and the Tune Tamers, and enjoyed singing in the Vashon Chorale.

Sheldon S. Frankel died on Dec. 12, 2014, at the age of 75.

Rep. Roger Freeman
Roger Freeman received his undergraduate degree from Iowa State University and his law degree from Washburn University School of Law. In 1995, he was hired as an attorney by the Society of Counsel Representing Accused Persons, a public defense law firm. In 2006, he was promoted to managing attorney of the dependency law practice. Freeman served nearly 20 years in public defense.

Freeman won a seat on the Federal Way City Council in 2009 and then became one of just two black members of the 147-member Legislature when he defeated a Republican House member in 2012. In 2013, he was diagnosed with stage 4 colon cancer. At the time of his passing, just six days before Election Day, he was running for Representative Position 2 in the 30th Legislative District. Freeman also served as City of Federal Way Human Services Commissioner for five years, and was an organizer for the City of Federal Way Dr. Martin Luther King Celebration.

“As a legislator, [Freeman] was passionate about social justice, strong families, and educational opportunities for all,” said House Speaker Frank Chopp and Democratic Caucus Chair Eric Pettigrew. “We have lost a treasured colleague and friend . . . We will miss him greatly.”

Roger Freeman died on Oct. 29, 2014, at the age of 48.

Marc D. Gianneschi
Marc Gianneschi received his bachelor’s degree in political science from Lewis & Clark College in Oregon. He earned his J.D. at the University of Puget Sound School of Law in 1990. He began practicing in Kitsap County in 1990, first serving as the public defender for the City of Bremerton. His practice was devoted to people that have been seriously injured. He was an Eagle Member of the Washington State Association for Justice and the American Association of Justice, as well as a former chair of the Kitsap County Tort Roundtable. He loved the outdoors.

Marc Gianneschi died Dec. 14, 2014, at the age of 52.

John A. Gose
John Gose was born in Walla Walla and joined the Marines after college to fight in the Korean War. After his military service, he earned his J.D. at the University of Washington School of Law and practiced in Walla Walla before relocating to Seattle. He was instrumental in enacting key legislation, including the Deed of Trust Act. He served as chair of the ABA Real Property, Probate and Trust Law Section and was the founder and president of the American College of Real Estate Lawyers. Gose trekked the high passes of Nepal, hiked the outback of New Zealand, and dove the Great Barrier Reef. He was an avid hunter and fly fisher.

John Gose died Jan. 2, 2015, at the age of 84.

Alexander McLaren Hart
A remembrance by his wife, Carole Grayson
My husband, Alexander McLaren Hart, died Dec. 25, 2014. He was 73 years and four days old. Two of his children (in their mid-40s) and a granddaughter were with him when he had a stroke five days earlier, on Dec. 20. Seventeen years earlier, also on a December 20, I was with him when he had a stroke from which he eventually recovered. I am proud that his death certificate identifies his employment as “lawyer/potter/commercial fisherman/house rehabber.”

Alex and I were out-of-state lawyers when we met at the BAR BRI prep class for the July 1981 Washington State Bar exam. In the 1960s, Alex practiced for five years in his native state of Connecticut. He moved with his then-wife and three young children to Tacoma, where he received his MFA in ceramics from the University of Puget Sound. They lived on San Juan Island during...
the 1970s. They built their home there using beached logs as center posts. Alex fished from Northern California to Southeast Alaska and produced pottery.

Alex moved to Seattle around 1979 and took the 1981 bar exam. His WSBA number is 12276. He practiced law for a decade and started a lawyers group for adult children of alcoholics. The group met for several years. Alex happily retired from law for a second time to continue rehabbing the older, modest houses in Seattle he bought with family members. He loved using his hands and, in his words, “unlayering” decades of bad remodels.

Alex leaves three children, three grandchildren, and me, his wife, Carole Grayson, WSBA no. 12146.

R. Scott Hutchison
Scott Hutchison was born in Seattle, attended the University of Washington, and earned his law degree at the University of Puget Sound School of Law. He practiced many years in Lynnwood. He was active at Edgewood Baptist Church in Edmonds and the Jaycees, serving as state president. He loved golf, tennis, and snow skiing. He was an avid Huskies fan and a 40-year season ticket holder.

Scott Hutchison died April 5, 2014, at the age of 63.

David D. Jahn
David Jahn was born in Kennewick and moved to Vancouver where he graduated from Columbia River High School. In 2014, he was inducted into the Columbia River High School Hall of Fame for his athletic accomplishments there. He attended the Northwestern School of Law at Lewis and Clark College earning his J.D. in 1982. He practiced law for many years in Vancouver. Jahn said that his most important role in life was as a father and grandfather.

David Jahn died April 28, 2014, at the age of 57.

Leland T. Johnson Jr.
Leland Johnson Jr. was born in New York and attended Princeton University and Harvard Law School. He served in the U.S. Army during the Cold War years. He practiced in Washington, D.C., for some time and then accepted a position with the Office of the Attorney General in Washington state. He worked there until his retirement as a senior assistant attorney general in 2000. He was a recipient of the Attorney General’s Steward of Justice Award. He was involved in many charitable activities, especially with the homeless and less privileged. He worked to establish an interfaith organization of faith communities. He loved baseball and was an avid reader.

Leland Johnson Jr. died Sept. 18, 2014, at the age of 82.

William J. Kochevar
William Kochevar was admitted to the WSBA in 1990 and practiced in Spokane. He worked for the Social Security Administration as a senior lawyer for 23 years. His family was important to him. He loved to hunt, fish and golf. He was a loyal fan of the Zags.


Arthur T. Lane
Arthur Lane grew up in Seattle and earned his law degree from the University of Washington School of Law, where he was a member of the Law Review. He served as a U.S. Marine officer in the Western Pacific between college and law school. Lane worked for 30 years for the City of Seattle Law Department as director of the Utilities Division. In 1978, he received the Outstanding Public Employee Award from the Municipal League of Seattle and King County. He was a member of the Knights of Columbus and worked with the Magnolia Community Blood Drive at our Lady of Fatima Church. He was a founding member of the Highland Poetry Society. Lane enjoyed many camping trips to the nation’s western national parks. He loved books and history and was known for his baking and pancakes.

Arthur Lane died Aug. 24, 2014, at the age of 84.

Sondra A. Sullins Lustgarten
Sondra Lustgarten was raised in Pampa, Texas. She participated in Girl Scouts and attributed that organization for gaining the knowledge and leadership skills she used throughout her life. She studied theater arts and speech pathology in college, earning a master’s degree. Lustgarten married and had a family. After her children were grown, she went to law school earning her J.D. She practiced family law for nearly 15 years.

Sondra Sullins Lustgarten died March 13, 2014, at the age of 74.

Laurie K. Fall Morris
Laurie Fall Morris was born in Seattle and graduated from the Lakeside School. She attended the University of Washington and majored in political science and economics. She earned her law degree at Seattle University School of Law. She dedicated her career to public defense. She worked for the Defender Association of King County for 16 years. In 2011, the office promoted her to supervise its team of investigators. When her oldest daughter was diagnosed with leukemia, Morris fought for the best medical care. She loved to travel.

Laurie Fall Morris died Nov. 17, 2015, at the age of 42.

Norman R. Nashem Jr.
Norman Nashem Jr. was born in Seattle and went to Queen Anne High School. He attended the University of Washington and earned his law degree from the University of Colorado School of Law. He served in the U.S. Marine Corps in the 1940s. He had a private practice in Yakima for nearly five decades. He was involved with Rotary and the Junior Chamber of Commerce, earning its Distinguished Service Award. Nashem enjoyed skiing, sailing, boating, and tennis. He held a private pilot’s license.

Norman Nashem Jr. died Jan. 4, 2015, at the age of 89.

Walter D. Palmer Sr.
Walter Palmer Sr. was born in Middle tow, Ohio. He attended and graduated with his J.D. from the University of Washington School of Law and was a longtime practicing attorney in Seattle. He served as a sergeant in the Army and received a Purple Heart after being wounded during the Korean War. Walter had many interests, but some of his favorites were cooking, reading, and traveling.
Walter Palmer Sr. died Sept. 9, 2014, at the age of 83.

John F. Rodda
John Rodda was born in Walla Walla and received his J.D. from the University of Oregon School of Law. Soon after graduation, he joined the firm of Butler Husk and Gleaves. Rodda then moved to Washington and joined Bellevue law firm Inslee Best Doezie and Ryder where he remained for the next 20 years. Rodda loved the outdoors, fishing, skiing, sailing, and spending time with his family. He is known for his spirit, smile, compassion, and faith.

John Rodda died Sept. 18, 2014, at the age of 67.

Betty J. Schall
Betty Schall received both her undergraduate degree and J.D. from the University of Washington. She spent her career in title insurance and was a member of Phi Beta Kappa. A longtime Bothell resident, Schall lived a full life of gratitude and shared her compassion with all who knew her. She saw the world as a wonderful place and lived a long life with few regrets.

Betty Schall died on Jan. 9, 2015, at the age of 68.

Judge Jack P. Scholfield
Jack Scholfield was born and raised in Fort Scott, Kansas. He received his undergraduate degree from the Kansas State Teachers College before enlisting in the Naval Flying Cadet program. Judge Scholfield received his J.D. from the University of Washington before joining the Port of Port Townsend. He was appointed Jefferson County Superior Court judge and served for two consecutive terms. Those in the community remember Craddock for his preparedness, mentorship, and firm but understandable rulings as judge.

Judge Craddock D. Verser
Craddock Verser spent more than 30 years of his life working in and with the Jefferson County legal community. Craddock served in a variety of ways including his private practice, as a public defender, and as a representative for the Port of Port Townsend. He was appointed Jefferson County Superior Court judge and served for two consecutive terms. Those in the community remember Craddock for his preparedness, mentorship, and firm but understandable rulings as judge.

Craddock Verser died Sept. 7, 2013, at the age of 64.

Donald H. Wollett
Donald Wollett was born in Muscatine, Iowa, and raised in Peoria, Illinois. He attended and received his J.D. from the University of Chicago and University of Indiana School of Law. After graduation, Wollett served in the Navy and commanded his own ship by the age of 25. He moved to Seattle and accepted a faculty position at the University of Washington School of Law. With a love of sports, he served as a salary arbitrator for professional athletes and an advocate for collegiate athletes.

Donald Wollett died Sept. 23, 2014, at the age of 95.

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For more info: http://bit.ly/NWLawyerAds or email paulw@wsba.org.

Donald L. Thoreson
Donald Thoreson was born in Pekin, North Dakota, and raised in Seattle. He graduated from Garfield High School and attended the University of Washington for both his undergraduate and J.D. degrees. Soon after graduation, Thoreson spent two years in the U.S. Army. When he returned, he joined Scotty Gibbon’s firm to create Gibbon & Thoreson which became Thoreson, Yost, Berry & Matthews. He then joined Betts Patterson & Mines where he practiced until his retirement. Thoreson loved to spend time with his family and he often sang in the choir at both Phinney Ridge Lutheran Church and Magnolia Lutheran Church.

Donald Thoreson died Jan. 16, 2015, at the age of 84.

Gov. Dan Ford

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Aiken, St. Louis & Siljeg, p.s. is pleased to announce that Christopher C. Lee has joined the firm.

Chris joins us from Helsell Fetterman LLP, where he was Of Counsel to the firm. Chris is an experienced litigator who focuses his practice on trust and estate litigation, guardianship, and elder protection. He lives in Seattle with his family and their new dog, Diesel.

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Angela Carr Baker, J.D., LL.M.
Beresford Booth PLLC is pleased to announce that Elizabeth Van Moppes has become Of Counsel to our firm.

Ms. Van Moppes will continue to offer her nearly 20 years of employment law experience to clients with a focus on the preventative measures employers can take to ensure the productivity of their business, training on issues related to diversity and performance management, guidance in everyday workplace related issues, and workplace investigations.

Beresford Booth PLLC is a full service law firm which includes services relating to Real Estate, Estate Planning, Probate, Corporations, Partnerships, Litigation, Employment Law, Family Law, and Complex Transactions.

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elizabethvm@beresfordlaw.com

Frank Freed Subit & Thomas LLP is pleased to announce that Jillian M. Cutler has become a partner of the firm.

Jillian’s practice continues to focus primarily on plaintiffs’ employment law.

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Etter McMahon, Lamberson, Van Wert & Oreskovich, P.C. would like to congratulate our former Partner Raymond F. Clary on his appointment to the Spokane County Superior Court Bench.

We would also like to welcome attorney Michael F. Connelly to our firm.

Mr. Connelly brings over 30 years of experience in the practice areas of municipal law, land use, zoning and development law, governmental operations, public contracts, construction law, public finance and tort defense litigation. Prior to entering private practice, Mr. Connelly worked as the City Attorney for the City of Spokane and City of Spokane Valley.

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Levy – von Beck & Associates, P.S. is pleased to announce that Katie J. Comstock has become a shareholder at the firm.

Katie will continue to represent homeowners, homeowners’ associations, small business owners, material suppliers, and contractors in litigation matters, primarily in the areas of construction, real estate, liens, and creditor’s rights.

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Opportunity for Service

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.

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 Apr. 25, 2015, in Spokane, at a location to be determined. For more information or to attend, email newlawyers@wsba.org.

WYLC Public Service Incentive Award

New and young lawyers: would you like the opportunity to attend a WSBA CLE for free? Apply to receive a WYLC Public Service Incentive Award. Applications are due March 23. This award was created to encourage and support new and young lawyers who engage or would like to engage in public service and public service volunteer opportunities as described in RPC 6.1.

Represent New and Young Lawyers on the WSBA Board of Governors

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

New Lawyer Education Web Series: Advising the New Tech Startup

Save the date for the New Lawyer Education Web Series: “Advising the New Tech Startup.” Reduced rates are available for new lawyers! For more information, email newlawyers@wsba.org.

WSBA Scholarship Fund to Attend ABA Young Lawyer Division Meetings

The ABA YLD Spring Meeting will be in Tampa, Florida, on May 14–16, 2015. If you are interested in attending as a Washington delegate, please submit the application form by March 31, 2015. Visit www.wsba.org/legal-community/new-and-young-lawyers/about-the-wylc to learn more.

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.

Volunteer Custodians Needed

The WSBA is seeking interested lawyers as potential ELC 7.7 volunteer custodians. An appointed custodian is authorized to act as counsel for the limited purpose of protecting a client’s interests whenever a lawyer has been transferred to disability inactive status, suspended, disbarred, dies, or disappears and no person appears to be protecting the clients’ interests. The custodian takes possession of the necessary files and records and takes action to protect clients’ interests. The custodian may act with a team of custodians and much of the work may be performed by supervised staff. If the WSBA is notified of the need for a custodian, the WSBA would affirm the willingness and ability of a potential volunteer and seek their appointment as custodian. Costs incurred may be reimbursed. Current WSBA members of all practice areas are welcome to apply. Contact Sandra Schilling at sandras@wsba.org, 206-239-2118 or 800-945-9722, ext. 2118 or Darlene Neumann at darlenen@wsba.org, 206-733-5923 or 800-945-9722, ext. 5923.

WSBA Board of Governors Meetings

**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.

Legal Community

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

The Access to Justice Board is pleased to invite you to the 18th Access to Justice Conference from Friday, June 12, through Sunday, June 14, 2015, at the Wenatchee Convention Center. Our conference theme, “Working for Justice: Our Journey Continues,” builds on the 20-year history of the Access to Justice Board and Alliance for Equal Justice bringing together attorneys, judges, and other community leaders to address the challenges and oppor-
tunities of advocating for civil equal justice for our state’s poorest and most disadvantaged communities. Lateefah Simon, a nationally recognized civil rights leader and program director for the Rosenberg Foundation, will keynote the conference. We will also offer networking opportunities and workshops geared towards substantive skills training, leadership development and addressing impediments to equal justice. Learn more and register at www.wsba-atj.org.

Know someone who is doing outstanding work promoting civil equal justice? The Access to Justice Board is collecting nominations for awards to be presented at the conference. The awards recognize the efforts of individuals or organizations that have played strategic, significant, and courageous leadership roles in improving access to the justice system. To see award descriptions and past recipients, visit http://bit.ly/1vExSQ8. Submit nominations by March 15, 2015, to Terra Nevitt at terran@wsba.org.

Ethics

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

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

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

Seeking Peer Advisors
Would you like to provide support to another lawyer in your community addressing topics such as mental health and self-care, alcoholism and addiction, or guidance in one’s practice? Lawyers are often uniquely able to be resources to one another in these areas. We have a robust network of advisors, support groups, and clinical referrals throughout the state. Skills trainings and newsletters are being developed and planned. To participate or learn more, see http://bit.ly/1o4fpwN, contact 206-727-8268 or 800-945-9722, ext. 8268.

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

Judges Assistance 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)
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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 (LOMAP) maintains a computer for members to review software tools designed to maximize office efficiency. LOMAP staff is available to provide materials, answer questions, and make recommendations. To make an appointment, contact lomap@wsba.org.

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

Usury Rate
The average coupon equivalent yield from the first auction of 26-week usury bills in February 2014 was 0.066 percent. Therefore, the maximum allowable usury rate for March is 12 percent.
Disciplinary Notices

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

Suspended

Dawn Marie Hiller (WSBA No. 32782, admitted 2002), of Poulsbo, was suspended for three months, effective 12/18/2014, 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), and 1.16 (Declining or Terminating Representation). Joanne S. Abelson acted as disciplinary counsel. Dawn Marie Hiller represented herself. The online version of NWLawyer contains links to the following documents: Disciplinary Board Order Approving Stipulation; Stipulation to Three Month Suspension; and Washington Supreme Court Order.

Suspended

Liam Aneurin McCann (WSBA No. 30865, admitted 2000), of Kirkland, was suspended for one year, effective 12/18/2014, 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), 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records), and 1.16 (Declining or Terminating Representation). Scott G. Busby acted as disciplinary counsel. Liam Aneurin McCann represented himself. Rebecca Lynn Stewart was the hearing officer. The online version of NWLawyer contains links to the following documents: Disciplinary Board Order Approving Stipulation; Stipulation to One Year Suspension; and Washington Supreme Court Order.

Suspended

Ronnie M. Rae (WSBA No. 34606, admitted 2004), of Spokane, was suspended for 21 months, effective 12/18/2014, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.15A (Safeguarding Property), 1.15B (Required Trust Account Records), 8.1 (Bar Admission and Discipline Matters), and 8.4 (Misconduct). Kevin Bank acted as disciplinary counsel. Ronnie M. Rae represented himself. Edward F. Shea Jr. was the hearing officer. David A. Thorner was the settlement hearing officer. The online version of NWLawyer contains links to the following documents: Disciplinary Board Order Approving Stipulation; Stipulation to Suspension and Probation; and Washington Supreme Court Order.

Suspended

Roger Jay Sharp (WSBA No. 12211, admitted 1981), of Vancouver, was suspended for six months, effective 12/18/2014, by order of the Washington Supreme Court. The lawyer’s conduct violated the following Rules of Professional Conduct: 1.3 (Diligence), 1.4 (Communication), 3.2 (Expediting Litigation), 3.4 (Fairness to Opposing Party and Counsel), and 8.4 (Misconduct). Natalea Skvir acted as disciplinary counsel. Roger Jay Sharp represented himself. Donald William Carter 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.

Transferred to Disability Inactive

Brian T. Ritchie (WSBA No. 17725, admitted 1988), of Seattle, was by stipulation transferred to disability inactive status, effective 11/12/2014. This is not a disciplinary action.

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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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Experienced contract attorney with strong research and writing skills drafts trial and appellate briefs, motions, and research memos for other lawyers. Resources include University of Washington Law Library and LEXIS online. Elizabeth Dash Bottman, WSBA No. 11791. 206-526-5777; ebottman@gmail.com.

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WILLS

If you have knowledge of a will executed by Victor Frank Farin, of Seattle, Washington, please contact Courtland Shafer at 206-923-2889.

Capitol Hill, Seattle, office space: Turn-key corner office space with small practice group in newly remodeled building, one block off Broadway at 707 East Harrison, with parking. $750 per month. Contact jtb@bwseattlelaw.com or Jeff at 206-623-2020.


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

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

ACHIEVING INCLUSION SERIES

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

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

ANIMAL LAW

The 12th Annual Animal Law Section Seminar: It’s Criminal: Animal Sexual Crimes, Overbreeding, and Overpopulation
March 12, Seattle and webcast. 7 CLE credits. Presented by WSBA in partnership with the WSBA Animal Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

BUSINESS

Doing Business Between Washington State/U.S. and Japan: Advice for U.S. Companies Looking to Transact or Invest in Japan
March 19, Seattle. 1.5 CLE credits. Presented by WSBA in partnership with the WSBA International Practice Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

NLE — Advising a Tech Startup Web Series
April 7, 14, and 21, webinar. CLE credits pending. Presented by WSBA New Lawyer Education; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org/nle.

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

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

CRIMINAL LAW

Current Issues in Evidence and Suppression

Current Issues in Evidence and Suppression

ELDER LAW

Elder Law Updates
April 17, Seattle and webcast. CLE credits pending. Presented by WSBA in partnership with the WSBA Elder Law Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.

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

ENVIRONMENTAL

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

ESTATE PLANNING

NLE: Boot Camp: Probate Fundamentals
March 10, Seattle and webcast. 6.25 CLE credits. Presented by WSBA New Lawyer Education; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org/nle.

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

REAL PROPERTY

Annual Spring Real Estate Update Seminar
April 16, Seattle and webcast. CLE credits pending. Presented by WSBA in partnership with the WSBA Real Property Probate & Trust Section; 800-945-WSBA or 206-443-WSBA. www.wsbacle.org.
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Yates v. Fithian,
2010 WL 3788272 (W.D. Wash. 2010)

City of Seattle v. Menotti,
409 F.3d 1113 (9th Cir. 2005)

State v. Letourneau,
100 Wn. App. 424 (2000)

Fordyce v. Seattle,
55 F.3d 436 (9th Cir. 1995)

LIMIT v. Maleng,
874 F. Supp. 1138 (W.D. Wash. 1994)

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Francis Adewale
WSBA No. 30089

I find joy in all that I do, advancing the cause of freedom, as a public defender, human rights advocate, and community activist.

I became a lawyer because it is the only means I have in fighting the pernicious military rule in Nigeria.

In my practice, I work on improving access to justice.

My career has surprised me in varied ways. I joined the Bar the year Jan Eric Petersen was the president and his year-long theme was “proud to be a lawyer.” It influenced me greatly and made my decision to join the City public defender an easy choice. I benefited immensely from the Washington Leadership Institute — as an alumnus I have friends and mentors all over the state that I can rely on to help me.

The best advice I have for new lawyers is to thyself be true! Respect and decorum to the courts and our justice system is not a fad. If you help advance the cause of access to justice you are helping your career and our dear profession will be better for it.

My long-term professional goal is to continue to work to help advance the cause of access to justice worldwide.

The most rewarding part of my job is waking up each Monday morning and going to community court from 8:30 a.m. till 6:45 p.m., knowing that one or two Spokane homeless men or women will be helped to their feet and given tools to fight their problems.

The worst part of my job is the lack of funding for the justice system.

I was told by friends in Washington, D.C., that Eastern Washington is a hostile territory for anyone with my skin color. I came here over 15 years ago and found people who will go the extra mile to help me be whatever I want to be. The goodwill, love, and affection I have enjoyed completely shattered that foreboding prediction.

I wish that more lawyers would do more pro bono work.

If I could have tried one famous case, it would be State v. D. B. Cooper! Call me when you find him.

Since I graduated from law school, the legal profession is a source of joy and made a tremendous impact on my life.

Successful attorneys should care about access to justice.

During my free time, I hang out with my kids.

The most memorable trip I ever took was to Yellowstone National Park.

I enjoy reading Let My People Go — Albert Luthuli’s autobiography.

My favorite place in the Pacific Northwest is Spokane’s Riverfront Park (pictured).

Nobody would ever suspect that I was never a “refugee” as defined by UNHCR.

I care about respect and decorum for the courts and the justice system.

A prosecutor friend describes me as “Hurrican Francis” and a Spokesman Review journalist has called me a “charismatic whirlwind.”

My all-time favorite TV show is Shark Tank.

I regret not knowing the name of the Peace Corps volunteer who came to my village and introduced the idea of the greatest country on earth (the U.S.A.) to me.

My name is Francis Adewale. I am a H. George Frederickson Honors graduate of Eastern Washington University. I have served as assistant public defender for the City of Spokane, Office of the Public Defender, since May 2001. I provide free limited legal clinics to seniors and low-income citizens of Spokane at the Resource Center. I provide free legal assistance and counseling to new refugees and volunteers through Spokane Refugee Connections. One of my greatest moments was when I was sworn in as a citizen of the United States of America in a private ceremony attended by Spokane City Council members and moderated by Justice Charles Z. Smith. I can be reached at fadewale@spokanecity.org.
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